

IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXVII
July 21, 2004

NUMBER 2
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PREFACE

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

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

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

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

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Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
4	Friday, July 30, 2004	August 18, 2004
5	Friday, August 13, 2004	September 1, 2004
6	Friday, August 27, 2004	September 15, 2004

PLEASE NOTE:

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

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

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

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

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, August 10, 2004, at 9 a.m. and Wednesday, August 11, 2004, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the August 4, 2004, Iowa Administrative Bulletin.

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Payroll deduction for additional insurance coverage, rescind 701—ch 206; adopt 11—ch 46,

Filed **ARC 3532B** 7/21/04
 Parking, 101.12(2), Filed **Emergency ARC 3483B** 7/7/04

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Farm deer—hunting; monitoring for CWD; registration of premises,
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- Types of campaign committees required to file statements of organization,
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- Cross reference correction, 4.8(3), Filed ARC 3498B 7/21/04
- Permissible expenditures of campaign funds—donations to charitable organizations,
 sharing of information, 4.25(1)“w” and “bb,” Filed ARC 3497B 7/21/04
- Civil penalties for late reports, 4.58 to 4.62, rescind ch 10, Notice ARC 3502B 7/21/04
- Use of public resources for a political purpose, adopt ch 5, Filed ARC 3504B 7/21/04
- Executive branch ethics, adopt ch 6, Notice ARC 3503B 7/21/04
- Personal financial disclosure statements, 7.1(4), 7.1(6), 7.3, 7.4,
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- Child development homes, 110.10(2), Filed Emergency After Notice ARC 3460B 7/7/04

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

- Continuation of rate limits for purchase of social service contracts and rehabilitative treatment and supportive service contracts, 150.3(5)“p”(2), 150.3(5)“p”(2)“3” and “4,” 185.112(1)“k,” Notice ARC 3467B, also Filed Emergency ARC 3459B 7/7/04
- State payment program for services to adults with mental illness, mental retardation, and developmental disabilities, 153.52(1), 153.53(2), 153.57(3)“b,” Notice ARC 3451B, also Filed Emergency ARC 3458B 7/7/04
- Subsidized adoptions, 201.3(2), 201.6(1)“a”(4) and (7), Notice ARC 3450B, also Filed Emergency ARC 3457B 7/7/04

INSPECTIONS AND APPEALS DEPARTMENT[481]

- Overpayment recovery, 71.1, 71.3, 71.4, 71.5(1), 71.5(1)“b,” “c” and “g,” 71.5(2), 71.6, Filed ARC 3535B 7/21/04

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

- Federal occupational safety and health regulations—adoption by reference, 10.20, 26.1, Notice ARC 3511B 7/21/04

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]“umbrella”

- Interns; retired status; reinstatement of lapsed license, 2.1, 2.8(3), 2.9, Notice ARC 3472B 7/7/04

LOTTERY AUTHORITY, IOWA[531]

- Winning ticket; monitor vending machines, 11.1(4), 14.4(2) to 14.4(11), 14.5(4), 14.19(3)“d,” 14.19(10), 14.28(2), Notice ARC 3505B, also Filed Emergency ARC 3506B 7/21/04

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

- Boating speed and distance zoning—Green Island and Odessa State Wildlife Areas, 40.9(2), 40.49, 40.50, Notice ARC 3488B 7/7/04
- Boat motor regulations—Banner Lakes at Summerset State Park in Warren County, 45.4(2), Filed ARC 3491B 7/7/04
- Wildlife refuges—trespass on the Middle River Wildlife Area in Allamakee County prohibited, 52.1(2)“b,” Notice ARC 3487B 7/7/04
- Deer hunting—licensing requirement for adults accompanying youth during special youth educational hunts at state parks or recreation areas, 105.4(1)“i,” Notice ARC 3489B 7/7/04
- Deer hunting by residents, 106.2(4), 106.6(1) to 106.6(3), 106.6(5), 106.7(4), 106.8(1), Filed ARC 3492B 7/7/04

NATURAL RESOURCES DEPARTMENT[561]

- Iowa nature store, ch 11, Filed ARC 3490B 7/7/04

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Reactivation process, 3.1, 3.7(4) to 3.7(8), 3.8, 4.7“4,” 5.2(2), 5.2(2)“a”(4), 5.2(2)“c,” 5.2(4), 5.2(5)“b” to “h,” Notice ARC 3470B 7/7/04

PROFESSIONAL LICENSING DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Dietitians, 81.4(4)“b” and “c,” 81.4(6), 81.4(7), 81.9, 81.11 to 81.14, 84.1(5) to 84.1(9), Filed ARC 3478B 7/7/04
- Funeral directors, 99.4(2), 99.4(3), 99.6(3), 99.6(4), 101.10 to 101.17, 104.1(5) to 104.1(12), Notice ARC 3476B 7/7/04
- Psychologists, 240.10(5)“b”(2), Notice ARC 3536B 7/21/04
- Respiratory care practitioners, 261.9(4), 261.9(6), 261.10(6), 262.2(1), 262.2(2), 262.6“6,” 262.10(2)“b,” Notice ARC 3475B 7/7/04
- Athletic trainers, 351.9, 351.11 to 351.14, 354.1(5), 354.1(7) to 354.1(9), Filed ARC 3477B 7/7/04

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

- Change of address, 1.4, 1.9(5), 12.3(1), Filed Emergency ARC 3514B 7/21/04

PUBLIC SAFETY DEPARTMENT[661]

- Closed circuit surveillance on excursion gambling boats, 23.3, 23.4, 23.5“10,” 23.6, 23.8, Filed Emergency ARC 3507B 7/21/04
- Fire fighter certification—training standards, 54.100 to 54.104, Notice ARC 3482B 7/7/04
- Fire fighter training and equipment funds, 55.104, 55.105, 55.301, Notice ARC 3481B 7/7/04
- Volunteer emergency services provider death benefits—line-of-duty death, 59.1, 59.2(1), 59.2(2), Notice ARC 3480B, also Filed Emergency ARC 3479B 7/7/04

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

- Implementation of 2004 Iowa Acts, House File 2302, 1.4, 1.5(1), 1.5(3), 3.13(2)"i" to "k," 3.14(3), 4.4(1)"c," 4.5(11), 4.6(5)"h," 4.10, ch 5 title, 5.2, 5.4(5)"b," 5.4(7), 5.4(8)"a"(4), 5.4(8)"b," 5.4(10), 5.4(12), 5.4(12)"a," 5.4(16), 5.4(17), 5.5(11), 5.6(1), 5.6(2)"a," 6.1, 6.2(6), 6.5(3)"e" and "j," 6.13(4), 7.2(2)"a," 9.2(15), 9.4(11)"i," 9.5(1)"a"(6), 9.7(4)"d," 10.2(11), 10.4(17)"i," 10.5(1)"a"(6), 10.5(3)"a"(6), 10.7(4)"d," 11.5(2), 11.9(1), Notice ARC 3449B 7/7/04
- Rescission of limitation on location and number of racetracks and excursion gambling boats, 1.6, Notice ARC 3448B 7/7/04

REGENTS BOARD[681]

- Personnel administration, 3.2, 3.37, 3.104(4)"c," 3.115, Notice ARC 3494B 7/21/04
- Organization, 11.1, Notice ARC 3495B 7/21/04

REVENUE DEPARTMENT[701]

- Individual, corporation and franchise tax—applicability of additional first-year depreciation allowance, Section 179 expensing, research activities credit, 39.3(5), 40.1, 40.60, 40.65, 42.2(11)"b," 52.7(3)"c," 52.7(5)"c," 53.1, 53.22, 53.23, 59.23, 59.24, Notice ARC 3485B 7/7/04
- Electronic filing of Iowa individual income tax returns, 39.13, Notice ARC 3484B 7/7/04
- Optional designation of funds by taxpayer, 43.4(1)"a" and "b," 43.4(2)"a" to "c," 43.4(3) to 43.4(7), Notice ARC 3527B 7/21/04

SECRETARY OF STATE[721]

- Absentee ballot couriers, 21.361(8), 21.370 to 21.378, Notice ARC 3538B 7/21/04
- Counting votes, adopt ch 26, Notice ARC 3537B 7/21/04
- Registration of postsecondary schools, adopt ch 31, Notice ARC 3524B, also Filed Emergency ARC 3523B 7/21/04
- Revised nonprofit corporation Act fees, 40.7, Notice ARC 3525B, also Filed Emergency ARC 3526B 7/21/04

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Level payment plans, 19.4(11)"e" and "f," 20.4(12)"e" and "f," Notice ARC 3493B 7/7/04

WORKERS' COMPENSATION DIVISION[876]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Contested cases, 4.17 to 4.20, 4.23, 4.35, 4.36, Notice ARC 3512B, also Filed Emergency ARC 3513B 7/21/04
- Payroll tax tables, 8.8, Filed Emergency ARC 3447B 7/7/04

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
DENTAL EXAMINERS BOARD[650]		
Fingerprint packet and fee required for licensure, 11.2, 11.3, 11.5, 11.6, 11.8, 13.2, 14.5, 15.1 IAB 7/21/04 ARC 3522B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	August 10, 2004 2 p.m.
Costs of monitoring, 35.1(6), 51.19(9) IAB 7/21/04 ARC 3521B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	August 10, 2004 2 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Secondary mathematics endorsement, 14.141(13) IAB 7/21/04 ARC 3540B	Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 10, 2004 11:30 a.m.
Special education consultant, 15.3(1) IAB 7/21/04 ARC 3542B	Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 10, 2004 10:30 a.m.
Director of special education of an AEA, 15.3(11) IAB 7/21/04 ARC 3543B	Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 10, 2004 11 a.m.
School social worker statement of professional recognition, 15.3(15) IAB 7/21/04 ARC 3541B	Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 10, 2004 10 a.m.
ELDER AFFAIRS DEPARTMENT[321]		
Alarm systems on doors in assisted living facilities, 25.1, 25.37(2) IAB 7/21/04 ARC 3530B (ICN Network)	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 10, 2004 10:30 a.m.
	Public Library, South entrance 21 E. Third St. Spencer, Iowa	August 10, 2004 10:30 a.m.
	Public Library 400 Willow Ave. Council Bluffs, Iowa	August 10, 2004 10:30 a.m.
	Meeting Room D, Public Library 123 S. Linn St. Iowa City, Iowa	August 10, 2004 10:30 a.m.

ELDER AFFAIRS DEPARTMENT[321] (Cont'd)

Monitoring, civil penalties, complaints and investigation for elder group homes, 26.1 to 26.10 IAB 7/21/04 ARC 3531B (ICN Network)	Room 105 Clinton Community College 1000 Lincoln Blvd. Clinton, Iowa	August 10, 2004 9:30 a.m.
	Public Library 300 S. Fillmore St. Osceola, Iowa	August 10, 2004 9:30 a.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 10, 2004 9:30 a.m.
Elder group homes, ch 29 IAB 7/21/04 ARC 3528B (ICN Network)	Room 105 Clinton Community College 1000 Lincoln Blvd. Clinton, Iowa	August 10, 2004 9:30 a.m.
	Public Library 300 S. Fillmore St. Osceola, Iowa	August 10, 2004 9:30 a.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 10, 2004 9:30 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 22.1 to 22.3, 23.1, 23.3, 25.1 IAB 7/21/04 ARC 3515B	Conference Room 1 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	August 23, 2004 1 p.m.
Landfarming of petroleum contaminated soil; land application of wastes, rescind and adopt new ch 120; 121.1 to 121.7 IAB 6/9/04 ARC 3397B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 21, 2004 10 a.m.

**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DIVISION[605]**

Enhanced 911 telephone systems, amendments to ch 10 IAB 7/21/04 ARC 3519B	Division Conference Room Hoover State Office Bldg. Des Moines, Iowa	August 11, 2004 1 p.m.
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LABOR SERVICES DIVISION[875]

OSHA regulations, 10.20, 26.1 IAB 7/21/04 ARC 3511B	First Floor West Conference Room 1000 E. Grand Ave. Des Moines, Iowa	August 18, 2004 1:30 p.m.
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LOTTERY AUTHORITY, IOWA[531]

Winning ticket; monitor vending machines, 11.1(4), 14.4, 14.5(4), 14.19, 14.28(2) IAB 7/21/04 ARC 3505B (See also ARC 3506B herein)	2015 Grand Ave. Des Moines, Iowa	August 11, 2004 11 a.m. (If requested)
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NATURAL RESOURCE COMMISSION[571]

Boating restrictions at Green Island and Odessa state wildlife areas, 40.9(2), 40.49, 40.50 IAB 7/7/04 ARC 3488B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 27, 2004 2 p.m.
Trespassing on Middle River Wildlife Area, 52.1(2) IAB 7/7/04 ARC 3487B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 27, 2004 10 a.m.
Licensing requirements for adults who accompany youth on special youth hunts, 105.4(1) IAB 7/7/04 ARC 3489B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 27, 2004 10 a.m.

NURSING BOARD[655]

Licensure, 3.1, 3.7, 3.8, 4.7, 5.2 IAB 7/7/04 ARC 3470B	Des Moines West Room Holiday Inn Downtown 1050 Sixth Ave. Des Moines, Iowa	September 8, 2004 6:30 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Mortuary science examiners, 99.4, 99.6, 101.10 to 101.17, 104.1 IAB 7/7/04 ARC 3476B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 28, 2004 9 to 10 a.m.
Psychologists—licensure by endorsement, 240.10(5) IAB 7/21/04 ARC 3536B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 10, 2004 9 to 10 a.m.
Respiratory care examiners, 261.9, 261.10, 262.2, 262.6, 262.10 IAB 7/7/04 ARC 3475B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 28, 2004 10 to 11 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Minimum training standards for fire fighters, 54.100 to 54.104 IAB 7/7/04 ARC 3482B	Fire Service Training Bureau 3100 Fire Service Rd. Ames, Iowa	August 5, 2004 10 a.m.
(ICN Network)	Room 8, Bldg. 6, Ankeny Campus Des Moines Area Community College 2006 S. Ankeny Blvd. Ankeny, Iowa	August 9, 2004 6 to 8 p.m.
	Room 210 Scott Community College 500 Belmont Rd. Bettendorf, Iowa	August 9, 2004 6 to 8 p.m.
	Room 203B, Linn Hall Kirkwood Community College 6301 Kirkwood Blvd. Cedar Rapids, Iowa	August 9, 2004 6 to 8 p.m.
	Looft Hall Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	August 9, 2004 6 to 8 p.m.
	Room 211, Instructional Center Southwestern Community College 1501 W. Townline Rd. Creston, Iowa	August 9, 2004 6 to 8 p.m.
	Room 818, Smith Wellness Center Iowa Lakes Community College 3200 College Dr. Emmetsburg, Iowa	August 9, 2004 6 to 8 p.m.
	Room 206, Library Iowa Central Community College 330 Avenue M Fort Dodge, Iowa	August 9, 2004 6 to 8 p.m.
	Room 806, Continuing Education Ctr. Iowa Valley Community College 3702 South Center St. Marshalltown, Iowa	August 9, 2004 6 to 8 p.m.
	Room 106, Activity Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	August 9, 2004 6 to 8 p.m.
	ICN Room 8, Video Conference Center Indian Hills Community College 651 Indian Hills Dr. Ottumwa, Iowa	August 9, 2004 6 to 8 p.m.
	Room 139 Northeast Iowa Community College 10250 Sundown Rd. Peosta, Iowa	August 9, 2004 6 to 8 p.m.

PUBLIC SAFETY DEPARTMENT[661] (Cont'd)
(ICN Network)

	Room 402, Bldg. D Northwest Iowa Community College 603 W. Park St. Sheldon, Iowa	August 9, 2004 6 to 8 p.m.
	Room 925, Bldg. A Western Iowa Tech. Community College 4647 Stone Ave. Sioux City, Iowa	August 9, 2004 6 to 8 p.m.
	Room 110, Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	August 9, 2004 6 to 8 p.m.
	Room 503, North Campus, Trustee Hall Southeastern Community College 1500 W. Agency West Burlington, Iowa	August 9, 2004 6 to 8 p.m.
Fire fighter training and equipment funds; training facility funds, 55.104, 55.105, 55.301 IAB 7/7/04 ARC 3481B	Conference Room Fire Service Training Bureau 3100 Fire Service Rd. Ames, Iowa	August 5, 2004 9:30 a.m.
Volunteer emergency services provider death benefits—line-of-duty death, 59.1, 59.2 IAB 7/7/04 ARC 3480B (See also ARC 3479B)	Conference Room Fire Service Training Bureau 3100 Fire Service Rd. Ames, Iowa	August 5, 2004 9:45 a.m.

RACING AND GAMING COMMISSION[491]

General, amendments to chs 1, 3 to 7, 9 to 11 IAB 7/7/04 ARC 3449B	Suite B 717 E. Court Des Moines, Iowa	July 27, 2004 9 a.m.
Limitation on location and number of racetracks and excursion gambling boats, rescind 1.6 IAB 7/7/04 ARC 3448B	Suite B 717 E. Court Des Moines, Iowa	July 27, 2004 9 a.m.

UTILITIES DIVISION[199]

Revisions to level payment plan rules, 19.4(11), 20.4(12) IAB 7/7/04 ARC 3493B	Hearing Room 350 Maple St. Des Moines, Iowa	September 1, 2004 9 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

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 Soil Conservation Division[27]
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 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
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 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
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 CORRECTIONS DEPARTMENT[201]
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 Iowa Advance Funding Authority[285]
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INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
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 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
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VOLUNTEER SERVICE, IOWA COMMISSION ON[555]
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TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
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VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	TYPES OF PROJECTS	NOTICE OF INTEREST (NOI) DUE DATE
Iowa Homeland Security and Emergency Management Division	Hazard Mitigation Grant Program (HMGP)	Statewide	<ul style="list-style-type: none"> • State and local governments • Private Non Profit (PNP) Organizations or institutions which operate a PNP facility as defined in the 44 Code of Federal Regulations (CFR), Section 206.221(e) • Indian tribes or authorized tribal organizations, and Alaska Native villages or organizations, but not Alaska native corporations with ownership vested in private individuals. 	<ol style="list-style-type: none"> 1. Residential property acquisition or relocation, as defined in the 44 CFR, Section 206.434(d). 2. Residential property structural elevation of structures with a Flood Insurance policy and eligible for Increased Cost of Compliance (ICC) coverage under the National Flood Insurance Program (NFIP). 3. Structural hazard control or protection projects for public facilities. 4. Construction activities that will result in public facility protection from hazards. 5. Retrofitting of public facilities to include the construction of tornado saferooms. 6. Development of state or local mitigation standards. 7. Development of comprehensive hazard mitigation programs with implementation as an essential component. 8. Development or improvement of warning systems. 	September 2, 2004

Notice of Interest (NOI) form is available at:

www.iowahomelandsecurity.org

click on Resource Room, click on Information Library, select “NOI Form”

Guidance may be obtained by contacting:

Dennis Harper, State Hazard Mitigation Officer
 Bonnie Rieder, Grants Fiscal Specialist
 Iowa Homeland Security and Emergency Management Division
 Hoover State Office Building, Level A
 Des Moines, Iowa 50319-0113
 (515) 281-3231

ADMINISTRATIVE SERVICES DEPARTMENT

Public Notice

NOTICE OF OFFICIAL PUBLICATION RATE INCREASE FOR THE FISCAL YEAR COMMENCING JULY 1, 2004, AND ENDING JUNE 30, 2005

In accordance with Iowa Code section 618.11, the Department of Administrative Services fleet, mail and printing administrator hereby publishes the lineage rate* for newspaper publications of any order, citation, or other publication required or allowed by law (also known as official publications) for the period commencing on July 1, 2004, and ending on June 30, 2005, in the following amounts:

* Lineage rate: "...each line of eight point type two inches in length, or its equivalent." (Iowa Code section 618.11.)

One insertion = 37.3 cents

Each subsequent insertion = 25.3 cents

The rate becomes effective on July 1, 2004. The rate was determined by applying the formula specified in the statute. According to the federal Department of Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers increased 2.3% from April 2003 to April 2004.

Pursuant to Iowa Code section 618.11, this notice is exempt from the rule-making process in Iowa Code chapter 17A.

Questions with respect to this notice may be directed to:

Dale Schroeder, State Fleet, Mail and Print Administrator
Department of Administrative Services
301 East 7th Street
Des Moines, Iowa 50319
Telephone: (515)281-7702
E-Mail: dale.schroeder@iowa.gov

ARC 3533B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5(11), 163.1, and 189A.13 and Iowa Code Supplement section 170.3, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to rescind Chapter 57, "Whitetail Deer Hunting Preserves," and to amend Chapter 64, "Infectious and Contagious Diseases," Chapter 65, "Livestock Importation," Chapter 66, "Livestock Movement," and Chapter 76, "Meat and Poultry Inspection," Iowa Administrative Code.

The purpose of these proposed amendments is to rescind certain regulatory programs over the hunting of farm deer, the monitoring of farm deer for chronic wasting disease in-

cluding eliminating the requirement that farm deer must originate from a herd participating in a chronic wasting disease program before the farm deer can be moved in Iowa, and the registration of farm deer premises. These proposed amendments also rescind a variety of fees imposed upon farm deer producers and whitetail hunting preserves to support these activities. The proposed amendments rescind rules 21—64.120(163) and 21—65.12(163), both of which deal with the importation of Cervidae into Iowa, and combine them into one new rule. The new rule is substantively identical to the two previous rules. Finally, a new rule is added to Chapter 66 relating to livestock movement. This rule is substantially similar to a rule in Chapter 64 that is being rescinded in this rule making.

These proposed amendments have been submitted due to the fact that the Department recently received an opinion from the Iowa Attorney General's office stating that the Department does not have statutory authority to adopt rules imposing a fee schedule upon farm deer producers for whitetail hunting preserve regulation, chronic wasting disease regulation, and the registration of farm deer premises. As a result, the Department has ceased the collection of the fees and is refunding fees that have been collected. In addition, no state or federal moneys have been provided to the Department to operate the farm deer program. Thus, the Department finds that, since it has no financial resources to implement the programs, it has no choice but to discontinue them.

Any interested persons may make written comments or suggestions on these proposed amendments on or before 4:30 p.m. on August 10, 2004. Such written materials should be directed to Dr. John Schiltz, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; or faxed to (515)281-4282. E-mail comments may be sent to John.Schiltz@idals.state.ia.us.

These proposed amendments were also Adopted and Filed Emergency and are published herein as **ARC 3534B**. The content of that submission is incorporated by reference.

No waiver provision is included in these proposed amendments because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to these proposed amendments.

These amendments are intended to implement Iowa Code chapters 163 and 189A and Iowa Code Supplement chapter 170.

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

ARC 3522B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 11, "Licensure to Practice Dentist-

DENTAL EXAMINERS BOARD[650](cont'd)

ry or Dental Hygiene”; Chapter 13, “Special Licenses”; Chapter 14, “Renewal”; and Chapter 15, “Fees,” Iowa Administrative Code.

The proposed amendments require applicants for a dental or dental hygiene license, faculty permit, or reinstatement of a license to submit a completed fingerprint packet and fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa Division of Criminal Investigation (DCI) and the Federal Bureau of Investigation (FBI), as authorized by the U.S. Department of Justice pursuant to the Volunteers for Children Act, Title 42, United States Code.

The amendments specify that the Board may issue a license or permit or reinstate a license prior to receipt of the criminal history report by the FBI. However, an applicant is required to submit an additional completed fingerprint packet and fee within 30 days of a request by the Board if an earlier fingerprint submission has been determined to be unacceptable by the DCI or FBI. Noncompliance with Board rules or fraud or deceit in procuring a license is grounds for disciplinary action.

The Board has required a completed fingerprint packet with all new dental licenses and dental hygiene licenses for many years. The proposed amendments merely add the requirement that applicants pay to have the fingerprint packet evaluated by the DCI and FBI. Application fees for dental licenses, dental hygiene licenses and faculty permits have not increased since 1983.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, fees are not subject to waiver pursuant to rule 15.9(17A,147,153,272C).

Any interested person may make written comments or suggestions on the proposed amendments on or before August 10, 2004. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on August 10, 2004, beginning at 2 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the June 17, 2004, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 147, 153, and 272C.

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

The following amendments are proposed.

ITEM 1. Amend subrule **11.2(2)**, paragraph “g,” as follows:

g. The nonrefundable application fee, *plus the fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI)*, as specified in 650—Chapter 15.

ITEM 2. Amend subrule **11.2(2)** by adopting **new** paragraph “k” as follows:

k. A completed fingerprint packet to facilitate a criminal history background check by the DCI and FBI.

ITEM 3. Amend subrule **11.3(2)**, paragraph “h,” as follows:

h. The nonrefundable application fee for licensure by credentials, *plus the fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI)*, as specified in 650—Chapter 15 of these rules shall be made payable to the Iowa State Board of Dental Examiners.

ITEM 4. Amend subrule **11.3(2)** by adopting **new** paragraph “i” as follows:

i. A completed fingerprint packet to facilitate a criminal history background check by the DCI and FBI.

ITEM 5. Amend subrule **11.5(2)**, paragraph “f,” as follows:

f. The nonrefundable application fee, *plus the fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI)*, as specified in 650—Chapter 15.

ITEM 6. Amend subrule **11.5(2)** by adopting **new** paragraph “k” as follows:

k. A completed fingerprint packet to facilitate a criminal history background check by the DCI and FBI.

ITEM 7. Amend subrule **11.6(2)**, paragraph “i,” as follows:

i. The nonrefundable application fee for licensure by credentials, *plus the fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI)*, as specified in 650—Chapter 15 of these rules shall be made payable to the Iowa State Board of Dental Examiners.

ITEM 8. Amend subrule **11.6(2)** by adopting **new** paragraph “m” as follows:

m. A completed fingerprint packet to facilitate a criminal history background check by the DCI and FBI.

ITEM 9. Adopt **new** subrule 11.8(5) as follows:

11.8(5) An application for a license, permit, or reinstatement of a license will be considered complete prior to receipt of the criminal history background check on the applicant by the FBI for purposes of review and consideration by the executive director, the license committee, or the board. However, an applicant is required to submit an additional completed fingerprint packet and fee within 30 days of a request by the board if an earlier fingerprint submission has been determined to be unacceptable by the DCI or FBI.

ITEM 10. Amend subrule 13.2(2) as follows:

13.2(2) The dean of the college of dentistry or chairperson of a dental hygiene program shall certify to the board or the dental hygiene committee those bona fide members of the college’s or a dental hygiene program’s faculty who are not licensed to practice dentistry or dental hygiene in Iowa. Any faculty member so certified shall, prior to commencing duties in the college of dentistry or a dental hygiene program, make *on official board forms* written application to the board or the dental hygiene committee for a permit ~~on official board forms~~ and shall provide the following:

DENTAL EXAMINERS BOARD[650](cont'd)

a. *The nonrefundable application fee, plus the fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI), as specified in 650—Chapter 15.*

a b. Information regarding the professional qualifications and background of the applicant.

c. *A completed fingerprint packet to facilitate a criminal history background check by the DCI and FBI.*

b d. Such additional information as the board may deem necessary to enable it to determine the character, education or experience of such applicant.

e e. Applications must be signed and verified as to the truth of the statements contained therein *and include required credentials and documents*, and all questions must be completely answered.

ITEM 11. Amend subrule 13.2(4) as follows:

***13.2(4)** The appropriate fee as specified in 650—Chapter 15 of these rules shall be paid by the applicant for issuance and renewal of the faculty permit.

ITEM 12. Amend subrule **14.5(1)** by adopting **new** paragraph “j” as follows:

j. For reinstatement of a lapsed license, a completed fingerprint packet to facilitate a criminal history background check by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI), including the fee for the evaluation of the fingerprint packet and the criminal history background checks by the DCI and FBI, as specified in 650—Chapter 15.

ITEM 13. Adopt **new** subrule 15.1(14) as follows:

15.1(14) The fee for evaluation of a fingerprint packet and the criminal history background checks is \$46. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

ARC 3521B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 35, “Iowa Practitioner Review Committee,” and Chapter 51, “Contested Cases,” Iowa Administrative Code.

These amendments allow the Board to collect either the actual costs of monitoring a practitioner’s compliance with terms of an Iowa practitioner program contract or settlement agreement or to collect a \$100 quarterly monitoring fee, as agreed to by the licensee or registrant in the contract or settlement agreement.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

*An adopted amendment to 13.2(4) is published herein under **ARC 3520B**.

Any interested person may make written comments or suggestions on the proposed amendments on or before August 10, 2004. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on August 10, 2004, beginning at 2 p.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the June 17, 2004, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

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

The following amendments are proposed.

ITEM 1. Amend subrule **35.1(6)**, paragraph “d,” as follows:

d. Monitoring costs. A provision for payment of the actual costs *or a \$100 quarterly fee to cover the board’s expenses* associated with monitoring a practitioner’s compliance with the terms of the IPRC initial agreement or contract may be included in the initial agreement and contract. Actual costs include mileage, meals, travel expenses, hourly investigative time, and all incidental expenses associated with monitoring compliance, ~~which~~. *Monitoring costs* shall be considered repayment receipts as defined in Iowa Code section 8.2.

ITEM 2. Amend subrule 51.19(9) as follows:

51.19(9) A provision for payment of the actual costs *or a \$100 quarterly fee to cover the board’s expenses* associated with monitoring a licensee’s or registrant’s compliance with the settlement agreement may be included in the settlement agreement. Actual costs include mileage, meals, travel expenses, hourly investigative time, and all incidental expenses associated with monitoring compliance, ~~which~~. *Monitoring costs* shall be considered repayment receipts as defined in Iowa Code section 8.2.

ARC 3540B

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 In-

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

tended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendment clarifies and strengthens existing secondary mathematics requirements to better prepare junior and senior high school mathematics teachers (grades 7-12). Approved teacher preparation institutions would not need to change their programs significantly.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, August 10, 2004, at 11:30 a.m. in Room 3 South, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, August 13, 2004. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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

The following amendment is proposed.

Amend subrule 14.141(13) as follows:

14.141(13) Mathematics.

a. K-6. Completion of 24 semester hours in mathematics to include coursework in algebra, geometry, number theory, measurement, computer programming, and probability and statistics.

b. 7-12. Completion of 24 semester hours in mathematics to include ~~coursework in a linear algebra or an abstract (modern) algebra course, a postcalculus geometry course, a two-course sequence in calculus, a computer programming course, and a probability and statistics course, and~~ *coursework in discrete mathematics.*

ARC 3542B

**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 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

The proposed amendment modifies the requirements of the special education consultant, which is a support personnel position that assists instructional programs for pupils who require special education services.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, August 10, 2004, at 10:30 a.m. in Room 3 South, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, August 13, 2004. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515) 281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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

The following amendment is proposed.

Amend subrule 15.3(1) as follows:

15.3(1) Special education consultant.

a. Authorization. The holder of this endorsement is authorized to serve as a special education consultant. ~~This support personnel~~ *The consultant* provides ongoing assistance to instructional programs for pupils requiring special education.

~~Consultant endorsements are available in mental disabilities, behavioral disorders, learning disabilities, physical disabilities, hearing impaired, visually impaired, early~~

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

childhood—special education, multicategorical resource room—mildly handicapped. The early childhood—special education consultant endorsement allows the individual to provide services to programs with pupils below the age of 7. All other consultants A consultant can serve programs with pupils from age 5 birth to the age of 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8) with the exception of consultants serving deaf or hard-of-hearing or visually disabled students. Applicants who desire to serve as consultants serving deaf or hard-of-hearing or visually disabled students must hold the respective special education instructional endorsement. The deaf or hard-of-hearing consultant endorsement or the visually disabled consultant endorsement allows the individual to serve students from birth to the age of 21.

b. Program requirements.

(1) Degree—master's.

1. Option 1: Master's in special education in an endorsement area listed under rule 15.2(272).

2. Option 2: Master's in another area of education plus 30 graduate semester hours an endorsement in at least one special education (instructional) area. These hours may have been part of, or in addition to, the degree requirements.

(2) Content: This sequence The coursework is to be at least eight graduate semester hours to include the following:

1. Curriculum development design.

2. Consultation process in special or regular education:

(a) • Examination, analysis, and application of a methodological model for consulting with teachers and other adults involved in the educational program.

(b) • Interpersonal relations, interaction patterns, interpersonal influence, and communication skills.

3. Skills required for conducting a needs assessment, delivering staff in-service needs, and evaluating in-service sessions.

c. Other.

(1) Meet the requirements for the special education teaching endorsement congruent with the consultant authorization desired.

(2) Four An applicant must have four years of successful teaching experience, two of which must be congruent with the consultant authorization desired in special education.

ARC 3543B

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 15, “Requirements for Special Education Endorsements,” Iowa Administrative Code.

The proposed amendment modifies the requirements for the director of special education, which include competencies rather than coursework and various options to meet the new requirements. The amendment also clarifies the authori-

zation to include the “director of special education of an area education agency.”

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, August 10, 2004, at 11 a.m. in Room 3 South, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, August 13, 2004. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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

The following amendment is proposed.

Amend subrule 15.3(11) as follows:

15.3(11) Director of special education of an area education agency.

a. Authorization. The holder of this endorsement is authorized to serve as a director of special education of an area education agency. Assistant directors, special education coordinators and other equivalent types of positions are also required to hold this endorsement.

b. Program requirements.

(1) Degree. Specialist or its equivalent: A master's degree plus at least 32 semester hours of planned graduate study in administration or special education beyond the master's degree.

(2) Endorsement. Hold or meet the requirements for supervisor of special education—instructional endorsement (refer to subrule 15.3(5)) or support (refer to subrule 15.3(10)); one of the following:

1. PK-12 principal and PK-12 supervisor of special education (see rule 282—14.142(272));

2. Supervisor of special education—instructional (see subrule 15.3(5));

3. Supervisor of special education—support (see subrule 15.3(10)); or

4. A letter of authorization for special education supervisor issued prior to October 1, 1988.

(2)(3) Content. The program shall include a minimum of 32 graduate semester hours, 16 semester hours of which are outlined under supervisor of special education—instructional or support. Completion of a sequence of courses and exper-

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

periences which may have been part of, or in addition to, the degree requirements to include the following:

1. ~~Foundations of school administration~~ Knowledge of federal, state and local fiscal policies related to education.

2. ~~School finance~~ Knowledge of school plant/facility planning.

3. ~~School law~~ Knowledge of human resources management, including recruitment, personnel assistance and development, evaluations and negotiations.

4. ~~School-community relations~~ Knowledge of models, theories and philosophies that provide the basis for educational systems.

5. ~~Electives in educational administration, special education, school psychology, speech/language pathology, audiology, and school social work so that the program totals 32 graduate semester hours~~ Knowledge of current issues in special education.

6. ~~Evaluator approval component~~ Knowledge of special education school law and legislative and public policy issues affecting children and families.

7. Knowledge of the powers and duties of the director of special education of an area education agency as delineated in Iowa Code section 273.5.

8. Practicum in administration and supervision of special education programs.

(4) Experience. The applicant must have three years of administrative experience as a PK-12 principal or PK-12 supervisor of special education.

(5) Competencies. Through completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements, the director of special education accomplishes the following:

1. Facilitates the development, articulation, implementation and stewardship of a vision of learning that is shared and supported by the school community.

2. Advocates, nurtures and sustains a school culture and instructional program conducive to student learning and staff professional growth.

3. Ensures management of the organization, operations and resources for a safe, efficient and effective learning environment.

4. Collaborates with educational staff, families and community members, responds to diverse community interests and needs, and mobilizes community resources.

5. Acts with integrity, fairness, and in an ethical manner.

6. Understands, responds to, and influences the larger political, social, economic, legal, and cultural context.

7. Collaborates and assists in supporting integrated work of the entire agency.

c. Other.

(1) Option 1:

Instructional. Meet the requirements for one special education teaching endorsement to include at least two of the following levels: and have three years of teaching experience in special education.

1. ~~Early childhood—special education.~~

2. ~~K-6.~~

3. ~~7-12.~~

(2) Option 2:

Support. Meet the practitioner licensure requirements for one of the following endorsements and have three years of teaching experience as a:

1. School audiologist; ;

2. School psychologist; ;

3. School social worker; ; or

4. Speech-language pathologist.

An individual holding a statement of professional recognition is not eligible for the director of special education of an area education agency endorsement.

ARC 3541B**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 15, “Requirements for Special Education Endorsements,” Iowa Administrative Code.

The proposed amendment regarding the school social worker statement of professional recognition (SPR) is necessary to align with the appropriate class of licensure issued by the Iowa Board of Social Work Examiners and the recent changes that were made in that Board’s rules.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, August 10, 2004, at 10 a.m. in Room 3 South, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, August 13, 2004. Written comments and suggestions should be addressed to Barbara F. Hendrickson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to barbara.hendrickson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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

The following amendment is proposed.

Amend subrule 15.3(15) as follows:

15.3(15) School social worker.

a. Authorization. ~~The holder of this endorsement~~ An individual who meets the requirements of paragraph

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

15.3(15)“b” or 15.3(15)“c” is authorized to serve as a school social worker to pupils from birth to *the age of* 21 (and to a maximum allowable age in accord *accordance* with Iowa Code section 256B.8).

Option 1:

b. *Option 1. Program Endorsement* requirements. Master's degree in social work from an accredited school of social work to include a minimum of 20 semester hours of coursework (including practicum experience) which demonstrates skills, knowledge, and competencies in the following areas:

(1) Social work: Study and knowledge in the following three areas:

1. Assessment (e.g., social, emotional, behavioral, and familial, etc.).

2. Intervention (e.g., individual, group, and family counseling, etc.).

3. Related studies (e.g., community resource coordination, multidiscipline teaming, organizational behavior, and research, etc.).

(2) Education: Study and knowledge in the following areas:

1. General education (e.g., school law, foundations of education, methods, psychoeducational measurement, behavior management, child development, etc.).

2. Special education (e.g., exceptional children, psychoeducational measurement, behavior management, special educational *education* regulations, counseling school age children, etc.).

3. Practicum experience: ~~The program shall include an A practicum experience in a school setting under the supervision of an experienced school social work practitioner is required.~~ The practicum shall include experiences that lead to the development of professional identity and the disciplined use of self. ~~These experiences will include: in assessment; , direct services to children and families; , consultation; , staffing, community liaison and documentation; which leads to the development of professional identity and the disciplined use of self.~~ If a person has served two years as a school social worker, the practicum experience can be waived.

4. Completion of an approved human relations component.

5. The program must include preparation that contributes to the education of the handicapped and the students with disabilities and students who are gifted and talented.

c. Option 2: . Statement of professional recognition (SPR).

The special education director (or designee) of the area education agency or local education agency must submit a letter *an application* requesting that the authorization be issued. ~~Additionally, an official transcript reflecting the master's in social work must be included. If a person qualifies for a regular license, that must also be submitted. A temporary SPR will then be issued for one school year. An approved human relations course must be completed before the start of the next school year. The applicant must provide evidence that the human relations component has been fulfilled within the required time frame. The application must include:~~

(1) An official transcript that reflects the master's degree in social work; and

(2) The licensed independent social worker (LISW) or licensed master social worker (LMSW) license issued by the Iowa board of social work examiners.

~~A temporary SPR will be granted for two additional school years to allow the person time to complete the two years' supervised practice experience that are required be-~~

~~fore taking the social work license examination and to allow sufficient time to complete successfully the examination and be issued the license. At the end of the third school year, the applicant must submit a copy of a social work license issued by the Iowa department of public health.~~

ARC 3530B

ELDER AFFAIRS
DEPARTMENT[321]

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 231.23(10), the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 25, “Assisted Living Programs,” Iowa Administrative Code.

The amendments clarify the requirements for alarm systems on doors in assisted living facilities.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 10, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309; E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

There will be a public hearing August 10, 2004, at 10:30 a.m. over the Iowa Communications Network (ICN), at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

Third Floor Conference Room
Wallace State Office Building
East Ninth and Grand Avenue
Des Moines

Spencer Public Library
21 East Third Street
Spencer (south entrance; check sign for room location)

Council Bluffs Public Library
400 Willow Avenue
Council Bluffs (south side main entrance; check sign for room location)

Iowa City Public Library
123 South Linn Street
Iowa City (main entrance, Meeting Room D)

At the public hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code Supplement chapter 231C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3)

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will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **321—25.1(231C)** by inserting, in alphabetical order, the following **new** definition:

"Wandering behavior" means a behavioral problem of disorientation and difficulty relating to the environment with aimless or purposeful motor activity that causes a social problem such as getting lost, leaving a safe environment or intruding in inappropriate places.

ITEM 2. Rescind subrule 25.37(2) and insert in lieu thereof the following **new** subrule:

25.37(2) A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

a. Written procedures regarding alarm systems and appropriate staff response when a tenant's service plan indicates a risk of wandering or a tenant exhibits wandering behavior.

b. Written procedures regarding appropriate staff response if a tenant with cognitive disorder or dementia is missing.

A program serving a person(s) with cognitive disorder or dementia in dementia-specific units shall have an operating alarm system connected to each exit door.

ARC 3531B

ELDER AFFAIRS DEPARTMENT[321]

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 231B.2, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 26, "Monitoring, Civil Penalties, Complaints and Investigation for Adult Day Services and Assisted Living Programs," Iowa Administrative Code.

The proposed amendments will include elder group homes in monitoring and complaints and investigation procedures as appropriate under Iowa Code Supplement chapter 231B.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 10, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309; E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

There will be a public hearing on August 10, 2004, at 9:30 a.m. over the Iowa Communications Network (ICN), at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

Clinton Community College
1000 Lincoln Blvd., Room 105
Clinton

Osceola Public Library
300 S. Fillmore Street
Osceola

Third Floor Conference Room
Wallace State Office Building
East Ninth and Grand Avenue
Des Moines

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

These amendments are intended to implement Iowa Code Supplement chapter 231B.

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

The following amendments are proposed.

Amend 321—Chapter 26 as follows:

CHAPTER 26

MONITORING, CIVIL PENALTIES, COMPLAINTS AND INVESTIGATION FOR *ELDER GROUP HOMES*, ADULT DAY SERVICES AND ASSISTED LIVING PROGRAMS

321—26.1(17A,231B,231C,231D) ~~Adult day services/assisted living program monitoring~~ **Monitoring.**

26.1(1) The department of inspections and appeals (DIA) shall monitor a certified program at least once during the program's certification period.

26.1(2) All records and areas of the program deemed necessary to determine compliance with the requirements for certification under 321—Chapters 24, ~~and 25 and 29~~ shall be accessible to DIA for purposes of monitoring.

321—26.2(17A,231B,231C,231D) **Complaint procedure.**

26.2(1) *The process for filing a complaint is as follows:*

a. Any person with concerns regarding the operations and service delivery of a program may file a complaint with the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083, *or by use of the complaint hotline, telephone 1-877-686-0027. The Web site address is www.dia-hfd.state.ia.us.*

b. *When the nature of the complaint is outside of DIA authority, DIA shall forward the complaint, or refer the complainant, to the appropriate investigatory entity.*

c. *Complaints related to elder group homes and assisted living programs may also be filed in the office of the long-term care resident's advocate as set forth in Iowa Code Supplement section 231.42.*

26.2(2) *The complaint shall include the complainant's name, address and telephone number; the complainant's relationship to the program, tenant or participant; and the reason for the complaint. DIA shall act on anonymous complaints unless DIA determines that the complaint is intended to harass the program. If DIA, upon preliminary review, determines that the complaint is intended as harassment or is without reasonable basis, DIA may dismiss the complaint.*

26.2(2) 26.2(3) Upon receipt of a complaint made in accordance with this rule, DIA shall make a preliminary review of the complaint to determine if a potential violation of 321—Chapter 24 for adult day services programs or 321—

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Chapter 25 for assisted living programs, *or 321—Chapter 29 for elder group homes*, as applicable, exists. If a potential violation exists, DIA shall make or cause to be made an on-site investigation of the program within 20 working days unless there is the possibility of immediate ~~harm~~ *danger, in which case the investigation shall be completed within 24 hours of the receipt of the complaint.*

26.2(3)(4) For any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, DIA shall:

- a. Promptly investigate the allegation.
- b. Take certification enforcement action, as appropriate, in accordance with this chapter.
- c. Notify the accrediting entity by the most expeditious means possible of any actions taken by DIA with respect to certification enforcement.

26.2(4)(5) DIA shall apply a preponderance-of-evidence standard in determining whether or not a complaint is substantiated.

26.2(5)(6) DIA shall notify the department, the program, and, if known, the complainant, of the results of the complaint investigation as follows:

a. If regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the complaint investigation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231B, 231C or 231D and 321—Chapter 24, ~~or 321—Chapter 25 or 29~~, whichever is applicable, within 10 working days of receiving an acceptable plan of correction and shall determine whether any enforcement action related to continued certification is necessary.

b. If no regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings within 15 days following the on-site investigation.

321—26.3(17A,231B,231C,231D) Enforcement action. DIA may take the following actions as a result of noncompliance with Iowa Code Supplement ~~chapter~~ *chapters 231B, 231C for assisted living programs and Iowa Code Supplement chapter 231D for adult day services programs* and rules promulgated by the Iowa department of elder affairs.

26.3(1) In lieu of denial, suspension or revocation, DIA may issue a conditional certification for a period of up to one year. In the issuance of a conditional certification, DIA shall specify the issues of noncompliance and the period of time required to comply with each issue. At any time up to ~~10~~ *ten* working days following the required compliance period, the program shall provide written notification to DIA of the program's compliance with requirements. Following receipt of the program notification, DIA shall make a final certification decision and may conduct an on-site monitoring evaluation to verify compliance prior to making the final decision. Failure by the program to submit timely notification of compliance to DIA shall result in suspension or revocation of the conditional certification and may result in further enforcement action as available under Iowa Code Supplement chapter 231B, 231C or 231D and 321—Chapter 24, ~~or 321—Chapter 25, or 29~~, whichever is applicable. DIA shall notify the program of a final certification decision within 15 working days following receipt of the program notification or on-site monitoring evaluation, whichever is later, or following the program's failure to timely notify DIA of compliance.

26.3(2) Civil penalty *for adult day services and assisted living programs.* If a program ~~continues to fail~~ *fails* or refuses to comply, DIA may assess a civil penalty, which shall be paid to DIA within ten working days following assessment, as follows:

a. A program in noncompliance with Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, that results in ~~imminent~~ *immediate* danger or a substantial probability of resultant death or physical harm to a participant or tenant, up to but not to exceed \$10,000.

b. Following receipt of notice from DIA, a program which fails or refuses to comply with Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, within prescribed time frames set out by DIA when such noncompliance has a direct relationship to the health, safety, or security of program participants or tenants, up to but not to exceed \$5,000.

321—26.4(17A,231B,231C,231D) Notice—hearings.

26.4(1) ~~The A notice setting forth the denial, suspension, or revocation of a certificate shall be effected by delivering delivered~~ to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service, ~~a notice setting forth the particular reasons for such action.~~ Such denial, suspension, or revocation shall become effective 30 days after the mailing or service of the notice, unless the applicant or certificate holder, within such 30-day period, gives written notice to DIA requesting a hearing, in which case the notice shall be deemed to be suspended.

26.4(2) The hearing shall be conducted by the administrative hearings division of DIA pursuant to 481—Chapter 10.

26.4(3) At any time at or prior to the hearing, DIA may rescind the notice of the denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

321—26.5(17A,231C,231D) Appeals. All appeals authorized under Iowa Code Supplement section 231C.11 or 231D.6 shall be conducted pursuant to 481—Chapter 10.

321—26.6(17A,231B,231C,231D) Judicial review. Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

321—26.7(17A,21,231B,231C,231D) Public disclosure of findings. The program shall post a notice in a prominent public location in the facility stating that copies of the final report resulting from a monitoring evaluation or a complaint investigation are available upon request. Copies shall be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083, telephone (515)281-6325.

321—26.8(17A,231C,231D) Discrimination or retaliation. A tenant of an assisted living program or a participant of an adult day services program, ~~or a legal representative or family member of a tenant or participant, if applicable, or an employee of the program~~ may file a complaint with DIA if *any* person has been the subject of discrimination or retaliation as prohibited by Iowa Code Supplement section 231C.13 or 231D.12. DIA shall follow the complaint procedures outlined in 26.2(17A,231B,231C,231D). A program found in violation of Iowa Code Supplement section 231C.13 or 231D.12 shall be assessed a civil penalty of \$1,000, which shall be paid to DIA within ten working days following assessment.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—26.9(17A,231C,231D) Emergency removal of *adult day services* participants or *assisted living* tenants. If DIA determines that the health or safety of participants in an adult day services program or tenants in an assisted living program is in immediate danger and the tenants or participants need to be removed from the program, DIA shall use the following procedures to ensure a safe and orderly transfer.

26.9(1) ~~DIA shall notify the local area agency on aging; the department; the departments of human services, public health, and transportation; law enforcement agencies; and the tenant advocate, as necessary and appropriate, to alert them to the need to transfer participants or tenants from a program and to request assistance in identifying alternative programs or other appropriate settings and in contacting the participants or tenants, legal representatives and family members of participants or tenants, if applicable, and others as appropriate, including health care professionals. DIA shall notify the local area agency on aging; the departments of elder affairs, human services, public health, and transportation; law enforcement agencies; and the tenant advocate, as necessary and appropriate, for the following:~~

a. To alert them to the need to transfer participants or tenants from a program;

b. To request assistance in identifying alternative programs or other appropriate settings; and

c. To contact the participants or tenants and their legal representatives or family members, if applicable, and others as appropriate, including health care professionals.

26.9(2) DIA shall notify the program on site of the immediate need to transfer participants or tenants and of assistance available, in coordination with the appropriate parties under 26.9(1).

26.9(3) DIA shall proceed with the transfer of participants or tenants.

26.9(4) DIA may suspend a program's certification prior to a hearing.

321—26.10(231C,231D) Notification of casualties. DIA shall be notified by telephone within 24 hours of *casualties in adult day services and assisted living programs*, and may request a written report following notification, in the following situations:

26.10(1) Any accident or incident causing substantial injury to or death of a participant or tenant.

26.10(2) When damage to the program as a result of fire, natural or other disaster impairs the program's ability to function.

These rules are intended to implement Iowa Code chapters 17A and 21 and Iowa Code Supplement chapters 231B, 231C and 231D.

ARC 3529B

ELDER AFFAIRS DEPARTMENT[321]

Notice of Termination

Pursuant to the authority of Iowa Code section 231.23(10), the Elder Affairs Department terminates the rule making initiated by its Notice of Intended Action published in the April 14, 2004, Iowa Administrative Bulletin as **ARC 3302B**, to rescind Chapter 29, "Elder Group Homes," Iowa Administrative Code, and adopt new Chapter 29 with the same title.

The Notice proposed to adopt a new Chapter 29 that establishes requirements for elder group home certification and standards for elder group homes. An appeal process for involuntary tenant transfer was also proposed.

The Department has made substantial changes to the rules published under Notice based on numerous written and oral comments from the general public and other organizations. Therefore, the Department is terminating the rule making commenced in **ARC 3302B** and is issuing a new Notice of Intended Action, published herein as **ARC 3528B**, regarding the proposed rules.

ARC 3528B

ELDER AFFAIRS DEPARTMENT[321]

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 231B.2, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 29, "Elder Group Homes," Iowa Administrative Code, and adopt a new Chapter 29 with the same title.

The proposed chapter sets standards for elder group homes and establishes requirements for certification.

These rules will be subject to waiver at the discretion of the Department in accordance with 321—Chapter 11, "Waivers or Variances from Administrative Rules."

Any interested person may make written suggestions or comments on these proposed rules on or before August 10, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309; E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

There will be a public hearing on August 10, 2004, at 9:30 a.m. over the Iowa Communications Network (ICN), at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

Osceola Public Library
300 South Fillmore Street
Osceola (enter at south door and turn to the left)

Clinton Community College
1000 Lincoln Blvd., Room 105
Clinton (front entrance; room will be posted)

Third Floor Conference Room
Wallace State Office Building
East Ninth and Grand Avenue
Des Moines

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

These rules are intended to implement Iowa Code Supplement chapter 231B.

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

The following amendment is proposed.

Rescind 321—Chapter 29 and adopt the following **new** chapter in lieu thereof:

CHAPTER 29
ELDER GROUP HOMES

321—29.1(231B) Definitions.

“Assessment” means the administration of a standardized tool, recognized by the department and administered by a health care professional, to determine appropriate admission qualifications and develop a service plan.

“Assistance” means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall not be construed to mean the tenant has not participated in the task or activity.

“Committee” means a resident advocate committee established by 321—Chapter 9.

“Condition” means a provision attached to a new or existing certification that limits or restricts the scope of the certification or imposes additional requirements on the certificate holder.

“Convenience services” means hotel-type services and may include meals, transportation, laundry and housekeeping provided for the convenience of a tenant.

“Department” means the department of elder affairs or the department's designee.

“DIA” means the department of inspections and appeals.

“EGH” means an elder group home.

“Elder” means a person 60 years of age or older.

“Elder group home” means a single-family residence that is operated by a person who is providing room, board, and personal care to three to five elders who are not related to the person providing the service within the third degree of consanguinity or affinity.

“Health care professional” means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed through the department of public health.

“Homelike” means an environment that promotes the dignity, security and comfort of tenants through the provision of personalized care and services to encourage independence, choice and decision making by the tenants.

“Household occupant” means a homeowner, a member of the homeowner's family, a tenant, an operator, a member of the operator's family, an on-site manager or a member of the on-site manager's family.

“Legal representative” means a person appointed by the court to act on behalf of the tenant, or a person acting pursuant to a power of attorney.

“Nurse-delegated assistance” means those delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, or evaluating, and for which the nurse remains legally accountable.

“Occupancy agreement” means a written contract entered into between an EGH and a tenant that clearly describes the rights and responsibilities of the EGH and the tenant and other information required by rule. The occupancy agreement may include a separate signed lease and signed service agreement.

“On-site manager” means the person on duty responsible for direct supervision or provision of tenant care. The “on-site manager” may be any household occupant over 18 years of age, except a tenant, who is qualified to perform the necessary duties.

“Operator” means the person who takes responsibility for all care and ensures that appropriate staffing is provided to tenants on a 24 hours per day, seven days per week basis.

“Part-time or intermittent health-related care” means licensed nursing services and professional therapies, in combination with nurse-delegated assistance, which are provided to a participant not to exceed a total of three hours per day.

“Person” has the same meaning as that defined in Iowa Code section 4.1(20).

“Personal care” means services that may include bathing, personal hygiene, dressing, grooming, and supervision of self-administered medications. However, “personal care” does not include the administration of medications or the services of a registered nurse or licensed practical nurse.

“Personal care provider” means an individual who, in return for remuneration, assists with the essential activities of daily living which the recipient can perform personally only with difficulty.

“Qualified professional” means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling or electrical contractor who furnishes regular service to such equipment.

“Routine” means regular, customary or not occasional or intermittent.

“Self-administration” means a tenant's taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

“Service plan” means the written description of a tenant's needs and capabilities, including by whom, when and how often care and services will be provided.

“Supervision of self-administered medications” means the verbal reminder or guidance in the identification of the medication and the times and manner of administration. “Supervision of self-administered medications” includes activities such as prompting or reminding, opening of containers or packaging at the direction of the tenant, and reading instructions or other label information in order for a tenant to self-administer a medication. “Supervision of self-administered medications” does not include the placing of the medication internally or externally on the tenant's body. Supervision of self-administration shall comply with rule 321—29.9(231B).

“Tenant” means any person who is receiving room, board, personal care or convenience services for payment of fees in an EGH on a 24 hours per day, seven days per week basis.

“Usable floor space” means open floor space that is not under fixtures, furniture or other barriers and is available for walking or using a wheelchair.

“Waiver” means action taken by DIA which suspends in whole or in part the requirements or provisions of a rule as applied to an identified tenant on the basis of that tenant's particular circumstances.

321—29.2(231B) Application content. Any entity that meets the definition of an EGH as defined in Iowa Code Supplement section 231B.1(4) must be certified by DIA. An eligible applicant is any for-profit or nonprofit corporation or person that owns a single-family residence.

29.2(1) Application materials may be obtained by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

29.2(2) The initial or renewal application for certification shall contain:

a. A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the owner, operator or designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The EGH operator shall notify DIA of any changes in the list within ten working days of the change;

b. A statement affirming that the individuals listed in 29.2(2)“a” have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult or child abuse code in any state;

c. A statement disclosing whether any of the individuals listed in 29.2(2)“a” have or have had an ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, home health agency, or licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect;

d. A copy of the current policy and procedure for evaluation of each tenant, which includes a copy of the evaluation tool to be used to identify the functional, cognitive and health status of each tenant;

e. Identification of target population;

f. A copy of the current EGH service plan format;

g. If the EGH contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity’s current license or certification;

h. The current policy and procedure for addressing medication needs of tenants;

i. The current policy and procedure describing accident and emergency response;

j. A copy of the current tenant occupancy agreement;

k. The current policy and procedure for mutual managed risk agreements and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

321—29.3(231B) Initial certification process.

29.3(1) The applicant shall submit one copy of the completed application and associated documentation to DIA at the address stated in 29.2(1) at least 60 calendar days prior to the expected date of beginning operations. An application for an EGH that intends to operate in new construction shall include proof of compliance with all applicable local housing or state building codes.

29.3(2) The applicant shall notify the state fire marshal of the applicant’s intent to become certified as an EGH at least 60 calendar days prior to the expected date of beginning operations.

29.3(3) DIA shall review the application for completeness and compliance with this chapter. A completed application shall include all necessary documentation including state fire marshal approval.

29.3(4) DIA shall notify the applicant within 20 working days of approval or denial, upon receipt of a completed application.

29.3(5) Certification for an EGH, unless suspended or revoked, shall expire at the end of the time period specified in the certificate.

321—29.4(231B) Renewal of certification. Certification may be renewed upon application by the owner or operator in accordance with this rule. In order to renew the EGH certification, the applicant must submit:

1. A completed application that includes all information required by 29.2(2) at least 90 days prior to the expiration of the certification;

2. Documentation by a qualified professional that the following systems have been inspected and found to be maintained in conformance with the manufacturer’s recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, wastewater, artificial light, and ventilation; and, if applicable, garbage disposal, cooking area, laundry and elevators;

3. Documentation that all employees have received the two-hour mandatory reporter training on dependent adult abuse as well as documentation that the EGH has established a policy for reporting abuse allegations and a policy for employee sanctions if allegations are substantiated; and

4. Documentation to reflect any structural or operational changes in the EGH from the information submitted since the last application.

321—29.5(231B) Denial, suspension, or revocation of certification.

29.5(1) DIA shall have the authority to deny, suspend or revoke certification in any case in which DIA finds there has been a substantial or repeated failure on the part of the EGH to comply with the requirements of Iowa Code Supplement chapter 231B and this chapter or for any of the following reasons:

a. Cruelty or indifference to EGH tenants.

b. Appropriation or conversion of the property of an EGH tenant without the tenant’s or the tenant’s legal representative’s written consent.

c. Permitting, aiding or abetting any illegal act set forth in Iowa Code Supplement chapter 231B or this chapter.

d. Obtaining or attempting to obtain or retain certification by fraudulent means or misrepresentation or by submitting false information.

e. Habitual intoxication or addiction to controlled substances by the owner, operator, on-site manager or other staff of the EGH.

f. Securing the devise or bequest of property owned by a tenant by threats, coercion or undue influence.

g. The documentation or presence of any individual, on staff or otherwise, who has or has had an ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, a home health agency, or a licensed health care facility as defined under Iowa Code section 135C.1, or licensed hospital as defined under Iowa Code section 135B.1, which has been closed in any state due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare program; or has been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

29.5(2) When an applicant for certification, an owner or an operator is an entity other than an individual, DIA may deny, suspend, or revoke certification if any person in a position of control or an officer of the entity engages in any act or omission prohibited by Iowa Code Supplement chapter 231B or this chapter.

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321—29.6(231B) Notice, hearing, appeal and judicial review.

29.6(1) Notice of denial, suspension, or revocation of a certificate shall be effected by delivery to the applicant or certificate holder by certified mail, return receipt requested, or by personal service setting forth the particular reasons for the action. The denial, suspension, or revocation shall become effective 30 days after the receipt or service of the notice. The applicant or certificate holder may, within the 30-day period, give written notice to DIA requesting a hearing. Any DIA action on the notice shall be suspended until the hearing and all appeals are concluded.

29.6(2) The hearing shall be conducted by the administrative hearings division of DIA pursuant to 481—Chapter 10.

29.6(3) At any time at or prior to the hearing, DIA may rescind the notice of denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

29.6(4) All appeals shall be conducted pursuant to 481—Chapter 10.

29.6(5) Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

321—29.7(231B) Tenant admission requirements.

29.7(1) The operator or on-site manager may only admit or continue to care for tenants whose service needs include personal care as defined in this chapter.

29.7(2) Criteria for exclusion of tenants. An EGH shall not knowingly admit or retain a tenant who:

- a. Is bed-bound; or
- b. Requires routine one-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self, other tenants or staff, including but not limited to a tenant who:
 - (1) Despite intervention chronically wanders into danger, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
 - (2) Displays behavior that places another tenant at risk; or
- d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
- e. Is under the age of 18; or
- f. Requires more than part-time or intermittent health-related care; or
- g. On a routine basis, has unmanageable incontinence.

29.7(3) A tenant may be accepted for residence only if a bedroom and a bathroom are available to the tenant from which the unaided tenant immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

321—29.8(231B) Service plan required.

29.8(1) At the time of admission, the tenant's service plan shall be developed from an assessment of the tenant's functional abilities in cooperation with the tenant or the tenant's legal representative.

29.8(2) The service plan shall be individualized and shall, at a minimum:

- a. Indicate the tenant's identified needs and tenant's requests for assistance with expected outcomes;
- b. Indicate any services and care to be provided pursuant to the agreement with the tenant;
- c. Identify the provider(s) if other than the EGH; and
- d. Be updated within 30 days of admission, as needed and, at a minimum, annually.

29.8(3) The tenant's service plan shall be reviewed for appropriateness as follows:

- a. Based on an assessment of the tenant's needs; or

- b. At the request of the tenant, the tenant's legal representative, the operator or the on-site manager.

321—29.9(231B) Medications. When medications are administered or stored by the EGH, the following requirements shall apply:

29.9(1) The administration of medications shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the agent delegated in accordance with 655—subrules 6.2(5) and 6.3(1) and Iowa Code chapter 155A.

29.9(2) The EGH shall document any medication the EGH has agreed to administer or store.

29.9(3) Medication, other than that self-administered by a tenant, shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

29.9(4) The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

29.9(5) No person other than the dispensing pharmacist shall alter a prescription label.

29.9(6) Each tenant's medication shall be stored in its originally received container.

29.9(7) When partial or complete control of medication is delegated to the EGH by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups in the tenant's presence.

29.9(8) Each EGH shall follow written policies and procedures for narcotic medications in accordance with Iowa Code chapter 155A.

321—29.10(231B) Occupancy agreement.

29.10(1) Prior to the tenant's taking occupancy, the tenant or tenant's legal representative, if applicable, and the EGH shall enter into and sign an occupancy agreement that clearly describes the rights and responsibilities of the tenant and of the EGH, and shall sign a managed risk policy disclosure statement.

29.10(2) The occupancy agreement shall be in 12-point type or larger, and be written in language using plain, commonly understood terms and, to the extent possible, be easy to understand by the tenant or the tenant's legal representative.

29.10(3) The written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. A description of all fees, charges, and rates describing the tenant's accommodations and basic services covered, as well as any additional and optional services with their related costs.
- b. A statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources are accepted by the EGH.
- c. The procedure followed for nonpayment of fees.
- d. Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.
- e. The term of the occupancy agreement.
- f. A statement that the EGH must notify the tenant or the tenant's legal representative, as applicable, in writing at least 30 days prior to any change in the occupancy agreement, with the following exceptions. In these instances the notification shall be immediate:

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(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the EGH.

g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer from the EGH. The internal appeals process provided relative to an involuntary transfer.

i. The EGH policies and procedures for addressing grievances between the EGH and the tenant, including grievances relating to transfer and occupancy.

j. A policy regarding discrimination or retaliation against a tenant, tenant's family, or an employee of the EGH who has initiated or participated in any proceeding authorized by this chapter.

k. The emergency response policy.

l. The staffing policy which specifies that staff is available 24 hours per day, if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

m. The refund policy.

n. A statement regarding billing and payment procedures.

o. The telephone number for filing a complaint with DIA.

p. The telephone number for the office of the state long-term care resident advocate/ombudsman.

q. The telephone number for the elder abuse hotline.

r. A copy of the EGH statement on tenant rights.

s. A statement that the tenant landlord law applies to the EGH.

29.10(4) A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the EGH.

29.10(5) The occupancy agreement shall be reviewed and updated as necessary to reflect any change in the services offered and in financial arrangements.

29.10(6) A blank copy of the most current occupancy agreement form shall be made available to the general public upon request. The EGH basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

321—29.11(231B) Waiver of the level of care requirements.

29.11(1) Criteria for level of care waiver.

a. When it becomes apparent to the EGH staff that a tenant will need licensed nursing activities or hospice care and the tenant or tenant's legal representative does not want or approve of a transfer from the EGH, a request for waiver of level of care shall be submitted to DIA by the tenant, tenant's legal representative, homeowner, operator or on-site manager.

b. DIA may grant a waiver if an investigation establishes by clear and convincing evidence that the following criteria have been met:

(1) It is the informed choice of the tenant or tenant's legal representative to remain in the home; and

(2) The operator is able to provide appropriate care to the tenant in addition to adequate care of the other tenants, or that additional staff is available or can be obtained to meet the tenant's care needs; and

(3) The waiver shall not jeopardize the care, health, safety or welfare of the tenant or others; and

(4) The tenant does not meet the criteria for exclusion set forth in 29.7(2).

29.11(2) Level of care waivers. Requests for waiver of the level of care requirements for a tenant of an EGH shall be submitted on a form and in a manner designated by DIA and in accordance with this rule. DIA may grant a waiver for an individual tenant on a time-limited basis.

29.11(3) DIA shall:

a. Review and respond in writing to waiver requests within two working days of receipt of necessary documentation.

b. Monitor regularly, for the duration of the waiver, the tenant's medical and functional information for continued appropriateness of the waiver.

29.11(4) The waiver applicant shall notify DIA within five calendar days of any changes in the condition of the tenant as provided in the approved waiver request.

29.11(5) A tenant who is subject to an involuntary transfer shall have the right to an internal appeal of the transfer before the transfer occurs.

321—29.12(231B) Resident advocate committees. Resident advocate committees for EGHs shall be governed by 321—Chapter 9 unless otherwise required in this chapter.

29.12(1) Committee placement. A resident advocate committee shall be established by the department for each EGH certified in accordance with this chapter.

29.12(2) Committee visitations. The committee shall visit the EGH assigned to it within one month of the admission of the first tenant as well as a minimum of once and maximum of four times annually thereafter.

321—29.13(231B) Requirements for and qualifications of staff.

29.13(1) The EGH shall be staffed by an on-site manager 24 hours per day, seven days per week.

29.13(2) Sufficient trained staff shall be available at all times to fully meet tenants' identified needs.

29.13(3) All personnel of the EGH shall be able to implement the EGH accident, fire safety and emergency procedures.

29.13(4) Personal care providers shall have completed, at a minimum, a home care aide training program that meets the requirements and criteria established in 641—Chapter 80.

29.13(5) The operator shall maintain proof of training of EGH staff for review as required by these rules.

29.13(6) All staff shall sign a statement disclosing whether the staff member has or has had ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, home health agency, or a licensed health care facility as defined under Iowa Code section 135C.1, or licensed hospital as defined under Iowa Code section 135B.1, which has been closed in any state due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare program; or has been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

29.13(7) The EGH shall conduct, on each employee hired after July 1, 1998, a criminal background check including a

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dependent adult and child abuse record check in accordance with Iowa Code section 135C.33.

29.13(8) Any person refusing to sign the statement required in 29.13(6) or subsequently found to have provided false information on said statement shall not serve on staff.

321—29.14(231B) Tenant documents.

29.14(1) A file shall be maintained for each tenant at the EGH and shall contain:

a. An occupancy record including the tenant's name; birth date; identification numbers; date of occupancy; names, addresses and telephone numbers of health care professional(s) and tenant's legal representative; tenant's diagnosis (if applicable); and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

b. Application forms;

c. Initial assessment and all updates;

d. Nutritional assessment as necessary;

e. Initial individual service plan and updates;

f. Signed authorizations for permission to release medical information, photos, or other medical information as necessary;

g. Signed authorization for the tenant to receive emergency medical care if necessary;

h. When appropriate, medical information sheet, documentation of health care professionals' orders, treatment, therapy, medication and service notes;

i. Advance health care directives as applicable;

j. A complete copy of the tenant's occupancy agreement, including any updates;

k. Written acknowledgement that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;

l. A copy of the tenant's power of attorney, guardianship, conservatorship letters of appointment or other documentation of a legal representative as necessary.

29.14(2) The EGH records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant before the records are destroyed.

29.14(3) All records shall be protected from loss, damage and unauthorized use.

321—29.15(231B) EGH facility standards.

29.15(1) The EGH shall be safe; sanitary; well-ventilated; properly lighted, heated, and cooled; and shall comply with all applicable state and local housing ordinances for family residences and with fire safety rules promulgated by the state fire marshal.

29.15(2) If the structure exists and is being used as an EGH on the effective date of this rule, and is unchanged until on or after July 1, 2005, the EGH shall meet the following standards:

a. General.

(1) The home, furnishings and fixtures shall be clean, in good repair and appropriate for the tenants.

(2) Stairways shall have handrails of a circumference, length, texture, strength and stability that can reasonably be expected to provide tenant support.

(3) A functioning light shall be provided in each room, stairway and exit; all light bulbs shall be protected from breakage or removal with appropriate covers.

(4) The yard, fire exits and exterior steps shall be kept free of obstructions, and shall be accessible and appropriate to the condition of the tenants.

(5) There shall be at least 150 square feet of common living space and sufficient furniture in the home to accommo-

date the recreational and socialization needs of all the tenants at one time; common space shall not be located in the basement or garage, unless such space was constructed for that purpose. Additional common living space may be required if wheelchairs, walkers or other durable medical equipment are to be accommodated.

(6) Interior and exterior doorways used by tenants shall be wide enough to accommodate wheelchairs and walkers if tenants with impaired mobility are in residence.

(7) Hot and cold water at each tub, shower, and sink shall be in sufficient supply to meet the needs of the tenants and staff.

(8) Grab bars shall be present for each toilet, tub and shower. Access to toilet and bathing facilities shall be barrier-free. Toilet and bathing facilities shall provide individual privacy.

(9) A telephone shall be available and accessible for tenants' use and located in a reasonable accommodation for privacy for all calls.

b. Safety.

(1) All combustion appliances shall be used and maintained properly, and shall be inspected annually by a qualified technician for carbon monoxide emissions and any other hazards to health and safety;

(2) Extension cord wiring shall not be used in place of permanent electrical fixtures or outlets.

c. Sanitation requirements.

(1) A public water supply shall be utilized if available. If a nonmunicipal water source is used, the homeowner or the person currently in charge of the EGH must show documentation from the state laboratory that the water supply is potable and is tested as required by the rules of the environmental protection commission of the department of natural resources.

(2) Septic tanks or other nonmunicipal wastewater disposal systems shall be in good working order and shall comply with state and local regulations for wastewater treatment.

(3) Garbage and refuse shall be suitably stored and disposed of by a sanitation company providing service in the area.

(4) If laundry service is provided, soiled linens and clothing shall be stored in containers in an area separate from food storage, kitchen and dining areas.

(5) Sanitation for household pets and other domestic animals shall be adequate to prevent health and safety hazards.

(6) There shall be adequate control of insects and rodents.

(7) Reasonable and prudent precautions for infection control including washing hands and exposed portions of arms with soap and hot water immediately before engaging in food preparation and meal service and before and after providing personal care.

(8) There shall be at least one toilet and one sink for every four EGH household occupants. A minimum of one sink and toilet is required on each floor occupied by tenants. A sink shall be located near each toilet. At least one tub or shower is required for each six household occupants.

d. Bedroom requirements.

(1) Each tenant bedroom shall:

1. Have a door that opens directly to a hallway or common use area without passage through another bedroom or common bathroom;

2. Be adequately ventilated, heated, cooled and lighted;

3. Be at least 70 square feet of usable floor space, excluding any area where a sloped ceiling does not allow a person to stand upright;

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4. Provide individual privacy and be occupied by one tenant, unless an alternative arrangement is agreed to by the tenant, or the tenant's legal representative, in the occupancy agreement;

5. Be on ground level for tenants with impaired mobility;

6. Be in close enough proximity to the on-site manager to ensure that tenants can alert the on-site manager to nighttime needs or emergencies, or be equipped with a call system.

(2) Owners, operators, on-site managers, their family members, convenience service providers and personal care providers shall not use as bedrooms areas that are designated as living areas or as tenant bedrooms;

(3) Common living space and tenant bedrooms shall not be used for EGH storage areas.

29.15(3) Facilities constructed or remodeled after July 1, 2005.

a. The square footage requirements for living areas and tenant bedrooms in EGH shall be as follows:

(1) Common living area, 300 square feet of usable floor space.

(2) Tenant bedroom, 100 square feet of usable floor space.

b. One toilet and one sink are required for every two EGH household occupants, with a minimum of one toilet and one sink on each floor occupied by tenants. A sink shall be located near each toilet.

c. At least one tub or one shower is required for each four household occupants.

321—29.16(231B) Records. DIA collects and stores a variety of records in the course of certifying and monitoring EGHs. Some stored information may be personally identifiable. Each EGH record maintained by DIA contains both open and confidential information. The confidential information shall not be retrievable by personal identifier unless an EGH uses an individual's name in the business title.

321—29.17(231B) Classes of information.

29.17(1) Open information includes the following:

- a. Certification application and status;
- b. Final findings of state monitoring evaluations;
- c. Records of complaints;
- d. Reports from the state fire marshal;
- e. Plans of correction submitted by an EGH;
- f. Official notices of certification sanctions; and
- g. Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 321—29.5(231B) and 321—29.6(231B).

29.17(2) Confidential information includes the following:

- a. Information which does not comprise a final finding resulting from monitoring or an investigation. That information which does not contain a final finding may be made public in a legal proceeding concerning a citation issued to an EGH, or denial, suspension or revocation of certification;
- b. Names of all complainants;
- c. Names of tenants of an EGH, identifying medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or operator.

321—29.18(231B) Landlord and tenant Act. Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to all EGHs under this chapter.

These rules are intended to implement Iowa Code Supplement chapter 231B.

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ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” and Chapter 25, “Measurement of Emissions,” Iowa Administrative Code.

Items 1 and 2 modify two existing exemptions from construction permitting. Paragraph 22.1(2)“b” currently exempts fuel burning equipment used for indirect heating or cooling with a capacity of less than one million Btu per hour heat input per unit, and paragraph 22.1(2)“j” currently exempts residential heaters, cookstoves, or fireplaces. These modifications are intended to address frequent inquiries to Department field office staff by residents regarding whether materials such as seed corn can be burned in residential heating units. The field office staff also receive comments regarding the emissions of toxins that occur when treated seeds or pellets are burned. Many manufacturers already recommend against the burning of treated seeds or pellets in heating units. Treated seeds and pellets frequently contain captan and other pesticides that will release low levels of hydrochloric acid and thiophosgene (mustard) gas when heated. These emissions are most likely to occur at start-up and shutdown, when combustion temperatures are lower, or if the heating unit is damped down.

The proposed changes allow the burning of seeds, pellets, and other vegetative matter in the emission units covered by these two exemptions, but only when the seeds, pellets and vegetative matter are untreated. Item 2 also restricts the burning of wood in residential heaters, cookstoves, or fireplaces to untreated wood. The burning of wood in fuel burning equipment used for indirect heating or cooling, with a capacity of less than one million Btu per hour input per unit is already limited to untreated wood.

Item 3 corrects a spelling error in paragraph “u” of subrule 22.1(2).

Item 4 rescinds subrule 22.2(3), which was intended to implement former Iowa Code section 455B.147(2), which allowed a permit applicant to treat a failure of the Department to act within 120 days of a complete permit application as a grant of the permit. Iowa Code section 455B.147(2) was repealed by 1993 Iowa Acts, chapter 137, section 6. The Iowa Code section was repealed in preparation for Iowa's application for the Title V program. As part of the application for that program, the Iowa Attorney General's Office certified in a November 3, 1993, letter, pursuant to EPA's request, that “State law does not authorize the issuance, modification, or renewal of any permit based on the passage of a specified time period when the Iowa Department of Natural Resources has failed to take action on the application, and does not include any other similar provision providing for default issuance of a permit unless EPA has specifically waived the right of review for itself and affected States.”

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Item 5 adds a comma in the introductory paragraph of subrule 22.3(3).

Items 6, 7, and 8 reference the most recent date for which changes to 40 Code of Federal Regulations, Parts 60, 61, and 63, respectively, were published. The previous adoption by reference of 40 CFR Part 503 has been deleted from Item 6 and moved to Item 7. Part 503 pertains to standards for the use or disposal of sewage sludge and refers to 40 CFR Part 61, not 40 CFR Part 60, beryllium and mercury standards for the incineration of sludge.

Item 9 updates paragraph "ay" of subrule 23.1(4) to include reference to additional processes that were added by EPA on July 12, 2002, in 40 CFR Part 63, Subpart YY (Generic MACT).

Item 10 incorporates by reference recently promulgated federal "national emission standards for hazardous pollutants (NESHAPs)." There are 15 "new" NESHAPs.

Item 11 removes references to boiler #6 at the Muscatine Power and Water facility from subparagraph 23.3(2)"b"(5). This boiler was permanently removed from service at the facility on September 17, 1985.

Items 12, 13, 14, and 15 amend four subrules in Chapter 25, "Measurement of Emissions." These amendments clarify that the maintenance of records of continuous monitors, reporting of continuous monitoring information, exemptions from continuous monitoring requirements, and requests for extensions of time to install monitoring equipment are applicable to all owners and operators who are required to install continuous monitors, not just owners or operators of coal-fired steam generating units or sulfuric acid plants. Item 13 also incorporates the existing federal requirement that the reporting of continuous monitoring information shall be pursuant to the provisions of Appendix P of 40 CFR Part 51.

Any person may make written suggestions or comments on the proposed amendments on or before August 27, 2004. Written comments should be directed to Jim McGraw, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094; or by electronic mail to jim.mcgraw@dnr.state.ia.us.

A public hearing will be held on August 23, 2004, at 1 p.m. in Conference Room 1 at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than August 27, 2004.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Jim McGraw at (515) 242-5167 to advise of any specific needs.

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

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

The following amendments are proposed.

ITEM 1. Amend subrule **22.1(2)**, paragraph "**b**," as follows:

b. Fuel burning equipment for indirect heating or cooling with a capacity of less than one million Btu per hour input per combustion unit when burning coal, untreated wood, *untreated seeds or pellets, other untreated vegetative materials*, or fuel oil. Used oils meeting the specification from 40 CFR

279.11 as amended through May 3, 1993, are acceptable fuels for this exemption.

ITEM 2. Amend subrule **22.1(2)**, paragraph "**j**," as follows:

j. Residential wood heaters, cookstoves, or fireplaces, *which burn untreated wood, untreated seeds or pellets, or other untreated vegetative materials*.

ITEM 3. Amend subrule **22.1(2)**, paragraph "**u**," as follows:

u. Equipment for ~~eaving~~ *carving*, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sandblast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals, (other than beryllium), plastics, concrete, rubber, paper stock, and wood or wood products, where such equipment is either used for nonproduction activities or exhausted inside a building.

ITEM 4. Rescind subrule 22.2(3) as follows:

~~22.2(3) Final notice. The department shall notify the applicant in writing of the issuance or denial of a construction or conditional permit as soon as practical and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.~~

ITEM 5. Amend subrule 22.3(3), introductory paragraph, as follows:

22.3(3) Conditions of approval. A permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

ITEM 6. Amend subrule 23.1(2), introductory paragraph, as follows:

23.1(2) New source performance standards. The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~December 31, 2004~~ *December 19, 2003*, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except §60.530 through §60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

ITEM 7. Amend subrule 23.1(3), introductory paragraph, as follows:

23.1(3) Emission standards for hazardous air pollutants. The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended through ~~October 14, 1997, December 11, 2003, and 40 CFR Part 503 as adopted on August 4, 1999~~, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance proce-

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dures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

ITEM 8. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended through April 29, 2003 May 6, 2004, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. 40 CFR Part 63 Subpart B incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purpose of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an "area source" means any stationary source of hazardous air pollutants that is not a major stationary source as defined in this paragraph. Paragraph 23.1(4)"a," general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 9. Amend subrule **23.1(4)**, paragraph "ay," as follows:

ay. Emission standards for hazardous air pollutants: generic maximum achievable control technology (Generic MACT). These standards apply to new and existing major sources of acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, polycarbonate (PC) production, *carbon black production, cyanide chemicals manufacturing, ethylene production, and Spandex production*. Affected processes include, but are not limited to, producers of homopolymers and copolymers of alternating oxymethylene units, acrylic fiber, modacrylic fiber synthetics composed of acrylonitrile (AN) units, hydrogen fluoride and polycarbonate. (Subpart YY)

ITEM 10. Amend subrule **23.1(4)** by adopting the following new paragraphs "ce," "cf," "ci," "ck," "cm," "co," "cq," "cy," "da," "de," "df," "dh," "di," "dj," and "dk":

ce. Emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline). These standards apply to new and existing major source organic liquids distribution (non-gasoline) operations, which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. (Part 63, Subpart EEEE)

cf. Emission standards for hazardous air pollutants for miscellaneous organic chemical manufacturing (MON). These standards establish emission limits and work practice standards for new and existing major sources with miscellaneous organic chemical manufacturing process units, waste-

water treatment and conveyance systems, transfer operations, and associated ancillary equipment. (Part 63, Subpart FFFF)

ci. Emission standards for hazardous air pollutants for surface coating of automobiles and light-duty trucks. These standards apply to new, reconstructed, or existing affected sources, as defined in the standard, that are located at a facility which applies topcoat to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart IIII)

ck. Emission standards for hazardous air pollutants for surface coating of metal cans. These standards apply to a metal can surface coating operation that uses at least 5,700 liters (1,500 gallons (gal)) of coatings per year and is a major source, is located at a major source, or is part of a major source of hazardous air pollutant emissions. Coating operations located at an area source are not subject to this rule. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart KKKK)

cm. Emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products. These standards apply to miscellaneous metal parts and products surface coating facilities that are a major source, are located at a major source, or are part of a major source of hazardous air pollutant emissions. A miscellaneous metal parts and products surface coating facility that is located at an area source is not subject to this standard. Certain sources are exempt as described in the standard. (Part 63, Subpart MMMM)

co. Emission standards for hazardous air pollutants for printing, coating, and dyeing of fabrics and other textiles. These standards apply to new and existing facilities with fabric or other textile coating, printing, slashing, dyeing, or finishing operations, or group of such operations, that are a major source of hazardous air pollutants or are part of a facility that is a major source of hazardous air pollutants. Coating, printing, slashing, dyeing, or finishing operations located at an area source are not subject to this standard. Several exclusions from this source category are listed in the standard. (Part 63, Subpart OOOO)

cq. Emission standards for hazardous air pollutants for surface coating of wood building products. These standards establish emission limitations, operating limits, and work practice requirements for wood building products surface coating facilities that use at least 1,100 gallons of coatings per year and are a major source, are located at a major source, or are part of a major source of hazardous air pollutant emissions. Wood building products surface coating facilities located at an area source are not subject to this standard. Several exclusions from this source category are listed in the standard. (Part 63, Subpart QQQQ)

cy. Emission standards for hazardous air pollutants for stationary combustion turbines. These standards apply to stationary combustion turbines which are located at a major source of hazardous air pollutant emissions. Several subcategories have been defined within the stationary combustion turbine source category. Each subcategory has distinct requirements as specified in the standards. These standards do not apply to stationary combustion turbines located at an area source of hazardous air pollutant emissions. (Part 63, Subpart YYYYY)

da. Emission standards for hazardous air pollutants for lime manufacturing plants. These standards regulate hazard-

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ous air pollutant emissions from new and existing lime manufacturing plants that are major sources, are colocated with major sources, or are part of major sources. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart AAAAA)

de. Emission standards for hazardous air pollutants for iron and steel foundries. These standards apply to each new or existing iron and steel foundry that is a major source of hazardous air pollutant emissions. A new affected source is an iron and steel foundry for which construction or reconstruction began after December 23, 2002. An existing affected source is an iron and steel foundry for which construction or reconstruction began on or before December 23, 2002. (Part 63, Subpart EEEEE)

df. Emission standards for hazardous air pollutants for integrated iron and steel manufacturing. These standards apply to affected sources at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. The affected sources are each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. (Part 63, Subpart FFFFF)

dh. Emission standards for hazardous air pollutants for miscellaneous coating manufacturing. These standards establish emission limits and work practice requirements for new and existing miscellaneous coating manufacturing operations, including but not limited to, process vessels, storage tanks, wastewater, transfer operations, equipment leaks, and heat exchange systems. (Part 63, Subpart HHHHH)

di. Emission standards for mercury emissions from mercury cell chlor-alkali plants. These standards apply to the chlorine production source category. This source category contains the mercury cell chlor-alkali plant subcategory and includes all plants engaged in the manufacture of chlorine and caustic in mercury cells. These standards define two affected sources: mercury cell chlor-alkali production facilities and mercury recovery facilities. (Part 63, Subpart IIIII)

dj. Emission standards for hazardous air pollutants for brick and structural clay products manufacturing. These standards apply to new and existing brick and structural clay products manufacturing facilities that are, are located at, or are part of a major source of hazardous air pollutant emissions. The brick and structural clay products manufacturing source category includes those facilities that manufacture brick including, but not limited to, face brick, structural brick, and brick pavers; clay pipe; roof tile; extruded floor and wall tile; or other extruded, dimensional clay products. Additional applicability criteria and exemptions from these standards are contained in the applicable subpart. (Part 63, Subpart JJJJJ)

dk. Emission standards for hazardous air pollutants for clay ceramics manufacturing. These standards apply to clay ceramics manufacturing facilities that are, are located at, or are part of a major source of hazardous air pollutant emissions. The clay ceramics manufacturing source category includes those facilities that manufacture pressed floor tile, pressed wall tile, and other pressed tile; or sanitaryware, such as toilets and sinks. (Part 63, Subpart KKKKK)

ITEM 11. Amend subparagraph **23.3(2)“b”(5)**, first unnumbered paragraph, as follows:

The maximum allowable emission rate for a single stack with a total heat input capacity less than 250 million Btu per hour shall be 0.60 pound of particulate matter per million Btu heat input; the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to

250 million Btu per hour or less than 500 million Btu per hour shall be 0.40 pound of particulate matter per million Btu of heat input; the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 500 million Btu per hour shall be 0.30 pound of particulate matter per million Btu of heat input; except that the maximum allowable emission rate for a stack serving Unit #1 of Iowa Public Service at Port Neal shall be 0.50 pound of particulate matter per million Btu heat input. ~~and the maximum allowable emission rate for the stack serving boiler #6 of Muscatine Power and Water during periods when only boiler #6 is operating shall be 0.65 pound of particulate matter per million Btu heat input.~~

ITEM 12. Amend subrule 25.1(5) as follows:

25.1(5) Maintenance of records of continuous monitors. The owner or operator of any facility which is required by ~~any of 25.1(1) to 25.1(4)~~ to install, calibrate, maintain and operate continuous monitoring equipment shall maintain, for a minimum of two years, a file of all information pertinent to each monitoring system present at the facility. Such information must include but is not limited to all emissions data (raw data, adjusted data, and any or all adjusted factors used to convert emissions from units of measurement to units of the applicable standard), performance evaluations, calibrations and zero checks, and records of all malfunctions of monitoring equipment or source and repair procedures performed.

ITEM 13. Amend subrule 25.1(6) as follows:

25.1(6) Reporting of continuous monitoring information. The owner or operator of *any facility required to install a continuous monitoring system or systems shall submit a written report of emissions for each calendar quarter pursuant to the provisions of Appendix P of 40 Code of Federal Regulations Part 51, as amended through (date), source affected by 25.1(1) to 25.1(4) shall provide quarterly reports to the director*, no later than 30 calendar days following the end of the calendar quarter, on forms provided by the director. All periods of recorded emissions in excess of the applicable standards, the results of all calibrations and zero checks and performance evaluations occurring during the reporting period, and any periods of monitoring equipment malfunctions or source upsets and any apparent reasons for these malfunctions and upsets shall be included in the report.

ITEM 14. Amend subrule 25.1(10), introductory paragraph, as follows:

25.1(10) Exemptions from continuous monitoring requirements. The owner or operator of any source ~~affected by 25.1(1) to 25.1(4)~~ is exempt if it can be demonstrated that any of the conditions set forth in this subrule are met with the provision that periodic recertification of the existence of these conditions can be requested.

ITEM 15. Amend subrule 25.1(11) as follows:

25.1(11) Extensions. The owner or operator of any source ~~affected by 25.1(1) to 25.1(4)~~ may request an extension of time provided for installation of the required monitor by demonstrating to the director that good faith efforts have been made to obtain and install the monitor in the prescribed time.

ARC 3500B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 1, “Iowa Ethics and Campaign Disclosure Board,” Iowa Administrative Code.

The proposed amendment clarifies the procedural requirements for a person requesting an advisory opinion from the Board.

The proposed amendment does not contain a waiver provision as the procedure is mandated by statute.

Any interested person may make written comments on the proposed amendment on or before August 10, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10.

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

The following amendment is proposed.

Rescind rule 351—1.2(68B) and adopt the following **new** rule in lieu thereof:

351—1.2(68B) Requirements for requesting board advisory opinions.

1.2(1) Who may request opinion. Any person subject to the board’s jurisdiction may request a board advisory opinion, including a local official or local employee seeking an opinion on the application of the ethics laws in Iowa Code chapter 68B. An authorized agent may seek an opinion on behalf of any person. The board will not issue an opinion to an unauthorized third party. The board may on its own motion issue opinions without receiving a formal request.

1.2(2) Form of request. The request for an opinion shall be in writing and shall describe the specific transaction, conduct, or activity that the requesting person plans to undertake or is presently undertaking. Requests shall be sent to the board as provided in subrule 1.3(1).

1.2(3) Jurisdiction. The board will issue opinions pertaining only to Iowa Code Supplement chapter 68A, Iowa Code chapter 68B, or rules adopted thereunder.

This rule is intended to implement Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10.

ARC 3502B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” and to rescind Chapter 10, “Civil Penalties for Late Campaign Reports,” Iowa Administrative Code.

The proposed amendments move the rules on the assessment of civil penalties for late-filed campaign reports from Chapter 10 to Chapter 4. The proposed amendments also reflect current Board procedures concerning the assessment and waivers of civil penalties for late-filed campaign reports.

The proposed amendments contain a waiver provision as applicable.

Any interested person may make written comments on the proposed amendments on or before August 10, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

The amendments are intended to implement Iowa Code Supplement sections 68A.503 and 68B.32A(8).

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

The following amendments are proposed.

ITEM 1. Amend 351—Chapter 4 by adopting the following **new** division:

DIVISION VII

CIVIL PENALTIES FOR LATE REPORTS

351—4.58(68B) Late-filed campaign disclosure reports.

4.58(1) Late reports. A campaign disclosure report is deemed filed late if it is not received on or before the applicable due date as set out in rule 351—4.9(68A).

4.58(2) Methods of filing. A campaign disclosure report may be filed by any of the following methods: hand-delivered, mailed, faxed, sent as an E-mail attachment, or sent electronically via the Internet. The location for filing reports is set out in rule 351—4.8(68A,68B).

4.58(3) Physical receipt. A report must be physically received by the board as set out in rule 351—4.10(68A,68B).

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.59(68B) Routine civil penalty assessment for late-filed disclosure reports.

4.59(1) Administrative resolution. In administrative resolution of violations for late-filed disclosure reports, the board shall assess and collect monetary penalties for all late-filed disclosure reports. The board shall notify any person

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

assessed a penalty of the amount of the assessment and the person's ability to request a waiver under rule 351—4.60(68B).

4.59(2) County and local committee assessments. County, city, school, other political subdivision, and local ballot issue committees shall be assessed civil penalties for late-filed reports in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same treasurer of a committee in 12-month period
1 to 14 consecutive days delinquent	\$20	\$50
15 to 30 consecutive days delinquent	\$50	\$100
31 to 45 consecutive days delinquent	\$100	\$200

4.59(3) State committee assessments. Statewide, general assembly, state statutory, and state political committees, and a judge standing for retention shall be assessed civil penalties for late-filed reports, except for supplementary and special election reports, in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same treasurer of a committee in 12-month period
1 to 14 consecutive days delinquent	\$50	\$100
15 to 30 consecutive days delinquent	\$100	\$200
31 to 45 consecutive days delinquent	\$200	\$300

4.59(4) Supplementary report assessments. General assembly candidates' committees required to file supplementary disclosure reports shall be assessed a \$200 civil penalty for filing a supplementary report one or more days late. Statewide committees required to file supplementary disclosure reports shall be assessed a \$400 civil penalty for filing a supplementary report one or more days late.

4.59(5) Special election assessments. The committees of general assembly candidates to fill vacancies in special elections shall be assessed a \$100 civil penalty for filing a special election report one or more days late. The committees of statewide candidates to fill vacancies in special elections shall be assessed a \$200 civil penalty for filing a special election report one or more days late.

4.59(6) Verified statement of registration assessments. An out-of-state committee that chooses to file a verified statement of registration (VSR) as provided in Iowa Code Supplement section 68A.201 and rule 351—4.32(68A), but fails to file the VSR on or before the fifteenth day after the date of the contribution shall be assessed a \$25 civil penalty per late-filed VSR. However, if there is a repeat delinquency by the committee in a 12-month period, the penalty shall be \$50.

For purposes of this subrule, "date of the contribution" means the day, month and year the contribution check is dated.

4.59(7) Independent expenditure assessment. A person that is delinquent in filing an independent expenditure statement shall be assessed a \$25 civil penalty for filing the statement one or more days delinquent, except that if there is a repeat delinquency by the person in timely filing an independent expenditure statement within a 12-month period, the penalty shall be \$50.

4.59(8) Form DR-OTC assessment. A permanent organization that makes a one-time contribution in excess of \$750

but fails to file Form DR-OTC within ten days of the date on which the check is issued shall be assessed a \$20 civil penalty.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.60(68B) Requests for waiver of penalties. If a person believes that there are mitigating circumstances that prevented the timely filing of a report, the person may make a written request to the board for waiver of the penalty. A person seeking a waiver must submit the request to the board within 30 days of receiving a civil penalty assessment order. Waivers may be granted only under exceptional or very unusual circumstances. The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the person shall promptly pay the assessed penalty or seek a contested case proceeding pursuant to rule 351—4.61(68B).

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.61(68B) Contested case challenge.

4.61(1) Request. If the person accepts administrative resolution of a matter through the payment of the assessed penalty, the matter shall be closed. If the person chooses to contest the board's decision to deny the request or grant a partial waiver of an assessed penalty, the person shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

4.61(2) Procedure. Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board's rules. The burden shall be on the board's legal counsel to prove that a violation occurred.

4.61(3) Failure to request hearing. Failure to request a contested case proceeding to appeal the board's decision on a waiver request is failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.62(68B) Payment of penalty.

4.62(1) Where payment made. Checks or money orders shall be made payable and forwarded to: Iowa Ethics and Campaign Disclosure Board, 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309. Such funds shall be deposited in the general fund of the state of Iowa.

4.62(2) Who may make payment. Payment may be made at the person's discretion, including from funds of a committee or from personal funds of an officer of a committee. Payments from corporate entities as described in Iowa Code Supplement section 68A.503 are prohibited, except in the case of a ballot issue committee.

4.62(3) Disclosure of payment. If payment is made from a source other than committee funds and is for payment of an assessment to the committee, the payment shall be publicly disclosed as an in-kind contribution to the committee.

This rule is intended to implement Iowa Code Supplement sections 68A.503 and 68B.32A(8).

ITEM 2. Rescind and reserve **351—Chapter 10.**

ARC 3503B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****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 Supplement section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to adopt Chapter 6, “Executive Branch Ethics,” Iowa Administrative Code.

The Board is required by Iowa Code section 68B.32(1) and Iowa Code Supplement section 68B.32A(12) to draft rules setting the standards for governing the ethical conduct of persons in the executive branch of state government. The amendment proposes a new chapter in the Board’s rules to begin the process of setting those standards.

The proposed chapter contains waiver provisions as applicable.

Any interested person may make written comments on the proposed chapter on or before August 10, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These rules are intended to implement Iowa Code Supplement chapter 68B.

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

The following **new** chapter is proposed.

CHAPTER 6
EXECUTIVE BRANCH ETHICS

DIVISION I
GENERAL PROVISIONS

351—6.1(68B) Scope of chapter. Pursuant to Iowa Code section 68B.32(1), the Iowa ethics and campaign disclosure board is to set standards for, investigate complaints relating to, and monitor the ethics of officials, employees, and candidates for office in the executive branch of state government. Pursuant to Iowa Code Supplement section 68B.32A(12), the board is required to establish rules relating to ethical conduct for the executive branch of state government. This chapter sets the standards and establishes the rules for the ethical conduct of persons in the executive branch of state government.

This rule is intended to implement Iowa Code section 68B.32(1) and Iowa Code Supplement section 68B.32A(12).

351—6.2(68B) Definitions. For purposes of this chapter, the following definitions apply:

“Agency of state government” or “state agency” means any board, bureau, commission, community college, department, division, office of a statewide elected official, or regents university.

“Board” means the Iowa ethics and campaign disclosure board.

“Candidate for statewide office” means a candidate for governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general.

“Employee” means an individual who is a paid employee of any agency of state government. “Employee” does not include an official or an independent contractor.

“Executive branch of state government” means an agency of state government.

“Official” means a statewide elected official, an executive or administrative head or heads of a state agency, a deputy executive or administrative head or heads of a state agency, a member of a board or commission as defined under Iowa Code section 7E.4, or a head of a major subunit of a state agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

“State duties” means the official duties, responsibilities, or activities of an official or employee that are mandated by law, rule, or court order, or that otherwise lawfully aid an agency of state government in carrying out the statutory functions of the agency.

This rule is intended to implement Iowa Code Supplement section 68B.2.

351—6.3(68B) Complaints or filing information alleging a violation.

6.3(1) Who may file. Any person may file a complaint or provide information to the board alleging a violation of Iowa Code Supplement chapter 68B or this chapter by officials, employees, and candidates for statewide office.

6.3(2) Procedure. The procedure for filing a complaint or providing information to the board alleging a violation of Iowa Code Supplement chapter 68B or this chapter is set out in Iowa Code section 68B.32B and 351—Chapter 9.

6.3(3) Whistleblower protection. A person who discharges or discriminates against an official or employee because the official or employee filed a complaint or provided information to the board shall be subject to the board’s complaint process if the official or employee filed the complaint or provided the information in good faith. If it is determined after a contested case proceeding that a person has impermissibly discharged or discriminated against an official or employee, the board may impose sanctions as set out in Iowa Code section 68B.32D.

For purposes of this subrule, “good faith” means that any statements or materials in a complaint or included as part of information provided to the board were made or provided with a reasonable belief that such statements or materials were true and accurate.

This rule is intended to implement Iowa Code Supplement section 68B.32A(13) and Iowa Code section 68B.32B.

351—6.4(68B) Board advice. Persons subject to the authority of the board under Iowa Code Supplement chapter 68B or this chapter may seek advice or guidance from the board concerning the legality of any action or conduct potentially affected by Iowa Code Supplement chapter 68B or this chapter.

6.4(1) Advisory opinion. A board advisory opinion applies a statute or rule under the board’s jurisdiction to a particular factual situation. The procedure for requesting a board opinion is set out in rules 351—1.2(68B) and 351—1.3(68B). Pursuant to Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10, a board opinion, if followed, constitutes a defense to a subsequent complaint or information provided to the board concerning the same facts and circumstances.

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6.4(2) Declaratory order. Persons may also seek board guidance concerning the application of a statute or rule under the board's jurisdiction to a specific factual situation through the petition for declaratory order procedure set out in 351—Chapter 12.

6.4(3) Routine administrative advice. A person may also receive oral or written routine administrative advice from board staff concerning the application of Iowa Code chapter 68B or this chapter. Routine administrative advice is not binding on the board, but may be offered as a defense to a subsequent complaint or information provided to the board concerning the same facts and circumstances.

This rule is intended to implement Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10.

DIVISION II

CONFLICT OF INTEREST AND MISUSE OF PROPERTY

351—6.5 to 6.8 Reserved.

351—6.9(68B) Use of confidential information. No official or employee shall disclose or use confidential information, including the contents of a sealed bid acquired during the course of the official's or employee's state duties, for the personal gain or benefit of any person. This rule does not apply to the release of information that is mandated by law, rule, or court order.

This rule is intended to implement Iowa Code Supplement section 68B.32A(12).

DIVISION III

SALES OF GOODS OR SERVICES

351—6.10(68B) Prohibition on sales; when public bids required—disclosure of income. Pursuant to Iowa Code section 68B.3, an official or employee shall not sell, in any one occurrence, goods or services having a value in excess of \$2,000 to a state agency unless the sale is made pursuant to an award or contract let after public notice and competitive bidding.

6.10(1) Exceptions. The prohibition in Iowa Code section 68B.3 and this rule shall not apply to any of the following:

- a. Sales of goods or services done as part of the official's or employee's state duties.
- b. Sales of services to a state agency when the official or employee does not serve the agency or is not employed by that agency.
- c. Sales of services to a state agency with which the official or employee does not have substantial and regular contact as part of the official's or employee's state duties.
- d. The publication of resolutions, advertisements, or other legal propositions or notices in newspapers designated by law for the publication of such materials and for which publication rates are fixed by law.
- e. Instruction at an accredited educational institution if the official or employee meets the minimum education and licensing requirements established for other instructors at the educational institution.

6.10(2) Sales to political subdivisions. An official who sells goods or services to a political subdivision of the state shall disclose on the official's Form PFD as provided in 351—Chapter 7 if income was received from the sale.

This rule is intended to implement Iowa Code section 68B.3.

351—6.11(68B) Sales by regulatory agency employees. An official or employee of a regulatory agency shall not di-

rectly or indirectly sell any goods or services to individuals, associations, or corporations subject to the regulatory authority of the official's or employee's agency except as provided by Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5, and this rule. This prohibition does not apply to sales that are part of the official's or employee's state duties.

6.11(1) Applicability. Pursuant to Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5, the board shall adopt rules specifying the method by which an employee of a regulatory agency may obtain consent to sell a good or service to an individual, association, or corporation subject to the regulatory authority of the employee's agency. Each regulatory agency shall adopt rules specifying the method by which officials may obtain such consent. This rule sets out the method of obtaining consent by a regulatory agency employee.

6.11(2) Definitions. For purposes of this rule, the following definitions apply:

"Agency" means a regulatory agency.

"Employee" means an employee of an executive branch regulatory agency and does not include an independent contractor or an official.

"Official" means a statewide elected official of a regulatory agency, an executive or administrative head or heads of a regulatory agency, a deputy executive or administrative head or heads of a regulatory agency, a member of a board or commission as defined under Iowa Code section 7E.4, or a head of a major subunit of a regulatory agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

"Regulatory agency" means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue, department of inspections and appeals, department of administrative services, public employment relations board, state department of transportation, civil rights commission, department of public defense, Iowa ethics and campaign disclosure board, and department of natural resources.

6.11(3) Request for consent. An employee's request for an agency's consent to the sale of goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed with the employee's agency at least 20 calendar days in advance of the proposed sale of any goods or services.

b. The request shall include all of the following:

- (1) The name of the individual, association, or corporation to which the goods or services are to be sold;
- (2) The relationship of the individual, association, or corporation to the agency;
- (3) A description of the goods or services;
- (4) The date or dates that the goods or services will be delivered; and

(5) A statement by the employee explaining how the proposed sale of the goods or services will not violate the provisions of Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5, or create a conflict of interest under Iowa Code section 68B.2A.

6.11(4) Agency guidelines. In determining whether to grant consent, the agency shall take the following guidelines into consideration:

a. The employee is not the person with the authority to determine whether consent should be granted.

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b. The duties and functions performed by the employee seeking consent are not related to the regulatory authority of the agency over the individual, association, or corporation to which the goods or services will be sold.

c. The selling of the goods or services does not affect the employee's duties or functions at the agency.

d. The selling of the goods or services will not cause the employee to advocate on behalf of the individual, association, or corporation to the agency.

e. The selling of the goods or services does not cause the employee to sell goods or services to the agency on behalf of the individual, association, or corporation.

f. The selling of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

g. The request complies with the procedural requirements of subrule 6.11(3).

These guidelines shall be publicized and made known to employees throughout the agency.

6.11(5) Agency decision. The employee's agency shall issue a written consent or denial within 14 calendar days following the date the request was filed. The deadline may be extended by agreement of both the employee and the agency. If the request is denied, the agency shall state the reasons for the denial.

6.11(6) Appeal of denial. An employee who receives a denial may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5, and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

6.11(7) Copy of consent filed with board. Pursuant to Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5, an agency granting consent shall file a copy of the consent with the board within 20 days of consent being granted. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the official who granted the consent.

6.11(8) Consent not a defense. Consent granted by an agency under this rule shall not constitute a defense to a complaint alleging a violation of any law or rule. It is the responsibility of the employee to ensure compliance with all applicable laws and rules.

This rule is intended to implement Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5.

351—6.12(68B) Sales by members of the office of the governor. A permanent full-time member of the office of the governor shall not directly or indirectly sell any goods or services to individuals, associations, or corporations that employ persons who are registered lobbyists before the general assembly or the executive branch except as provided in Iowa Code section 68B.4B as amended by 2004 Iowa Acts, Senate File 2179, section 6, and this rule. This prohibition does not apply to sales that are part of the member's state duties.

6.12(1) Request for consent. A request submitted by a member of the office of the governor for consent to sell goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed at least 20 calendar days in advance of the proposed sale of any goods or services with the person responsible for hiring or approving the hiring of the member.

b. The request shall include all of the following:

(1) The name of the individual, association, or corporation to which the goods or services are to be sold;

(2) The relationship of the individual, association, or corporation to the office of the governor;

(3) A description of the goods or services;

(4) The date or dates that the goods or services will be delivered; and

(5) A statement by the member explaining how the proposed sale of the goods or services will not violate the provisions of Iowa Code section 68B.4B as amended by 2004 Iowa Acts, Senate File 2179, section 6, or create a conflict of interest under Iowa Code section 68B.2A.

6.12(2) Guidelines for granting consent. In determining whether to grant consent, the person responsible for hiring or approving the hiring of the member shall take the following guidelines into consideration:

a. The duties and functions performed by the member are not related to the authority of the office of the governor over the individual, association, or corporation.

b. The selling of goods or services by the member to the individual, association, or corporation does not affect the member's duties or functions at the office of the governor.

c. The selling of any goods or services by the member to an individual, association, or corporation does not include lobbying the office of the governor.

d. The selling of any goods or services by the member does not cause the member to sell goods or services to the office of the governor on behalf of the individual, association, or corporation.

e. The selling of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

f. The request complies with the procedural requirements of subrule 6.12(1).

These guidelines shall be publicized and made known to members of the office of the governor.

6.12(3) Decision. The person responsible for hiring or approving the hiring of the member shall issue a written consent or denial within 14 calendar days following the date the request was filed. The deadline may be extended by agreement of both the member and the person. If the request is denied, the person shall state the reasons for the denial.

6.12(4) Appeal of denial. A member who receives a denial may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code section 68B.4B as amended by 2004 Iowa Acts, Senate File 2179, section 6, and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

6.12(5) Copy of consent filed with board. Pursuant to Iowa Code section 68B.4B as amended by 2004 Iowa Acts, Senate File 2179, section 7, a copy of consent granted to a member shall be filed with the board within 20 days of consent being granted. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the person who granted the consent.

6.12(6) Consent not a defense. Consent granted under this rule shall not constitute a defense to a complaint alleging a violation of any law or rule. It is the responsibility of the member of the office of the governor to ensure compliance with all applicable laws and rules.

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This rule is intended to implement Iowa Code section 68B.4B as amended by 2004 Iowa Acts, Senate File 2179, sections 6 and 7.

DIVISION IV
EMPLOYMENT RESTRICTIONS

351—6.13 Reserved.

351—6.14(68B) Engaging in services against the interest of the state prohibited. Except for a member of a board or commission, no official or employee shall receive compensation in any form, or enter into any type of agreement to receive compensation in any form, to appear on behalf of any person or otherwise render services against the interest of the state except as set out in Iowa Code section 68B.6 as amended by 2004 Iowa Acts, Senate File 2179, section 8, and this rule. This prohibition relates to any case, proceeding, application, or other matter before any federal court, federal bureau, federal agency, federal commission, federal department, any agency of state government, or any court of the state of Iowa.

6.14(1) Definitions. For purposes of this rule, the following definitions apply:

“Board” means a policy-making body that has the power to hear contested cases or a policy-making body that has powers for both rule making and hearing contested cases.

“Commission” means a policy-making body that has rule-making powers.

6.14(2) Member of board or commission. No member of a board or commission shall receive compensation in any form, or enter into any type of agreement to receive compensation in any form, to appear on behalf of any person or otherwise render services against the interest of the state in relation to any case, proceeding, application, or other matter before the subunit of a state agency in which the member serves or is employed, or with which the member has substantial and regular contact as part of the member’s state duties.

6.14(3) Exception for attorney general and public defender. As provided in 2004 Iowa Acts, Senate File 2179, sections 1 and 2, officials and employees carrying out the official duties of the office of the attorney general or the office of the state public defender are not subject to the provisions of Iowa Code section 68B.6 as amended by 2004 Iowa Acts, Senate File 2179, section 8, or this rule.

This rule is intended to implement Iowa Code section 68B.6 as amended by 2004 Iowa Acts, Senate File 2179, section 8.

ARC 3501B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby

gives Notice of Intended Action to amend Chapter 7, “Personal Financial Disclosure,” Iowa Administrative Code.

The proposed amendments clarify the deposit, retention, and availability of personal financial disclosure statements filed by executive branch officials, employees, and candidates for statewide office. The proposed amendments also clarify when a personal financial disclosure statement is considered timely filed.

The proposed amendments do not contain a waiver provision as the changes are mandated by statute.

Any interested person may make written comments on the proposed amendments on or before August 10, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code Supplement section 68B.35 as amended by 2004 Iowa Acts, Senate File 2179, section 11, and Iowa Code section 68B.35A as amended by 2004 Iowa Acts, Senate File 2179, section 12.

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

The following amendments are proposed.

ITEM 1. Rescind subrule 7.1(4) and adopt the following **new** subrule in lieu thereof:

7.1(4) Physical receipt. The board must physically receive a filed Form PFD on or before April 30 of each year. If mailed, the form must bear a United States Postal Service postmark dated on or before April 30. Faxed forms must be submitted on or before 11:59 p.m. on the required due date. If the due date falls on a weekend or holiday, the filing deadline shall be extended to the first working day following the deadline.

ITEM 2. Rescind subrule **7.1(6)**.

ITEM 3. Rescind rule 351—7.3(68B) and adopt the following **new** rule in lieu thereof:

351—7.3(68B) Procedure for determining persons required to file with the board—distribution of forms.

7.3(1) Persons required by statute. In order to determine which persons in the executive branch are required by Iowa Code Supplement section 68B.35(2) as amended by 2004 Iowa Acts, Senate File 2179, section 11, to file Form PFD, the board shall contact each agency on an annual basis and provide notification of the statutory requirement. This notification shall include the name and position title of each person in the agency who filed Form PFD the previous year. Each agency, in consultation with the board, shall then determine which persons are required to file Form PFD for the next filing period and shall provide the board with the appropriate names and position titles. The board shall have the final authority to determine whether a position requires that a Form PFD be filed.

7.3(2) Boards, commissions, or authorities not named in statute. Pursuant to Iowa Code Supplement section 68B.35(2)“e” as amended by 2004 Iowa Acts, Senate File 2179, section 11, on an annual basis the board shall conduct a review to determine if a member of any other board, commission, or authority not specifically named in Iowa Code Supplement section 68B.35(2)“e” as amended by 2004 Iowa Acts, Senate File 2179, section 11, should file Form PFD. If

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

the board determines that Form PFD should be filed, the board shall by rule require a Form PFD to be filed.

7.3(3) Statewide candidates. A person who is a candidate for statewide office shall file Form PFD with the board no later than 30 days after the date on which a person is required to file nomination papers for state office under Iowa Code section 43.11. Once nomination papers or an affidavit of candidacy is filed, the board shall notify the person of the requirement to file Form PFD. The notification shall be sent by first-class mail and shall include a blank form or information on how to obtain a blank form for filing.

7.3(4) Statewide candidates in a special election. Pursuant to Iowa Code Supplement section 68B.35(5), a person who is a candidate for statewide office in a special election shall file Form PFD with the board within seven days after the certification of the candidate's name as the nominee under Iowa Code section 43.88.

7.3(5) Distribution of forms. The board shall provide each agency with blank forms for distribution to the designated persons and shall make blank forms available via the board's Web site at www.iowa.gov/ethics.

This rule is intended to implement Iowa Code Supplement section 68B.32A(4) and Iowa Code Supplement section 68B.35 as amended by 2004 Iowa Acts, Senate File 2179, section 11.

ITEM 4. Rescind and reserve rule **351—7.4(68B)**.

ITEM 5. Adopt **new** rule 351—7.9(68B) as follows:

351—7.9(68B) Retention and availability of filed forms.

7.9(1) Public record. Forms filed with the board are a public record and shall be available for inspection and copying.

7.9(2) Internet access. Pursuant to Iowa Code section 68B.35A as amended by 2004 Iowa Acts, Senate File 2179, section 12, the board shall record a filed Form PFD on the board's Web site at www.iowa.gov/ethics. Filed forms shall be accessible via the board's Web site for a period of at least five years from the reporting due date.

This rule is intended to implement Iowa Code Supplement section 68B.35 as amended by 2004 Iowa Acts, Senate File 2179, section 11, and Iowa Code section 68B.35A as amended by 2004 Iowa Acts, Senate File 2179, section 12.

ARC 3519B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division proposes to amend Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The amendments are intended to implement 2004 Iowa Acts, Senate File 2298, signed by the Governor on May 17, 2004.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before August 10, 2004. Such written materials should be sent to the E911 Program Manager, Iowa Homeland Security and Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319; fax (515)281-7539.

Also, there will be a public hearing on August 11, 2004, at 1 p.m. in the Homeland Security and Emergency Management Division Conference Room in the Hoover State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Homeland Security and Emergency Management Division and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 34A as amended by 2004 Iowa Acts, Senate File 2298.

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

The following amendments are proposed.

ITEM 1. Amend rule **605—10.2(34A)** as follows:

Amend the following definitions:

"Access line" means ~~the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the telephone company's switching office~~ *an exchange access line that has the ability to access dial tone and reach a public safety answering point.*

"Administrator," unless otherwise noted, means the administrator of the *homeland security and emergency management division of the department of public defense.*

"E911 program manager" means that person appointed by the administrator of the *homeland security and emergency management division*, and working with the E911 communications council, to perform the duties specifically set forth in Iowa Code chapter 34A and this chapter.

"Enhanced 911 (E911) service plan (wire-line)" means a plan, produced by a joint E911 service board, which includes the information required by Iowa Code subsection 34A.2(6 7).

"Public or private safety agency" means a unit of state or local government, a special purpose district, or a private firm, which provides or has the authority to provide firefighting, police, ambulance, ~~or~~ emergency medical services *or hazardous materials response.*

"Wireless communications surcharge" means a surcharge of up to ~~50~~ 65 cents imposed on each wireless communications service number provided in this state and collected as part of a wireless communications service provider's monthly billing to a subscriber.

Further amend rule 605—10.2(34A) by inserting the following **new** definitions in alphabetical sequence:

"Competitive local exchange service provider" means the same as defined in Iowa Code section 476.96

"Emergency 911 notification device" means a product capable of accessing a public safety answering point through the E911 system.

"Local exchange carrier" means the same as defined in Iowa Code section 476.96.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

“Local exchange service provider” means a vendor engaged in providing telecommunications service between points within an exchange and includes, but is not limited to, a competitive local exchange service provider and a local exchange carrier.

“Wireless E911 phase 1” means a 911 call made from a wireless device in which the wireless service provider delivers the call-back number and the address of the tower that received the call to the appropriate public safety answering point.

“Wireless E911 phase 2” means a 911 call made from a wireless device in which the wireless service provider delivers the call-back number and the latitude and longitude coordinates of the wireless device to the appropriate public safety answering point.

ITEM 2. Amend paragraph **10.3(1)“d”** as follows:

d. A political subdivision, ~~which~~ *that* does not operate its own public safety agency, but contracts for the provision of public safety services, is not entitled to membership on the joint E911 service board. However, its contractor is entitled to membership according to the contractor’s status as a public or private safety agency.

ITEM 3. Amend subrule **10.3(3)**, second unlettered paragraph, as follows:

The joint E911 service board shall record the signed bylaws with the county recorder and shall forward a copy of the signed bylaws to the E911 program administrator at the state *homeland security and emergency management division*.

ITEM 4. Amend subrules 10.5(3) to 10.5(7) as follows:

10.5(3) The E911 program manager shall notify a *local exchange service* provider scheduled to provide exchange access E911 service within an E911 service area that implementation of an E911 service plan has been approved by the joint E911 service board, E911 program manager, and by the service area referendum, and that collection of the surcharge is to begin within 100 days. *The E911 program manager shall also provide notice to all affected public safety answering points.*

10.5(4) The *local exchange service* provider shall collect the surcharge as a part of its monthly billing to its subscribers. The surcharge shall appear as a single line item on a subscriber’s monthly billing entitled “E911 emergency telephone service surcharge.”

10.5(5) The *local exchange service* provider may retain 1 percent of the surcharge collected as compensation for the billing and collection of the surcharge. If the compensation is insufficient to fully recover a provider’s costs for the billing and collection of the surcharge, the deficiency shall be included in the provider’s costs for rate-making purposes to the extent it is reasonable and just under Iowa Code section 476.6.

10.5(6) The *local exchange service* provider shall remit collected surcharge to the joint E911 service board on a calendar-quarter basis within 20 days of the end of the quarter.

10.5(7) *The joint E911 service board may request, not more than once each quarter, the following information from the local exchange service provider:*

- a. *The identity of the exchange from which the surcharge is collected.*
- b. *The number of lines to which the surcharge was applied for the quarter.*
- c. *The number of refusals to pay per exchange, if applicable.*
- d. *The number of write-offs per exchange, if applicable.*

e. *The number of lines exempt per exchange.*

f. *The amount retained by the local exchange service provider from the 1 percent administrative fee.*

Access line counts and surcharge remittances are confidential public records as provided in Iowa Code section 34A.8.

10.5(7.8) Collection for a surcharge shall terminate ~~at the end of 24 months if E911 service is not initiated for all or a part of the E911 service area as stated in Iowa Code subsection 34A.6(1) ceases to operate within the respective E911 service area.~~ The E911 program manager for good cause may grant an extension.

a. The administrator shall provide 100 days’ prior written notice to the joint E911 service board or the operating authority and to the *local exchange* service provider(s) collecting the fee of the termination of surcharge collection.

b. Individual subscribers within the E911 service area may petition the joint E911 service board or the operating authority for a refund. Petitions shall be filed within one year of termination. Refunds may be prorated and shall be based on funds available and subscriber access lines billed.

c. At the end of one year from the date of termination, any funds not refunded and remaining in the E911 service fund and all interest accumulated shall be retained by the joint E911 service board. However, if the joint E911 service board ceases to operate any E911 service, the balance in the E911 service fund shall be payable to the state *homeland security and emergency management division*. Moneys received by the division shall be used only to offset the costs for the administration of the E911 program.

ITEM 5. Amend subrule 10.7(2) as follows:

10.7(2) Adoption by reference. The “Wireless Enhanced 911 Implementation and Operation Plan,” effective February 1, 2000, and available from the *Homeland Security and Emergency Management Division*, Hoover State Office Building, Des Moines, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference with the following changes effective May 8, 2002: Section F, provide further clarification of eligible costs for public safety answering points and the Iowa department of public safety; Section G, provide further specification on the surplus payment process for local E911 service boards and the Iowa department of public safety; Attachment A, ensure that the application for surplus payments contains the language contained in Section G. *Additional changes effective August 16, 2004: Sections A, D, E, I, J, K, and service area maps, update to reflect changes in the Code of Iowa and to represent the actual 911 operating conditions with the state; Sections F and G, provide further clarification of eligible costs and the payment of those costs.*

ITEM 6. Amend subrules 10.8(5) and 10.8(6) as follows:

10.8(5) The wireless ~~carrier~~ *service provider* shall list the surcharge as a separate line item on the customer’s billing *indicating that the surcharge is for E911 emergency telephone service*. In the case of prepaid wireless service, *this surcharge shall be collected for each active prepaid wireless telephone that has a sufficient positive balance at the beginning of the month.* ~~The~~ *this* surcharge shall be remitted based upon the address associated with the point of purchase, the customer billing address, or the location associated with the mobile telephone number for each active prepaid wireless telephone that has a sufficient positive balance as of the last days of the information, if that information is available. If the wireless ~~carrier~~ *service provider* receives a partial payment of a monthly bill, the payment shall first be applied to the amount owed the wireless carrier with the remainder be-

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

ing applied to the surcharge. The wireless carrier shall bill and collect for a full month's surcharge in cases of a partial month's service. The wireless carrier is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing. *The wireless E911 surcharge is not subject to sales or use tax.*

10.8(6) Remaining surcharge funds shall be remitted on a calendar-quarter basis within 20 days following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, *Homeland Security and Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.*

ITEM 7. Amend rule 605—10.9(34A) as follows:

605—10.9(34A) Wireless E911 emergency communications fund.

10.9(1) Wireless E911 surcharge money, collected and remitted by wireless service providers, shall be placed in a fund within the state treasury under the control of the administrator.

10.9(2) Iowa Code section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this subrule. However, moneys in the fund may be combined with other moneys in the state treasury for purposes of investment.

10.9(3) Moneys in the fund shall be expended and distributed in the order and manner as follows:

a. An amount as appropriated by the general assembly to the *homeland security and emergency management division* for implementation, support, and maintenance of the functions of the E911 program *and to employ the auditor of the state to perform an annual audit of the wireless E911 emergency communications fund.*

b. ~~The administrator shall retain funds necessary to reimburse wireless service providers for their eligible costs to deliver E911 services. Those eligible costs include hardware and software necessary for receipt and delivery of the enhanced wireless 911 service phase I call and as further defined in the enhanced wireless 911 service plan. The program manager shall allocate 21 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase 1 services as defined in the Federal Communications Commission docket 94-102 and further defined in their letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph.~~

c. *The program manager shall reimburse local exchange service providers on a calendar quarter basis for their expenses for transport costs between the wireless E911 selective router and the public safety answering points related to the delivery of wireless E911 service.*

d. *The program manager shall reimburse local exchange service providers and third-party E911 automatic location information (ALI) database providers on a calendar quarter*

basis for the costs of maintaining and upgrading the E911 components and functionalities between the input and output points of the wireless E911 selective router. This includes the wireless E911 selective router and the automatic location information (ALI) database.

e. *The program manager shall apply an amount up to \$500,000 per calendar quarter to any outstanding wireless E911 phase 1 obligations incurred pursuant to this chapter prior to July 1, 2004.*

f. *The program manager shall allocate an amount up to \$159,000 per calendar quarter equally to the joint E911 service boards and the department of public safety that have submitted a written request to the program manager. The written request shall be made with the "Request for Wireless E911 Funds" form contained in the "State of Iowa Wireless E911 Implementation and Operation Plan". The request is due to the program manager on May 15, or the next business day, of each year. A minimum of \$1,000 per calendar quarter shall be allocated for each public safety answering point with the E911 service area of the department of public safety or joint E911 service board.*

Upon retirement of the outstanding obligations referred to in 10.9(3)"e," the amount allocated under 10.9(3)"f" shall be 24 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 service boards shall be \$1,000 per PSAP operated by the respective authority. Additional funds shall be allocated as follows:

(1) *Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the E911 service area to the total square miles in the state.*

(2) *Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls answered at the public safety answering point in the E911 service area to the total of wireless E911 calls originating in the state.*

g. *If moneys remain after all obligations under subrule 10.9(3), paragraphs "a" to "f," as listed above have been fully paid, the remainder may be accumulated as a carryover operating surplus. These moneys shall be used to fund future wireless phase 2 network improvements and public safety answering point improvements. These moneys may also be used for wireless service provider's transport costs related to wireless E911 phase 2 services, if those costs are not otherwise recovered by the wireless service provider's customer billing or other sources and are approved by the program manager. Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.*

10.9(4) Payments to wireless service providers and local exchange service providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Payments to wireless service providers shall be made in accordance with these rules and the State of Iowa Accounting Policies and Procedures.

10.9(5) Wireless service providers and local exchange service providers shall be reimbursed for only those items and services that are defined as eligible in the enhanced wireless 911 service plan and when initiation of service has been ordered and authorized by the E911 program manager.

10.9(6) ~~If the total amount of moneys available in the fund for the reimbursement of wireless service providers is insufficient to reimburse all wireless service providers for their eligible expenses, the E911 program manager shall remit an amount to each wireless service provider equal to the per-~~

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

centage of the provider's eligible expenses as compared to the total of all eligible expenses for all wireless service providers for the calendar quarter during which such expenses were submitted. Any remaining unpaid balances shall be carried forward in the next quarter's billing cycle.

10.9(7) If moneys remain in the fund, they shall be distributed to the department of public safety and joint E911 service boards to be used for the implementation of enhanced wireless communications capabilities.

10.9(8) The department of public safety or a joint E911 service board, to receive funds from the E911 emergency communications fund, shall submit an annual written request for such funds to the E911 program manager in a form as approved by the E911 program manager. This approved application form is contained in the "Wireless Enhanced 911 Implementation and Operation Plan." This application form is due on May 15 or the next business day.

10.9(9) Requests shall be for funding under the approved statewide enhanced wireless 911 service plan for equipment which is directly related to the reception and disposition of incoming enhanced wireless 911 calls.

10.9(10) If insufficient funds are available to fund all requests, the E911 program manager shall fund requests in an order deemed appropriate by the manager, consistent with the statewide enhanced wireless 911 service plan, and after considering factors including, but not limited to, the documented volume of enhanced wireless 911 calls received by each PSAP, the population served by each PSAP, the number of wireless telephones in the PSAP jurisdiction, the public safety of the citizens of the state, and any other factor deemed appropriate by the E911 program manager, in consultation with the E911 communications council. Any remaining unpaid balances shall be carried forward in the next quarter's billing cycle.

10.9(11 6) If it is found that an overpayment has been made to an entity, the E911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the *state homeland security and emergency management division*. If resolution of the debt does not occur and the debt is at least \$50, the *state homeland security and emergency management division* will then utilize the income offset program through the department of revenue and finance. Until resolution of the debt has occurred, the *state homeland security and emergency management division* may withhold future payments to the entity.

ITEM 8. Amend rule 605—10.13(34A) as follows:

605—10.13(34A) Limitations on use of funds. Surcharge money in the E911 service fund may be used to pay recurring and nonrecurring costs including, but not limited to, network equipment, software, database, addressing, initial training, and other start-up, capital, and ongoing expenditures. E911 surcharge moneys shall be used only to pay costs directly attributable to the provision of E911 telephone systems and services and may include costs for portable and vehicle radios, communication towers and associated equipment, and other radios and equipment permanently located in the public safety answering point. *Funds allocated under paragraph 10.9(3)"f" shall be used for communication equipment located inside the public safety answering point for the implementation and maintenance of wireless E911 phase 2 service.*

ITEM 9. Amend subrule 10.15(2) as follows:

10.15(2) Request for a hearing shall be made in writing to the *state homeland security and emergency management di-*

vision administration bureau chief within 30 days of the E911 program manager's mailing or serving a decision and shall state the reason(s) for the request and shall be signed by the appropriate authority.

ARC 3508B**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 524I.5(8), the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

These amendments permit a child who is enrolled in the HAWK-I Program to change health plans when there is a substantial change in the provider panel of the health plan originally chosen (provided that another plan is available). Substantial change means, but is not limited to, loss of a contracted hospital or provider group.

Current rules require children to remain enrolled in their selected plan for a period of 12 months. Requiring a child to remain in a plan that has made a substantial change in its provider panel may affect the continuity of care for the child. This is unfair to families who made their plan selection based on the provider panel that was available at the time.

These amendments do not provide for waivers in specified situations because the changes benefit customers. Customers may request a waiver of these provisions under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before August 11, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

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

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

The following amendments are proposed.

Amend rule 441—86.6(514I) as follows:

Amend the introductory paragraph as follows:

441—86.6(514I) Selection of plan. At the time of initial application, if there is more than one participating plan available in the child's county of residence, the applicant shall select the plan in which the applicant wishes to enroll as part of the eligibility process. The enrollee may change plans only at the time of the annual review unless the provisions of subrule 86.7(1) or paragraph 86.6(2)"a" apply. The applicant may designate the plan choice verbally or in writing. Form 470-3574, Selection of Plan, may be used for this purpose.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subrule 86.6(2) as follows:

86.6(2) Period of enrollment. Once enrolled in a plan, the child shall remain enrolled in the selected plan for a period of 12 months unless:

a. There is a substantial change in the provider panel of the health plan originally chosen, as determined by the board. A substantial change means, but is not limited to, loss of a contracted hospital or provider group. When there is another participating health plan available in the child's county of residence, the child may disenroll from the current plan and enroll in the other health plan.

b. ~~the~~ The child is disenrolled in accordance with the provisions of rule 441—86.7(514I). If a child is disenrolled from the plan and subsequently reapplies ~~prior to~~ before the end of the 12-month enrollment period, the child shall be enrolled in the plan from which the child was originally disenrolled unless the provisions of subrule 86.7(1) apply.

These amendments are intended to implement Iowa Code section 88.5.

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

The following amendments are proposed.

ITEM 1. Amend rule **875—10.20(88)** by inserting at the end thereof:

69 Fed. Reg. 31881 (June 8, 2004)

ITEM 2. Amend rule **875—26.1(88)** by inserting at the end thereof:

69 Fed. Reg. 31881 (June 8, 2004)

ARC 3505B

LOTTERY AUTHORITY, IOWA[531]

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 99G.9(3), the Iowa Lottery Authority hereby proposes to amend Chapter 11, "Prizes," and Chapter 14, "Monitor Vending Machines," Iowa Administrative Code.

Chapter 11 is being amended in order to clarify the definition of a winning ticket. Chapter 14 is being amended as a result of comments the Authority has received and issues that have arisen during the launch of a new lottery project, monitor vending machines.

Any interested party may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request must include all of the following: the name, address, and telephone number of the party making the comments or request; a reference to the specific proposed rules that are the subjects of the comments or request; and the general content of a requested oral presentation.

All comments or requests should be addressed to the Iowa Lottery Rules Administrator and should either be mailed to 2015 Grand Avenue, Des Moines, Iowa 50312; faxed to (515)281-7882; or E-mailed to brandi.hoffmann@ilot.state.ia.us. All comments or requests for oral presentations must be received by the Iowa Lottery Rules Administrator no later than August 10, 2004.

A meeting to hear requested oral presentations is scheduled for August 11, 2004, at 11 a.m. at the Iowa Lottery headquarters. The meeting will be canceled without further notice if no oral presentations are requested.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3506B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code Supplement chapter 99G.

ARC 3511B

LABOR SERVICES DIVISION[875]

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 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, "General Industry Safety and Health Rules," and Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

These proposed amendments adopt by reference changes to federal occupational safety and health regulations. Adoption is required by Iowa Code subsection 88.5(1)(a) and 29 CFR 1953.23. The changes delete references to a nonexistent table in the mechanical power-transmission apparatus standard, correct typographical errors in the mechanical power presses standard, and correct erroneous cross references in the telecommunications and hydrogen standards.

Written data, views, or arguments to be considered in adoption shall be submitted no later than August 18, 2004, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.state.ia.us.

A public hearing will be held on August 18, 2004, at 1:30 p.m. in the First Floor West Small Conference Room, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

The principal reasons for adoption of these amendments are to implement Iowa Code chapter 88 and to protect the safety and health of Iowa's workers.

These amendments will not necessitate additional annual expenditures exceeding \$100,000 by any political subdivision or agency or any contractor providing services to political subdivisions or agencies.

LOTTERY AUTHORITY, IOWA[531](cont'd)

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

ARC 3494B

REGENTS BOARD[681]

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 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 3, "Personnel Administration," Iowa Administrative Code.

These amendments are intended to change numerous references in Chapter 3 from Iowa Code chapter 19A to Iowa Code Supplement chapter 8A.

In addition, rule 3.37(19A) is amended to eliminate the need for an annual public hearing on the pay plan. There is no longer a statutory requirement for a public hearing. The pay plans for union-covered staff are negotiated in the collective bargaining process.

Paragraph 3.104(4)"c" is amended to strike the word "provisional." This type of appointment was eliminated when Chapter 3 was amended in June 2002. The reference in this paragraph to "provisional" appointment was overlooked at that time.

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

Any interested person may make written comments on the proposed amendments on or before August 10, 2004. Written comments may be directed to Marcia Brunson, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322. Comments may also be made by E-mail to mbruns@iastate.edu, by phone at (515)281-3934 or by fax at (515)281-6420.

These amendments are intended to implement Iowa Code Supplement chapter 8A.

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

The following amendments are proposed.

ITEM 1. Amend **681—Chapter 3** by changing the parenthetical implementation statutes from "19A" to "8A."

ITEM 2. Amend **681—Chapter 3** by replacing all references to Iowa Code chapter 19A with references to Iowa Code Supplement chapter 8A.

ITEM 3. Amend rule 681—3.2(8A) as follows:

681—3.2(8A) Covered employees. All employees of the board of regents, except those exempted by Iowa Code Supplement section ~~19A.3~~ 8A.412(3), will be covered under the rules of this system.

ITEM 4. Amend rule **681—3.26(8A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code Supplement sections ~~19A.3(5)~~ 8A.412(5) and ~~19A.9~~ 8A.413.

ITEM 5. Amend rule 681—3.37(8A) as follows:

ARC 3536B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby gives Notice of Intended Action to amend Chapter 240, "Licensure of Psychologists," Iowa Administrative Code.

This proposed amendment amends licensure by endorsement rules relating to required certifications. The amendment removes a date that is no longer applicable to licensure by endorsement of doctoral level practitioners.

Any interested person may make written comments on the proposed amendment no later than August 10, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on August 10, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas 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 proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 154B and 272C.

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

The following amendment is proposed.

Amend subrule **240.10(5)**, paragraph "**b**," subparagraph (2), as follows:

(2) Current credentialing at the doctoral level as a Health Service Provider in Psychology by the National Register of Health Service Providers in Psychology that was granted after December 31, 1981.

REGENTS BOARD[681](cont'd)

681—3.37(8A) Preparation, content and adoption of the pay plan. The board of regents will adopt a pay plan for all the classes established in the classification plan. The pay plan will consist of a schedule or schedules of numbered grades with minimums and maximums for each grade. Each class will be assigned to a pay grade. The plan will be developed to reflect the relative difficulty and responsibility of the work involved in the various classes, what is paid for similar work by other employers in the pertinent labor market, and the availability of funds with due regard to the results of a collective bargaining agreement negotiated under the provisions of Iowa Code chapter 20. The plan will be uniformly applicable to all regents institutions except for variances approved on the basis of geographical differences. ~~Prior to final approval by the board of regents, the plan will be the subject of a public hearing conducted after reasonable and adequate notice at each board of regents institution. After approval by the board of regents, the plan will be submitted for approval to such other authority as required by law.~~

ITEM 6. Amend rule **681—3.39(8A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code *Supplement* section ~~49A.9~~ **8A.413**.

ITEM 7. Amend rule **681—3.69(8A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code *Supplement* section ~~49A.9(7)~~ **8A.413(7)**.

ITEM 8. Amend rule **681—3.82(8A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code *Supplement* section ~~49A.9~~ **8A.413(9)**.

ITEM 9. Amend rule **681—3.85(8A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code *Supplement* section ~~49A.9~~ **8A.413(9)**.

ITEM 10. Amend rule **681—3.101(8A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code *Supplement* sections ~~49A.4~~ **8A.402** and ~~49A.9~~ **8A.413**.

ITEM 11. Amend subrule **3.104(4)**, paragraph “c,” as follows:

c. The order of reduction in force will be by type of appointment as follows: temporary, ~~provisional~~, trainee, initial probationary, permanent.

ITEM 12. Amend rule **681—3.104(8A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code *Supplement* section ~~49A.9(14)~~ **8A.413(14)**.

ITEM 13. Amend rule ~~681—3.115(8A)~~ as follows:

681—3.115(8A) Causes for disciplinary action. All employees may be subject to disciplinary action for any of the reasons specified in Iowa Code *Supplement* section ~~49A.9(16)~~ **8A.413(16)**.

ITEM 14. Amend rule **681—3.127(8A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code *Supplement* section ~~49A.9~~ **8A.413**.

ITEM 15. Amend rule **681—3.128(8A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code *Supplement* sections ~~49A.4~~ **8A.402**, ~~49A.9~~ **8A.413**, and ~~49A.18~~ **8A.416**.

ITEM 16. Amend rule **681—3.151(8A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~49A.9~~ *Supplement* section **8A.413** and Iowa Code section ~~262.9(2)~~.

ARC 3495B

REGENTS BOARD[681]

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 262.9(12) and 262.12, the Board of Regents hereby gives Notice of Intended Action to amend Chapter 11, “Board of Regents Organization and General Rules,” Iowa Administrative Code.

These amendments are intended to do the following:

- Provide information about the president and president pro tem of the Board of Regents.
- Update information regarding Board meeting dates and agendas and note when that information will be distributed.
- Update the address of the Board of Regents’ office.
- Distinguish between the policy-making authority of the Board and that of the institutional presidents.
- Clarify who is authorized to establish Regent committees and task forces and appoint individuals to those entities, as well as delete specific references to outdated Regent committees.
- Incorporate minor edits to enhance readability of the rules.

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681 IAC 19.18(17A).

Any interested person may make written comments on the proposed amendments on or before August 10, 2004. Written comments may be directed to Elaine Newell, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322. Comments may also be made by E-mail to enewell@iastate.edu, by telephone at (515)281-3934 or by fax at (515)281-6420.

These amendments are intended to implement Iowa Code sections 262.9 and 262.12.

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

The following amendments are proposed.

Amend rule 681—11.1(262) as follows:

681—11.1(262) Organization.

11.1(1) President and president pro tem. The president of the board of regents is elected by the board from its members at the ~~May~~ *April* meeting in even-numbered years for a two-year term and until a successor is elected and qualified. ~~If a vacancy occurs in the office prior to the end of the regular~~

REGENTS BOARD[681](cont'd)

~~term, the board elects a president to fill out the unexpired term. A president pro tem shall be elected at the same meeting at which the board president is elected. If a vacancy occurs in the office of board president, the president pro tem shall serve as president until such time as a new president is elected by the board.~~

11.1(2) Duties of the president. The duties of the president include presiding at all meetings of the board, appointing members of all ~~special~~ committees *and task forces* with the consent of the board of regents, executing, with the executive director, such instruments and contracts as may be ordered by the board, and performing such other duties as may be assigned by the board. *The president of the board shall serve as an ex officio, nonvoting member of all standing committees.*

11.1(3) Executive director. The executive director is elected by the board. The duties of the executive director include recording proceedings of the board, preserving the documents and records of the board, providing a meeting agenda to the board, administering the board office, providing such staff work as may be necessary to assist the board in its planning and decision making, participating in budget preparation and presentation to the board, maintaining liaison between the board and other state agencies, providing information to the general assembly and the public, participating in the preparation and completion of matters relating to financing of capital improvements, and such other duties as may be assigned by the board.

Agendas containing matters to be brought before the board together with supporting material will be assembled by the executive director. Such agendas will be indexed and included in a binder for easy reference. ~~Each institution will prepare its own portion of the agenda and forward same, with necessary supporting material, to the executive director at least ten days prior to the date a board meeting is scheduled. Assembled agendas will be mailed forwarded to members of the board by the executive director at least six days about a week prior to any scheduled meeting.~~

The agenda ~~of for the board meetings~~ *meeting also* will be made available to students, faculty, staff, and the general public through the board office and the public information offices at each institution prior to ~~the~~ *each* board meeting at which the agenda is to be considered.

11.1(4) Submissions and requests. Inquiries, submissions, petitions, and other requests directed to the board of regents may be made by letter addressed to the Executive Director, Board of Regents, Old Historical Building, Des Moines 11260 Aurora Avenue, Urbandale, Iowa 50319 50322-7905.

Any person may petition for a written or oral hearing before the board. All requests for a hearing must be in writing and state the specific subject to be discussed and the reasons why a personal appearance is necessary if one is requested.

Students, faculty, and other employees of institutions under the control of the board must route their petitions through the chief executive officer of the institution concerned. The chief executive officer will forward the petition, with the chief executive officer's comments, to the executive director of the board. The executive director of the board will place the item on the agenda for consideration by the board.

All other persons may request hearings by written petition directly to the executive director of the board. The executive director shall cause the subject matter of the petition to be investigated, and make a written report to the board. ~~The executive director of the board will, and place the item on the agenda for consideration by the board.~~

If the board grants a hearing, it shall be conducted in the manner prescribed by the board. The board may decide to grant a written hearing, an oral hearing, or both.

11.1(5) ~~Rule making~~ *Adoption of rules and policies.* The board of regents adopts rules *and policies* having general application to the institutions subject to its governance. The president of each institution is delegated the authority to adopt ~~such rules~~ *policies* as may be appropriate ~~to for~~ the operation of the individual institution and which are not inconsistent with the general rules *and policies* adopted by the board. The board of regents retains the authority to rescind any such institutional ~~rule~~ *policy*.

11.1(6) Meetings. The board meets regularly ~~once each month except one month in the summer throughout the year.~~ The schedule of meetings is available from the executive director at the address given in 11.1(4). The advance schedule of meetings is shown in each ~~monthly~~ agenda that is distributed to the press and the public at the board meeting. The meeting schedule, ~~generally is to be set for about six several months, indicates in advance and indicate the site at which regent institution the meeting meetings will be held and the date(s) of the meeting meetings.~~ Formal notification *of meeting details* is given to the press about a week prior to each ~~monthly~~ board meeting.

Six members of the board shall constitute a quorum *for a meeting of the full board of regents.* The number of votes required to constitute a majority for a given purpose shall be a majority of those present, assuming a quorum. Except where otherwise required by statute or these rules, the board shall conduct its meetings according to Robert's Rules of Order.

11.1(7) No change.

11.1(8) Committees. The board of regents ~~has established~~ *may establish standing committees of the board,* interinstitutional committees of professional educators drawn from the institutions and staff under its governance, *and special committees or task forces.* ~~Their~~ *The function of all committees and task forces* is to advise the board on matters related to development of policy, ~~and.~~ *An additional goal of interinstitutional committees is to ensure cooperation among the several institutions, and promote efficiency of operation.*

~~The committees include the committee on educational coordination, the registrar's committee on coordination, the subcommittee on library coordination, the information committee, the regent committee on educational relations, the state extension and continuing education council, the committee on equal employment opportunity, the coordinating council for international studies, and the regent advisory committees on Iowa School for the Deaf and Iowa Braille and Sight Saving School.~~

This rule is intended to implement Iowa Code section ~~sections~~ 262.9 and 262.12.

ARC 3527B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice

REVENUE DEPARTMENT[701](cont'd)

of Intended Action to amend Chapter 43, "Assessments and Refunds," Iowa Administrative Code.

These amendments are proposed as a result of 2004 Iowa Acts, Senate File 2112, and 2004 Iowa Acts, Senate File 2298, sections 434 through 439.

Item 1 amends subrule 43.4(1) to update what obligations must be satisfied before donations to the Iowa fish and game protection fund are allowed and to remove obsolete provisions of this subrule.

Item 2 amends subrule 43.4(2) to update what obligations must be satisfied before donations to the Iowa election campaign fund are allowed and to remove obsolete provisions of this subrule.

Item 3 rescinds subrule 43.4(3), which is an obsolete subrule regarding the United States Olympic fund checkoff.

Item 4 amends subrule 43.4(4) by renumbering it as subrule 43.4(3) and to provide that the domestic abuse services checkoff does not apply for tax years beginning on or after January 1, 2000.

Item 5 renumbers subrule 43.4(5) as subrule 43.4(4) and strikes a reference to the United States Olympic fund checkoff.

Item 6 amends subrule 43.4(6) by renumbering it as subrule 43.4(5) and to allow a limitation of four checkoffs on the Iowa individual income tax return for tax years beginning on or after January 1, 2004.

Item 7 amends subrule 43.4(7) by renumbering it as subrule 43.4(6) and to provide that the Department shall transfer the amount designated as contributions directly into the keep Iowa beautiful fund.

Item 8 adopts new subrule 43.4(7) and updates the implementation clause for rule 43.4(56,422,456A) to provide for a new income tax checkoff for donations to the volunteer firefighter preparedness fund.

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

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than August 23, 2004, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 10, 2004. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by August 13, 2004.

These amendments are intended to implement Iowa Code Supplement sections 422.12A as amended by 2004 Iowa Acts, Senate Files 2112 and 2298, and 422.12E as amended by 2004 Iowa Acts, Senate File 2298; and 2004 Iowa Acts, Senate File 2298, section 438.

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

The following amendments are proposed.

ITEM 1. Amend subrule **43.4(1)** by rescinding paragraph "**a**" and amending paragraph "**b**," introductory paragraph, as follows:

~~b.—For tax years beginning on or after January 1, 1984. The taxpayer may designate an amount to be donated to the Iowa fish and game protection fund. The donation must be \$1 or more, and the designation must be made on the original return for the current year. The donation is allowed only after obligations of the taxpayer to the Iowa department of revenue and finance, the child support recovery unit of the Iowa department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, and the additional political Iowa election campaign contribution checkoff have been satisfied. The designation to the fund is irrevocable and cannot be made on an amended return. If the amount of refund claimed on the original return or the payment remitted with the return is adjusted by the department, the amount of the designation to the fund may be adjusted accordingly.~~

ITEM 2. Amend subrule **43.4(2)** by rescinding paragraphs "**a**" and "**b**" and amending paragraph "**c**," introductory paragraph, as follows:

~~c.—For tax years beginning on or after January 1, 1986, a A person with a tax liability of \$1.50 or more on the Iowa individual income tax return may direct or designate that a \$1.50 contribution be made to a specific political party or that the contribution be made to the Iowa election campaign fund to be shared by all political parties as clarified further in this paragraph. In the case of married taxpayers filing a joint Iowa individual return with a tax liability of \$3.00 or more, each spouse may direct or designate that a \$1.50 contribution be made to a specific political party or that a \$1.50 contribution be made to the Iowa election campaign fund as a contribution to be shared by all political parties. The designation or direction of a contribution to a political party or to the election campaign fund is irrevocable and cannot be changed on an amended return. The designation to a political party or the election campaign fund is allowed only after obligations of the taxpayer to the Iowa department of revenue and finance, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, public assistance overpayment, the college student aid commission, the office of investigations of the department of human services, the district courts and other state agencies are satisfied and after designations of contributions to the Iowa fish and game protection fund are satisfied. Note that for purposes of this rule subrule, "political party" means a party as defined in Iowa Code section 43.2.~~

ITEM 3. Rescind subrule **43.4(3)**.

REVENUE DEPARTMENT[701](cont'd)

ITEM 4. Amend subrule 43.4(4) as follows:

43.4(4-3) Domestic abuse services checkoff. For tax years beginning on or after January 1, 1991, but before January 1, 1996, and for tax years beginning on or after January 1, 1997, *but before January 1, 2000*, a taxpayer filing a state individual income tax return can designate a checkoff of \$1 or more to the general fund of the state to be used for the purposes of providing services to victims of domestic abuse or sexual assault. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the domestic abuse services checkoff, the amount credited to the domestic abuse services checkoff will be reduced accordingly. The designation to the domestic abuse services checkoff is irrevocable and cannot be revised on an amended return.

A designation to the domestic abuse services checkoff may be allowed only after obligations of the taxpayer to the department of revenue ~~and finance~~, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, and the state fair foundation checkoff are satisfied.

On or before January 31 of the year following the year in which returns with domestic abuse services checkoff are due, the department of revenue ~~and finance~~ is to certify the total amount designated to the domestic abuse services checkoff to the state treasurer.

ITEM 5. Amend subrule 43.4(5) as follows:

43.4(5-4) State fair foundation checkoff. For tax years beginning on or after January 1, 1993, a taxpayer filing a state individual income tax return can designate a checkoff of \$1 or more to the Iowa state fair foundation. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the state fair foundation checkoff, the amount credited to the state fair foundation checkoff will be reduced accordingly. The designation to the state fair foundation checkoff is irrevocable.

A designation to the state fair foundation checkoff may be allowed only after obligations of the taxpayer to the department of revenue ~~and finance~~, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, ~~the United States Olympic fund checkoff~~, and the domestic abuse services checkoff are satisfied.

On or before January 31 of the year following the year in which returns with the state fair foundation checkoff are due, the department of revenue ~~and finance~~ shall transfer the total amount designated to the state fair foundation to the state fair foundation fund.

ITEM 6. Amend subrule 43.4(6) as follows:

43.4(6-5) Limitation of checkoffs on the individual income tax return. For tax years beginning on or after January 1, 1995, *but before January 1, 2004*, no more than three checkoffs are allowed on the individual income tax return. The election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return. When the same three checkoffs have been provided on the income tax return for three consecutive years,

the checkoff for which the least amount has been contributed in the aggregate for the first two years and through March 15 of the third tax year will be repealed.

For example, the ~~1995 1999~~ Iowa individual income tax return due in ~~1996 2000~~ includes checkoffs A, B and C which also were shown on the Iowa returns for ~~1993 1997, 1998 and 1994 1999~~. Through March 15, ~~1996 2000~~, \$90,000 was contributed on the ~~1993 1997, 1994 1998 and 1995 1999~~ returns for checkoff A, \$60,000 was contributed for checkoff B and \$120,000 for checkoff C. Since the least amount contributed in the aggregate was for checkoff B, that checkoff is repealed and will not appear on the ~~1996 2000~~ Iowa income tax return to be filed in ~~1997 2001~~.

For tax years beginning on or after January 1, 2004, no more than four checkoffs are allowed on the individual income tax return. The election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return. When the same four checkoffs have been provided on the income tax return for two consecutive years, the two checkoffs for which the least amount has been contributed in the aggregate for the first year and through March 15 of the second tax year will be repealed.

If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual income tax return form, the earliest enacted checkoffs for which there is space will be included on the income tax return form, and all other checkoffs enacted during that session of the general assembly are repealed.

ITEM 7. Amend subrule 43.4(7) as follows:

43.4(7-6) Keep Iowa beautiful fund checkoff. For tax years beginning on or after January 1, 2001, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the keep Iowa beautiful fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the keep Iowa beautiful fund, the amount credited to the keep Iowa beautiful fund will be reduced accordingly. Once the taxpayer has designated a contribution to the keep Iowa beautiful fund on an individual income tax return filed with the department of revenue ~~and finance~~, the taxpayer cannot amend the designation.

A designation to the keep Iowa beautiful checkoff may be allowed only after obligations of the taxpayer to the department of revenue ~~and finance~~, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the keep Iowa beautiful fund are due, the department of revenue ~~and finance is to certify to the state treasurer shall transfer~~ the total amount designated to the keep Iowa beautiful fund ~~on those returns~~.

ITEM 8. Amend rule ~~701—43.4(56,422,456A)~~ as follows:

Add the following **new** subrule:

43.4(7) Volunteer firefighter preparedness fund checkoff. For tax years beginning on or after January 1, 2004, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the volunteer firefighter preparedness fund. If the refund due on the return or the payment re-

REVENUE DEPARTMENT[701](cont'd)

mitted with the return is insufficient to pay the additional amount designated by the taxpayer to the volunteer firefighter preparedness fund, the amount credited to the volunteer firefighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the volunteer firefighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the volunteer firefighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the keep Iowa beautiful fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the volunteer firefighter preparedness fund are due, the department of revenue is to certify to the state treasurer the amount designated to the volunteer firefighter preparedness fund on those returns.

Rescind the implementation clause and insert the following **new** implementation clause in lieu thereof:

This rule is intended to implement Iowa Code Supplement sections 422.12A as amended by 2004 Iowa Acts, Senate Files 2112 and 2298, and 422.12E as amended by 2004 Iowa Acts, Senate File 2298; and 2004 Iowa Acts, Senate File 2298, section 438.

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SECRETARY OF STATE[721]

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 47.1 and section 53.17 as amended by 2004 Iowa Acts, Senate File 2269, section 33, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

These proposed rules implement changes to procedures for receiving and counting absentee ballots, and provide a training curriculum for absentee ballot couriers as required by Iowa Code section 53.17 as amended by 2004 Iowa Acts, Senate File 2269, section 33. The proposed rules also provide county commissioners of elections with direction in handling absentee ballots returned by anonymous or unauthorized persons.

Any interested person may make written suggestions or comments on these proposed rules through Tuesday, August 10, 2004. Written suggestions or comments should be directed to Sandy Steinbach, Director of Elections, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office at (515)281-5823 or at the Secretary of State’s offices on the first floor of the Lucas

State Office Building. Requests for a public hearing must be received by 4:30 p.m. on Monday, August 9, 2004.

These amendments are intended to implement Iowa Code section 53.17 as amended by 2004 Iowa Acts, Senate File 2269, section 33.

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

The following amendments are proposed.

ITEM 1. Amend rule 721—21.361(53) by adding the following **new** subrule:

21.361(8) An absentee ballot that has been challenged because it was delivered to the commissioner’s office by someone other than the voter or an absentee ballot courier shall be rejected if the voter does not respond to the notice sent pursuant to rule 21.377(53) or 21.378(53) or if the voter reports that the voter:

- a. Requested an absentee ballot, but did not receive it.
- b. Requested and received an absentee ballot but did not vote it or return it.
- c. Did not request or vote an absentee ballot.

ITEM 2. Amend 721—Chapter 21 by adding the following **new** rules 21.370(53) to 21.378(53):

721—21.370(53) Training for absentee ballot couriers.

All absentee ballot couriers shall be trained using the curriculum prescribed in rule 21.375(53). It is the responsibility of any person who wishes to serve as an absentee ballot courier to obtain training from an authorized trainer. The training shall include a video class prepared by the state commissioner, if one is available. If the video class is used, the trainer shall be present while the courier trainee views the video and shall be available to answer questions. Each courier shall also receive a paper copy of rule 21.375(53).

21.370(1) For all elections, the county commissioner of elections or the commissioner’s designee may provide training. The commissioner may designate only a member of the commissioner’s staff who has experience in election administration to conduct the training.

21.370(2) For partisan elections only, training may be provided by:

- a. State or county central committees of the political parties defined by Iowa Code section 43.2.
- b. Members of the paid staff of a state or county central committee.
- c. County and state political parties.
- d. Members of the paid staff of a county or state political party.

721—21.371(53) Certificate. The trainer shall provide each person who completes the training with a certificate in substantially the following form:

State of Iowa

Absentee Ballot Courier

_____ has successfully completed the training course prescribed by the Iowa State Commissioner of Elections and is now authorized under Iowa law to collect absentee ballots from voters for delivery to the County Commissioner of Elections in counties in which the courier is registered. Each County Commissioner keeps a list of Absentee Ballot Couriers who are registered to serve in the county.

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This certificate was awarded on _____, 20___. It expires one year from this date.

Signed: _____
 Trainer
 Name of Organization: _____

721—21.372(53) Frequency of training. An absentee ballot courier who has completed the training course may serve as a courier for any election held for a period of one year from the date of completion of the training without receiving additional training. A separate registration must be submitted for each election pursuant to rule 21.373(53). The trainer shall register the courier for each election for which the courier wishes to serve during the following 12 months.

721—21.373(53) Registration of absentee ballot couriers.

21.373(1) Filing location. The trainer shall register each courier with the commissioner of every county in which the courier may collect absentee ballots.

21.373(2) Content. The registration may include more than one courier on a list and shall include:

a. The courier's name and address and the best means for contacting the courier, which shall include the courier's mobile or other telephone number, E-mail address, or any other information that will help the commissioner reach the courier if the commissioner has questions about the absentee ballots collected by the courier.

b. The name and telephone number or E-mail address of the courier's trainer.

c. The name of the political party, candidate or committee, if any, for which the courier is serving as an actual or implied agent.

d. The best method for contacting the entity named in paragraph "c," including mobile or other telephone number, E-mail address or any other information that will help the commissioner reach a person in the organization if there are questions about the absentee ballots collected by the courier.

21.373(3) Timely registration. Trainers shall register couriers with the county commissioner before each election for which the courier will serve. Trainers may register couriers for an election not more than 70 days before the election and not later than one day before the election. No absentee ballot couriers shall be registered on any election day for an election being conducted that day.

21.373(4) Method for filing. The trainer shall file the registration information with the commissioner before the courier begins collecting ballots. The registration may be personally delivered, E-mailed, sent by facsimile transmission or mailed. If the training is completed when the commissioner's office is closed and it is not possible for the trainer to register the courier, the trainer may use any of the following methods to register newly trained couriers after the completion of the training course:

a. Send the registration by facsimile transmission to the commissioner within 24 hours.

b. Mail the registration to the commissioner if the envelope containing the registration information is postmarked on the next business day.

c. E-mail the registration to the commissioner within 24 hours.

721—21.374(53) County commissioner's duties. The county commissioner shall be responsible for training and registration of absentee ballot couriers.

21.374(1) Applicants for courier training shall contact the commissioner to schedule a time for training.

21.374(2) The commissioner shall maintain a list of all absentee ballot couriers who are registered in the county to collect ballots for each election.

721—21.375(53) Absentee ballot courier training. The document provided to absentee ballot couriers shall be in substantially the following form:

Absentee Ballot Courier Training

As an absentee ballot courier, you will be visiting voters in their homes and handling voted ballots. This is an important service to the voters. Any mistakes that you make have serious consequences. Your errors can take away someone else's chance to vote. If you break the law and you are convicted, you can be fined, be sent to prison and lose your right to vote.

There are many legal restrictions that apply to absentee voting. Pay careful attention to these:

1. No candidates or elected officials may serve as absentee ballot couriers.

a. Candidates whose names are on the ballot for an election may not serve as couriers for that election.

b. No elected official may serve as a courier, including anyone holding an office that is filled by the voters at any level of government.

It is a felony for a candidate or an elected official to serve as a courier.

2. Only a trained and registered absentee ballot courier or the person who voted an absentee ballot may deliver a voted absentee ballot to the county auditor's office. The only exceptions to this restriction apply to voters who are in hospitals and nursing homes. It is an aggravated misdemeanor for anyone other than the absentee ballot courier or person who voted the ballot to deliver the absentee ballot to the auditor's office.

3. It is also an aggravated misdemeanor to lie about an unauthorized person returning an absentee ballot.

4. It is a felony to violate the requirements of the absentee ballot courier law. This law requires anyone acting on behalf of a political party, candidate or committee organized under the campaign finance law to be trained and registered before the person can collect absentee ballots.

5. The courier must provide each voter with a receipt for the voter's ballot, and must properly document the ballots in the courier's care.

6. Vote fraud and intimidating and bribing voters are also felonies under Iowa law.

7. If you are convicted of a felony, you lose your right to vote. There may also be other penalties.

a. Vote fraud. It is a felony to:

(1) Destroy, deliver, or handle an absentee ballot with the intent of interfering with the voter's right to vote.

(2) Produce, procure, submit, or accept an absentee ballot that is known by the person to be materially false, fictitious, forged, or fraudulent.

(3) Vote or attempt to vote more than once at the same election, or vote or attempt to vote at an election knowing oneself not to be qualified.

(4) Make a false or untrue statement in an application for an absentee ballot or make or sign a false certification or affidavit in connection with an absentee ballot.

(5) Otherwise deprive, defraud, or attempt to deprive or defraud the citizens of Iowa of a fair and impartially conducted election process.

b. Duress. It is a felony to intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, a person to do any of the following:

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(1) To register to vote, to vote, or to attempt to register to vote.

(2) To urge or aid a person to register to vote, to vote, or to attempt to register to vote.

(3) To exercise a right under the election laws of Iowa (Iowa Code chapters 39 through 53).

c. Bribery. It is a felony to:

(1) Pay, offer to pay, or cause to be paid money or any other thing of value to a person to influence the person's vote.

(2) Pay, offer to pay, or cause to be paid money or any other thing of value to an election official conditioned on some act done or omitted to be done contrary to the person's official duty in relation to an election.

(3) Receive money or any other thing of value knowing that it was given in violation of paragraph (1) or (2) above.

d. Conspiracy. It is a felony to conspire with or act as an accessory to another person to commit an act in violation of laws prohibiting vote fraud, duress and bribery.

Courier Responsibilities

1. Contact auditor. Contact the county auditor in each county where you will be collecting ballots. You need to have the following information:

a. The address of the auditor's office where ballots should be delivered.

b. Hours that the auditor's office is open.

c. Holidays during which the office will be closed.

d. The name and telephone number of a person who can answer any questions you have about absentee ballots.

e. Each absentee voter receives a set of instructions. Get a copy of the instructions from each county where you will be working as a courier. Study them and, if you have questions, contact the county auditor.

2. Supplies. Be prepared. Take along what you need for your own personal needs, as well as the following materials:

a. Certificate showing that you are a trained absentee ballot courier.

b. Photo identification, such as a driver's license.

c. Cover sheet to list the ballots you have collected and a clipboard.

d. Receipt forms.

e. Pens, recommended.

f. No. 2 pencils, recommended. (Optical scan ballots should be marked with a No. 2 pencil.)

3. Ballot security.

a. Keep all of the ballots you collect in a ballot box or bag that you can close securely. Don't use the ballot box or bag for anything else.

b. If you are collecting ballots on a rainy day, be sure to waterproof your ballot box or bag.

c. Keep the ballot box in your personal possession. Don't leave it unattended. Don't trust anyone else with it.

d. Store the cover sheet separately from the ballots.

e. At the end of the day, check the ballots against the cover sheet to be sure that:

(1) All ballots in the box are included on the cover sheet.

(2) All ballots listed on the cover sheet are in the box.

4. If you lose any ballot, call the county auditor as soon as you discover the loss. If it is a weekend, go to the county sheriff. The sheriff will find the auditor for you.

Don't wait. Don't lie about it. Don't hide it.

Take your cover sheet to the auditor's office. The auditor may be able to replace the ballots of those voters whose ballots you lost.

5. Etiquette. Introduce yourself and explain that you are an absentee ballot courier and have come to pick up absentee

ballots to be delivered to the county auditor. Be prepared to show identification and your training certificate if anyone asks for it.

6. Secret ballot. The voter is required by law to mark the ballot in secret, unless the voter cannot mark the ballot because of a disability.

7. Voters who ask for help. A voter who has a disability may ask anyone for help to mark the ballot. **Do not help mark a ballot unless the voter asks for your help.** Please note that federal law prohibits the following people from helping a voter:

a. The voter's employer or an agent of the voter's employer.

b. An officer or agent of the voter's union.

8. **If you help someone vote:**

a. Do not tell the voter how to vote.

b. Mark the ballot according to the voter's instructions.

c. If the voter is not sure who to vote for, don't decide for the voter.

d. Do not tell anyone else how the person voted.

9. Spoiled ballots. If the voter reports that the ballot is spoiled, you can return the ballot to the auditor's office for the voter. This must be done immediately. The auditor will mail a new ballot to the voter. This takes time!

Have the voter:

a. Put the ballot and affidavit envelope in the Return Carrier Envelope.

b. Write "Spoiled" on the Return Carrier Envelope.

10. Secrecy folder or envelope. The voter should put the ballot into the secrecy folder, if one was provided. The secrecy folder does not have to be sealed. Its purpose is to conceal the marks on the ballot when the ballot is removed from the Affidavit Envelope. Put the secrecy envelope in the Affidavit Envelope.

11. Affidavit Envelope. The Affidavit Envelope must be filled out or the ballot cannot be counted. The affidavit must include:

a. The address where the voter lives.

b. The voter's signature.

c. Date the voter signed the affidavit.

If the voter cannot sign the affidavit because of a disability, and if the voter asks for your help, you may sign the voter's name in the voter's presence and with the voter's permission. Add your name and the title "Registered Absentee Ballot Courier" to the envelope.

12. Affidavit Envelope must be sealed. If the Affidavit Envelope is open, or has been opened and resealed, the ballot will not be counted.

13. Return Carrier Envelope. The Affidavit Envelope must be sealed inside the Return Carrier Envelope.

14. Receipt for ballot. You must provide each voter with a receipt for the voter's ballot, and must properly document the ballots in your care. Use only the receipt form prescribed by the Secretary of State.

15. Cover sheet. Record each ballot on the cover sheet. Use only the cover sheet form prescribed by the Secretary of State.

16. Deliver the ballot to the county that issued it. The appropriate courier must personally deliver the ballots (see paragraph "19" below). Do not use a drop box. The Return Carrier Envelope will have the auditor's county and mailing address on it. Do not deliver ballots to the wrong county.

17. Out-of-county ballots. If you visit a voter who has a ballot that needs to be delivered to another county, and you are not a registered courier for that county or you cannot deliver the ballot on time, advise the voter to mail the ballot to the appropriate county.

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18. Do not mail any absentee ballots! It is a crime for anyone other than the voter or a member of the voter's family to mail an absentee ballot. Unless you are an immediate family member, you may not mail the ballot for the voter.

Immediate family member includes only **the voter's**:

- Husband or wife;
- Daughter, stepdaughter, son or stepson, if that family member is 18 years of age or older;
- Granddaughter or grandson, if that family member is 18 years of age or older;
- Grandfather or grandmother;
- Sister or brother, if 18 years of age or older.

19. Transferring ballots to another absentee ballot courier for a political party, candidate or committee. The law allows you to transfer the ballots you collected to another courier if a delivery courier has been designated by the political party, candidate or committee for whom you are acting. Ballots may not be transferred more than once. When you transfer the ballots:

- a. Compare the ballots in your possession with the ballots on your cover sheet.
- b. Get a receipt. You are personally responsible for the ballots you collected. Your name is on the receipts you gave to the voters.

20. Delivery schedule. Deliver ballots to the appropriate county auditor within 72 hours (three days) after you retrieve them from the voters. There are no extensions for holidays or weekends. If you received the ballots from another courier, the 72-hour limit applies from the time the ballot was collected from the voter, not from the other courier.

For example, if you (or another courier) picked up a ballot from a voter at 9 a.m. on a Monday morning, you must deliver the ballot to the auditor no later than 9 a.m. on Thursday. If you (or another courier) picked up a ballot at 8 p.m. on a Monday evening, you must deliver the ballot to the auditor before the office closes on Thursday, unless the office is open until 8 p.m.

It is a felony to keep any ballot for more than 72 hours.

A ballot picked up on:	Shall be delivered no later than the same time on:
Sunday	Wednesday
Monday	Thursday
Tuesday	Friday
Wednesday	Saturday (if auditor's office is open, otherwise Friday)
Thursday	Saturday (if auditor's office is open, otherwise Friday)
Friday	Monday (If Monday is a holiday, ballots picked up on Friday must be delivered on Friday.)
Saturday	Tuesday

It is your responsibility to know what hours the auditor's office will be open. Ask the auditor's office staff for a list of holidays for which the office will be closed.

All county auditors' offices are open on the two Saturdays before primary and general elections.

For primary and general elections, the polls close at 9 p.m. All absentee ballots must be delivered by that time. Ballots delivered after 9 p.m. cannot be counted.

For all other elections, the polls close at 8 p.m. All absentee ballots must be delivered by that time. Ballots delivered after 8 p.m. cannot be counted.

21. Check-in process. Auditor's office staff will compare your cover sheet with the ballots to verify that all items on the cover sheet are included and that all ballots in the group are

on the cover sheet. The auditor will give you a file-stamped copy of your cover sheet. Keep this. You are personally responsible for the ballots you collected and may be asked for proof that you delivered the ballots to the appropriate county auditor's office.

721—21.376(53) Receiving absentee ballots. The county commissioner shall carefully document the return of absentee ballots.

21.376(1) From couriers. If a courier delivers the ballots, the commissioner shall ask the courier to show identification, such as a driver's license or other identification card with a photograph and the name of the courier. The commissioner shall compare the cover sheet with the ballots being returned. The commissioner shall mark the cover sheet with the date and time that it was received and the name of the person receiving the ballots. The commissioner shall make a copy of the cover sheet and give it to the courier. The commissioner shall keep the original cover sheet for the county's records.

21.376(2) From voters. If a person who is not an absentee ballot courier returns one ballot, the commissioner shall ask the person's name. If the person is not the voter or if a person returns more than one ballot, the commissioner shall record the name of the person who delivers the ballot or ballots. The commissioner shall follow the procedures in rule 21.377(53) for ballots returned by unauthorized persons.

721—21.377(53) Absentee ballots delivered by unauthorized person. If someone other than the voter or a registered absentee ballot courier delivers one or more absentee ballots to the commissioner's office, the commissioner or a member of the commissioner's staff shall record the name of the person who delivered the ballots.

21.377(1) Family member. If the person delivering the ballot is an immediate family member, the commissioner shall advise the person to mail the ballot, unless the ballot is returned on election day. If it is election day, the ballot shall be received and challenged.

21.377(2) Other. If the person delivering the ballot is not an immediate family member, the commissioner shall record the name and address of the person delivering the ballot and receive the ballot. The absentee ballot shall be challenged.

a. Challenge form. The commissioner or a member of the commissioner's staff shall complete Form 3-G: Challenge of Absentee Voter. The reason for the challenge shall be "Ballot returned by unauthorized person."

b. Notice to voter. The commissioner shall enclose with the challenge form a notice in substantially the following form:

Iowa law now strictly limits the persons who may return and methods for returning absentee ballots. Only you or a registered absentee ballot courier may legally deliver an absentee ballot to the auditor's office. The following person delivered your absentee ballot:

Please indicate below the circumstances that apply:

- I voted, sealed and gave my absentee ballot to the following person to deliver to the auditor's office:
Name: _____ Address: _____
- I requested an absentee ballot, but did not receive it.
- I requested and received an absentee ballot, but I did not vote it or return it.
- I did not request or vote an absentee ballot.
- Other (if none of the above apply) _____

Your ballot cannot be counted if you do not return this form or reply before _____ [date

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and time the Absentee and Special Voter's Precinct Board will convene].

Signed: _____ Date: _____

721—21.378(53) Absentee ballots delivered anonymously. If an absentee ballot is delivered to the commissioner's office and no one in the commissioner's office saw the person deliver the ballot, the ballot shall be challenged.

21.378(1) Challenge form. The commissioner or a member of the commissioner's staff shall complete Form 3-G: Challenge of Absentee Voter. The reason for the challenge shall be "Ballot returned anonymously."

21.378(2) Notice to voter. The commissioner shall enclose with the challenge form a notice in substantially the following form:

Iowa law now strictly limits the persons who may return and methods for returning absentee ballots. An unknown person delivered your absentee ballot to the Commissioner's office.

Please indicate below the circumstances that apply:

- I personally delivered my own absentee ballot, but did not have the opportunity to speak with anyone on the staff.
- I voted, sealed and gave my absentee ballot to the following person to deliver to the auditor's office.

Name: _____ Address: _____

- I requested an absentee ballot, but did not receive it.
- I requested and received an absentee ballot, but I did not vote it or return it.
- I did not request or vote an absentee ballot.
- Other (if none of the above apply) _____

Your ballot cannot be counted if you do not return this form or reply before _____ [date and time the Absentee and Special Voter's Precinct Board will convene].

Signed: _____ Date: _____

These rules are intended to implement Iowa Code chapter 53 as amended by 2004 Iowa Acts, Senate File 2269.

ARC 3537B

SECRETARY OF STATE[721]

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 47.1 and section 49.98 as amended by 2004 Iowa Acts, Senate File 2269, section 21, the Secretary of State hereby gives Notice of Intended Action to adopt new Chapter 26, "Counting Votes," Iowa Administrative Code.

These proposed rules provide a definition of what constitutes a vote for all voting systems in use in Iowa as mandated by Iowa Code section 49.98 as amended by 2004 Iowa Acts, Senate File 2269, section 21, and provide clarification of procedures for recounts.

Any interested person may make written suggestions or comments on these proposed rules through Tuesday, August 10, 2004. Written suggestions or comments should be di-

rected to Sandy Steinbach, Director of Elections, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office at (515)281-5823 or at the Secretary of State's offices on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by 4:30 p.m. on Monday, August 9, 2004.

These rules are intended to implement Iowa Code section 49.98 as amended by 2004 Iowa Acts, Senate File 2269, section 21.

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

The following **new** chapter is proposed.

CHAPTER 26 COUNTING VOTES

PART I—GENERAL PROVISIONS

721—26.1(49) Definitions.

"Blank ballot" means a ballot that contains no votes that can be detected by a tabulating device. See also "unvoted ballot."

"Hesitation mark" means a small mark made by resting a pen or pencil on the ballot.

"Optical scan voting system" includes a tabulating device that reads ballots by detecting voters' marks using reflected or absorbed light. An optical scan voting system may be used to count ballots either at the polling place (precinct count) or at a counting center (central count). Optical scan ballots are special paper ballots designed for use with an optical scan voting system.

"Overvote" means to vote for more than the permitted number of choices for any office or question on a ballot.

"Paper ballot" as used in this chapter means a ballot that is intended to be counted only after inspection by precinct election officials. "Paper ballot" in this context includes:

1. An emergency paper ballot cast in a precinct that has voting machines;
2. An absentee ballot designed to be inspected by precinct election officials, then entered manually on the voting machine;
3. A ballot provided at a precinct that has neither voting machines nor optical scan voting equipment.

"Prescribed mark" means the mark shown in the voting instructions as the appropriate way to mark a vote. "Prescribed mark" includes a close approximation of the mark.

"Question" as used in this chapter includes a public measure as defined by Iowa Code section 39.3(10) and a judicial retention question pursuant to Iowa Code section 46.21.

"Random mark" means a mark on a ballot (other than the prescribed mark) that is used inconsistently, either in or near the voting target or the names of candidates.

"Straight party vote" means a vote cast in the area of the ballot where political parties and nonparty political organizations are listed, pursuant to Iowa Code section 49.37(1).

"Stray mark" means a mark on a ballot that appears to be accidental or appears to be unrelated to the act of filling in the voting target.

"Tabulating device" means the portable apparatus that removes the special paper ballot from the secrecy envelope, examines and counts the votes recorded on the special paper ballot, and produces a paper printout of the results of the voting.

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“Undervote” means to vote for fewer than the permitted number of choices for any office or question on a ballot.

“Unvoted ballot” means a ballot that has not been marked in any way. See also “blank ballot.”

“Vote” means the voter’s choice for an office or question on the ballot.

“Voting machine” means a mechanical or electronic device meeting the requirements of Iowa Code section 52.7 as amended by 2004 Iowa Acts, Senate File 2269, section 27, and designated for use in casting, registering, recording, and counting votes at an election. “Voting machine” includes, but is not limited to, direct recording electronic devices.

“Voting target” means the place designated on a ballot for the voter to mark the voter’s choice.

“Write-in vote” means a vote cast pursuant to Iowa Code section 49.99 or 52.16.

721—26.2(49) Counting votes on election day.

26.2(1) Optical scan—precinct count. Ballots shall be counted at the polling place on election day using the equipment provided. The precinct election officials shall not examine ballots accepted and counted by the tabulating device. After the polls close, the precinct election officials shall:

a. Remove any ballots from the emergency ballot box and insert them into the tabulating device.

b. Examine ballots sorted by the tabulating device because they contain write-in votes and count the write-in votes following the standards in rule 26.20(49).

c. Examine ballots rejected by the tabulating device and abandoned by the voter only if the tabulating device has no override device that permits the officials to reset the tabulating device to accept blank or overvoted ballots. The officials shall follow the standards in rules 26.12(50) through 26.21(49).

26.2(2) Optical scan—central count. The ballots shall be counted at the counting center on election day as required by Iowa Code section 52.37(2). When it is necessary to duplicate or enhance a ballot because it is read as blank, the officials shall follow the standards in rules 26.12(50) through 26.21(49).

26.2(3) Paper ballots. Ballots shall be counted at the polling place on election day as provided in Iowa Code chapter 50 or 51, as applicable, according to the standards in Part III.

26.2(4) Voting machines. Votes shall be counted following the standards in Part IV. If a voter leaves the voting booth without casting the ballot, the precinct election officials shall cast the ballot without examining the face of the machine. Emergency paper ballots shall be counted following the standards in Part III. The standards in Part IV apply to the following voting systems:

- a. MicroVote.
- b. Election Systems & Software iVotronic.
- c. Fidar Doubleday EV2000.
- d. Sequoia Pacific Automatic Voting Machine.
- e. Sequoia Pacific Automatic Voting Computer.

721—26.3(50) Reporting overvotes and undervotes. The reports from computerized voting equipment and canvass summaries for precinct, county and state canvasses of votes shall include the number of overvotes and undervotes for each office and question on the ballot. Undervotes and overvotes shall not be reported on abstracts of votes prepared pursuant to Iowa Code sections 50.24 and 50.39.

EXAMPLE: For a special election, 100 people voted using an optical scan voting system. The printed report from the machine tally of votes should be in substantially the following form:

Number of voters = 100

City Official	
Candidate 1	24
Candidate 2	51
Candidate 3	12
Write-in votes	8
Overvotes	2
Undervotes	3

The vote tally portion of the abstract of votes for this office would read as follows:

For the office of city official, there were ninety-five (95) votes cast as follows:

Candidate 1 received twenty-four (24) votes.

Candidate 2 received fifty-one (51) votes.

Candidate 3 received twelve (12) votes.

Scattering received eight (8) votes.

721—26.4(50) Absentee and special voters precinct. The absentee and special voters precinct board shall tabulate ballots in the manner appropriate to the voting equipment, if any has been provided.

26.4(1) If an optical scan voting system is used, the board shall follow the procedures in subrule 26.2(2) for central count.

26.4(2) If paper ballots are to be counted on voting machines, the board shall follow the standards in Part III for counting paper ballots and record the votes on the voting machine.

26.4(3) If the MicroVote absentee voting system is used, the standards in 721—22.461(52) shall be followed. If the voter has cast a write-in vote for a candidate whose name appears on the ballot for an office to which more than one person is to be elected, the vote shall be counted.

721—26.5 to 26.9 Reserved.

PART II—OPTICAL SCAN VOTING SYSTEMS

721—26.10(50) Systems affected. The following rules apply to all optical scan voting systems in use in Iowa.

721—26.11(50) Examples used. The examples used in this part all show the voting target as an oval on the left-hand side next to each candidate’s name. The same principles demonstrated in the examples apply to other types of voting targets on optical scan ballots.

721—26.12(50) Wrong ballots. Optical scan voting equipment shall be programmed to reject ballots not coded for use in the precinct, as required by 721—subrule 22.201(1).

26.12(1) Central count. If the tabulating device sorts out ballots that are coded for a precinct other than the precinct being tabulated, the resolution board appointed pursuant to Iowa Code section 52.36 shall inspect the ballots for the initials of the precinct election official who issued the ballot.

a. If the sorted ballots have the initials of an election official from the precinct in which the ballots were cast, the ballots shall be duplicated on the correct ballot for all offices and questions that are common to all voters in both precincts. An office or question that is included on the correct ballot for the precinct where the ballot was cast, or is not included on every ballot for that precinct, shall not be duplicated. The officials shall note on the original ballot which offices have not been duplicated.

b. If the ballots do not have the initials of an election official from the precinct in which the ballots were cast, the ballots shall be marked “Defective” and shall not be counted unless the commissioner or the commissioner’s designee re-

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ports that the wrong ballots were delivered to the polling place. The resolution board shall account for all defective ballots in its tally list.

26.12(2) Precinct count. If a recount board appointed pursuant to Iowa Code section 50.48 finds ballots that are coded for a precinct other than the precinct being tabulated, those ballots shall not be counted unless the commissioner or the commissioner's designee reports that the wrong ballots were delivered to the polling place. The recount board shall immediately report to the commissioner the number of these ballots. The recount board and the commissioner shall securely seal the ballots coded for another precinct and attach to the ballot package a report of the findings. A copy of the report shall be forwarded to the county attorney as a possible violation of Iowa Code section 39A.2(1)"b"(2).

721—26.13(50) Ballot properly marked by the voter. No ballot properly marked by the voter shall be rejected:

1. Because of any discrepancy between the printed ballot and the nomination paper, or certificate of nomination, or certified abstract of the canvassing board.
2. Because of any error in stamping or writing the endorsement thereon by the officials charged with such duties.
3. Because of any error on the part of the officer charged with such duty in delivering the wrong ballots at any polling place.

721—26.14(50) Ballots with identifying marks. The precinct election officials shall reject a ballot if the ballot includes an identifying mark. The following marks shall be considered to be identifying marks:

1. A comment or statement that indicates the identity of the voter either individually or as member of a group.
2. Initials, a printed name or a signature placed on the ballot in any place other than on the lines intended for write-in votes or intended for the initials of the election official who issued the ballot.

If the ballot has an identifying mark, the precinct election officials shall mark the ballot "Defective due to identifying mark" and shall return the ballot to the commissioner in the envelope or container for disputed ballots as required by Iowa Code section 50.5.

721—26.15(49) Voter's choice. A vote for any office or question on a ballot shall not be rejected solely because a voter failed to follow instructions for marking the ballot.

26.15(1) If the choice of the voter is clear from the marks for any office or question, the vote shall be counted as the voter has indicated.

26.15(2) If for any reason it is impossible to determine the choice of the voter for any office or question, the vote for that office or question shall not be counted.





721—26.16(49) Determination of voter's choice.

26.16(1) If a voter uses both the prescribed mark and other marks, only the prescribed marks shall be counted as votes.

EXAMPLE: The voter has used both the prescribed mark and a cross in the voting targets within the same office.

For Board of Supervisors

(Vote for no more than two.)

-  CANDIDATE 1 (Party A)
-  CANDIDATE 2 (Party A)
-  CANDIDATE 3 (Party B)
-  CANDIDATE 4 (Party B)



(Write-in vote, if any)








(Write-in vote, if any)

This example shows a vote for CANDIDATE 4. It is not clear from the voter's mark whether the mark in the oval for CANDIDATE 3 is intended as a vote.

26.16(2) If a voter does not use the mark prescribed in the voting instructions but consistently uses some other mark, the mark shall be counted as a vote if the mark is:

- a. In the voting target, or
- b. In close proximity to a candidate's name or to a voting target associated with a candidate's name or with a "yes" or "no" choice for a ballot question.

721—26.17(49) Marks not counted. The following marks on ballots shall not count as votes:

1. Hesitation marks. Example: 
2. Identifying marks. Example: 
3. Random marks. Example: 
4. Marks for which there is no consistent pattern. Example: 
5. Stray marks. Example: 




721—26.18(49) Acceptable marks. If the voter uses or places marks on the ballot in a consistent manner as described in subrule 26.16(2), the marks shall be counted as votes. The following marks shall count as votes:

1. The prescribed mark as shown in the voting instructions as the correct manner of marking a vote.
2. A mark that is a close approximation of the prescribed mark but that strays outside the voting target or does not completely fill the voting target. (See Example A of this rule.)
3. Any mark inside the voting target if the mark is consistently used instead of the prescribed mark. This includes a cross, check mark, asterisk, plus sign, diagonal, horizontal, or vertical line or any mark that is substantially contained within the voting target. (See Example B of this rule.)
4. Any mark of the type described in "3" above that is near the name of a candidate or voting target. (See Examples C and D of this rule.)
5. A circle around the voting target for all choices. (See Example E of this rule.)
6. A circle around or a line drawn under the name of the candidate for all choices. (See Example F of this rule.)
7. Names of candidates not crossed out, if the voter has crossed out the names of all candidates except the number (or fewer) to be elected for each office. (See Example G of this rule.)

EXAMPLE A: Close approximations. The voter has consistently marked the ballot by scribbling in the voting targets. The marks do not completely blacken the voting target and one mark strays outside the voting target.

For Board of Supervisors

(Vote for no more than two.)

-  CANDIDATE 1 (Party A)
-  CANDIDATE 2 (Party A)
-  CANDIDATE 3 (Party B)
-  CANDIDATE 4 (Party B)

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(Write-in vote, if any)

(Write-in vote, if any)

This example shows a vote for CANDIDATE 3 and a vote for CANDIDATE 4. The same principle applies for other voting marks. If the mark used is a close approximation of the prescribed mark, it shall be counted as a vote provided that all other applicable standards are met.

EXAMPLE B: Acceptable mark in the voting target. The voter has consistently marked each choice by putting a check mark in the voting target.

For Board of Supervisors
(Vote for no more than two.)

CANDIDATE 1 (Party A)
 CANDIDATE 2 (Party A)
 CANDIDATE 3 (Party B)
 CANDIDATE 4 (Party B)

 (Write-in vote, if any)

Martha Stone
 (Write-in vote, if any)

This example shows a vote for CANDIDATE 3 and a vote for the write-in choice, Martha Stone.

EXAMPLE C: Acceptable mark placed near the voting target. The voter has consistently marked each choice by putting a check mark in the space between the voting target and the candidate's name.

For Board of Supervisors
(Vote for no more than two.)

CANDIDATE 1 (Party A)
 CANDIDATE 2 (Party A)
 CANDIDATE 3 (Party B)
 CANDIDATE 4 (Party B)

 (Write-in vote, if any)

 (Write-in vote, if any)

This example shows a vote for CANDIDATE 2 and a vote for CANDIDATE 3.

EXAMPLE D: Acceptable mark placed near a candidate's name. The voter has consistently marked each choice by putting a check mark behind the candidate's name.

For Board of Supervisors
(Vote for no more than two.)

CANDIDATE 1 (Party A) ✓
 CANDIDATE 2 (Party A)
 CANDIDATE 3 (Party B)
 CANDIDATE 4 (Party B) ✓

 (Write-in vote, if any)

 (Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 4.

EXAMPLE E: Choices circled. The voter has consistently marked each choice by circling the voting target.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
 CANDIDATE 2 (Party A)
 CANDIDATE 3 (Party B)
 CANDIDATE 4 (Party B)

 (Write-in vote, if any)

 (Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 4.

EXAMPLE F: Choices underlined. The voter has consistently marked each choice by underlining the name of the candidate.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
 CANDIDATE 2 (Party A)
 CANDIDATE 3 (Party B)
 CANDIDATE 4 (Party B)

 (Write-in vote, if any)

 (Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 4.

EXAMPLE G: Choices not crossed out. The voter has consistently marked each choice by crossing out the names of candidates not chosen.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
 ~~CANDIDATE 2 (Party A)~~
 ~~CANDIDATE 3 (Party B)~~
 CANDIDATE 4 (Party B)

 (Write-in vote, if any)

 (Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 4.

721—26.19(49) Counting straight party or organization votes. Precinct count and central count tabulating devices shall be programmed to count straight party votes according to this rule. Precinct election officials and recount boards shall count straight party votes according to this rule.

26.19(1) When a voter has marked a voting target for one political party or one nonparty political organization, each candidate on the ballot for that party or organization shall receive one vote.

26.19(2) Overvote. If a voter has marked the voting target next to the name of more than one political party or organiza-

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tion, only votes cast for individual candidates shall be counted.

26.19(3) Overriding a straight party vote. If the voter has marked a straight party vote and has also marked a voting target for a candidate or for a write-in line for a partisan office, the straight party vote shall not apply to that office. The vote shall be counted as the voter has marked that individual office.

26.19(4) More than one candidate to be elected. If the voter may vote for more than one candidate for an office, a straight party vote does not apply to that office if the voter marks one or more voting targets next to the names of candidates listed under that office title or if the voter marks one or more voting targets next to write-in lines. The vote shall be counted as the voter has marked that individual office.

EXAMPLE for 26.19(2): Straight party overvote. The voter has marked a straight party vote for Party A and for Organization D.

STRAIGHT PARTY VOTING

- POLITICAL PARTY A
- POLITICAL PARTY B
- POLITICAL ORGANIZATION C
- POLITICAL ORGANIZATION D

This example shows an overvote. Count only votes cast separately for candidates listed on the ballot.

EXAMPLE A for 26.19(3) and 26.19(4): Overriding a straight party vote. The voter has marked a straight party vote for Party A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
- CANDIDATE 2 (Party A)
- CANDIDATE 3 (Party B)
- CANDIDATE 4 (Party B)
- _____
(Write-in vote, if any)
- _____
(Write-in vote, if any)

This example shows a vote for CANDIDATE 4. No votes shall be counted for either of the two candidates from Party A. The vote for CANDIDATE 4 overrides the straight party vote.

EXAMPLE B for 26.19(3) and 26.19(4): Overriding a straight party vote. The voter has marked a straight party vote for Party A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
- CANDIDATE 2 (Party A)
- CANDIDATE 3 (Party B)
- CANDIDATE 4 (Party B)
- _____
(Write-in vote, if any)
- _____
(Write-in vote, if any)

This example shows a vote for CANDIDATE 2. No vote shall be counted for CANDIDATE 1, who is

also a candidate for Party A. The separate vote for one candidate of Party A overrides the straight party vote.

EXAMPLE C for 26.19(3) and 26.19(4): Overriding a straight party vote. The voter has marked a straight party vote for Party A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
- CANDIDATE 2 (Party A)
- CANDIDATE 3 (Party B)
- CANDIDATE 4 (Party B)
- _____
(Write-in vote, if any)
- _____
(Write-in vote, if any)

This example shows a vote for "blank." No vote shall be counted for either of the two Party A candidates: CANDIDATE 1 or CANDIDATE 2. The separate vote for a write-in choice overrides the straight party vote.

EXAMPLE D for 26.19(3), 26.19(4) and 26.20(3): Overriding a straight party vote. The voter has marked a straight party vote for Party A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
- CANDIDATE 2 (Party A)
- CANDIDATE 3 (Party B)
- CANDIDATE 4 (Party B)
- Candidate 1
(Write-in vote, if any)
- Candidate 2
(Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 2. Although the write-in vote duplicates the voter's straight party vote, it is clear that the voter has chosen CANDIDATE 1 and CANDIDATE 2. The precinct election officials shall duplicate the ballot following the process in Iowa Code section 52.37(2).

721—26.20(49) Write-in votes.

26.20(1) The precinct election officials and recount board members shall count a write-in vote only if the voting target is marked.

26.20(2) If a voter writes the name of the same person more than once in the proper places on a ballot for an office to which more than one person is to be elected, all but one of those votes for that person for that office are void and shall not be counted.

26.20(3) If a write-in vote duplicates an otherwise correctly cast vote for a candidate whose name appears on the ballot, the write-in vote shall not be counted and the mark in the voting target next to the candidate's name shall be counted as one vote for the candidate. The officials shall duplicate the ballot but omit the write-in votes.

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26.20(4) Write-in votes cast for the office of president and vice president, or for governor and lieutenant governor, shall be tabulated as a single vote for a pair of candidates.

26.20(5) Names. The officials tabulating write-in votes shall disregard misspellings or variations in names or abbreviations for write-in candidates and shall count the variations in the form of the name for a single person if the officials can determine for whom the write-in votes were cast. Write-in votes for fictitious characters shall be tabulated as written.

EXAMPLE A for 26.20(1): Write-in voting target not marked. The voter has not marked the voting target for the write-in votes. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
○ CANDIDATE 2 (Party A)
○ CANDIDATE 3 (Party B)
○ CANDIDATE 4 (Party B)
○ Candidate 1 (Write-in vote, if any)
○ Candidate 2 (Write-in vote, if any)

This example does not show a vote. Iowa Code section 49.99 requires voters to mark the voting target for write-in votes on optical scan ballots. If the voting target for a write-in vote is not marked, the vote does not count.

EXAMPLE B for 26.20(1): Write-in voting target not marked. The voter has written in the names on the write-in lines but has not marked the voting targets. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
● CANDIDATE 2 (Party A)
○ CANDIDATE 3 (Party B)
○ CANDIDATE 4 (Party B)
○ Candidate 9 (Write-in vote, if any)
○ Candidate 8 (Write-in vote, if any)

This example shows one vote for CANDIDATE 1 and one vote for CANDIDATE 2. Iowa Code section 49.99 requires voters to mark the voting target for write-in votes on special paper ballots or the votes do not count. These write-in votes have no effect.

EXAMPLE C for 26.20(1): Overvote. The voter has marked the write-in voting target, but has not written a name on the line. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
○ CANDIDATE 2 (Party A)
● CANDIDATE 3 (Party B)
○ CANDIDATE 4 (Party B)

● (Write-in vote, if any)

○ (Write-in vote, if any)

This example shows an overvote. No votes shall be counted for this office. The voter's choice here can be interpreted in more than one way.

EXAMPLE for 26.20(2): Two write-ins for the same person. The voter has written in the name of the same person on both write-in lines. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
○ CANDIDATE 2 (Party A)
○ CANDIDATE 3 (Party B)
○ CANDIDATE 4 (Party B)
● Candidate 7 (Write-in vote, if any)
● Candidate 7 (Write-in vote, if any)

This example shows one vote for Candidate 7. Iowa Code section 49.99 provides that only one vote be counted if a voter writes the name of the same person more than once in the proper places on a ballot or on a voting machine for an office to which more than one person is to be elected.

EXAMPLE for 26.20(3): Write-in vote duplicates other votes. The voter has written on the write-in lines the names of the candidates for whom the voter has also marked the voting targets next to the printed names. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
● CANDIDATE 2 (Party A)
○ CANDIDATE 3 (Party B)
○ CANDIDATE 4 (Party B)
● Candidate 1 (Write-in vote, if any)
● Candidate 2 (Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 2. Although the write-in votes duplicate the votes for candidates on the ballot, it is clear that the voter has chosen CANDIDATE 1 and CANDIDATE 2.

EXAMPLE A for 26.20(4): Write-in vote for team on the ballot. The voter has written in the names of the candidates for president and vice president whose names also appear on the ballot.

For President and Vice President

(Vote for no more than one team.)

- CANDIDATE 19, of State
CANDIDATE 20, of State
Party A
○ CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

SECRETARY OF STATE[721](cont'd)

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 21
Write-in vote for President, if any

Candidate 22
Write-in vote for Vice President, if any

This example shows a vote for the Party B team of Candidate 21 for president and for Candidate 22 for vice president. The voter has clearly chosen this team of candidates.

EXAMPLE B for 26.20(4): Identifying mark with write-in vote for team on the ballot. The voter has written in the names of the candidates for president and vice president whose names also appear on the ballot and has identified the political affiliation of the voter.

For President and Vice President
(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 21
Write-in vote for President, if any

Candidate 22
Write-in vote for Vice President, if any
By The New Party

This is not a vote. The political identification next to the write-in lines is an identifying mark, as defined in rule 26.14(50). **Do not count any votes on this ballot pursuant to Iowa Code section 39A.4(1)“a”(6) or 49.92.**

EXAMPLE C for 26.20(4): Write-in vote for part of a team. The voter has written in the name of the presidential candidate of one party and the vice presidential candidate of another.

For President and Vice President
(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 19
Write-in vote for President, if any

Candidate 22
Write-in vote for Vice President, if any

This example shows a vote for the team of Candidate 19 for president and for Candidate 22 for vice president. This does not count as a vote for the president/vice president team of either Party A or Party B.

EXAMPLE D for 26.20(4): Write-in vote for part of a team. The voter has written in the name of the presidential candidate of one party and the name of another person for vice president.

For President and Vice President
(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 19
Write-in vote for President, if any

Candidate 45
Write-in vote for Vice President, if any

This example shows a vote for the team of Candidate 19 for president (who is also the presidential candidate for Party A) and for Candidate 45 for vice president. This does not count as a vote for the president/vice president team of Party A.

EXAMPLE E for 26.20(4): Write-in vote for president and vice president. The voter has written in votes for president and vice president.

For President and Vice President
(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 44
Write-in vote for President, if any

Candidate 45
Write-in vote for Vice President, if any

This example shows a vote for the team of Candidate 44 for president and for Candidate 45 for vice president.

EXAMPLE F for 26.20(4): Write-in vote for president and vice president. The voter has written in votes for president and vice president.

SECRETARY OF STATE[721](cont'd)

For President and Vice President

(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 44
Write-in vote for President, if any

Candidate 50
Write-in vote for Vice President, if any

This example shows a vote for the team of Candidate 44 for president and for Candidate 50 for vice president. Even though other write-in votes have been counted for Candidate 44 for president with a different vice presidential teammate, this team is listed and counted separately.

721—26.21(49) Corrections by voter. A vote for an office or question shall be counted if the voter has marked the ballot in a manner that will be counted as an overvote by automatic tabulating equipment but the voter has indicated in a clear fashion that the voter has made a mistake. The correction shall be honored if the correction does not include an identifying mark in violation of Iowa Code section 39A.4(1)“a”(6) or 49.92.

EXAMPLE A: Correction. The voter has crossed out the mark for one candidate and has written in the names of two persons on the write-in lines. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)

CANDIDATE 2 (Party A)

~~CANDIDATE 3 (Party B)~~

CANDIDATE 4 (Party B)

Margaret Allen
(Write-in vote, if any)

Bob Burns
(Write-in vote, if any)

This example shows a vote for Margaret Allen and a vote for Bob Burns. The voter has clearly crossed out the mark for CANDIDATE 3.

EXAMPLE B: Identifying mark. The voter has corrected a mistake by crossing out a marked voting target and has also initialed the correction.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)

CANDIDATE 2 (Party A)

~~CANDIDATE 3 (Party B)~~

CANDIDATE 4 (Party B)

Margaret Allen
(Write-in vote, if any)

Bob Burns
(Write-in vote, if any)

This example does not show a vote. The initials next to the correction identify the voter. **Do not count any votes on this ballot pursuant to Iowa Code section 39A.4(1)“a”(6) or 49.92.**

EXAMPLE C: Erasure. The voter has attempted to erase one marked voting target and has marked another voting target. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)

CANDIDATE 2 (Party A)

CANDIDATE 3 (Party B)

CANDIDATE 4 (Party B)

(Write-in vote, if any)

(Write-in vote, if any)

This example shows a vote for CANDIDATE 3. The voter has attempted to erase the mark for CANDIDATE 2. Count this as a vote for CANDIDATE 3.

721—26.22 to 26.49 Reserved.

PART III—PAPER BALLOTS

721—26.50(49) Standards. The precinct election officials shall count paper ballots according to the standards for optical scan ballots with the exception that write-in votes shall be counted according to the standards in 26.51(49).

721—26.51(49) Write-in votes. The precinct election officials shall count write-in votes on paper ballots without regard to whether the voter has made a mark opposite the candidate’s name.

721—26.52 to 26.59 Reserved.

PART IV—VOTING MACHINES

721—26.60(49) Abandoned ballots. If a voter leaves the voting booth without casting the ballot, the precinct election officials shall cast the ballot without examining the face of the machine. This rule applies to all voting machines listed in subrule 26.2(4).

721—26.61(49) Counting emergency paper ballots. The precinct election officials shall count emergency paper ballots according to the standards for optical scan ballots in rules 26.10(49) through 26.19(49) and 26.21(49). Write-in votes shall be counted according to the standards for paper ballots in 26.51(49).

721—26.62(52) Write-in votes on certain voting machines. The precinct election officials shall not count write-in votes cast for candidates whose names appear on the ballot for the same office for the voting systems listed in subrule 26.2(4).

721—26.63 to 26.99 Reserved.

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PART V—RECOUNTS

721—26.100(50) Requester. Any person who received votes for an office, including the person who received the most votes, may request a recount. If a person who is an apparent winner of an election requests a recount, the person who received the next highest number of votes for that office shall assume the functions of the “apparent winner” as designated in Iowa Code section 50.48. These functions include:

1. Receiving notice of the recount.
2. Designating a member of the recount board.
3. Calculation of bond.

721—26.101(50) Recounts for candidates who run as a team. For the offices of president and vice president of the United States, and for governor and lieutenant governor, either of the two candidates may sign a request for a recount or designate a member of the recount board.

721—26.102(50) Bond. In an election for a jurisdiction that includes more than one county, only one bond is required for each candidate who requests a recount for that office. For state and federal offices, the bond shall be filed with the state commissioner of elections. For other elections, the bond shall be filed with the commissioner responsible for the election under Iowa Code section 47.2(2). If more than one candidate for a multicounty office requests a recount, the bond requirement shall be calculated for each candidate.

721—26.103(50) Recount board. A three-person board shall conduct the recount.

26.103(1) The person requesting the recount shall name one board member in the written request. If more than one person files a request for a recount of the same office in the same county, the board member shall be the designee of the first person who filed.

26.103(2) The apparent winner shall name one board member at or before the time the board is required to convene. If more than one person is to be elected to the office in question, the designation shall be made by the apparent winner who received the fewest votes.

26.103(3) The board members designated pursuant to subrules 26.103(1) and 26.103(2) shall mutually agree upon the third member of the board.

721—26.104(50) Responsibilities of the recount board. Recount boards do not resolve procedural or legal questions about the conduct of the election or the qualifications of voters. The responsibility of a recount board is to tabulate all votes for the office in question on ballots that were counted by the precinct election officials at the election.

26.104(1) Ballots to be recounted. All ballots that were accepted for counting shall be recounted.

- a. This includes disputed ballots returned separately pursuant to Iowa Code section 50.5.
- b. This does not include spoiled ballots.
- c. This does not include absentee or provisional ballots that were rejected before the ballot envelope was opened.
- d. For direct recording electronic voting systems, the internal audit trail of ballot images shall constitute the ballots for purposes of the recount.

26.104(2) Ballot packages. The recount board shall open only the sealed ballot containers from the precincts specified in the request to be recounted or from the precincts specified by the recount board. Ballots from precincts that are not included in the recount shall be kept sealed or kept separate from those being recounted.

26.104(3) Standards. A voter’s definite choices shall be counted even if the recount board determines that the voter’s

choices differ from the votes as counted by the tabulating device. The recount board shall follow the standards for counting votes as prescribed by Iowa Code sections 49.92 to 49.99 and this chapter.

26.104(4) Sealing ballot packages. When the recount is completed, the ballots must be sealed in the same manner that ballots are required to be sealed on election night. The envelope or container must have across its opening a seal that is signed by all members of the recount board. The seal shall be applied so that the ballot package cannot be opened without breaking the seal.

721—26.105(50) Duties of commissioner and commissioner’s staff.

26.105(1) Ballot security. The county commissioner (or the commissioner’s designee) shall be responsible for the security of the ballots and shall supervise their handling. The commissioner shall ensure that the ballots are protected from alteration, damage or loss.

26.105(2) Tabulation duties. In counties with electronically tabulated special paper ballots, the recount board may request that the ballots be recounted by machine, may count the ballots by hand, or may do both. The county commissioner or members of the commissioner’s staff shall operate the tabulation equipment for machine recounts. The same program used on election day shall be used in the recount unless the program is believed or known to be flawed.

721—26.106(50) Access to meeting. Recounts, like all canvasses of votes, are open to the public. However, observers may not participate in the recount. Because a recount is a purely ministerial function, rather than a policy-making one, recounts are not subject to the notification requirements of the Iowa open meetings law. (See Iowa Code section 21.2 for the definition of “meeting.”)

721—26.107(50) Report of the recount board. The report of the recount board shall be filed with the county commissioner no later than 18 days after the board of supervisor’s canvass of the votes for the election in question or 11 days after city primary elections or the regular city election in cities with runoff election provisions.

These rules are intended to implement Iowa Code section 49.98 as amended by 2004 Iowa Acts, Senate File 2269, section 21.

ARC 3524B

SECRETARY OF STATE[721]

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 2004 Iowa Acts, House File 2559, section 7, and Iowa Code section 261B.3(4), the Secretary of State gives Notice of Intended Action to adopt Chapter 31, “Registration of Postsecondary Schools,” Iowa Administrative Code.

As required by 2004 Iowa Acts, House File 2559, this chapter contains fees based upon the costs of administering the law. The registration and renewal fee for postsecondary registrations is set at \$4,000 per application.

SECRETARY OF STATE[721](cont'd)

Any interested person may make written suggestions or comments on this proposed chapter prior to August 10, 2004. Such written materials should be directed to Steven Mandernach, Director of Business Services, Secretary of State's Office, 1st Floor, Lucas State Office Building, Des Moines, Iowa 50319; fax (515)281-4682; or E-mail smandernach@sos.state.ia.us. Persons who wish to convey their views orally should contact Steven Mandernach at (515)242-5071 or at the Secretary of State's Office on the first floor of the Lucas State Office Building.

The proposed chapter is not subject to waiver.

This proposed chapter was also Adopted and Filed Emergency and is published herein as **ARC 3523B**. The content of that submission is incorporated here by reference.

This rule is intended to implement 2004 Iowa Acts, House File 2559, section 7.

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

ARC 3525B

SECRETARY OF STATE[721]

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 2004 Iowa Acts, Senate File 2274, sections 5 and 13, the Secretary of State gives Notice of Intended Action to amend Chapter 40, "Corporations," Iowa Administrative Code.

This rule contains the fee schedule for the recently adopted revised nonprofit corporation Act. The fees remain unchanged from the Iowa nonprofit corporation Act, Iowa Code chapter 504A.

Any interested person may make written suggestions or comments on this proposed rule prior to August 10, 2004. Such written materials should be directed to Steven Mandernach, Director of Business Services, Secretary of State's Office, 1st Floor Lucas State Office Building, Des Moines, Iowa 50319; fax (515)281-4682; or E-mail smandernach@sos.state.ia.us. Persons who wish to convey their views orally should contact Steven Mandernach at (515)242-5071 or at the Secretary of State's Office on the first floor of the Lucas State Office Building.

The proposed rule is not subject to waiver.

This proposed rule was also Adopted and Filed Emergency and is published herein as **ARC 3526B**. The content of that submission is incorporated here by reference.

This rule is intended to implement 2004 Iowa Acts, Senate File 2274, section 5.

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

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for July is 6.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

- 74A.2 Unpaid Warrants Maximum 6.0%
- 74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective July 10, 2004, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 0.90%
- 32-89 days Minimum 1.00%
- 90-179 days Minimum 1.20%
- 180-364 days Minimum 1.60%
- One year to 397 days Minimum 1.60%
- More than 397 days Minimum 2.50%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 3512B
WORKERS' COMPENSATION
DIVISION[876]

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 86.8, the Workers' Compensation Commissioner hereby gives Notice of Intended Action to amend Chapter 4, “Contested Cases,” Iowa Administrative Code.

These amendments modify the existing rules regarding discovery in, scheduling of and admissibility of evidence in workers' compensation contested cases. Item 1 specifies when a record or report is admissible into evidence in a contested case. Item 2 specifies that discovery in workers' compensation proceedings is governed by the rules of civil procedure. Item 3 provides for prehearing procedures and deadlines. Item 4 deletes subrule 4.20(2) to conform with Item 3. Item 5 specifies that continuances are governed by the appropriate rules of civil procedure. Item 6 provides that the word “trial” in the rules of civil procedure shall be deemed a reference to a contested case hearing. Item 7 modifies sanctions for failure to follow the Division of Workers' Compensation rules or orders.

The Division has determined that these amendments will not necessitate additional annual expenditures exceeding

\$100,000 or combined expenditures exceeding \$500,000 within five years by all affected persons, including the agency within the meaning of Iowa Code section 17A.4(3). Therefore, no fiscal impact statement accompanies this rule making.

The Division has determined that these amendments will have no impact on small business within the meaning of Iowa Code section 17A.4A.

The Division has determined that these amendments will not necessitate additional annual expenditures exceeding \$100,000, or \$500,000 within five years, by political subdivisions or agencies which contract with political subdivisions within the meaning of Iowa Code section 25B.6. Therefore, no fiscal impact statement accompanies this rule making.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 10, 2004, to the Workers' Compensation Commissioner, Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These amendments do not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3513B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code sections 17A.1, 17A.12, 17A.13, 17A.14, 86.8, 86.17 and 86.18.

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

ARC 3534B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 159.5(11), 163.1, and 189A.13 and Iowa Code Supplement section 170.3, the Department of Agriculture and Land Stewardship hereby rescinds Chapter 57, "Whitetail Deer Hunting Preserves," and amends Chapter 64, "Infectious and Contagious Diseases," Chapter 65, "Livestock Importation," Chapter 66, "Livestock Movement," and Chapter 76, "Meat and Poultry Inspection," Iowa Administrative Code.

The purpose of these amendments is to rescind certain regulatory programs over the hunting of farm deer, the monitoring of farm deer for chronic wasting disease including eliminating the requirement that farm deer must originate from a herd participating in a chronic wasting disease program before the farm deer can be moved in Iowa, and the registration of farm deer premises. These amendments also rescind a variety of fees imposed upon farm deer producers and whitetail deer hunting preserves to support these activities. The amendments rescind rules 21—64.120(163) and 21—65.12(163), both of which deal with the importation of Cervidae into Iowa, and combine them into one new rule. The new rule is substantively identical to the two previous rules. Finally, a new rule is added to Chapter 66 relating to livestock movement. This rule is substantially similar to a rule in Chapter 64 that is being rescinded in this rule making.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation are impractical. The Department recently received an opinion from the Iowa Attorney General's office stating that the Department does not have statutory authority to adopt rules imposing a fee schedule upon farm deer producers for whitetail hunting preserve regulation, chronic wasting disease regulation, and the registration of farm deer premises. As a result, the Department has ceased the collection of the fees and is refunding fees that have been collected. In addition, no state or federal moneys have been provided to the Department to operate the farm deer program. Thus, the Department finds that, since it has no financial resources to implement the programs, it has no choice but to discontinue them.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments should be made effective upon filing with the Administrative Rules Coordinator on July 2, 2004. The amendments confer a benefit on the Iowa farm deer industry because they remove restrictions upon the movement and hunting of farm deer. The amendments also remove several fees that had been previously imposed upon the farm deer industry. In addition, without funding for the programs, the programs have already ceased being implemented.

No waiver provision is included in these amendments because a waiver would not be appropriate for these amendments. In addition, the Department has a general rule which allows for waivers in appropriate cases. The waiver rule also applies to these amendments.

These amendments are also published herein under Notice of Intended Action as **ARC 3533B** to allow for public comment.

These amendments are intended to implement Iowa Code chapters 163 and 189A and Iowa Code Supplement chapter 170.

The amendments became effective July 2, 2004.

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

The following amendments are adopted.

ITEM 1. Rescind and reserve **21—Chapter 57**.

ITEM 2. Amend subrule **64.34(10)** by rescinding paragraph "**a**" and inserting in lieu thereof the following **new** paragraph "**a**":

a. Native Iowa Cervidae. Native Iowa Cervidae from a herd not under quarantine may be exhibited without additional testing for brucellosis or tuberculosis. Native Iowa Cervidae may be exhibited without other testing requirements when the Cervidae are accompanied by a Certificate of Veterinary Inspection that lists individual official identification and contains the following statement:

"All Cervidae listed on this certificate have been part of the herd of origin for at least one year or were natural additions to the herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year."

ITEM 3. Rescind subrule 64.35(6) and insert in lieu thereof the following **new** subrule:

64.35(6) Cervidae. Cervidae may be exhibited without other testing requirements when accompanied by a Certificate of Veterinary Inspection that lists individual official identification and contains the following statement:

"All Cervidae listed on this certificate have been part of the herd of origin for at least one year or were natural additions to the herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year."

ITEM 4. Rescind and reserve rules **21—64.104(163)** through **21—64.124(163)**.

ITEM 5. Rescind rule 21—65.12(163) and adopt in lieu thereof the following **new** rule:

21—65.12(163) Cervidae.

65.12(1) Definitions. Definitions used in this rule are as follows:

"Accredited veterinarian" means a veterinarian approved by the deputy administrator of veterinary services, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1, of the Code of Federal Regulations, revised as of January 1, 2000, to perform functions required by cooperative state/federal animal disease control and eradication programs.

"Cervidae" means all animals belonging to the Cervidae family.

"Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

"CWD susceptible Cervidae" means all species of Cervidae susceptible to chronic wasting disease including whitetail deer, blacktail deer, mule deer, red deer, elk, and related species and hybrids of these species.

"Official cervid identification" means a USDA-approved identification ear tag that conforms to the alphanumeric na-

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

tional uniform ear tagging system as defined in 9 CFR Part 71.1, Chapter 1, revised as of January 1, 2000.

65.12(2) Cervidae permitted entry into the state will be quarantined to the premises of destination and held in isolation until inspected by a departmental representative. Cervidae shall meet all of the requirements of this rule prior to entry into the state.

65.12(3) All Cervidae entering Iowa must be accompanied by all of the following:

a. An official Certificate of Veterinary Inspection.
b. A permit number requested by the licensed, accredited veterinarian signing the certificate and issued by the state veterinarian prior to movement of the Cervidae. The permit number must be recorded on the certificate.

c. One of the following statements must appear on the certificate:

(1) For CWD susceptible Cervidae:

“All Cervidae on this certificate originate from a CWD monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, sign, or epidemiological evidence of CWD in this herd for the past five years. All cervids listed are quarantined to the destination and shall be held in isolation until inspected by a departmental representative.”

(2) For Cervidae other than CWD susceptible Cervidae:

“The animal(s) has not spent any time within the past 36 months in a zoo, animal menagerie or like facility, or has not been on the same premises as a cervid herd which has been classified as a CWD infected herd, exposed herd or trace herd. All cervids listed are quarantined to the destination and shall be held in isolation until inspected by a departmental representative.”

d. The CWD herd number, anniversary date, expiration date, and herd status for each individual animal must be listed on the Certificate of Veterinary Inspection. Each animal must have an official cervid identification, and all forms of identification must be listed on the certificate.

65.12(4) CWD susceptible Cervidae shall only be allowed into Iowa from herds which have satisfactorily completed at least three years in an official recognized CWD monitoring program. However, Cervidae originating from an area considered to be endemic to chronic wasting disease shall not be allowed entry into Iowa. Cervidae that originate from a herd that has had animal introductions from an area endemic to chronic wasting disease during the preceding five years shall not be allowed entry into Iowa.

65.12(5) Cervidae six months of age or over imported into Iowa must originate from a herd not under quarantine and be tested negative for tuberculosis (TB) within 90 days of importation by the Single Cervical Tuberculin (SCT) test (Cervidae) or originate from an Accredited Herd (Cervidae) or originate from a Qualified Herd (Cervidae) tested negative within 90 days of importation, with test dates shown on the Certificate of Veterinary Inspection. Herd status and SCT test are according to USDA Tuberculosis Eradication in Cervidae Uniform Methods and Rules effective May 15, 1994.

65.12(6) Cervidae must also be classified as negative for brucellosis within 90 days of importation or originate from a Certified Brucellosis-Free Cervid Herd or a Cervid Class Free Status State (Brucellosis). This negative status must be determined by brucellosis tests approved for cattle and bison. Testing must be conducted in a cooperative state-federal laboratory.

65.12(7) Movement to slaughter is not affected by this rule.

ITEM 6. Amend 21—Chapter 66 by adding the following **new** rule:

21—66.14(163) Intrastate movement requirements.

66.14(1) All intrastate movements of Cervidae other than to a state or federally inspected slaughter establishment shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian.

66.14(2) Such intrastate movement certificate shall include all of the following:

- Consignor's name and address.
- Consignee's name and address.
- Individual, official identification of each animal.
- The following statement:

“All Cervidae listed on this certificate have been part of the herd of origin for at least one year or were natural additions to the herd. There has been no diagnosis, sign, or epidemiological evidence of chronic wasting disease in this herd for the past year.”

ITEM 7. Rescind rule **21—76.15(189A)**.

[Filed Emergency 7/2/04, effective 7/2/04]
[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3506B

LOTTERY AUTHORITY, IOWA[531]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code Supplement section 99G.9(3), the Iowa Lottery Authority hereby amends Chapter 11, “Prizes,” and Chapter 14, “Monitor Vending Machines,” Iowa Administrative Code.

Chapter 11 is being amended in order to clarify the definition of a winning ticket. Chapter 14 is being amended as a result of comments the Authority has received and issues that have arisen during the launch of a new lottery project, monitor vending machines.

In compliance with Iowa Code section 17A.4(2), the Iowa Lottery Authority finds that notice and public participation are unnecessary and impracticable due to the immediate need for these rule changes in order to provide additional protections to the integrity of lottery operations. Furthermore, some amendments are being made as a result of informal public comments received since the launch of the monitor vending machine project.

The Iowa Lottery Authority also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and that these amendments should be made effective upon filing with the Administrative Rules Coordinator on June 29, 2004, because they confer a benefit on the public by ensuring that the integrity of the lottery is maintained at the highest possible level.

The Iowa Lottery Authority Board adopted these amendments on June 18, 2004.

These amendments are also published herein under Notice of Intended Action as **ARC 3505B** to allow for public comment.

These amendments are intended to implement Iowa Code Supplement chapter 99G.

LOTTERY AUTHORITY, IOWA[531](cont'd)

These amendments became effective June 29, 2004.

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

The following amendments are adopted.

ITEM 1. Amend rule 531—11.1(99G) by adopting the following **new** subrule:

11.1(4) An original ticket or share must be presented before payment of any prize will occur. No reproductions, facsimiles, or copies of any kind will be allowed.

ITEM 2. Amend rule 531—14.4(99G) by adopting **new** subrule 14.4(2) as follows and renumbering subrules **14.4(2)** to **14.4(10)** as **14.4(3)** to **14.4(11)**:

14.4(2) No MVM retailer license will be issued to an MVM manufacturer or any parent, subsidiary, or affiliated company or entity thereof.

ITEM 3. Amend rule 531—14.5(99G) by adopting the following **new** subrule:

14.5(4) MVM premises licenses shall be issued in accordance with the lottery's MVM business plan.

ITEM 4. Amend subrule **14.19(3)**, paragraph "**d**," as follows:

d. Disable itself if it fails to communicate with the central computer system for a period of ~~48~~ *not to exceed 50* hours.

ITEM 5. Amend rule 531—14.19(99G) by adopting the following **new** subrule:

14.19(10) No MVM manufacturer or any parent, subsidiary, or affiliated company or entity thereof shall be licensed as an MVM retailer or an MVM premises operator.

ITEM 6. Rescind subrule 14.28(2) and adopt the following **new** subrule in lieu thereof:

14.28(2) No officer, employee, agent, or subcontractor of any MVM manufacturer, or any spouse, child, sibling, or parent residing in such a person's household, shall purchase tickets from MVMs produced by that particular manufacturer. However, tickets may be purchased by the aforementioned persons from MVMs produced by other manufacturers. No officer, employee, agent or subcontractor of any MVM retailer or distributor, or any spouse, child, sibling, or parent residing in such a person's household, shall purchase tickets from MVMs owned, distributed, serviced, or otherwise under the care, custody, or control of that MVM retailer or distributor. However, tickets may be purchased by the aforementioned persons from MVMs owned, distributed, serviced, or otherwise under the care, custody, or control of other MVM retailers or manufacturers.

[Filed Emergency 6/29/04, effective 6/29/04]

[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3514B

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby amends Chapter 1, "General Provisions," and Chapter 12, "Public Records and Fair Information Practices," Iowa Administrative Code.

The purpose of these amendments is to reflect the agency's new mailing address and the physical location it will occupy effective July 30, 2004.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because the amendments simply reflect the agency's new address and have no other effect on the substantive rights or responsibilities of the public or regulated parties.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and the amendments made effective on July 30, 2004, following filing with the Administrative Rules Coordinator, as they confer a benefit on the public for public employers, employees and employee organizations to be aware of the agency's true location and mailing address, thus facilitating their prompt access to the Board.

The Board adopted these amendments at a meeting on June 30, 2004.

These amendments will become effective on July 30, 2004.

These amendments are intended to implement Iowa Code chapter 20 and Iowa Code section 22.11.

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

The following amendments are adopted.

ITEM 1. Amend rule 621—1.4(20) as follows:

621—1.4(20) Method of obtaining information and making submissions or requests. Any person may obtain information from, make submission to, or make a request of the board by writing to Chairperson, Iowa Public Employment Relations Board, ~~514 East Locust Street, Suite 202, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50309 50319.~~

ITEM 2. Amend the first sentence of subrule **1.9(5)** as follows:

All petitions requesting a waiver must be filed personally or by mail with the board at its offices at ~~514 E. Locust Street, Suite 202, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50309 50319.~~

ITEM 3. Amend subrule 12.3(1) as follows:

12.3(1) Location of records. In lieu of the words "(insert agency head)", insert the words "Chairperson, Public Employment Relations Board, ~~514 East Locust Street, Suite 202,~~

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

510 East 12th Street, Suite 1B, Des Moines, Iowa 50309 50319". The second and third sentences of subrule 12.3(1) are not adopted.

[Filed Emergency 7/1/04, effective 7/30/04]
[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3507B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to Iowa Code sections 17A.3 and 99F.4(18), the Department of Public Safety hereby amends Chapter 23, "Closed Circuit Videotape Surveillance Systems on Excursion Gambling Boats," Iowa Administrative Code.

Iowa Code section 99F.4 requires the continuous recording of all gambling activities on excursion gambling boats. 2004 Iowa Acts, House File 2302, section 33, amended this requirement, which previously required that all such activities be videotaped. The change from videotaping to recording recognizes the introduction of new recording technology in recent years, specifically digital recording technology. In accordance with the prior statutory requirement, the administrative rules implementing this requirement have required videotaping. The changes adopted here clarify that digital technology may be used for the recording that is required. Use of digital recording technology will be required in some instances.

These amendments, along with additional changes in Chapter 23, will be included in a Notice of Intended Action, which will be filed within the next month. The Notice will provide an opportunity for public comment, including a public hearing.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments is impracticable, as it is desirable that the requirements for recording of gaming activities on excursion gambling boats contained in these rules reflect the change in the statutory requirement on the effective date of that change, July 1, 2004.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2004, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by allowing, and in some instances requiring, the use of digital recording technology for recording gaming activities on excursion gambling boats. Digital technology allows for greater precision of recording, enhancing the use of recording for enforcement of gaming laws and regulations and investigation of possible violations of these laws and regulations.

The amendments are intended to implement Iowa Code section 99F.4, subsection 18, as amended by 2004 Iowa Acts, House File 2302, section 33.

These amendments became effective on July 1, 2004.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or

at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 661—23.3(99F) as follows:

661—23.3(99F) Closed circuit television surveillance system.

23.3(1) Every licensee shall install, maintain and operate a closed circuit ~~television surveillance~~ system according to specifications set forth in these rules and shall provide to the *commission and the DCI* access at all times to the system or its signal to ~~the commission and the DCI~~.

23.3(2) Any casino issued a license on or after July 1, 2004, will be required to install and utilize a recording system that is entirely digital and that meets the requirements outlined in this chapter.

23.3(3) Any casino issued a license prior to July 1, 2004, will be required during expansion, remodeling, or replacement of existing equipment to install and utilize digital recording equipment that meets the requirements outlined in this chapter.

23.3(4) All licensees shall have digital recording systems that meet the requirements of this chapter no later than January 1, 2011.

ITEM 2. Amend rule 661—23.4(99F) as follows:

661—23.4(99F) Required equipment. The closed circuit ~~television surveillance~~ system shall include, but shall not be limited to, the following equipment:

1. ~~Camera~~ *Cameras*—Pan, tilt, zoom, commonly referred to as P.T.Z. cameras, that are light sensitive and capable of being placed behind a dome or one-way mirror which conceals the P.T.Z. cameras from view. Each camera shall have the capability to distinguish a clear, unobstructed view of the table number of the gaming table or slot machine.

2. ~~Video printers~~ *Printers*—*Video systems*: Capable of adjustment and must possess the capability to generate instantaneously upon command a clear, still copy of the image depicted on a videotape recording with a minimum of 128 shades of gray. *Digital systems*: Capable of printing a clear, still copy using a minimum of four colors at 600 × 600 dots per inch on photo quality paper.

3. ~~Video monitors~~ *Monitors*—Each screen must be at least 12 inches measured diagonally and all controls must be front-mounted. Solid state circuitry is required.

4. Date and time generators—Each system shall be capable of *synchronized recording in military time*, with both the time and date of the recorded events *displayed* without obstructing the recorded view. ~~This must be in military time.~~

5. Universal power supply—The system and its equipment must be directly and securely wired in a way to prevent tampering with the system. In the event of a loss in power to the surveillance system, an auxiliary or backup power source must be available and capable of providing immediate restoration of power to the elements of the surveillance system that enable surveillance personnel to observe the gaming activity remaining open for play and all areas monitored by dedicated coverage.

6. Domes for cameras—Made of sufficient quality and size to accommodate P.T.Z. cameras, and capable of accommodating clear, unobstructed views.

7. ~~Video switchers~~ *Switchers*—Capable of both manual and automatic sequential switching for the entire surveillance system.

8. ~~Videotape recorders~~ *Recorders*—Each video camera required by these standards must possess the capability of

PUBLIC SAFETY DEPARTMENT[661](cont'd)

having its view displayed on a video *or computer* monitor and recorded. The surveillance system must include enough monitors and recorders to simultaneously display and record multiple gaming, cage, *drop*, count room activities, and record the views of all dedicated coverage. ~~The~~ *For digital systems the acceptable standard is a maximum of sixteen cameras to one recorder, and for video systems the acceptable standard is a maximum of eight cameras to one recorder, unless the licensee satisfactorily demonstrates the ability to meet the intent of the rule by other means. Recording systems shall be capable of copying original images while maintaining the original native format, and shall be stored in a format that contains a method to verify the authenticity of the original recordings and copies. The licensee will be responsible for supplying the medium for download and transfer of the information and a jewel case or sleeve for the medium.*

9. Digital systems—

- All images and audio shall be recorded on a hard drive.
- Recording systems shall be locked by the manufacturer to disable the erase and reformat functions and to prevent access to the system data files.
- The system shall provide uninterrupted recording while using the playback or copy function.
- If the licensee chooses to use a network for the digital recording equipment, it must be a closed network with limited access. The licensee must submit, for approval by the DCI, written policies on the administration of the network, including employee access levels.
- The licensee shall provide the DCI and the commission representative with the necessary software and hardware to review a downloaded recording. Additionally, the licensee shall provide the DCI and the commission representative with printers meeting the requirements outlined in rule 661—23.4(99F), numbered paragraph “2.”
- The licensee shall be responsible for staffing the surveillance room with licensed staff trained in the use of digital equipment. Surveillance employees shall be capable of downloading or copying digital audio or images, or both, for evidentiary purposes.

ITEM 3. Amend rule **661—23.5(99F)** by adding the following **new** numbered paragraph “**10**”:

10. Digital systems. All areas requiring dedicated coverage and all images viewed on a surveillance operator’s working monitor shall be recorded at a rate of not less than 30 images per second. Motion activated recording shall not be allowed in areas where coverage is mandatory.

ITEM 4. Amend rule 661—23.6(99F) as follows:

661—23.6(99F) Equipment in DCI offices. Excursion gambling boat, racetrack enclosure or land-based offices assigned to the DCI shall be equipped with a minimum of two ~~12~~ 15-inch ~~monochrome~~ video *or computer* monitors with control capability of any ~~video~~ source in the surveillance system. The following shall be additional mandatory equipment for said room or rooms:

1. ~~Video printer.~~ *Printer meeting specifications outlined in rule 661—23.4(99F), numbered paragraph “2.”*
2. ~~Video recorder.~~ *Two recorders.*
3. Audio pickup of soft count room.
4. Time and date generators, if not in the master surveillance system.
5. Total override surveillance system capabilities.

ITEM 5. Amend rule 661—23.8(99F) as follows:

661—23.8(99F) Lighting. Adequate lighting shall be present in all areas of the casino and count rooms to enable clear ~~video viewing and~~ reproductions.

ITEM 6. Amend **661—Chapter 23**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 99F.4 *as amended by 2004 Iowa Acts, House File 2302.*

[Filed Emergency 6/30/04, effective 7/1/04]

[Published 7/21/04]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3523B

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of 2004 Iowa Acts, House File 2559, section 7, and Iowa Code section 261B.3(4), the Secretary of State adopts Chapter 31, “Registration of Postsecondary Schools,” Iowa Administrative Code.

As required by 2004 Iowa Acts, House File 2559, this chapter contains fees based upon the costs of administering the law. The registration and renewal fee for postsecondary registrations is set at \$4,000 per application.

In compliance with Iowa Code section 17A.4(2), the Secretary finds that notice and public participation are impracticable because the new law allows filing to begin on July 1, 2004, and fees must be in place at this time.

The Secretary also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the rule should be waived and this rule should be made effective upon filing with the Administrative Rules Coordinator on July 1, 2004, because the rule confers a public benefit with timely and prompt implementation of the new law.

The Secretary of State adopted this rule on July 1, 2004.

The rule is also published herein under Notice of Intended Action as **ARC 3524B** to allow for public comment.

This rule is intended to implement 2004 Iowa Acts, House File 2559, section 7.

This rule became effective on July 1, 2004.

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

The following **new** chapter is adopted.

CHAPTER 31

REGISTRATION OF POSTSECONDARY SCHOOLS

721—31.1(80GA,HF2559) Postsecondary registration fees. The secretary of state shall collect a nonrefundable registration fee of \$4,000 with each application to register a postsecondary institution for four years. The secretary of state shall collect a nonrefundable \$1,000 fee when a registered school seeks a substantive change in program offerings, location, or accreditation.

SECRETARY OF STATE[721](cont'd)

This rule is intended to implement 2004 Iowa Acts, House File 2559, section 7.

[Filed Emergency 7/1/04, effective 7/1/04]
[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3526B

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of 2004 Iowa Acts, Senate File 2274, sections 5 and 13, the Secretary of State amends Chapter 40, "Corporations," Iowa Administrative Code.

This rule contains the fee schedule for the recently adopted revised nonprofit corporation Act. The fees remain unchanged from the Iowa nonprofit corporation Act, Iowa Code chapter 504A.

In compliance with Iowa Code section 17A.4(2), the Secretary finds that notice and public participation are impracticable because the new law allows filing to begin on July 1, 2004, and fees must be in place at this time.

The Secretary also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rule should be waived and this rule should be made effective upon filing with the Administrative Rules Coordinator on July 1, 2004, because the rule confers a public benefit with timely and prompt implementation of the new law.

The Secretary of State adopted this rule on July 1, 2004.

The rule is also published herein under Notice of Intended Action as **ARC 3525B** to allow for public comment.

This rule is intended to implement 2004 Iowa Acts, Senate File 2274, section 5.

This rule became effective on July 1, 2004.

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

The following **new** rule is adopted.

721—40.7(80GA,SF2274) Revised nonprofit corporation Act fees. The following are the fees for the revised nonprofit corporation Act, 2004 Iowa Acts, Senate File 2274.

40.7(1) The secretary shall collect the following fee when the documents described below are delivered to the secretary's office for filing.

Articles of incorporation	\$20
Application for use of indistinguishable name	\$5
Application for reserved name	\$10
Notice of transfer of reserved name	\$10
Application for registered name per month or part thereof	\$2
Application for renewal of registered name	\$20
Corporation's statement of change of registered agent or registered office or both	No Fee
Agent's statement of change of registered office for each affected corporation	No Fee
not to exceed a total of	No Fee
Agent's statement of resignation	No Fee
Amendment of articles of incorporation	\$10

Restatement of articles of incorporation with amendments	\$20
Articles of merger	\$20
Articles of dissolution	\$5
Articles of revocation of dissolution	\$5
Certificate of administrative dissolution	No Fee
Application for reinstatement following administrative dissolution	\$5
Certificate of reinstatement	No Fee
Certificate of judicial dissolution	No Fee
Application for certificate of authority	\$25
Application for amended certificate of authority	\$25
Application for certificate of withdrawal	\$5
Certificate of revocation of authority to transact business	No Fee
Biennial report	No Fee
Articles of correction	\$5
Application for certificate of existence or authorization	\$5
Any other document required or permitted by the Act	\$5

40.7(2) The secretary of state shall collect a fee of \$5 each time process is served on the secretary under this chapter.

40.7(3) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- \$1 per page for copying.
- \$5 per page for the certificate.

[Filed Emergency 7/1/04, effective 7/1/04]
[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3513B

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 4, "Contested Cases," Iowa Administrative Code.

These amendments modify the existing rules regarding discovery in, scheduling of and admissibility of evidence in workers' compensation contested cases. Item 1 specifies when a record or report is admissible into evidence in a contested case. Item 2 specifies that discovery in workers' compensation proceedings is governed by the rules of civil procedure. Item 3 provides for prehearing procedures and deadlines. Item 4 deletes subrule 4.20(2) to conform with Item 3. Item 5 specifies that continuances are governed by the appropriate rules of civil procedure. Item 6 provides that the word "trial" in the rules of civil procedure shall be deemed a reference to a contested case hearing. Item 7 modifies sanctions for failure to follow the Division of Workers' Compensation rules or orders.

In compliance with Iowa Code section 17A.4(2), the Workers' Compensation Commissioner finds that notice and public participation are unnecessary. In order for these amendments to be effective July 1, 2004, they must be filed emergency.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these

WORKERS' COMPENSATION DIVISION[876](cont'd)

amendments, 35 days after publication, should be waived and the amendments be made effective July 1, 2004, as they confer a benefit upon the public to ensure speedy and uniform compliance with the Division's contested case hearings.

The Division has determined that these amendments will not necessitate additional annual expenditures exceeding \$100,000 or combined expenditures exceeding \$500,000 within five years by all affected persons, including the agency within the meaning of Iowa Code section 17A.4(3). Therefore, no fiscal impact statement accompanies this rule making.

The Division has determined that these amendments will not necessitate additional annual expenditures exceeding \$100,000, or \$500,000 within five years, by political subdivisions or agencies which contract with political subdivisions within the meaning of Iowa Code section 25B.6. Therefore, no fiscal impact statement accompanies this rule making.

These amendments do not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

These amendments are also published herein under Notice of Intended Action as **ARC 3512B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 17A.1, 17A.12, 17A.13, 17A.14, 86.8, 86.17 and 86.18.

These amendments became effective July 1, 2004.

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

The following amendments are adopted.

ITEM 1. Amend rule **876—4.17(17A,85,86)** by adding the following **new** unnumbered paragraph:

For hearings on or after July 1, 2004, compliance with this rule does not permit a record or report to be received into evidence if the record or report was not served prior to an applicable deadline established by rule or order for completing discovery or service of exhibits.

ITEM 2. Amend rule 876—4.18(17A,85,86) as follows:

876—4.18(17A,85,86) Medical evidence and discovery. *Discovery in workers' compensation proceedings is governed by the rules of civil procedure pursuant to 4.35(86).* Any relevant medical record or report served upon a party in compliance with these rules prior to any deadline established by order *or rule* for service of the records and reports shall be admissible as evidence at hearing of the contested case unless otherwise provided by rule. Any party against which a medical record or report may be used shall have the right, at the party's own initial expense, to cross-examine by deposition the medical practitioner producing the record or report and the deposition shall be admissible as evidence in the contested case.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

ITEM 3. Rescind rule 876—4.19(86) and adopt the following **new** rule in lieu thereof:

876—4.19(86) Prehearing procedure.

4.19(1) Prehearing procedure in contested cases shall be administered in accordance with these rules and the orders issued by the workers' compensation commissioner or a deputy workers' compensation commissioner.

4.19(2) Counsel of record and pro se litigants have a duty to exercise reasonable diligence to bring the contested case to hearing at the earliest reasonable opportunity.

4.19(3) For contested cases that were filed on or after July 1, 2004, the following time limits govern prehearing procedure, completion of discovery and case management in contested cases, except proceedings under rules 4.46(17A,85,86) and 4.48(17A,85,86) and except when otherwise ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner.

a. Within 120 days, but not less than 60 days, following filing of a petition, the counsel of record for all parties and all pro se litigants shall jointly telephone the hearing administrator at (515)281-6221 between the hours of 8:30 a.m. and 11 a.m. central time, Monday through Friday, excluding holidays, to schedule a hearing date, place and time. Claimant has primary responsibility for initiating the call. A joint scheduling call may be initiated by any party after the petition has been on file more than 120 days or at any other time agreeable to the parties. If more than 120 days have elapsed since the petition was filed, any party may move to schedule the hearing at a particular date, time and place that is available and the hearing administrator may assign the case for hearing at that date, time and place. The hearing date shall be within 12 months following the date the petition was filed or as soon thereafter as reasonably practicable as determined by the hearing administrator. If the parties fail to schedule the hearing with the hearing administrator, the case will be scheduled at the discretion of the hearing administrator without prior notice to the parties.

b. A party who intends to introduce evidence from an expert witness, including a rebuttal expert witness, shall certify to all other parties the expert's name, subject matter of expertise, qualifications, and a summary of the expert's opinions within the following time period: (1) claimant—120 days before hearing; (2) employer/second injury fund of Iowa—90 days before hearing; (3) rebuttal—60 days before hearing. Certification is not required to introduce evidence from an examining physician pursuant to Iowa Code section 85.39, a treating physician, or a vocational consultant if the expert witness is known by all parties to have personally provided services to the claimant and the witness's reports are served on opposing parties prior to the date when certification is required. The parties may alter these times by written agreement.

c. Discovery responses must be supplemented as required in Iowa Rules of Civil Procedure 1.503(4) and 1.508(3). Discovery responses shall be supplemented within 20 days after a party requests supplementation. All discovery responses, depositions, and reports from independent medical examinations shall be completed and served on opposing counsel and pro se litigants at least 30 days before hearing. The parties may alter these times by written agreement.

d. At least 30 days before hearing, counsel of record and pro se litigants shall serve a witness and exhibit list on all opposing counsel and pro se litigants and exchange all intended exhibits that were not previously required to be served. Evidentiary depositions pursuant to Iowa Code section 86.18(2) may be taken at any time before the hearing in lieu of the witness testifying at the hearing.

e. If evidence is offered at hearing that was not disclosed in the time and manner required by these rules, as altered by order of the workers' compensation commissioner or a deputy workers' compensation commissioner or by a written agreement by the parties, the evidence will be excluded if the

WORKERS' COMPENSATION DIVISION[876](cont'd)

objecting party shows that receipt of the evidence would be unfairly prejudicial. Sanctions may be imposed pursuant to 4.36(17A,85,86) in addition to or in lieu of exclusion if exclusion is not an effective remedy for the prejudice.

f. Counsel and pro se litigants shall prepare a hearing report that defines the claims, defenses, and issues that are to be submitted to the deputy commissioner who presides at the hearing. The hearing report shall be signed by all counsel of record and pro se litigants and submitted to the deputy when the hearing commences.

ITEM 4. Amend rule 876—4.20(86) as follows:

876—4.20(86) Prehearing procedure conference.

4.20(1) A deputy commissioner or the workers' compensation commissioner may order parties in the case to either appear before the commissioner or a deputy commissioner for a conference, or communicate with the commissioner or the commissioner's designee and with each other in any manner as may be prescribed to consider, so far as applicable to the particular case:

- a 1. The necessity or desirability of amending pleadings by formal amendment or prehearing order;
- b 2. Agreeing to admissions of facts, documents or records not really controverted, to avoid unnecessary proof;
- c 3. Limiting the number of witnesses;
- d 4. Settling any facts of which the commissioner or deputy commissioner is to be asked to take official notice;
- e 5. Stating and simplifying the factual and legal issues to be determined;
- f 6. Specifying the items and amounts of compensation claimed;
- g 7. Specifying all proposed exhibits and proof thereof;
- h 8. Consolidation, separation for hearing, and determination of points of law;
- i 9. Specifying all witnesses expected to testify;
- j 10. Possibility of settlement;
- k 11. Filing of advance briefs, if any;
- l 12. Setting or altering dates for completion of discovery or completion of medical evidence by each party;
- m 13. Any other matter which may facilitate, expedite, or simplify any contested case.

4.20(2) ~~Prehearing conference report. For petitions filed on or after July 1, 2002, all parties, or their counsel if a party is represented, shall jointly complete and sign an original prehearing conference report, Form No. 14-0049, within 120 days of the date the original notice and petition is filed. Claimant shall initiate preparation of the report by communicating with defendant(s) regarding a proposed case preparation completion date and length of hearing by marking claimant's hearing issues on the report, and by signing the report and sending it to defendant(s) to be received not less than ten days before the report is due to be filed. Defendant(s) shall file the completed original report with the workers' compensation commissioner. The case preparation completion date specified in the prehearing conference report shall not be more than six months from the date the report is filed, unless fixed by agreement of the parties or ordered by a deputy workers' compensation commissioner upon a showing of good cause. In no event shall a case preparation completion date be specified for a date more than nine months from the~~

~~date the report is filed unless ordered by a deputy workers' compensation commissioner following a prehearing conference. If the report or any portion of the report is not filed as required by this rule, discovery shall be deemed completed, unless the parties mutually agree that discovery may continue. A hearing for three hours will be scheduled as soon as practicable, and rescheduling as provided in the hearing assignment order shall not be allowed. One report shall be filed for all claims that have been consolidated, or that the parties agree to consolidate through the filing of the report. A copy shall be filed for each case involved. The time in which to file the report for consolidated cases shall begin with the date the latest original notice and petition is filed. Failure to comply with this rule may result in sanctions as provided in 4.36(86).~~

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

ITEM 5. Amend rule 876—4.23(86) as follows:

876—4.23(86) Assignment for hearing. Contested cases shall be set for hearing within the discretion of the workers' compensation commissioner as soon as practicable after the parties have had adequate opportunity to prepare for hearing. A party may request in writing that no hearing in a contested case be held until such time as specified matters have been accomplished or specified events have occurred. Continuances of hearings in contested cases shall be granted only by the workers' compensation commissioner or the commissioner's designee. *Continuances are governed by Iowa Rules of Civil Procedure 1.910-1.912.* Requests for continuance shall also state in detail the reasons for the request and whether the opposing party accedes to the request. ~~The workers' compensation commissioner or the commissioner's designee shall enter an order granting or denying the request.~~

Defendants shall promptly notify the workers' compensation commissioner of settlements.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

ITEM 6. Amend rule 876—4.35(86) as follows:

876—4.35(86) Rules of civil procedure. The rules of civil procedure shall govern the contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A, or obviously inapplicable to the workers' compensation commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner;" *and reference to the word "trial" shall be deemed reference to "contested case hearing."*

This rule is intended to implement Iowa Code sections 17A.1, 17A.12, 17A.13, 17A.14, and 86.8.

ITEM 7. Amend rule 876—4.36(86) as follows:

876—4.36(86) Compliance with order or rules. If any party to a contested case or an attorney representing such party shall fail to comply with these rules or any order of a deputy commissioner or the workers' compensation commissioner, the deputy commissioner or workers' compensation commissioner may dismiss the action. Such dismissal shall

WORKERS' COMPENSATION DIVISION[876](cont'd)

~~be without prejudice. The deputy commissioner or workers' compensation commissioner may enter an order closing the record to further activity or evidence by any party for failure to comply with these rules or an order of a deputy commissioner or the workers' compensation commissioner impose sanctions which may include dismissing the action without prejudice, excluding or limiting evidence, assessing costs or expenses, and closing the record in whole or in part to further activity by the party.~~

This rule is intended to implement the provisions of Iowa Code section 86.8.

[Filed Emergency 7/1/04, effective 7/1/04]

[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3532B
ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services hereby rescinds 701—Chapter 206, “Insurance Deductions,” and adopts 11—Chapter 46, “Payroll Deduction for Additional Insurance Coverage,” Iowa Administrative Code.

The purpose of this rule making is to adopt accounting rules, which were formerly under the authority of and adopted by the Department of Revenue and Finance, and to comply with 2004 Iowa Acts, House File 2262, signed by the Governor on April 26, 2004. 2004 Iowa Acts, House File 2262, reestablishes an optional payroll deduction for the purpose of purchasing optional insurance when at least 500 state employees request the deduction from the same company for insurance that is not provided by the state and the company has entered into an agreement with the state delineating each party’s rights and responsibilities. Insurance company representatives may meet with employees at the workplace on non-work time to obtain enrollees provided the company’s materials have been approved by the program administrator and the representatives have received all required permissions from the local facility manager.

Notice of Intended Action was published in the May 26, 2004, Iowa Administrative Bulletin as **ARC 3365B**. A public hearing was held on June 15, 2004. Representatives from two insurance companies attended the hearing and provided comments and questions on the proposed rules. Two changes have been made to the Noticed rules. The exclusion of insurance coverage offering a mutual fund or annuity investment component has been added to rule 11—46.4(80GA, HF2262) pursuant to input from the Administrative Rules Review Committee. The provisions for insurance company solicitation of state employees have been clarified in rule 11—46.11(80GA, HF2262) pursuant to questions received at the public hearing.

These amendments shall become effective on August 25, 2004.

These amendments are intended to implement 2004 Iowa Acts, House File 2262.

The following amendments are adopted.

ITEM 1. Rescind **701—Chapter 206**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 46
 PAYROLL DEDUCTION FOR
 ADDITIONAL INSURANCE COVERAGE

11—46.1(80GA, HF2262) General provisions. The state of Iowa may grant to qualified insurance companies the right to receive insurance premiums from state employees through payroll deduction upon presentation of insurance deduction authorization forms signed by state employees.

11—46.2(80GA, HF2262) Definitions. For the purpose of this chapter, the following definitions apply.

“Employee” means a permanent state employee.

“Payroll system” means any one of the following:

1. State of Iowa centralized.
2. Department of transportation.
3. Iowa State University of Science and Technology.

4. State University of Iowa.
5. University of Northern Iowa.
6. Iowa Braille and Sight Saving School.
7. Iowa School for the Deaf.
8. Iowa state fair board.

11—46.3(80GA, HF2262) Insurance company qualifications. To qualify to receive insurance premiums from state employees through payroll deductions, an insurance company must be authorized to do business in Iowa and must meet the requirements of this rule.

46.3(1) Minimum number of participating employees.

a. The insurance company must have and maintain the participation of 500 or more state employees.

b. Notwithstanding subrule 46.3(1), paragraph “a,” during the first 12 months of this program an insurance company is considered qualified if it received insurance premium payments through payroll deductions under repealed Iowa Code section 70A.17. All such companies may continue in the program during the first 12 months following the reinstatement of this payroll deduction program. By the end of the twelfth month after the reinstatement of this program, all companies must have and maintain a total of at least 500 participating employees in order to continue participation. Following the end of the twelfth month of participation of an insurance company under this subrule, company participation may be terminated pursuant to rule 11—46.13(80GA, HF2262).

c. For purposes of certifying the required 500 state employees, an insurance company shall not count state employees enrolled in insurance programs authorized by existing Iowa Code sections, by collective bargaining contracts, or by the appropriate governing authority.

46.3(2) Qualification process.

a. Written agreement. The company providing the insurance must enter into a written agreement with the state delineating each party’s rights and responsibilities. At the same time, the company must provide a template of the company’s enrollment form.

b. Forms. The insurance premium payroll deductions for qualified insurance companies must be authorized on forms approved by the program administrator.

c. Payroll deduction requests. The state employee must make the request for the payroll deduction for insurance premiums in writing to the appointing authority.

d. Participating employee list. A company seeking to be qualified must supply the program administrator with a certified list of all state employees for whom insurance premium payroll deductions are sought. The list shall contain, according to affected payroll systems, the names, in alphabetical order, and the social security numbers of state employees for whom insurance premium payroll deductions are being requested and the name of the type of insurance being requested.

11—46.4(80GA, HF2262) Noneligible types of insurance. Deductions from salaries and wages will not be authorized for any type of insurance that is not approved by the program administrator or which is being provided for by the state, such as: health and dental; term life; and long-term sickness or disability. No insurance coverage offering a mutual fund or annuity investment component will be allowed.

11—46.5(80GA, HF2262) Deduction limits and frequency. Authorized deductions must be a minimum of \$1. The frequency of the deductions must be compatible with the affected payroll system. All payroll deductions must be made in equal amounts on a monthly basis or be made on a basis compatible with the payroll system. The deduction will be

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

made only for the amount of insurance premiums and shall not include amounts for any other purpose, such as organizational dues or membership fees.

11—46.6(80GA,HF2262) Distribution of literature. The state of Iowa will not distribute with payroll materials literature soliciting insurance premium deductions or any other matter.

11—46.7(80GA,HF2262) Number of contributions. Each payroll system must allow each employee the opportunity to make insurance premium deductions to any combination of up to a maximum of four companies.

11—46.8(80GA,HF2262) Cash contributions. No cash contributions will be accepted or administered through the payroll process or system.

11—46.9(80GA,HF2262) Terminations. An employee wishing to terminate the deduction shall be required to give 30 days' notice in writing to the appointing authority of the department in which the employee works or, in the case of regents institutions, to the officer in charge of the payroll system through which the employee is paid.

11—46.10(80GA,HF2262) Remittance. The officer in charge of the payroll system must send the monthly payment to each company within 20 working days after the last pay date of each calendar month. Support documentation is limited to a listing of employees and the amount deducted for each such employee.

11—46.11(80GA,HF2262) Unapproved solicitation prohibited. Salespersons or agents must follow all applicable rules prohibiting solicitation on state property. The designated company representative may schedule presentations of marketing and informational materials provided the program administrator has given written approval of said materials and applicable rules are followed concerning approval of the date, time, and location of such presentations.

11—46.12(80GA,HF2262) Annual review of participating employees. During September of each year, each participating company must supply the program administrator with a certified list of all state employees who have an insurance premium deduction through each payroll system. The list must contain the same information as required in 46.3(2)"d," and will be used by the state to determine if the company has 500 employees participating in the program.

If the minimum qualification is not being maintained, written notification will be provided to the company, giving the company 90 days to meet the minimum qualification. If, at the end of the 90-day period, the minimum qualification has not been attained, the insurance premium deduction for all participating employees in that company will be terminated.

The program administrator will provide a copy of the certified list for each payroll system to the officer in charge of that payroll system for verification of employee status.

11—46.13(80GA,HF2262) Termination of company participation. If the program administrator finds a company is not complying with administrative rules in this chapter or the agreement made with the state, or if the company is not operating in a manner the program administrator determines to be in the best interest of the state or its employees, the state reserves the right to terminate an insurance company's participation in the program.

These rules are intended to implement 2004 Iowa Acts, House File 2262.

[Filed 7/2/04, effective 8/25/04]

[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3520B**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 1, "Administration"; Chapter 6, "Public Records and Fair Information Practices"; Chapter 10, "General Requirements"; Chapter 12, "Dental and Dental Hygiene Examinations"; Chapter 13, "Special Licenses"; Chapter 15, "Fees"; Chapter 16, "Prescribing, Administering, and Dispensing Drugs"; Chapter 20, "Dental Assistants"; Chapter 22, "Dental Assistant Radiography Qualification"; Chapter 25, "Continuing Education"; Chapter 27, "Standards of Practice and Principles of Professional Ethics"; Chapter 28, "Designation of Specialty"; Chapter 30, "Discipline"; Chapter 31, "Complaints and Investigations"; and Chapter 51, "Contested Cases," Iowa Administrative Code.

These amendments make various technical corrections and clarifications to the rules of the Board of Dental Examiners. Some of the specific changes include the following:

Items 6 and 7 require a dental hygienist to obtain a passing score, as established by the Central Regional Dental Testing Service (CRDTS), for dental hygiene licensure by examination. CRDTS recently changed the passing score.

Items 9 and 14 of the amendments require faculty permit holders to submit evidence of current certification in cardiopulmonary resuscitation (CPR) at the time of renewal for consistency with license and registration renewal requirements.

Items 12 and 13 of the amendments shorten the time period for late renewal of a registration to be consistent with the time period for late renewal of a dental or dental hygiene license.

Item 15 of the amendments changes the length of time in which dental records must be retained for consistency with the statute of limitations as specified in Iowa Code section 614.1.

Items 19 and 21 clarify that the Board has the authority to subpoena evidence, whether or not it is privileged or confidential under the law, in connection with a licensee disciplinary investigation or contested case proceeding. This clarification is consistent with Iowa Code sections 17A.13(1) and 272C.6(3), and a ruling by the Iowa Supreme Court in *Portz v. Board of Medical Examiners*, 563 N.W.2d 592 (Iowa 1997).

Item 20 of the amendments corrects a reference to the time period in which a licensee or registrant must file a mandatory report as specified in 650—30.13(272C), which requires a report to be filed within seven days.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, the amendments in Items 10, 15, and 17 are not subject to waiver pursuant to rules 15.9(17A,147,153,272C), 27.12(17A,147,153,272C) and 30.4(147,153,272C).

DENTAL EXAMINERS BOARD[650](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 12, 2004, as **ARC 3347B**. A public hearing on the amendments was held on June 1, 2004. Written comments on the proposed amendments were received from the Iowa Dental Association (IDA). The IDA objected to the amendment in Item 17 that requires a licensee to make a mandatory report of any act or omissions that could result in discipline of a licensee or registrant. The IDA expressed the belief that the amendment was a significant expansion of the mandatory reporting requirement. However, Iowa Code section 272C.9 requires practitioners to report any act or omission committed by another licensee or registrant, and only the Board has authority to determine the disciplinary sanction that may result from any act or omission.

The IDA also objected to the amendment in Item 17 that clarifies that licensees and registrants must follow standard precautions for preventing and controlling infectious diseases and managing personnel health and safety concerns as issued by the Centers for Disease Control and Prevention (CDC). The IDA expressed the belief that Iowa dentists should not be required to follow CDC recommendations. CDC guidelines have been required since 1993 in Iowa, and the adopted amendment merely reflects a terminology change. The term "universal precautions" has been replaced with the term "standard precautions." In addition, the amendment clarifies that licensees and registrants are not required to implement CDC suggestions, only recommendations or those items that are required by law or required by other state or federal agencies such as OSHA.

In response to other comments submitted by the IDA, the following changes were made to the amendments published under Notice of Intended Action:

- The word "declaratory" was added to subrule 6.15(3) in Item 4 to clarify that the subrule refers to declaratory rulings and declaratory orders, as well as final orders. Subrule 6.15(3) now reads:

"**6.15(3)** Board decisions, findings of fact, final orders, declaratory rulings, declaratory orders, and other statements of law or policy issued by the board in the performance of its function. This information is stored electronically or on paper."

- In Item 15, subrule 27.11(5), the words "authorized representative" were replaced with the words "legal guardian."

These amendments were approved at the June 17, 2004, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapter 153.

These amendments will become effective on August 25, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 1, 6, 10, 12, 13, 15, 16, 20, 22, 25, 27, 28, 30, 31, 51] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3347B**, IAB 5/12/04.

[Filed 7/1/04, effective 8/25/04]
[Published 7/21/04]

[For replacement pages for IAC, see IAC Supplement 7/21/04.]

ARC 3539B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

This amendment expands the wording of a Class E (formerly called "Emergency") license to include the denial of a Class E license if no progress has been made on a Class A (one-year), Class B (two-year), Class C (three-year), or Class D (two-year career and technical) license unless extenuating circumstances can be verified.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 28, 2004, as **ARC 3313B**. A public hearing on the amendment was held on May 18, 2004. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective August 25, 2004. The following amendment is adopted.

Amend rule 282—14.131(272) as follows:

282—14.131(272) Requirements for a Class E license. A nonrenewable license valid for one year may be issued to an individual based upon an expired Class A, Class B, Class C, Class D or teacher exchange license. The holder of an expired license shall be eligible to receive a Class E license upon application *and submission of all required materials*. The application process will require transcripts of coursework completed during the term of the expired license, a program of study indicating the coursework necessary to obtain full licensure, and registration for coursework to be completed during the term of the Class E license. *The Class E license will be denied if the applicant has not completed any coursework during the term of the Class A, Class B, Class C, or Class D license unless extenuating circumstances are verified.*

[Filed 7/2/04, effective 8/25/04]

[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3516B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 49, "Nonpublic Water Supply Wells," and Chapter 82, "Well Contractor Certification," Iowa Administrative Code.

The amendments to these chapters were developed by a stakeholder committee authorized by 2002 Iowa Acts, House File 583 (Iowa Code section 455B.190A) and reviewed by

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Department Water Supply Section engineers. The intent is to establish a certification program for private well pump system installers in addition to the existing water well drilling contractor certification.

The amendments to Chapter 49:

- Set technical requirements for proper installation of well pumps and related plumbing up to the pressure tank.
- Amend the purpose, add technical definitions and expand the rules addressing proper pump and plumbing installation.

The amendments to Chapter 82:

- Add the category of certified pump installer contractor to the certified well contractor classifications.
- Add definitions for pump services and define who may perform well services and pump services.
- Exempt public water supply operators from pump installer certification requirements.
- Set testing, fee and continuing education requirements for pump installers.
- Establish a general test and technical tests for well drillers and pump installers.
- Establish a peer advisory committee to help the Department review application experience requirements and recommend future rule modifications.
- Set the sign-up period for registration without testing.

Notice of Intended Action was published in the Iowa Administrative Bulletin Vol. XXVI, Number 19, on March 17, 2004, as **ARC 3223B**. Seven public hearings were held, and 42 comments were received. The comments have been addressed in a responsiveness summary available from the Department. There are ten changes as a result of the public comments. Changes were made to what was originally proposed in Items 9, 11, 12, and 13 dealing with specific well construction standards. Changes were made to what was originally proposed in Items 16 and 19 dealing with applicability for monitoring wells, work experience requirements and record submission. The changes that were made as a result of the public comments are as follows:

- Changes were made in subrule 49.13(1) to change “molded” PVC fittings to “machined” fittings, to require use of stainless steel or brass fittings on polyethylene (PE) pipe, and to limit pump diameter hung on PE pipe to prevent pumps getting stuck. The subrule now reads as follows:

“**49.13(1)** Discharge pipe. Galvanized, black, or stainless steel drop pipe shall be minimum schedule 40 wall thickness. PVC drop pipe shall be minimum schedule 80 wall thickness. Schedule 80 machined PVC, brass, or stainless steel couplings shall be used with PVC pipe. Polyethylene drop pipe shall be minimum ASTM Standard PE3406 SDR9. Only brass or stainless steel fittings are permitted for use on polyethylene drop pipe. If polyethylene drop pipe is used, the outside diameter of the pump must be at least one inch smaller than the inside diameter of the well casing.”

- In rule 49.15(455B), subrule 49.15(3) was changed to more specifically define the prohibition for aboveground discharge pitless adapters, and subrule 49.15(5), which contained the requirement for bentonite to be placed around the pitless adapter, was not adopted. Subrule 49.15(3) now reads as follows:

“**49.15(3)** A pitless subsurface pipe connection to a well casing pipe shall be made with a weld-on, clamp-on, or bolt-on pitless adapter or weld-on or threaded pitless unit. Aboveground discharge pitless adapters with a drain-back into the well are prohibited on systems under continuous pressure.”

- Changes were made in rule 567—49.16(455B) to allow the discharge of water through the top of the well in some limited circumstances. The rule now reads as follows:

“**567—49.16(455B) Well caps and seals.** A well cap shall be used on any well not protected by a well house and must seal tightly against the casing to exclude surface water, dirt, insects or any foreign matter from entering the well. The well casing shall terminate at least one foot above the finished grade surface. A split-top sanitary seal may only be used on a well terminating within a well house. Any openings in the cap or seal, such as for pump wiring, water depth measurement, or chemical feed, shall be properly grommeted or sealed, except properly screened and oriented vent openings. There shall be no openings through the well cap except for a factory installed vent, air line chemical feed, and power supply wiring, unless a proposal is submitted to and approved by the administrative authority. To be approved, the proposal must show that any entrance into the well cap is watertight and meets the following conditions: prevents surface water from entering the water supply, is secured in position, is removable with tools only, and is resistant to weathering and corrosion.

“Well pump systems that are not under continuous pressure and have no pressure tank may discharge out of the top of the well if all connections are watertight welds or grommeted openings. Venting, heights and other cap requirements shall be met.”

- A change was made in rule 567—49.19(455B) to allow the electrical conduit to enter the side of the casing under certain conditions, and the rule now reads as follows:

“**567—49.19(455B) Underground wiring.** Underground wiring from the well shall be enclosed in a watertight electrical conduit extending from the entrance of the conduit into the casing to a minimum of three feet below ground level, threaded into the well cap, or sealed into the cap or casing in a watertight manner. The internal passage of the conduit shall be sealed around the wire with a nonhardening, pliable sealing compound.”

- Changes were made in subrule 49.21(6) to delay the implementation of a ban on buried pressure tanks and to ban the use of buried vaults in flood plains. The subrule now reads as follows:

“**49.21(6)** Tank location. Buried pressure tanks shall not be permitted after July 1, 2009. If pressure tanks are not located in a residence or other heated structure, they should be housed in the following manner:

“a. Buried vault (frost pit). The vault and vault opening shall be sized to allow ease of access for the installation and maintenance of necessary equipment. The vault shall be as watertight as possible. The outside of the vault should be completely tiled at the base and either drain to daylight or to a sump pit that is equipped with a sump pump. The trench should be backfilled with pea gravel to one foot above the tile. All wiring in the vault shall be in watertight conduit. No buried vault shall be allowed within a 100-year flood plain. Buried vaults are not recommended because of the hazard associated with confined space entry.

“b. Aboveground structure. The structure and access opening shall be sized to allow the installation and maintenance of necessary equipment with a minimum of inconvenience. The structure shall be of an all-seasons design. It shall be insulated and heated to prevent freezing of the tank. If a poured concrete floor is provided, the top of the floor shall be at least four inches above the surrounding ground and be sloped to a drain or to the door to facilitate drainage of the room. It is recommended that the structure be located no closer than ten feet from the well. If the structure is located

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

over the well, it must have a hinged roof or removable hatch over the well or have other provisions for pulling the well pump.”

- Subrule 82.2(3) was changed to clarify that certified pump installers are not required for monitoring wells. The subrule now reads as follows:

“**82.2(3)** Applicability exception. These rules shall not apply to a water operator certified pursuant to Iowa Code section 455B.213, when the water operator is performing pump services on any well owned by a public water supply system as defined in Iowa Code section 455B.171. These rules shall not apply to a wastewater operator certified pursuant to Iowa Code section 455B.213, when the wastewater operator is performing pump services on a groundwater monitoring well, groundwater dewatering well, or other well not used to provide drinking water, owned by a sewer system as defined in Iowa Code section 455B.171. Pump installer certification requirements shall not apply to monitoring wells.”

- Subrule 82.6(1) was amended to more specifically define the experience requirement expectation, and the subrule now reads as follows:

“**82.6(1)** All applicants shall meet the experience requirements as shown below. Educational programming approved by the department may be substituted for up to one half of any experience requirement at the rate of one CEU for each 100 hours of required experience.

CLASSIFICATION	EXPERIENCE
Certified Well Contractor (well driller)	Two years' employment and 2000 hours work experience in Class 1 and Class 2 well construction
Certified Well Contractor (pump installer)	Two years' employment and 1000 hours work experience in the installation, repair, and maintenance of water systems
Provisionally Certified Well Contractor	One half of the employment and experience required for full certification
Well Plugging Contractor	None

- Proposed amendments to subrule 82.12(1), regarding the submission of well logs using the Private Well Tracking System, were not adopted. The subrule reads as follows:

“**82.12(1)** Submission of records and samples. Each certified well contractor shall submit drilling records and drill cutting samples, when required, to the Iowa Geological Survey, Department of Natural Resources, Oakdale Campus, University of Iowa, Iowa City, Iowa 52242, telephone (319) 338-1575, or as otherwise directed by the department, as follows:

“a. Within 30 days of completion of any water well used as part of a public water supply, a well used for withdrawal of water for which a permit is required by rule 567—50.1(455B), or wells used to monitor groundwater quantity or quality required by the department if so directed by the Iowa geological survey (IGS), department of natural resources. The certified well contractor must submit the drilling records and samples required by subrules 82.12(2) and 82.12(3).

“b. Within 30 days of the completion of any water well used as part of a nonpublic water supply or other water wells used to access groundwater. The certified well contractor must submit the drilling records and samples required by subrules 82.12(2) and 82.12(3).

“c. No change.”

These amendments are intended to implement Iowa Code section 455B.190A.

These amendments will become effective on August 25, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 49, 82] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3223B**, IAB 3/17/04.

[Filed 7/1/04, effective 8/25/04]
[Published 7/21/04]

[For replacement pages for IAC, see IAC Supplement 7/21/04.]

ARC 3517B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 459.312, the Environmental Protection Commission hereby adopts amendments to Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The amendments modify rule 65.17(459) regarding manure management plan requirements and related tables. The primary modification is adoption of the NRCS phosphorus index as prescribed by 2002 Iowa Acts, chapter 1137. The amendments also include changes to clarify manure management plan requirements, and standard table values used for calculations in the rule have been updated to reflect current Iowa State University publication values.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 18, 2004, as **ARC 3167B**. Written comments were received by the Department. In addition, oral comments were heard by the Department at five public hearings held across the state. The following indicates the significant changes that have been made to the Notice of Intended Action:

1. Language has been modified in paragraph 65.17(1)“a” to maintain consistency when describing application rate limitations when they are based on the phosphorus index and when they are based on nitrogen use levels.

2. In paragraph 65.17(1)“d,” the first day that a phosphorus index-based manure management plan is required has been changed from October 24, 2004, to October 25, 2004.

3. Language has been added to paragraph 65.17(2)“a” to specify that, if an operation is completely covered by Iowa Code chapter 200 or 200A, the phosphorus index is not required.

4. Language has been added to 65.17(2)“b”(6)“7” and 65.17(3)“i”(2) to indicate that a copy of the NRCS phosphorus index “detailed report” shall satisfy the requirement to include the factors used in the calculation.

5. In 65.17(2)“b”(6)“7” and 65.17(3)“i”(2), “field” has been defined by referencing 65.17(17)“a.”

6. In 65.17(2)“b”(8) and 65.17(13), the length of time that records must be kept has been increased from four to five years. This change is based on review of EPA’s CAFO rule, which the Department must implement, that indicates that records must be kept for at least five years. The Department feels that adopting the EPA requirement now is more ap-

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appropriate than changing from three to four years now, and from four to five years a year from now.

7. Proposed paragraphs 65.17(4)“a” and “b” from the Notice have been consolidated into paragraph 65.17(4)“a.”

8. In paragraph 65.17(5)“a,” the phrase “content of the manure” has been replaced by “available to be applied” because this is what is actually calculated.

9. In 65.17(6)“a”(3), the definition of a “crop disaster” for purposes of excluding yields from a yield average has been changed from “when a Farm Service Agency crop disaster payment or crop insurance payment is made for the field or farm” to “when there is a 30 or more percent reduction in yield for a particular field or farm from the average yield over the most recent five years.” Many comments were received indicating that a 15 percent yield loss should be considered a crop disaster; however, a 30 percent reduction was used to be consistent with the Farm Service Agency.

10. Subparagraph 65.17(6)“a”(3) has been modified to indicate that proven crop yield documentation should not be submitted to the DNR, but should be maintained with the current manure management plan.

11. Subrule 65.17(8) has been revised to indicate that agreements should not be submitted to the DNR, but should be maintained with the current manure management plan.

12. The first sentence of paragraph 65.17(8)“c” duplicates paragraph 65.17(8)“b” and has been stricken. Paragraph 65.17(8)“d” has been omitted.

13. Subrule 65.17(10) has been modified to indicate that conservation plans should not be submitted to the DNR, but should be maintained with the current manure management plan.

14. Subrule 65.17(10) has been amended to indicate that a copy of the NRCS RUSLE2 profile erosion calculation record satisfies the requirement to indicate the crop rotation, tillage practices and supporting practices to calculate sheet and rill erosion.

15. Subrule 65.17(10) has also been revised to clarify that, when the phosphorus index goes into effect, information regarding how RUSLE2 is calculated will be required for all fields, rather than limiting this requirement to highly erodible land.

16. Paragraph 65.17(13)“e” has been modified to provide a one-year period before records of commercial nitrogen and phosphorus application are required. This one-year period will provide producers time to update their manure agreements to allow acquisition of this data from crop producers who receive manure.

17. In paragraph 65.17(16)“b,” the language “distributed throughout the sampling area,” which inadvertently eliminated point grid sampling as a method for soil sampling, has been replaced with “from the sampling area.”

18. In paragraph 65.17(16)“c,” language has been added to specify that small fields with acreage between 10 and 15 acres need only one soil sample to meet the requirements of the rule.

19. In paragraph 65.17(17)“a,” the terms “thoroughfare” and “watercourse” have been replaced with “public thoroughfare” and “water source,” respectively, to be consistent with the statutory terms.

20. Paragraph 65.17(17)“b” has been modified to read:

“b. When sheet and rill erosion is calculated for the phosphorus index, the soil type used for the calculation shall be the most erosive soil type that is at least 10 percent of the total field area.”

The intent of this paragraph is to identify the soil type used when the RUSLE2 model is being run for the phosphorus in-

dex. The RUSLE2 program asks specifically for a soil type to consider for the calculation of sheet and rill erosion. The result of RUSLE2 is an erosion rate that is inputted directly into the NRCS phosphorus index spreadsheet under the heading “sheet and rill (RUSLE).” The NRCS, when running RUSLE2, chooses the predominant soil type in terms of erosion and not the most common soil type in the field. Therefore, the 10 percent approach is consistent with NRCS in that the most erosive soil type is used when running RUSLE2. The difference between the NRCS approach and what is contained in this rule is that NRCS uses a more subjective approach to determining what the predominant soil type is, leaving the decision to the planner, while the rule provides a more rigid guideline. For regulatory purposes it is important to have a concrete methodology for choosing the soil type in order to maintain consistency for all plans across the state and therefore, the use of the most erosive soil type that is greater than 10 percent of the total field area is a reasonable way to maintain consistency.

21. In 65.17(17)“f”(1) and (2), “Low” and “Very Low” categories have been separated.

22. In 65.17(17)“f”(3), the department has changed language in the “Medium” category to that which more clearly indicates that if current or planned practices will not result in a “High” phosphorus index the next time the phosphorus index is run (new phosphorus index required every four years in adopted rule), nitrogen-based management may be continued. Therefore, remedial measures are not required in the “Medium” risk category. Additionally, new language (numbered paragraph “2”) prohibits application of phosphorus in excess of two times the phosphorus crop removal rate over the period of a crop rotation. The Department concludes that it is reasonable to consider drastic overapplication of phosphorus within the confines of a nitrogen-based plan inconsistent with the intent of the phosphorus index in the “Medium” category.

23. In 65.17(17)“f”(3)“1,” an incorrect reference has been changed from 65.17(17)“d” to 65.17(17)“h”(3).

24. In 65.17(17)“f”(4) and (5), the “High” and “Very High” categories have been separated so that manure may not be applied to fields in the “Very High” category. Language has been added to allow phosphorus-based rates in the lower half of the “High” category (5-10) until December 31, 2008, if practices will be adopted to reduce the phosphorus index to “Medium.” This provides producers with fields in this range (5-10) a period of time to implement management practices to reduce phosphorus loss from the field while continuing to apply manure. The Department concludes that, for the upper half of the “High” range (10-15), there must be a severe erosion problem and extremely high soil phosphorus. Continued application on this ground is inappropriate until practices are actually implemented on the field. After December 31, 2008, no application will be allowed in the “High” category until practices are adopted to reduce the phosphorus index to “Medium.”

25. Language that was previously located at 65.17(19)“f” has been moved to 65.17(17)“g”(2). The subparagraph has also been reworded for clarity.

26. Subparagraphs 65.17(17)“h”(1) and (2) have been modified such that, when new management practices change the phosphorus index of a field or if a new field becomes available for manure application, the new phosphorus index information should not be submitted with the next annual update but should be kept with the current manure management plan.

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27. In paragraph 65.17(18)“c,” the language “nitrogen needed for the crop” has been replaced with “nitrogen-based application rates” because nitrogen applied with manure to some crops is not agronomically needed to attain an optimum crop yield.

28. Language pertaining to applying additional nitrogen fertilizer to meet the remaining nitrogen need when a phosphorus-based rate is used has been moved from proposed 65.17(19)“f” to 65.17(17)“g” because paragraph “g” deals with the conditions in which additional fertilizer can be applied.

29. New paragraph 65.17(19)“f” has been added to provide guidelines for phosphorus availability in manure.

In addition, the direction to replace references to Iowa Code chapter 455B with references to Iowa Code chapter 459 throughout Chapter 65 has been omitted, and will be pursued in a later rule making.

These amendments are intended to implement Iowa Code section 459.312.

These amendments will become effective on August 25, 2004.

The following amendments are adopted.

ITEM 1. Amend rule 567—65.17(455B) as follows:

567—65.17(455B 459) Manure management plan content requirements. All manure management plans submitted after January 1, 1999, or when forms are available, whichever is later, are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in Iowa Code section 455B.203 459.312 and as described below.

65.17(1) General.

a. A confinement feeding operation that is required to submit a manure management plan to the department shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. *When a phosphorus index is required in a manure management plan as provided in 65.17(1)“d,” a confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index.* ~~Nitrogen application rates shall be based on total nitrogen content of the manure unless the calculations are submitted to show that crop usage rates based on plant available nitrogen have not been exceeded for the crop schedule submitted.~~ Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other credible sources including, but not limited to, Iowa State University, the United States Department of Agriculture (USDA), a licensed professional engineer, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS) program, the Certified Crop Advisors (CCA) program, or the Registry of Environmental and Agricultural Professionals (REAP) program.

b. Manure management plans shall comply with the minimum manure control requirements of 65.2(455B) and the requirements for land application of manure in 65.3(455B).

c. ~~All manure~~ Manure management plans shall include all of the following:

(1) The name of the owner and the name of the confinement feeding operation, including mailing address and telephone number.

(2) The name of the contact person for the confinement feeding operation, including mailing address and telephone number.

(3) The location of the confinement feeding operation ~~and the animal weight capacity of the operation identified by county, township, section, 1/4 section and, if available, the 911 address.~~

(4) ~~The animal unit capacity of the confinement feeding operation and, if applicable, the animal weight capacity.~~

d. A person who submits a manure management plan shall include a phosphorus index as part of the manure management plan as follows:

(1) A person who submitted an original manure management plan prior to April 1, 2002, shall submit a phosphorus index with the first manure management plan update on and after August 25, 2008.

(2) A person who submitted an original manure management plan on or after April 1, 2002, but prior to October 25, 2004, shall submit a phosphorus index with the first manure management plan update on and after August 25, 2006.

(3) A person who submits an original manure management plan on and after October 25, 2004, shall include the phosphorus index as part of the original manure management plan and manure management plan updates.

65.17(2) Manure management plans for sales of manure. Selling manure means the transfer of ownership of the manure for monetary or other valuable consideration. Selling manure does not include a transaction where the consideration is the value of the manure, or where an easement, lease or other agreement granting the right to use the land only for manure application is executed.

a. Confinement feeding operations that will sell dry manure as a commercial fertilizer or soil conditioner regulated by the Iowa department of agriculture and land stewardship (IDALS) under Iowa Code chapter 200 or 200A shall submit a copy of their site-specific IDALS license or documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved manure management plan form for sales of dry manure. *Operations completely covered by this paragraph are not required to meet other manure management plan requirements in this rule.*

b. A confinement feeding operation not fully covered by paragraph “a” above and that has an established practice of selling manure, or the a confinement feeding operation that contains an animal species for which selling manure is a common practice, shall submit a manure management plan that includes the following:

(1) ~~An~~ *Until a phosphorus index is required as part of the manure management plan, an estimate of the number of acres required for manure application shall be calculated by dividing the total nitrogen available to be applied from the confinement feeding operation by the crop usage rate. Crop usage rate may be estimated by using a corn crop usage rate factor and an estimate of the optimum crop yield for the property in the vicinity of the confinement feeding operation.*

(2) *When a phosphorus index is required as part of the manure management plan, an estimate of the number of acres required for manure application shall be calculated by one of the following methods:*

1. *Dividing the total phosphorus (as P₂O₅) available to be applied from the confinement feeding operation by the corn crop removal of phosphorus. The corn crop removal of phosphorus may be estimated by using the phosphorus removal rate in Table 4a at the end of this chapter and an estimate of the optimum crop yield for the property in the vicinity of the operation.*

2. *Totaling the quantity of manure that can be applied to each available field based on application rates determined in conjunction with the phosphorus index in accordance with*

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65.17(17), and ensuring that the total quantity that can be applied is equal to or exceeds the manure annually generated at the operation.

(2) (3) The total nitrogen available to be applied from the confinement feeding operation.

(4) *The total phosphorus (as P₂O₅) available to be applied from the confinement feeding operation if the phosphorus index is required in accordance with 65.17(1)“d.”*

(3) (5) An estimate of the annual animal production and manure volume or weight produced.

(4) (6) A manure sales form, if manure will be sold, shall include the following information:

1. A place for the name and address of the buyer of the manure.

2. A place for the quantity of manure purchased.

3. ~~The planned crop schedule and optimum crop yield usage rate for the crops indicated in the crop schedule yields.~~

4. A place for the manure application methods and the timing of manure application.

5. A place for the location of the field where the manure will be applied including the number of acres where the manure will be applied.

6. A place for the manure application rate.

7. *When a phosphorus index is required as part of a manure management plan in accordance with 65.17(1)“d,” a place for a phosphorus index of each field receiving manure, as defined in 65.17(17)“a,” including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.*

(5) (7) Statements of intent if the manure will be sold. The number of acres indicated in the statements of intent shall be sufficient according to the manure management plan to apply the manure from the confinement feeding operation. The permit holder for an existing confinement feeding operation with a construction permit may submit past records of manure sales instead of statements of intent. The statements of intent shall include the following information:

1. The name and address of the person signing the statement.

2. A statement indicating the intent of the person to purchase the confinement feeding operation's manure.

3. The location of the farm where the manure can be applied including the total number of acres available for manure application.

4. The signature of the person who may purchase the confinement feeding operation's manure.

(6) (8) The owner shall maintain in the owner's records a current manure management plan and copies of all of the manure sales forms; *the sales forms must be completed and signed by each buyer of the manure and the applicant, and the copies must be maintained in the owner's records for three years after each sale. Effective August 25, 2006, the owner shall maintain in the owner's records copies of all of the manure sales forms for five years after each sale.* An owner of a confinement feeding operation shall not be required to maintain current statements of intent as part of the manure management plan.

65.17(3) Manure management plan for nonsales of manure. Confinement feeding operations that will not sell all of their manure shall submit the following for that portion of the manure which will not be sold:

a. Calculations to determine the land area required for manure application.

b. The total nitrogen available to be applied from the confinement feeding operation.

c. *The planned crop schedule and optimum crop yield and crop usage rate for the crops indicated in the crop schedule yields.*

d. Manure application methods and timing of the application.

e. The location of manure application.

f. An estimate of the annual animal production and manure volume or weight produced.

g. Methods, structures or practices that will be used to reduce soil loss and prevent surface water pollution.

h. Methods or practices that will be utilized to reduce odor if spray irrigation equipment is used to apply manure.

i. *When a phosphorus index is required as part of the manure management plan in accordance with 65.17(1)“d,” the following are required:*

(1) *The total phosphorus (as P₂O₅) available to be applied from the confinement feeding operation.*

(2) *A phosphorus index of each field in the manure management plan, as defined in 65.17(17)“a,” including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.*

65.17(4) Manure management plan calculations to determine land area required for manure application.

a. ~~The number of acres of cropland needed for manure application shall be calculated by dividing the total nitrogen available to be applied from the confinement feeding operation by the nitrogen crop usage rate. The number of acres needed for manure application for each year of the crop schedule shall be determined as follows:~~

(1) *Until a phosphorus index is required in accordance with 65.17(1)“d,” the requirements of 65.17(18) shall be followed.*

(2) *When a phosphorus index is required in accordance with 65.17(1)“d,” the requirements of 65.17(17) shall be followed.*

b. ~~Manure from a confinement feeding operation may be applied in excess of the annual crop usage rate if soil testing determines that phosphorus or potassium levels are below recommended levels. However, maximum manure application rates shall not exceed 1.5 times the annual crop nitrogen usage rate; or, that rate which provides the recommended amount of phosphorus or potassium, whichever is more limiting, to obtain the optimum crop yield. Operations evaluated with the master matrix pursuant to 65.10(3) that claim points for additional separation distance for the land application of manure must maintain those distances for each year of the manure management plan.~~

c. Nitrogen in addition to that allowed in the manure management plan may be applied up to the amounts, indicated by soil or crop nitrogen test results, necessary to obtain the optimum crop yield.

65.17(5) Total nitrogen and total phosphorus (as P₂O₅) available from the confinement feeding operation.

a. ~~To determine the nitrogen content of the manure available to be applied per year, use the factors in Table 3, “Annual Pounds of Nitrogen Per Space of Capacity,” multiplied by the number of spaces shall be used. To determine total phosphorus (as P₂O₅) available to be applied per year, the factors in Table 3a, “Annual Pounds of Phosphorus Per Space of Capacity,” multiplied by the number of spaces shall be used. If the table is tables are not used to determine the nitrogen or phosphorus content of the manure per year available to be applied, other credible sources for standard table values or the actual nitrogen and phosphorus content of the manure may be used. The actual nitrogen and phosphorus~~

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content shall be determined by a laboratory analysis *along with measured volume or weight* of the manure from the manure storage structure or from a manure storage structure with similar design and management as similar to the confinement feeding operation's manure storage structure.

b. ~~Credit for nitrogen from legume production in the year prior to growing corn or other grass crops shall be deducted from the total nitrogen to be applied according to the crop schedule submitted. Any planned commercial fertilizer nitrogen shall also be deducted from the total nitrogen that can be applied from manure sources. If an actual sample is used to represent the nutrient content of manure, the sample shall be taken in accordance with Iowa State University extension publication PM 1558, "Management Practices: How to Sample Manure for Nutrient Analysis." The department may require documentation of the manure sampling protocol or take a split sample to verify the nutrient content of the operation's manure.~~

c. ~~The correction factor for nitrogen losses shall be determined for the method of application by the following, or from other credible sources for standard nitrogen loss values.~~

Surface-apply dry with no incorporation	0.70
Surface-apply liquids with no incorporation	0.75
Surface-apply liquid or dry with incorporation within 24 hours	0.95
Surface-apply liquid or dry with incorporation after 24 hours	0.80
Knifed in or soil injection of liquids	0.98
Irrigated liquids with no incorporation	0.60

65.17(6) ~~Calculating the crop usage rate *Optimum crop yield and crop schedule.*~~

a. ~~The optimum crop yield shall be determined for the cropland where the manure is to be applied. Any of the following methods for calculating the optimum crop yield may be used. To determine the optimum crop yield, the applicant may either exclude the lowest crop yield for the period of the crop schedule in the determination or allow for a crop yield increase of 10 percent. In using these methods, adjustment to update yield averages to current yield levels may be made if it can be shown that the available yield data is not representative of current yields. *The optimum crop yield shall be determined using any of the following methods for the cropland where the manure is to be applied:*~~

(1) ~~Soil survey interpretation record. The plan shall include a soil type map showing types *soil map units* for the fields where manure will be applied. The optimum crop yield for each field shall be determined by using the weighted average of the soil interpretation record yields for the soils on the cropland where the manure is to be applied. Soil interpretation records from the Natural Resources Conservation Service shall be used to determine yields based on soil type *map units*.~~

(2) ~~Consolidated farm service agency yields. The plan shall include a copy of the consolidated farm service agency's determined crop yield or verified yield data for the cropland where the manure is to be applied. *USDA county crop yields. The plan shall use the county yield data from the USDA Iowa Agricultural Statistics Service.*~~

(3) ~~Countywide crop insurance yields. The plan shall include a copy of the county average yields established for crops covered by the catastrophic crop insurance program administered by the consolidated farm service agency. *Proven yield methods. Proven yield methods may only be used if a minimum of the most recent three years of yield data for the crop is used. These yields can be proven on a field-by-field or farm-by-farm basis. Crop disaster years may be excluded*~~

when there is a 30 percent or more reduction in yield for a particular field or farm from the average yield over the most recent five years. Excluded years shall be replaced by the most recent nondisaster years. Proven yield data used to determine application rates shall be maintained with the current manure management plan. Any of the following proven yield methods may be used:

1. *Proven yields for USDA Farm Service Agency. The plan shall use proven yield data or verified yield data for Farm Service Agency programs.*

2. *Proven yields for multiperil crop insurance. Yields established for the purpose of purchasing multiperil crop insurance shall be used as proven yield data.*

3. *Proven yields from other methods. The plan shall use the proven yield data and indicate the method used in determining the proven yield.*

(4) ~~Multiperil crop insurance proven yields. Yields established for the purpose of purchasing multiperil crop insurance shall be used as proven yield data. A copy of the yield information on the multiperil crop insurance form shall be submitted as proven yield verification. The optimum yield determined for each crop shall be the average of at least three years' yield data.~~

(5) ~~Proven yields. The plan shall include the proven yield for the cropland that will be used for manure application and indicate the method used in determining the proven yield. Proven yields can only be used if a minimum of the most recent three years of yield data is submitted. The proven yields may exclude years in which a crop disaster occurred on the field or farm. These yields can be proven on a field-by-field or farm-by-farm basis.~~

(6) ~~USDA county crop yields. The plan shall include the county yield data from the USDA Iowa Agricultural Statistics Service.~~

b. ~~Crop schedule. Crop schedules shall include the name and total acres of the planned crop on a field-by-field or farm-by-farm basis where manure application will be made. A map *can* be used to indicate crop plans *schedules* by field or farm. ~~These plans~~ *The planned crop schedule* shall name the crop that is *crop(s)* planned to be grown in each successive growing season for the length of the crop rotation beginning with the crop planned or actually grown during the year this plan is submitted *or the first year manure will be applied*. Records shall be maintained of a multiyear planned crop schedule, including the crop grown, or planned to be grown for the current year and the planned crops for successive years. The confinement feeding operation owner shall not be penalized for exceeding the nitrogen *or phosphorus* application rate for an unplanned crop, if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances.~~

c. ~~Crop usage rates. Crop nitrogen requirements may be based on the values in Table 4 at the end of this chapter or other credible sources. The corn crop usage rate and the optimum corn crop yield instead of the table value for a legume crop for those years in the crop schedule that are part of a corn/legume rotation may be used.~~

65.17(7) ~~No change.~~

65.17(8) ~~Location of manure application.~~

a. ~~The manure management plan shall identify each farm where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available.~~

b. ~~The manure management plan shall include a A copy of each written agreement executed with the owner of the~~

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land where manure will be applied *shall be maintained with the current manure management plan*. The written agreement shall indicate the acres on which manure from the confinement feeding operation may be applied and the length of the agreement. A written agreement is not required if the land is owned or rented for crop production by the owner of the confinement feeding operation.

c. ~~The current manure management plan must also include a copy of each written agreement executed with the landowner when the location where the manure will be applied to land not owned or rented for crop production by the owner of the confinement feeding operation is changed. If a present location becomes unavailable for manure application, additional land for manure application shall be identified in the current manure management plan prior to the next manure application period.~~

65.17(9) No change.

65.17(10) Methods to reduce soil loss and potential surface water pollution. The manure management plan shall include an identification of the methods, structures or practices that will be used to prevent or diminish soil loss and potential surface water pollution during the application of manure. ~~The~~ *Until a phosphorus index is required in accordance with 65.17(1)“d,” the current manure management plan shall include maintain a summary or copy of the conservation plan for the cropland where manure from the animal feeding operation will be applied if the manure will be applied on highly erodible cropland. The conservation plan shall be the conservation plan approved by the local soil and water conservation district or its equivalent. The summary of the conservation plan shall identify the methods, structures or practices that are contained in the conservation plan. When a phosphorus index is required in accordance with 65.17(1)“d,” the manure management plan shall indicate for each field in the plan the crop rotation, tillage practices and supporting practices used to calculate sheet and rill erosion for the phosphorus index. A copy of the NRCS RUSLE2 profile erosion calculation record shall satisfy the requirement to indicate the crop rotation, tillage practices and supporting practices to calculate sheet and rill erosion. The plan shall also identify the highly erodible cropland where manure will be applied. The manure management plan may include additional information such as whether the manure will be injected or incorporated or the type of manure storage structure.*

65.17(11) No change.

65.17(12) Current manure management plan. The owner of a confinement feeding operation ~~which who~~ is required to submit a manure management plan shall maintain a current manure management plan at the site of the confinement feeding operation ~~unless other arrangements acceptable to the department are made so that a copy of the current plan can be made available to the department within two working days after being requested or at a residence or office of the owner or operator of the operation within 30 miles of the site.~~ The plan shall include completed manure sales forms for a confinement feeding operation from which manure is sold. If manure management practices change, a person required to submit a manure management plan shall make appropriate changes consistent with this rule. If values other than the standard table values are used for manure management plan calculations, the source of the values used shall be identified.

65.17(13) Record keeping. Records shall be maintained by the owner of a confinement feeding operation ~~which who~~ is required to submit a manure management plan. This recorded information shall be maintained for three years following the year of application or for the length of the crop

rotation, whichever is greater. *Effective August 25, 2006, records shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater.* Records shall be maintained at the site of the confinement feeding operation ~~unless other arrangements acceptable to the department are made so that a copy can be made available to the department within two working days after being requested by the department for inspection pursuant to Iowa Code section 455B.203 or at a residence or office of the owner or operator of the facility within 30 miles of the site.~~ Records to demonstrate compliance with the manure management plan shall include *the following:*

a. ~~Methods of application when manure from the confinement feeding operation was applied. Factors used to calculate the manure application rate:~~

(1) *Optimum yield for the planned crop.*

(2) *Types of nitrogen credits and amounts.*

(3) *Remaining crop nitrogen needed.*

(4) *Nitrogen content and first-year nitrogen availability of the manure.*

(5) *Phosphorus content of the manure if required in accordance with 65.17(3)“i.” If an actual sample is used, documentation shall be provided.*

b. ~~Date(s) when the manure from the confinement feeding operation was applied or sold. If phosphorus-based application rates are used, the following shall be included:~~

(1) *Crop rotation.*

(2) *Phosphorus removed by crop harvest of that crop rotation.*

c. ~~Location of the field where the manure from the confinement feeding operation was applied, including the number of acres. Maximum allowable manure application rate.~~

d. ~~The Actual manure application rate, information:~~

(1) *Methods of application when manure from the confinement feeding operation was applied.*

(2) *Date(s) when the manure from the confinement feeding operation was applied.*

(3) *Location of the field where the manure from the confinement feeding operation was applied, including the number of acres.*

(4) *The manure application rate.*

e. *Effective August 25, 2005, date(s) and application rate of commercial nitrogen and phosphorus on fields that received manure.*

f. *When a phosphorus index is required in accordance with 65.17(1)“d,” a copy of the current soil test lab results for each field in the manure management plan.*

g. *For sales of manure under 65.17(2)“b,” record-keeping requirements of 65.17(2)“b”(8) shall be followed.*

65.17(14) Record inspection. The department may inspect a confinement feeding operation at any time during normal working hours and may inspect the manure management plan and any records required to be maintained. As required in Iowa Code section 455B.203(5) 459.312(12), Iowa Code chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

a. *Upon waiver by the owner of the confinement feeding operation.*

b. *In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.*

c. *When required by subpoena or court order.*

65.17(15) No change.

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65.17(16) Soil sampling requirements for fields where the phosphorus index must be used. Soil samples shall be obtained from each field in the manure management plan at least once every four years. Each soil sample shall be analyzed for phosphorus and pH. The soil sampling protocol shall meet all of the following requirements:

a. Acceptable soil sampling strategies include, but are not limited to, grid sampling, management zone sampling, and soil type sampling. Procedural details can be taken from Iowa State University extension publication PM 287, "Take a Good Soil Sample to Help Make Good Decisions," NCR-13 Report 348, "Soil Sampling for Variable-Rate Fertilizer and Lime Application," or other credible soil sampling publications.

b. Each soil sample must be a composite of at least ten soil cores from the sampling area, with each core containing soil from the top six inches of the soil profile.

c. Each soil sample shall represent no more than ten acres. For fields less than or equal to 15 acres, only one soil sample is necessary.

d. Soil analysis must be performed by a lab enrolled in the IDALS soil testing certification program.

e. The soil phosphorus test method must be an appropriate method for use with the phosphorus index. If soil pH is greater than or equal to 7.4, soil phosphorus data from the Bray-1 extraction method is not acceptable for use with the phosphorus index.

65.17(17) Use of the phosphorus index. Manure application rates shall be determined in conjunction with the use of the Iowa Phosphorus Index as specified by the USDA Natural Resources Conservation Service (NRCS) Iowa Technical Note No. 25.

a. The phosphorus index shall be used on each individual field in the manure management plan. The fields must be contiguous and shall not be divided by a public thoroughfare or a water source as each is defined in this chapter. Factors to be considered when a field is defined may include, but are not limited to, cropping system, erosion rate, soil phosphorus concentration, nutrient application history, and the presence of site-specific soil conservation practices.

b. When sheet and rill erosion is calculated for the phosphorus index, the soil type used for the calculation shall be the most erosive soil map unit that is at least 10 percent of the total field area.

c. The average (arithmetic mean) soil phosphorus concentration of a field shall be used in the phosphorus index.

d. Soil phosphorus concentration data is considered valid for use in the phosphorus index if the data is four years old or less and meets the requirements of 65.17(16).

e. For an original manure management plan, previous soil sampling data that does not meet the requirements of 65.17(16) may be used in the phosphorus index if the data is four years old or less. In the case of fields for which soil sampling data is used that does not meet the requirements of 65.17(16), the fields must be soil-sampled according to the requirements of 65.17(16) no more than one year after the manure management plan is approved.

f. The following are the manure application rate requirements for fields that are assigned the phosphorus index site vulnerability ratings below as determined by the NRCS Iowa Technical Note No. 25 to the NRCS 590 standard rounded to the nearest one-hundredth:

(1) Very Low (0-1).

1. Manure shall not be applied in excess of a nitrogen-based rate in accordance with 65.17(18).

2. If, pursuant to 65.17(19), manure is applied at phosphorus-based rates within soil sampling periods on fields in the Very Low risk category, each soil sample may represent up to 20 acres for the next required soil sampling.

(2) Low (>1-2).

1. Manure shall not be applied in excess of a nitrogen-based rate in accordance with 65.17(18).

2. If, pursuant to 65.17(19), manure is applied at phosphorus-based rates within soil sampling periods on fields in the Low risk category, each soil sample may represent up to 20 acres for the next required soil sampling.

(3) Medium (>2-5).

1. Manure may be applied at a nitrogen-based rate in accordance with 65.17(18) if current or planned soil conservation and phosphorus management practices predict the rating of the field to be not greater than 5 for the next determination of the phosphorus index as required by 65.17(17) "h" (3).

2. Manure shall not be applied in excess of two times the phosphorus removed with crop harvest over the period of the crop rotation.

3. If, pursuant to 65.17(19), manure is applied at phosphorus-based rates within soil sampling periods on fields in the Medium risk category, each soil sample may represent up to 20 acres for the next required soil sampling.

(4) High (>5-15). Manure shall not be applied on a field with a rating greater than 5 and less than or equal to 15 until practices are adopted which reduce the phosphorus index to at least the Medium risk category. However, prior to December 31, 2008, fields with a phosphorus index greater than 5 and less than or equal to 10 may receive manure at a phosphorus-based rate in accordance with 65.17(19) if practices will be adopted to reduce the phosphorus index to the Medium risk category.

(5) Very High (>15). Manure shall not be applied on a field with a rating greater than 15.

g. Additional commercial fertilizer may be applied as follows on fields receiving manure:

(1) Phosphorus fertilizer may be applied in addition to phosphorus provided by the manure up to amounts recommended by soil tests and Iowa State University extension publication PM 1688, "General Guide for Crop Nutrient Recommendations in Iowa."

(2) Nitrogen fertilizer may be applied in addition to nitrogen provided by the manure to meet the remaining nitrogen need of the crop as calculated in the current manure management plan. Additional nitrogen fertilizer may be applied up to the amounts indicated by soil test nitrogen results or crop nitrogen test results as necessary to obtain the optimum crop yield.

h. Updating the phosphorus index.

(1) When any inputs to the phosphorus index change, an operation shall recalculate the phosphorus index and adjust the application rates if necessary.

(2) If additional land becomes available for manure application, the phosphorus index shall be calculated to determine the manure application rate before manure is applied.

(3) An operation must submit a complete manure management plan using a new phosphorus index for each field in the manure management plan a minimum of once every four years.

65.17(18) Requirements for application of a nitrogen-based manure rate to a field.

a. Nitrogen-based application rates shall be based on the total nitrogen content of the manure unless the calculations are submitted to show that nitrogen crop usage rates

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based on plant-available nitrogen have not been exceeded for the crop schedule submitted.

b. The correction factor for nitrogen losses shall be determined for the method of application by the following or from other credible sources for nitrogen volatilization correction factors.

Knifed in or soil injection of liquids	0.98
Surface-apply liquid or dry with incorporation within 24 hours	0.95
Surface-apply liquid or dry with incorporation after 24 hours	0.80
Surface-apply liquids with no incorporation	0.75
Surface-apply dry with no incorporation	0.70
Irrigated liquids with no incorporation	0.60

c. Nitrogen-based application rates shall be based on the optimum crop yields as determined in 65.17(6) and crop nitrogen usage rate factor values in Table 4 at the end of this chapter or other credible sources.

d. A nitrogen-based manure rate shall account for legume production in the year prior to growing corn or other grass crops and shall account for any planned commercial fertilizer application.

65.17(19) Requirements for application of a phosphorus-based manure rate to a field

a. Phosphorus removal by harvest for each crop in the crop schedule shall be determined using the optimum crop yield as determined in 65.17(6) and phosphorus removal rates of the harvested crop from Table 4a at the end of this chapter or other credible sources. Phosphorus crop removal shall be determined by multiplying optimum crop yield by the phosphorus removal rate of the harvested crop.

b. Phosphorus removal by the crop schedule shall be determined by summing the phosphorus crop removal values determined in 65.17(19)“a” for each crop in the crop schedule.

c. The phosphorus applied over the duration of the crop schedule shall be less than or equal to the phosphorus removed with harvest during that crop schedule as calculated in 65.17(19)“b” unless additional phosphorus is recommended by soil tests and Iowa State University extension publication PM 1688, “General Guide for Crop Nutrient Recommendations in Iowa.”

d. Additional requirements for phosphorus-based rates.

(1) No single manure application shall exceed the nitrogen-based rate of the planned crop receiving the particular manure application.

(2) No single manure application shall exceed the rate that applies to the expected amount of phosphorus removed with harvest by the next four anticipated crops in the crop schedule.

e. If the actual crop schedule differs from the planned crop schedule, then any surplus or deficit of phosphorus shall be accounted for in the subsequent manure application.

f. Phosphorus in manure should be considered 100 percent available unless soil phosphorus concentrations are below optimum levels for crop production. If soil phosphorus concentrations are below optimum levels for crop production phosphorus availability, values suggested in Iowa State University extension publication PM 1811, “Managing Manure Nutrients for Crop Production” or other credible sources shall be used.

ITEM 2. Amend 567—Chapter 65, Table 3, as follows:

TABLE 3
Annual Pounds of Nitrogen Per Space of Capacity
Source: PM 1811, Managing Manure Nutrients for Crop Production

Swine	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Nursery, 25 lb.	1 head	2	1	5
Grow-finish, 150 lb.				
Formed storage*				
Dry feeders	1 head	21		29
Wet/dry feeders	1 head	23 19		29
Earthen storage**	1 head	14		29
Lagoon***	1 head		6	29
Gestation, 400 lb.	1 head	14 27	5	39
Sow & Litter, 450 lb.	1 crate	32	11	86
Farrow-nursery	Per sow in breeding herd	22	8	85
Farrow-finish	Per sow in breeding herd	150	44	172
Dairy, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Cows, 1200 & up lb.	1 head	129 164	59	239 140
Heifers, 900 lb.	1 head	97 81	44	179 65
Calves, 500 lb.	1 head	54 45	24	100 15
Veal calves, 250 lb.	1 head	27 22	12	50 10
Dairy herd	Per productive cow in herd	203 169	87	393 180
Beef, Confined	Space	Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
Mature cows, 1000 lb.	1 head	105	23	147
Finishing, 900 lb.	1 head	95	19	132
Feeder calves, 500 lb.	1 head	53	11	73

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<u>Poultry</u>	<u>Space</u>	<u>Dry Manure</u>
Layer, cages	1000 head	367
Broiler, litter	1000 head	585
Turkeys, litter	1000 head	1400

* Formed manure storage structure

** Earthen manure storage basin

*** Anaerobic lagoon

ITEM 3. Amend **567—Chapter 65** by adopting the following **new** Table 3a:

TABLE 3a
Annual Pounds of Phosphorus (as P₂O₅) Per Space of Capacity
Source: PM 1811, Managing Manure Nutrients for Crop Production

<u>Swine</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Nursery, 25 lb.	1 head	1	0.7	3
Grow-finish, 150 lb.				
Formed storage*				
Dry feeders	1 head	15		18
Wet/dry feeders	1 head	13		18
Earthen storage**	1 head	10		18
Lagoon***	1 head		5	18
Gestation, 400 lb.	1 head	27	4	25
Sow & Litter, 450 lb.	1 crate	26	8	55
Farrow-nursery	Per sow in breeding herd	18	6	55
Farrow-finish	Per sow in breeding herd	109	33	110

<u>Dairy, Confined</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Cows, 1200 & up lb.	1 head	78	44	42
Heifers, 900 lb.	1 head	38	33	20
Calves, 500 lb.	1 head	22	18	5
Veal calves, 250 lb.	1 head	10	9	3
Dairy herd	Per productive cow in herd	80	66	80

<u>Beef, Confined</u>	<u>Space</u>	<u>Liquid, Pit* or Basin**</u>	<u>Liquid, Lagoon***</u>	<u>Solid Manure</u>
Mature cows, 1000 lb.	1 head	66	17	73
Finishing, 900 lb.	1 head	59	14	66
Feeder calves, 500 lb.	1 head	33	8	37

<u>Poultry</u>	<u>Space</u>	<u>Dry Manure</u>
Layer, cages	1000 head	840
Broiler, litter	1000 head	585
Turkeys, litter	1000 head	1400

* Formed manure storage structure

** Earthen manure storage basin

*** Anaerobic lagoon

ITEM 4. Amend **567—Chapter 65** by adopting the following **new** Table 4a:

TABLE 4a
Phosphorus Removal for Iowa Crops
Source: PM 1688, General Guide for Crop Nutrient Recommendations in Iowa

CROP	UNITS	P ₂ O ₅ (pounds/unit)
Corn	bu.	0.375
Corn silage	ton (65% H ₂ O)	3.5
Soybeans	bu.	0.8

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CROP	UNITS	P ₂ O ₅ (pounds/unit)
Alfalfa	ton	12.5
Oat and straw	bu.	0.4
Wheat	bu.	0.6
Smooth brome	ton	9
Orchard grass	ton	14
Tall fescue	ton	12
Switch grass	ton	12
Sorghum-Sudan	ton	12
Vetch	ton	12
Red clover	ton	12
Perennial rye grass	ton	12
Timothy	ton	9
Wheat straw	ton	4
Oat straw	ton	5

ITEM 5. Amend **567—Chapter 65**, Table 5, as follows:

TABLE 5
Manure Production Per Space of Capacity

	Space	Daily		Yearly
		Liquid, Pit* or Basin**	Liquid, Lagoon***	Solid Manure
<u>Swine</u>				
Nursery, 25 lb.	1 head	0.2 gal	0.7 gal	0.34 tons
Grow-finish, 150 lb.				
Formed storage*				
Dry feeders	1 head	1.2 gal		2.05 tons
Wet/dry feeders	1 head	0.84 gal		2.05 tons
Earthen storage**	1 head	1.2 gal		2.05 tons
Lagoon***	1 head		4.1 gal	2.05 tons
Gestation, 400 lb.	1 head	4.6 gal	3.7 gal	2.77 tons
Sow & Litter, 450 lb.	1 crate	3.5 gal	7.5 gal	6.16 tons
Farrow-nursery	Per sow in breeding herd	2.2 gal	5.4 gal	6.09 tons
Farrow-finish	Per sow in breeding herd	9.4 gal	30 gal	12.25 tons
<u>Dairy, Confined</u>				
Cows, 1200 & up lb.	1 head	11.8 gal	40.1 gal	19.93 tons
Heifers, 900 lb.	1 head	8.8 gal	29.9 gal	14.95 tons
Calves, 500 lb.	1 head	4.9 gal	16.5 gal	8.30 tons
Veal calves, 250 lb.	1 head	2.5 gal	8.2 gal	4.15 tons
Dairy herd	Per productive cow in herd	18.5 gal	59.8 gal	32.77 tons
<u>Beef, Confined</u>				
Mature cows, 1000 lb.	1 head	7.2 gal	15.7 gal	12.23 tons
Finishing, 900 lb.	1 head	6.5 gal	13.1 gal	11.00 tons
Feeder calves, 500 lb.	1 head	3.6 gal	7.3 gal	6.11 tons
<u>Poultry</u>				
Layer, cages	1000 head			10.5 tons
Broiler, litter	1000 head			9.00 tons
Turkeys, litter	1000 head			35.00 tons

* Formed manure storage structure

** Earthen manure storage basin

*** Anaerobic lagoon

[Filed 7/1/04, effective 8/25/04]
[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3518B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455H.105, the Environmental Protection Commission hereby adopts amendments to Chapter 137, "Iowa Land Recycling Program and Response Action Standards," Iowa Administrative Code.

In part, these amendments reflect changes to Iowa Code chapter 455H that were made in 2002 Iowa Acts, chapter 1091 [Iowa Code sections 455H.203, 455H.204, and 455H.208], including changes in how risk-based standards are computed and in requirements for public notification. These amendments include other items to satisfy the concerns of the U.S. Environmental Protection Agency (EPA) in the state's negotiations with EPA for a memorandum of agreement for the Iowa Land Recycling Program. These amendments also simplify compliance with site-specific soil standards. Finally, the amendments include various minor corrections and clarifications.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 14, 2004, as **ARC 3283B**. A public hearing was held on May 5, 2004. No oral or written comments were received at the public hearing. However, written comments were received from one party. Several changes, which are summarized as follows, were made in response to the comments:

- A minor revision was made to the definition of "target organ." The definition now reads as follows:

"'Target organ' means the biological organ(s) most adversely affected from exposure to the contaminant of concern. A 'reference dose' used to calculate noncancer health risk is normally established based on adverse impact to a target organ or organs from exposure to the contaminant of concern."

- A modification to the method for calculating standards for Cancer Group C (possible human carcinogens) in nonprotected groundwater and soil was made to Tables I, II and III. This change will result in higher values for some individual Cancer Group C chemicals, but will result in no net difference in the compliance with cumulative risk. The following entries in Tables I, II, and III were amended to read as follows:

Table I

Input Variables for Risk-Based Statewide Standards for Groundwater
from Protected and Nonprotected Groundwater Sources

<u>Parameter</u>	<u>Units</u>	<u>Cancer Group</u>	<u>Protected</u>	<u>Nonprotected</u>
TR	unitless	A, B	5×10^{-6}	1×10^{-4}
SF	$[(\text{mg}/\text{kg})/\text{day}]^{-1}$	A, B, C	Chem.-spec.	Chem.-spec.*
THQ	unitless	C	0.02	0.1/1*
		D, E	0.2	1

Table II

Input Variables for Statewide Soil Standards

<u>Parameter</u>	<u>Units</u>	<u>Cancer Group</u>	<u>Route of Exposure</u>	
			<u>Oral</u>	<u>Dermal</u>
TR	unitless	A, B	5×10^{-6}	5×10^{-6}
SF	$[(\text{mg}/\text{kg})/\text{day}]^{-1}$	A, B, C*	Chem.-spec.	Chem.-spec.
THQ	unitless	C*	0.1/1	0.1/1
		D, E	1	1

Table III

Input Variables for Site-Specific Soil Standards for
Individual Contaminants for Nonresidential Area Land-Use Designation

<u>Parameter</u>	<u>Units</u>	<u>Cancer Group</u>	<u>Soil Depth (ft.)</u>	
			≤ 2	≥ 2
TR	unitless	A, B	1×10^{-4}	1×10^{-4}
SF (oral)	$[(\text{mg}/\text{kg})/\text{day}]^{-1}$	A, B, C*	Chem.-spec.	Chem.-spec.
SF (dermal)	$[(\text{mg}/\text{kg})/\text{day}]^{-1}$	A, B, C*	Chem.-spec.	Chem.-spec.
THQ	unitless	C*	0.1/1	0.1/1
		D, E	1	1

* The risk-based concentration using Formula I for Cancer Group C chemicals that have an SF value established per paragraph 137.5(3)"c" will be the larger of a value based on the risk factor for protection from noncancer health risks with a THQ = 0.1 or the risk factor for protection from cancer health risks. Risk-based concentrations using Formula I for Cancer Group C chemicals that do not have an SF value established per paragraph 137.5(3)"c" will be a value based on the risk factor for protection from noncancer health risks with a THQ = 1.

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• The following new subrule 137.6(7) was added which will enable compliance to be determined by cumulative risk based on residential exposure while not necessarily complying with statewide standards for individual chemicals in soils. Unlike other site-specific soil standards, no institutional control will be required with this new standard.

“**137.6(7)** Site-specific cumulative risk for residential exposures to soil. A cumulative risk standard may be used as a site-specific standard for soil in lieu of statewide standards that are provided in subrule 137.5(5) for individual chemicals in soil. Cumulative risk will be determined using the toxicity values and exposure factors (i.e., the input variables less TR and THQ) from Table II in subrule 137.5(5). Criteria for compliance with the cumulative risk standard are specified in subrule 137.10(7). No institutional control will be required with the use of this site-specific standard.”

• Several changes were made to the introductory paragraph and subparagraphs (1) and (4) of paragraph 137.8(3)“1” to make new requirements more practical for assessing migration of contaminants from one medium to another. The paragraphs now read as follows:

“1. Evaluate the potential for contaminants to migrate from one medium to another. The following subparagraphs prescribe requirements for assessing potential migration of contamination from one medium to another. Requirements in the following subparagraphs may be waived if it can be demonstrated in accordance with procedures established in 567—Chapter 135 or the latest version of ASTM Standards related to the Phase II environmental site assessment process that migration of contamination from one medium to another will not cause a violation of the applicable standard in the receiving medium. The assessment activities prescribed in the following subparagraphs are intended to determine if significant migration of contamination from one medium to another has occurred. If evidence of significant migration of contamination from one medium to another (i.e., generally a contaminant concentration in the receiving medium in excess of the statewide standard) is discovered, full-scale characterization of the receiving medium may be required.

“(1) The water from any pond or lake on the site or within 300 feet of the site shall be sampled and analyzed for the contaminants of concern, if it is reasonably possible that contaminants from the site could impact the pond or lake. Any surface stream that runs through the site or within 300 feet of the site should be sampled at a location downstream of any potential impact from the site and analyzed for the contaminants of concern. Depending on the characteristics of the contaminants (e.g., solubility), associated sampling and analysis of sediments may be required.”

“(4) If a water line exists within the zone of known organic contamination of soil, groundwater or soil vapor and the potential for significant diffusion of contaminants into the water line cannot otherwise be dismissed, a sample from the water line shall be collected at the nearest location where any impact may exist and that sample shall be analyzed for the organic contaminants of concern. All such samples should be collected at times following minimum movement within the water line (e.g., early morning following a weekend).”

• The introductory paragraph of subrule 137.10(7) was revised as follows to allow compliance to be based only on cumulative risk, instead of compliance based on cumulative risk in addition to compliance with standards for individual contaminants.

“**137.10(7)** Compliance with cumulative risk. In addition to or, for soil only, in lieu of compliance with standards for individual contaminants as prescribed above, cumulative risk criteria must be attained. Cumulative carcinogenic health risks shall not exceed 1 in 10,000. Noncarcinogenic health risks affecting the same target organ shall not exceed a cumulative hazard quotient of 1. Cumulative risk criteria are applicable to multiple contaminants in the same medium and multiple media in which exposure is likely to occur to the same individual. Cumulative risks shall be based on the same exposure assumptions that are used for determining the selected standard.”

These amendments are intended to implement Iowa Code chapter 455H.

These amendments shall become effective August 25, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 137] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3283B**, IAB 4/14/04.

[Filed 7/1/04, effective 8/25/04]
[Published 7/21/04]

[For replacement pages for IAC, see IAC Supplement 7/21/04.]

ARC 3499B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 1, “Iowa Ethics and Campaign Disclosure Board,” Iowa Administrative Code.

The amendments reflect the statutory change to the definition of “regulatory agency” that now includes the Board. The amendments also clarify that Board consent for a member or staff to sell a good or service to a person subject to the regulatory authority of the Board is a public record.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on May 12, 2004, as **ARC 3354B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on June 23, 2004.

These amendments are intended to implement Iowa Code Supplement sections 68B.2(23) and 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, sections 4 and 5.

These amendments will become effective on August 25, 2004.

The following amendments are adopted.

ITEM 1. Adopt **new** subrule 1.1(7) as follows:

1.1(7) The board is a “regulatory agency” as defined in Iowa Code Supplement section 68B.2(23) as amended by 2004 Iowa Acts, Senate File 2179, section 4.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

ITEM 2. Adopt **new** subrule 1.7(5) as follows:

1.7(5) Public record. Consent granted under this rule shall be a public record and shall be made available for public inspection.

[Filed 6/24/04, effective 8/25/04]

[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3496B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment clarifies the different types of campaign committees that are required to file statements of organization.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on May 12, 2004, as **ARC 3356B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on June 23, 2004.

This amendment is intended to implement Iowa Code Supplement sections 68A.102 and 68A.201.

This amendment will become effective August 25, 2004. The following amendment is adopted.

Rescind subrule 4.3(1) and adopt in lieu thereof **new** subrule 4.3(1) as follows:

4.3(1) Committee purpose. An organized campaign committee shall identify the purpose of the committee on the statement of organization. The purpose shall be indicated in part by designating the committee as one of the following types of committees:

Type 1 – A candidate's committee for a statewide or legislative candidate or a judge standing for retention. This type of committee is referred to as a state candidate's committee.

Type 2 – A political committee that expressly advocates for or against candidates at the state level or expressly advocates for or against a statewide ballot issue. This type of committee is referred to as a statewide PAC.

Type 3 – A state statutory political committee. This type of committee is referred to as a state party.

Type 4 – A county statutory political committee. This type of committee is referred to as a county central committee.

Type 5 – A candidate's committee for a candidate seeking county office. This type of committee is referred to as a county candidate's committee.

Type 6 – A candidate's committee for a candidate seeking city office. This type of committee is referred to as a city candidate's committee.

Type 7 – A candidate's committee for a candidate seeking school board or other political subdivision office except for a county or city office. This type of committee is referred to as a school board or other political subdivision candidate's committee.

Type 8 – A political committee that expressly advocates for or against candidates for county office. This type of committee is referred to as a county PAC.

Type 9 – A political committee that expressly advocates for or against candidates for city office. This type of committee is referred to as a city PAC.

Type 10 – A political committee that expressly advocates for or against candidates for school board or other political subdivision except for county or city candidates. This type of committee is referred to as a school board or other political subdivision PAC.

Type 11 – A political committee that expressly advocates for the passage or defeat of a ballot issue, franchise election, or referendum conducted for a county, city, school, or other political subdivision ballot question. This type of committee is referred to as a local ballot issue committee.

[Filed 6/24/04, effective 8/25/04]

[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3498B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment corrects a cite to the statutory provision requiring county commissioners of elections to retain campaign disclosure reports.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on May 12, 2004, as **ARC 3353B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on June 23, 2004.

This amendment is intended to implement Iowa Code Supplement section 68A.401(3).

This amendment will become effective August 25, 2004. The following amendment is adopted.

Amend subrule 4.8(3) as follows:

4.8(3) The board shall make the reports in subrule 4.8(2) available to the appropriate county commissioner of elections electronically via the board's Web site at www.iowa.gov/ethics. A county commissioner of elections who establishes an Internet link between a public computer in the commissioner's office and the board's Web site shall be deemed in compliance with the requirement in Iowa Code Supplement section ~~68A.401(2)~~ 68A.401(3) to retain the reports.

[Filed 6/24/04, effective 8/25/04]

[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3497B

ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendments permit a candidate's committee to share information with another candidate's committee without violating the prohibition on a candidate-to-candidate in-kind contribution. The amendments also clarify that a candidate may not donate campaign funds to a charitable organization when the candidate or a family member of the candidate is employed by the organization and would receive a direct financial benefit from the donation. Finally, the amendments remove the requirement that the charitable organization be a 501(c) organization as that requirement is not mandated by statute.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on May 12, 2004, as **ARC 3355B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on June 23, 2004.

These amendments are intended to implement Iowa Code Supplement sections 68A.301 and 68A.303 as amended by 2004 Iowa Acts, House File 2318, sections 4 and 5.

These amendments will become effective on August 25, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule **4.25(1)**, paragraph "**w**," as follows:

w. ~~Transfers of funds~~ *Donations* to charitable organizations ~~which qualify for tax-exempt status under Section 501(c) of the Internal Revenue Service regulations unless the candidate or the candidate's spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent is employed by the charitable organization and will receive a direct financial benefit from a donation.~~

ITEM 2. Amend subrule **4.25(1)** by adopting **new** paragraph "**bb**" as follows:

bb. The sharing of information in any format such as computer databases containing yard sign locations or lists of registered voters with another candidate's committee.

[Filed 6/24/04, effective 8/25/04]

[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3504B

ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby adopts Chapter 5, "Use of Public Resources for a Political Purpose," Iowa Administrative Code.

The amendment adopts a new chapter on the permissible and impermissible use of public resources for a political purpose. The chapter reflects the language of Iowa Code Supplement section 68A.505, Board advisory opinions, and determinations in Board investigations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 24, 2003, as **ARC 3047B**. Based on comments from the Governor's Office and the Administrative Rules Review Committee, the following changes from the Notice have been made:

1. Changes were made to clarify that these rules apply to the use of resources belonging to the executive branch of state government and political subdivisions of the state.

2. Two new sentences were added to the beginning of rule 351—5.1(68A) to clarify the scope of the chapter.

3. A definition of "public school" was added to rule 351—5.3(68A) to clarify that charter schools are deemed to be "public schools."

4. Paragraph 5.4(2)"d," which set forth the prohibition on leaving a personal vehicle with a campaign sign in a public parking lot, was not adopted.

5. The words "are invited to" were added to subrule 5.5(3).

6. Subrule 5.5(4) was changed to clarify that a person may reimburse a governmental entity for the political use of a public resource so long as it can be demonstrated that the resource was also used for a public purpose or furthered a public interest. This change was made to reflect requirements of the Constitution of the State of Iowa.

7. Subrule 5.5(7), which set forth the guidelines on the wearing of uniforms, was not adopted.

8. Subrule 5.5(10), which set forth the guidelines on posting literature in a public school classroom when the literature is part of the curriculum, was not adopted.

9. The transfer of the campaign laws from Iowa Code chapter 56 to Iowa Code chapter 68A as mandated in 2003 Iowa Acts, chapter 40, section 9, and updated cites to Iowa Code Supplement section 68B.32A as amended by 2004 Iowa Acts, Senate File 2179, section 10, were also made.

The Board adopted these rules on June 23, 2004.

These rules are intended to implement Iowa Code Supplement sections 68A.505, 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10, and Iowa Code section 68B.32B.

These rules will become effective on August 25, 2004.

The following **new** chapter is adopted.

CHAPTER 5
USE OF PUBLIC RESOURCES
FOR A POLITICAL PURPOSE

351—5.1(68A) Scope of chapter. Iowa Code Supplement section 68A.505 prohibits the expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue. For the purposes of this chapter, the board will construe the phrase "expenditure of

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

public moneys for political purposes” broadly to include the use of public resources generally. This chapter outlines the permissible and impermissible uses of public resources for a political purpose pursuant to Iowa Code Supplement section 68A.505 and board interpretations of the statute.

This rule is intended to implement Iowa Code Supplement section 68A.505.

351—5.2(68A) Applicability. This chapter applies to the use of resources that belong to the executive branch of state government, a county, city, public school, or other political subdivision by state and local campaigns in Iowa. This chapter does not apply to property belonging to the federal government or to the use of the executive branch of state government, a county, city, public school, or other political subdivision by a federal campaign.

This rule is intended to implement Iowa Code Supplement section 68A.505.

351—5.3(68A) Definitions. For purposes of this chapter, the following definitions apply:

“Ballot issue” means a question that has been approved to be placed before the voters or is otherwise required by law to be placed before the voters. “Ballot issue” does not include the nomination or election of a candidate.

“Campaign” means the organized effort to expressly advocate the nomination, election, or defeat of a candidate for state or local office in Iowa. “Campaign” also means the organized effort to expressly advocate the passage or defeat of a ballot issue.

“Candidate” means any individual who has taken affirmative action to seek nomination or election to a state or local office in Iowa.

“Expressly advocate” means “express advocacy” as defined in Iowa Code Supplement section 68A.102(14) and 351—subrule 4.53(1). “Express advocacy” includes a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or for the passage or defeat of a clearly identified ballot issue.

“Political purpose” means to expressly advocate the nomination, election, or defeat of a candidate or to expressly advocate the passage or defeat of a ballot issue.

“Public resources” means the moneys, time, property, facilities, equipment, and supplies of the executive branch of state government, a county, city, public school, or other political subdivision.

“Public school” includes a school designated as a “charter school.”

This rule is intended to implement Iowa Code Supplement sections 68A.102 and 68A.505.

351—5.4(68A) Use of public resources for a political purpose prohibited.

5.4(1) General prohibition. Unless one of the exceptions in rule 351—5.5(68A) applies, the public officials and public employees of the executive branch of state government, a county, city, public school, or other political subdivision shall not permit public resources to be used to expressly advocate the nomination, election, or defeat of a candidate or to expressly advocate the passage or defeat of a ballot issue.

5.4(2) Specific prohibitions. For purposes of clarifying the general prohibition on the use of public resources for a political purpose, the board has identified situations in which the use of public resources for a political purpose is prohibited unless one of the exceptions in rule 351—5.5(68A) applies. The following specific conduct or actions are deemed

to be the prohibited use of public resources for a political purpose:

a. Using public resources to solicit or accept campaign contributions.

b. Using public resources to solicit votes, engage in campaign work, or poll voters on their preferences for candidates or ballot issues. The prohibition on polling voters by using public resources does not apply to authorized research at a public university.

c. Using a publicly owned motor vehicle to transport political materials, placing campaign signs on a publicly owned motor vehicle, or traveling to campaign-related events in a publicly owned motor vehicle.

d. Using public resources to produce and distribute communications that expressly advocate for or against candidates or that expressly advocate for or against ballot issues.

e. Placing campaign materials on public property including the placement of campaign signs in the public right-of-way.

5.4(3) Transportation maps. As provided in Iowa department of transportation rule 761—28.3(307), Iowa transportation maps are not to be sold or used for purposes of personal or professional gain. The paper version of the map is not to be altered for distribution in any way, including adding a name or address, by candidates running for political office. This prohibition does not apply to pictures of the governor and lieutenant governor and a personal message which may appear on the map.

This rule is intended to implement Iowa Code Supplement section 68A.505.

351—5.5(68A) Exceptions from prohibition on use of public resources for a political purpose.

5.5(1) Expressing opinion by resolution. Iowa Code Supplement section 68A.505 permits the state or a governing body of a county, city, public school, or other political subdivision to express an opinion on a ballot issue through the passage of a resolution or proclamation. It is also permissible for a member of a governing body of the state, county, city, public school, or other political subdivision to express the member’s opinion on a ballot issue at a public meeting of the governing body.

5.5(2) Public forum. Any public resource that is open to a member of the general public to use for other purposes may be used for political purposes, including the distribution of political materials on windshields of vehicles that are parked in public parking lots.

5.5(3) Candidate debate. The executive branch of state government, a county, city, public school, or other political subdivision may permit the holding of a candidate debate or forum and the accompanying distribution of campaign materials on governmental property so long as at least two candidates seeking the same office are invited to attend the debate or forum.

5.5(4) Reimbursement to governmental body. A person may reimburse a governmental body for the use of a public resource for a political purpose so long as it can be demonstrated to the board that the use of the resource was also for a public purpose or furthered a public interest. The reimbursement shall be for the actual costs of the public resource or be for the same amount charged to a person using the public resource for any other purpose.

5.5(5) Communications that do not expressly advocate. Public resources may be used to produce and distribute communications that do not expressly advocate for or against a candidate or that do not expressly advocate for or against a ballot issue.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

5.5(6) Use of job title. As there is no expenditure of taxpayer funds, job titles may be used for political purposes.

5.5(7) Residence. It is not deemed a violation of Iowa Code Supplement section 68A.505 for a public official or public employee to use for political purposes the portion of public property that is designated as the personal residence of the public official or public employee.

5.5(8) Clothing or paraphernalia. While performing official duties, a public official or public employee may wear clothes or wear political paraphernalia that expressly advocate for or against candidates or that expressly advocate for or against ballot issues. However, the administrative head of a state agency or of a department of a political subdivision may enact an internal policy that would prohibit the wearing of campaign materials on the public property of that agency or subdivision.

This rule is intended to implement Iowa Code Supplement section 68A.505.

351—5.6(68B) Board advice. Public officials, public employees, or other persons interested in using public funds for a political purpose may first seek advice or guidance from the board concerning the legality of the action or conduct.

5.6(1) Advisory opinion. A board advisory opinion applies a statute or rule to a particular factual situation. The procedure for requesting a board opinion is set out in rules 351—1.2(68B) and 1.3(68B). As provided in Iowa Code section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10, a board opinion, if followed, constitutes a defense to a subsequent complaint concerning the same facts and circumstances.

5.6(2) Declaratory order. Persons may also seek board guidance concerning the application of a statute or rule to a specific factual situation through the petition for declaratory order procedure set out in 351—Chapter 12.

5.6(3) Board review of a communication. Any person interested in producing and distributing a communication using public resources may submit the communication prior to its distribution for a board determination of whether or not the communication contains express advocacy.

This rule is intended to implement Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10.

351—5.7(68B) Complaints. Any person may file a complaint or provide information to the board alleging a violation of Iowa Code Supplement section 68A.505 or the rules of this chapter by a public official or a public employee of the executive branch of state government or a political subdivision of state government. The procedure for filing a complaint or providing information to the board is set out in Iowa Code section 68B.32B and 351—Chapter 9.

This rule is intended to implement Iowa Code section 68B.32B.

[Filed 6/24/04, effective 8/25/04]

[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3510B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 239B.4(4) and 238B.8, the Department of Human Services amends Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," and Chapter 93, "PROMISE JOBS Program," Iowa Administrative Code.

These amendments change policies for the Family Investment Program (FIP) and the PROMISE JOBS (Promoting Independence and Self-Sufficiency through Employment Job Opportunities and Basic Skills) program. FIP and PROMISE JOBS are funded through the federal Temporary Assistance to Needy Families block grant, which requires states to limit eligibility for cash assistance to 60 months during a recipient's lifetime and sets state targets for workforce participation.

These amendments focus FIP and PROMISE JOBS policy by:

- Requiring that families applying for FIP assistance sign a Family Investment Agreement (FIA) before they are approved for receiving cash benefits. Applicants who are not exempt from referral to PROMISE JOBS will meet with PROMISE JOBS staff within ten days after filing their FIP application to do an initial assessment and develop an agreement outlining how the family intends to become self-supporting and what the state will do to assist this plan. Families that have barriers that make long-term planning ineffective may have a series of short-term Family Investment Agreements.

The program changes in these amendments will help families reach self-sufficiency more quickly by enabling them to begin work activities earlier and reducing the time lag between activities. There will be no limited benefit plan imposed when a person does not cooperate in the development of the initial Family Investment Agreement, except when a person who was initially exempt has lost that exemption. Families that do not develop an initial Family Investment Agreement will not be eligible for FIP assistance.

- Eliminating FIP eligibility for assistance units that contain a member who is enrolled in an educational program leading to a degree beyond a bachelor's degree and removing work toward a graduate degree as an FIA option. These household members have enough education to be economically self-sufficient.

These amendments also make several technical changes in the programs in support of these goals, including:

- Clarifying that many policies will apply to FIP applicants as well as FIP participants.
- Defining a PROMISE JOBS "participant" as a person who has signed a Family Investment Agreement and is receiving FIP assistance, rather than a person who has begun assessment.
- Changing requirements for appointments and assessments to accommodate initial assessment before approval.
- Removing the ability to volunteer for PROMISE JOBS services and procedures that applied to volunteers. Applicants who are referred will already be involved in PROMISE JOBS. Applicants who are disabled will be referred to the Department of Education, Division of Vocational Rehabilitation Services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Clarifying that a limited benefit plan is considered to be imposed as of the date that a timely and adequate notice is issued to the participant establishing the limited benefit plan.
- Allowing for flexibility in the process for reviews of subsequent limited benefit plans.
- Transferring responsibility for serving people who entered the country as refugees from the Bureau of Refugee Services to Iowa Workforce Development when they have obtained United States citizenship.
- Adding a requirement that subcontractor provider agencies are also required to safeguard confidential information about participants.
- Removing the requirement that the Department annually reestablish a standard for rate and time of reimbursement for on-the-job training.
- Updating form numbers and references.

These amendments do not provide for waivers in specified situations as a matter of fairness and equitable treatment for all FIP applicants and recipients. Individuals who wish to request a waiver may do so under the Department's general rule at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on January 21, 2004, as **ARC 3114B**. The Department received no comments on the Notice of Intended Action.

The Department has made the following changes to rule 441—41.24(239B) in Item 2 of the Notice of Intended Action to reflect the later effective date and clarify policies on limited benefit plans:

- In subparagraph 41.24(4)“c”(1), changed the date referenced from June 1, 2004, to September 1, 2004. The implementation date has been delayed due to system issues.
- In subparagraph 41.24(8)“d”(1), added the catchwords “first limited benefit plan.”
- In subparagraph 41.24(8)“d”(3), added the catchwords “subsequent limited benefit plan” and changed the new language in the first unnumbered paragraph and added a new second unnumbered paragraph to read as follows:

“A subsequent limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued to establish the limited benefit plan. Therefore, once timely and adequate notice is issued, the person who chose the limited benefit plan cannot end it by complying with the issue that resulted in its imposition.

“FIP eligibility no longer exists as of the effective date of the limited benefit plan. Eligibility cannot be reestablished until the six-month period of ineligibility has expired. FIP eligibility does not exist for a person who reapplies for FIP after the notice is issued and before the effective date of the limited benefit plan because the person is not eligible to sign a family investment agreement until the six-month period of ineligibility has expired.”

The Council on Human Services adopted these amendments on June 9, 2004.

These amendments are intended to implement Iowa Code chapter 239B.

These amendments shall become effective on September 1, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 40, 41, 93] is being omitted. With the exception of the changes noted above,

these amendments are identical to those published under Notice as **ARC 3114B**, IAB 1/21/04.

[Filed 7/1/04, effective 9/1/04]
[Published 7/21/04]

[For replacement pages for IAC, see IAC Supplement 7/21/04.]

ARC 3509B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

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

These amendments clarify and cross-reference existing policies, including the following:

- The HAWK-I eligibility decision is based primarily on information furnished by the family. This language matches Medicaid rules.
- Only the income of parents, spouses, and children who live together is counted.
- A new application form is not required to add an eligible person to an existing HAWK-I eligible group.
- A child may be reinstated once per enrollment period when the family fails to pay a HAWK-I premium during the month before the month for which the premium is intended. The premium must be paid in full within the month for which it is intended in order for the reinstatement to occur.
- Collection of HAWK-I overpayments is governed by Department policies in 441—Chapter 11.

These amendments do not provide for waivers in specified situations because they are technical changes that benefit the customers by explaining HAWK-I policy more clearly.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on May 12, 2004, as **ARC 3339B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to the Notice of Intended Action.

The HAWK-I Board adopted these amendments on June 21, 2004.

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

These amendments shall become effective on September 1, 2004.

The following amendments are adopted.

ITEM 1. Amend rule 441—86.2(514I) as follows:

Amend the introductory paragraph as follows:
441—86.2(514I) Eligibility factors. *The decision with respect to eligibility shall be based primarily on information furnished by the applicant or recipient.* A child must meet the following eligibility factors to participate in the HAWK-I program.

Amend subrule **86.2(2)**, paragraph “a,” subparagraph (1), introductory paragraph, as follows:

(1) Earned income. The earned income of all parents, spouses, and children under the age of 19 who are not students *who are living together* shall be countable. Income shall be countable earned income when an individual produces it as a result of the performance of services. Earned income is income in the form of a salary, wages, tips, bo-

HUMAN SERVICES DEPARTMENT[441](cont'd)

nuses, and commissions earned as an employee, or net profit from self-employment.

ITEM 2. Amend rule 441—86.3(514I) as follows:

Amend subrule 86.3(6) as follows:

86.3(6) Application not required.

a. An application shall not be required when a child becomes ineligible for Medicaid and the county office of the department makes a referral to the HAWK-I program, ~~in which case,~~ Form 470-3563 470-3565, HAWK-I Referral to the Healthy and Well Kids in Iowa (HAWK-I) Program, shall be accepted in lieu of an application. The original Medicaid application or the last review form that is on file in the county office of the department, whichever is more current, shall suffice to meet the signature requirements.

b. A new application shall not be required when an eligible child is added to an existing HAWK-I eligible group.

Amend subrule **86.3(11)**, first unnumbered paragraph, as follows:

In cases of founded falsification of information, the department may proceed with disenrollment in accordance with rule 441—86.7(514I) and require repayment *in accordance with 441—Chapter 11* for the amount that was paid to a health plan by the department.

ITEM 3. Amend subrule 86.8(4) as follows:

86.8(4) Reinstatement. A child may be reinstated once in a ~~12-month~~ *per enrollment* period when the family fails to pay the premium by the last day of the month ~~prior to~~ *before* the month of coverage. However, the ~~reinstatement premium must occur~~ *be paid or postmarked* within the calendar month following the month of nonpayment and the premium must be paid in full ~~prior to~~ *in order for* reinstatement to occur.

ITEM 4. Amend subrule 86.10(7) as follows:

86.10(7) Failure to report changes. Any benefits paid during a period of time in which the child was ineligible due to unreported changes will be subject to recoupment *in accordance with 441—Chapter 11*.

[Filed 7/1/04, effective 9/1/04]

[Published 7/21/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/21/04.

ARC 3535B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby amends Chapter 71, "Overpayment Recovery Unit," Iowa Administrative Code.

The adopted amendments clarify the public assistance programs for which the Department seeks overpayments by including the HAWK-I, PROMISE JOBS, and food assistance programs; change references to forms used by the Department of Human Services for the purpose of determining client overpayment; and eliminate obsolete, outdated, and redundant references pursuant to Executive Order Number 8.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 26, 2004, as **ARC 3381B**. No comments were received on the amendments. The adopted amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 10A.104(5).

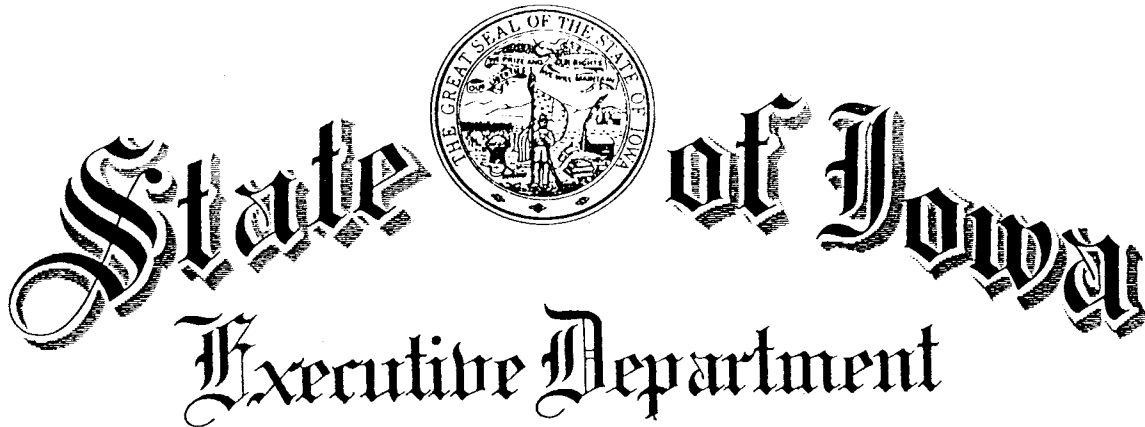
These amendments will become effective August 25, 2004.

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 [71.1, 71.3, 71.4, 71.5(1), 71.5(2), 71.6] is being omitted. These amendments are identical to those published under Notice as **ARC 3381B**, IAB 5/26/04.

[Filed 7/2/04, effective 8/25/04]

[Published 7/21/04]

[For replacement pages for IAC, see IAC Supplement 7/21/04.]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*** EXECUTIVE ORDER NUMBER THIRTY - THREE**

WHEREAS, the State of Iowa recognizes that public and private efforts to address and prevent homelessness are in the best interests of all Iowans; and the State of Iowa is committed to ensuring all Iowans have access to safe, decent and affordable housing, health care and education; and

WHEREAS, the United States Interagency Council on Homelessness, created in 1987 by Congress and the Executive Branch with the passage of the McKinney-Vento Homeless Assistance Act ("McKinney Act"), 42 U.S.C. 11311 *et seq.*, in partnership with the U.S. Conference of Mayors, is supporting the creation of interagency councils on homelessness in our nation's states; and

WHEREAS, the State of Iowa has taken affirmative steps to reduce and eliminate homelessness in Iowa, including the formation of the Governor's Interagency Task Force on Homelessness ("Task Force"), whose responsibilities and functions have informally expanded over the years, including responsibilities under the McKinney Act; and

WHEREAS, the Task Force is an ongoing entity that works to increase the effectiveness and activities of Local Homeless Coordinating Boards; assist in the development and maintenance of a statewide continuum of care to end homelessness; facilitate the collection of demographic data on homeless Iowans and anecdotal information on causes of homelessness in Iowa, and to increase public awareness and education about homelessness; and

WHEREAS, a comprehensive and coordinated effort by designated State agencies and other entities is called for to develop strategies to alleviate and end homelessness within the State of Iowa:

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 create and recognize the Iowa Council on Homelessness ("Council") and order and direct the heads of the following state agencies to participate in the Iowa Council on Homelessness:

Iowa Department of Economic Development
Iowa Department of Education
Iowa Department of Human Services
Iowa Department of Justice
Iowa Department of Human Rights
– Division of Community Action Agencies
Iowa Department of Elder Affairs
Iowa Department of Public Health
Iowa Department of Corrections
Iowa Workforce Development Administration
Iowa Department of Public Safety
Iowa Department of Veterans Affairs
Iowa Finance Authority

Each agency head shall designate one or more representatives that through the Council shall evaluate policies, programs, statutes within agencies and regulations of their respective agencies and divisions to determine whether any should be revised or modified or resources better coordinated with other agencies.

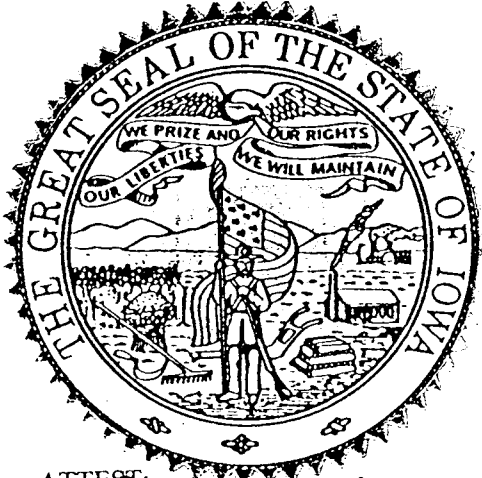
The Council shall seek membership and varying levels of participation from consumers, advocacy organizations, providers, and relevant federal and local agency representatives and others to facilitate collaboration across Iowa to address the needs of the homeless, alleviate and prevent homelessness.

The Council shall draw upon existing resources to identify and prioritize efforts to prevent individuals and families from becoming homeless and to eliminate the barriers that keep people homeless. The Council is to engage in planning activities to ensure the resources of each State agency are utilized in the most efficient and effective manner to support the goals of addressing the needs of the homeless and eliminating homelessness. The Council shall identify and utilize federal and other funding opportunities to address and alleviate homelessness within the State of Iowa. The Council shall work to identify causes and effects of homelessness in Iowa, develop recommendations to address homelessness, and foster greater awareness among policy makers and the general public.

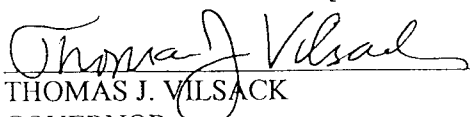
The Council shall on an annual basis advise the Governor's Office and the Iowa Finance Authority on workable strategies to eliminate homelessness in Iowa and for developing a well-coordinated and seamless service delivery system to prevent and alleviate homelessness.

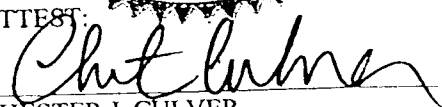
The Council shall meet at least six times per year. The Council shall within one hundred and eighty days of the signing of this order develop a ten year plan to address homelessness in Iowa coordinated with the efforts of the United States Interagency Council on Homelessness. The Council shall oversee the completion of a report on homelessness in Iowa every two calendar years. The Council shall on an annual basis oversee the completion of the state's Continuum of Care application for funding under the McKinney Act.


VI. I designate the Iowa Finance Authority as the State's administering agency in developing and implementing this Executive Order and as such, I direct the Iowa Finance Authority, in cooperation with other state agencies, to provide staff support as necessary to carry out the mission and purpose of the Council. Upon enactment of this Executive Order, the Task Force is hereby dissolved.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 17th day of November, in the year of our Lord two thousand three.


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 THIRTY - FOUR**

- WHEREAS,** effective state budget planning and service delivery depends upon the accuracy of all information gathered by state officials for tracking economic conditions and trends; and
- WHEREAS,** *Iowa Code § 8.22A* created a state Revenue Estimating Conference, comprised of the governor's designee, the director of the legislative fiscal bureau, and a third member mutually agreed upon by the first two members, to forecast anticipated state revenue; and
- WHEREAS,** on December 16, 1974, Governor Ray issued *Executive Order Number 20*, which created an advisory council to identify economic trends across the state, and advise state officials; and
- WHEREAS,** on January 7, 1983, Governor Ray issued *Executive Order Number 49*, which created a forecasting council to advise officials on methods to improve the quality of economic forecasting for the state of Iowa; and
- WHEREAS,** individual state agencies are currently gathering economic information needed to carry out their specific duties, but an effective coordinated effort will be useful within state government, to collect, analyze, and disseminate economic information; and
- WHEREAS,** additional steps can be taken to modernize information the gathering system within state government to improve the quality information that is available to state officials who make budget forecasting and economic policy decisions for the state; and
- WHEREAS,** state officials will benefit from the knowledge, experience, and resourcefulness of professionals outside of government representing Iowa business, agriculture and academics:

NOW, THEREFORE, I, Thomas J. Vilsack, by the power vested in me by the Constitution and laws of the State of Iowa, do hereby order and direct that the Governor's Economic Advisory Council created by Governor's Ray's *Executive Order Number 20* on December 16, 1974, and the Iowa Economic Forecasting Council created by Governor Ray's *Executive Order Number 49* on January 7, 1983 are hereby disbanded and replaced by the *Council of Economic Advisors*, which shall function in the manner outlined below.

*Reproduced as submitted

There is hereby created, within the executive branch of state government, the *Council of Economic Advisors*. The *Council* shall consist of no fewer than seven members, and no more than fifteen. *Council* members shall be appointed by the governor, and serve at the pleasure of the governor for a one-year term. The *Council* shall include members that represent Iowa business, Iowa agriculture, and Iowa academics. The Governor's designee who serves on the Revenue Estimating Conference, pursuant to Iowa Code § 8.22A, shall serve as an ex-officio member on the *Council*. The Governor will designate the *Council* chairperson.

II. Responsibilities.

1. The *Council* shall advise the Governor's Office on all pertinent trends, which affect economic activities within the state. The trends that the *Council* will track shall include, but not be limited to: personal income; employment, agricultural manufacturing, workforce, and population indicators. The *Council* shall also recommend policies to improve the economic well being of the state.
2. The *Council* shall make suggestions for a system to improve the quality of information gathered by state officials to assess the state's economy, and estimate future state revenues.
3. The *Council* shall make suggestions for a system for improving the manner in which state officials assess information gathered for purposes of examining the state's economy and estimating future state revenues.
4. The *Council* shall make suggestions for a system for improving the dissemination of economic information across the state enterprise.

III. Support.

The *Council* shall work with representatives from the Department of Agriculture, Department of Commerce, Department of Economic Development, Department of Management, Department of Revenue and Finance, Department of Transportation, and Department of Workforce Development, and the State Treasurer to expand and coordinate the gathering of, analysis and distribution of economic data for the state as a whole, for geographic regions within the state, and for various economic sectors and labor pools.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 5th day of December, in the year of our Lord two thousand three.

Thomas J. Vilsack

THOMAS J. VILSACK
GOVERNOR

ATTEST:

Chester J. Culver

CHESTER J. CULVER
SECRETARY OF STATE



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

***EXECUTIVE ORDER NUMBER THIRTY - FIVE**

WHEREAS, thousands of community non-profit organizations throughout the state provide invaluable services across a broad spectrum of needs; and

WHEREAS, Iowans have created these organizations through their ingenuity and commitment to providing much needed services to friends and neighbors; and

WHEREAS, this state cannot grow economically or maintain a high quality of life without vigorous and effective non-profit organizations; and

WHEREAS, it is essential that the people of Iowa understand, appreciate and support these community non-profit organizations, particularly in times of economic stress:


NOW, THEREFORE, I, Thomas J. Vilsack, by the power in vested in me by the Constitution and the laws of the State of Iowa, do hereby establish a *Governor's Non-profit Taskforce*. This *Taskforce* shall assess the present and potential role of Iowa's nonprofit sector in advancing the vitality of communities throughout the state. The *Taskforce* shall identify the barriers to achieving the nonprofit sector's full potential. The *Taskforce* shall also develop and submit a set of recommendations describing how non-profit organizations can be more effective in their operations, and how their services can be enhanced through collaborations with the business community and government entities. Lastly, the *Taskforce* shall recommend methods to increase citizen involvement in non-profit activities throughout the state.

The *Governor's Non-profit Taskforce* shall be comprised of Iowa citizens representing all types of voluntary non-profit organizations, the business sector, the public and representatives of the General Assembly.

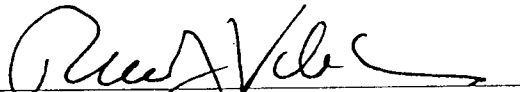
The *Governor's Non-profit Taskforce* shall submit a written report to this office outlining its findings, conclusions, and recommendations by December 31, 2004.

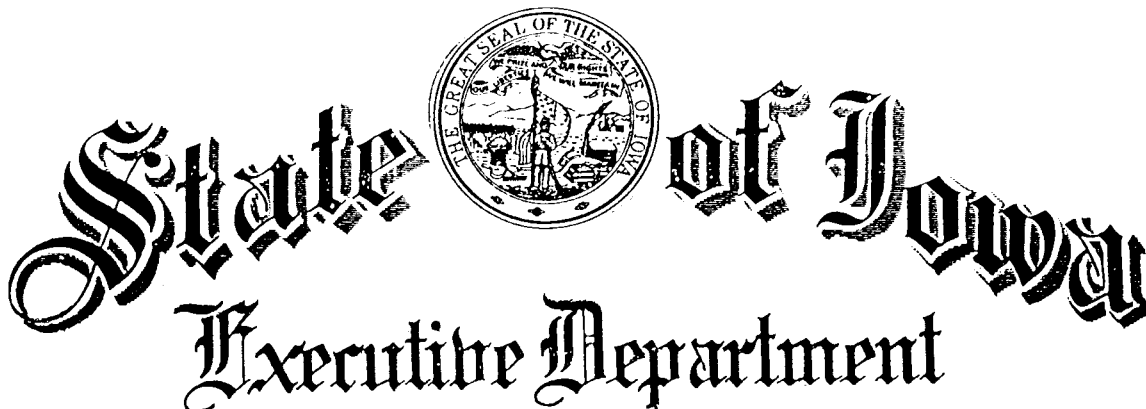


ATTEST:


CHESTER J. CULVER
SECRETARY OF STATE

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 30th day of January, in the year of our Lord two thousand four.


THOMAS J. VILSACK
GOVERNOR



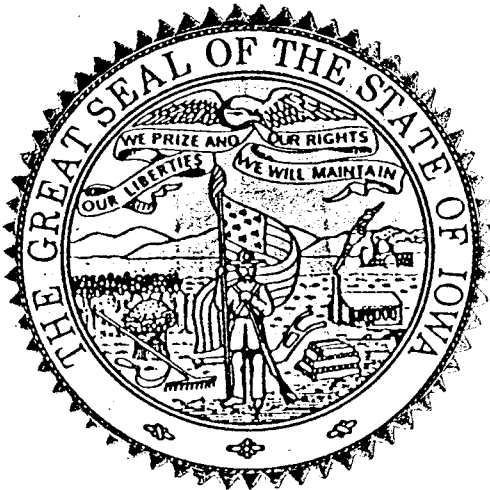
IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*** EXECUTIVE ORDER NUMBER THIRTY - SIX**

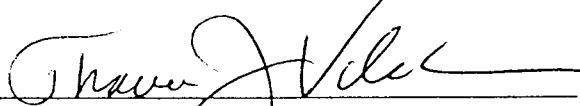
- WHEREAS,** on October 14, 2003, I issued Executive Order Number Thirty-One, whereby I ordered a 2.5 percent across-the-board reduction in appropriated allotments, pursuant to Iowa Code § 8.31; and
- WHEREAS,** Executive Order Number Thirty-One reduced appropriated allotments to state agencies by approximately \$82.5 million; and
- WHEREAS,** I based the size of the across-the-board allotment reduction on the findings of the Revenue Estimating Conference, which met on October 10, 2003 and reduced its projection of state revenue for fiscal year 2004 by \$142.2 million; and
- WHEREAS,** our State economy has shown signs of recovery during the last quarter of the fiscal year resulting in Iowa general fund revenue, received year-to-date, exceeding Revenue Estimating Conference estimates for fiscal year 2004; so the general fund ending balance for fiscal year 2004 is now expected to be \$33.6 million; and
- WHEREAS,** in light of the state's new expected ending balance, I have determined the 2.5 percent across-the-board reduction can itself be reduced without jeopardizing the state's ability to maintain a positive ending balance; and
- WHEREAS,** education remains the top priority for the State of Iowa and the key to transforming our economy to one that supports our Iowa values; and
- WHEREAS,** restoring ten percent of the original across-the-board reduction will provide an additional \$7.1 million to Iowa schools this year, providing a more secure future for local school districts and teachers; and
- WHEREAS,** restoring ten percent of the original across-the-board reduction will enable us to provide greater opportunities to Iowa students in a fiscally responsible way and maintain other vital services for Iowans, and

WHEREAS, any additional revenue that is received exceeding the Revenue Estimating conference estimates for fiscal year 2004 is needed to fund future commitments to education and health, and to make fiscal year 2005 school foundation aid payments on time.

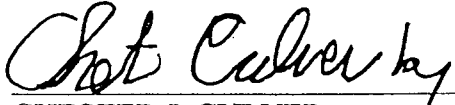
NOW, THEREFORE, I Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the Constitution and laws of the State of Iowa, do hereby order and direct a uniform modification of allotment requests, pursuant to Iowa Code § 8.31, to rescind ten percent of the across the board reduction ordered pursuant to Executive Order Thirty-One for a net across the board reduction of 2.25 percent for fiscal year 2004, which shall be directed to all state departments and establishments with the exception of departments designated as charter agencies that are exempt from the across the board cuts because they are already taking action to achieve savings or increase revenue to the general fund, pursuant to Iowa Code 7J.1(3)(d). Actions taken by the Department of Management and all state departments and establishments described above, to implement this order, shall commence on June 25, 2004.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 25th day of June, in the year of our Lord two thousand four.


 THOMAS J. VILSACK
 GOVERNOR

ATTEST:


 CHESTER J. CULVER
 SECRETARY OF STATE


 Steve Mardock, Deputy

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of Administrative Services
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