



# IOWA ADMINISTRATIVE BULLETIN

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Pages 1441 to 1508

## CONTENTS IN THIS ISSUE

Pages 1450 to 1505 include **ARC 2457B** to **ARC 2482B**

### AGRICULTURAL DEVELOPMENT AUTHORITY[25]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"  
Filed, IADA loan participation program—increase  
in net worth limitations; Iowa agricultural  
loan assistance program, 4.3(7), 4.6(1),  
4.7; rescind ch 6 **ARC 2471B** ..... 1486

### AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice, Registration of exhibitions involving  
poultry, 60.4 **ARC 2458B** ..... 1450  
Filed Emergency, Registration of exhibitions  
involving poultry, 60.4 **ARC 2479B** ..... 1482  
Filed Emergency After Notice, Animal  
exhibitions—update of requirements,  
64.34, 64.35 **ARC 2480B** ..... 1482  
Filed, Chronic wasting disease—definitions,  
herd status, 64.104, 64.106(3), 64.113(2),  
64.115 to 64.117, 64.119, 64.120  
**ARC 2457B** ..... 1486

### ALL AGENCIES

Schedule for rule making ..... 1444  
Publication procedures ..... 1445  
Administrative rules on CD-ROM ..... 1445  
Agency identification numbers ..... 1448

### CITATION OF ADMINISTRATIVE RULES ... 1443

### DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"  
Notice, Temporary permit, 13.3, 15.1(16)  
**ARC 2473B** ..... 1450  
Notice, Expanded functions for dental  
assistants, 15.1(14), 15.2(7), 20.3,  
20.4, 20.6(3), 20.11, 20.16, 33.1  
**ARC 2474B** ..... 1451  
Filed, Removal of restorations,  
rescind 27.7(8) **ARC 2472B** ..... 1488

### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice, Update and clarification of rules,  
amend chs 1, 21, 50, 163; rescind  
chs 38, 42, 43, 45, 52, 101, 131  
**ARC 2461B** ..... 1452

### EMPLOYMENT APPEAL BOARD[486]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"  
Filed, Clarification of existing rules;  
update of mailing address, 1.1(2),  
1.2(3), 3.1(2), 4.7(7), 4.8(1), 4.70(3),  
5.1(1), 11.1(1) **ARC 2475B** ..... 1489

### ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"  
Notice, Exemptions—equipment used  
for nonproduction activities or that  
vent indoors and specific manually  
operated equipment, 22.1(2)"u" and "v"  
**ARC 2467B** ..... 1456  
Filed, Ambient air quality standards,  
28.1 **ARC 2465B** ..... 1489  
Filed, Iowa ambient air sampling manual,  
28.2 **ARC 2468B** ..... 1490  
Filed, Prohibition of construction—  
confinement feeding operations on the  
flood plains of major water sources,  
amendments to chs 65, 70 to 72, 75  
**ARC 2466B** ..... 1491

### ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice, Iowa ethics and campaign  
disclosure board, adopt ch 1;  
rescind ch 12 **ARC 2462B** ..... 1457  
Notice, Personal financial disclosure;  
contested case procedures, rescind  
chs 7, 11; adopt chs 7, 11 **ARC 2478B** ..... 1459  
Filed, Campaign disclosure procedures,  
ch 4 **ARC 2463B** ..... 1495

## PREFACE

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

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

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

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

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**INSPECTIONS AND APPEALS DEPARTMENT[481]**  
 Filed, Indigent defense claims processing,  
 ch 9 **ARC 2476B** ..... 1496

**LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]**  
 Professional Licensing and Regulation Division[193]  
 COMMERCE DEPARTMENT[181]"umbrella"  
 Notice, Rescind chs 1 to 8; adopt chs 1 to 4  
**ARC 2477B** ..... 1467

**PUBLIC HEARINGS**  
 Summarized list ..... 1446

**PUBLIC SAFETY DEPARTMENT[661]**  
 Filed Emergency, Procedural requirements—  
 certification and operation of evidentiary  
 breath testing equipment, 7.2  
**ARC 2481B** ..... 1482  
 Filed Emergency, Criminal justice  
 information, 8.201(7), 8.202, 8.203  
**ARC 2482B** ..... 1483

**TRANSPORTATION DEPARTMENT[761]**  
 Notice, Update and clarification of rules;  
 intermodal projects, amendments to  
 chs 201, 800, 802, 810, 811, 820, 821,  
 830, 831 **ARC 2464B** ..... 1474

**TREASURER OF STATE[781]**  
 Filed, Deposit and security of public  
 funds in banks, ch 13 **ARC 2470B** ..... 1496

**UTILITIES DIVISION[199]**  
 COMMERCE DEPARTMENT[181]"umbrella"  
 Notice, Alternate energy purchase  
 programs, 15.1, 15.17, 20.9(2)"b"(9)  
**ARC 2459B** ..... 1479  
 Filed, Electric franchise and related rules,  
 11.1, 11.2, 11.3(2), 11.5, 11.6, 11.8,  
 25.1, 25.2, 25.5 **ARC 2460B** ..... 1501

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**  
 Filed, Employer's contributions and  
 charges, amendments to ch 23  
**ARC 2469B** ..... 1505

**CITATION of Administrative Rules**

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

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

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

## Schedule for Rule Making 2003

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
***Nov. 19***	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
***Dec. 17***	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
25	Friday, May 23, 2003	June 11, 2003
26	Friday, June 6, 2003	June 25, 2003
1	Friday, June 20, 2003	July 9, 2003

**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

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

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2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

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

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

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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
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#### DENTAL EXAMINERS BOARD[650]

Temporary permit and associated fee, 13.3, 15.1(16) IAB 5/14/03 <b>ARC 2473B</b>	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	June 3, 2003 10 a.m.
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Expanded functions for dental assistants, 15.1(14), 15.2(7), 20.3, 20.4, 20.6(3), 20.11, 20.16, 33.1 IAB 5/14/03 <b>ARC 2474B</b>	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	June 3, 2003 10 a.m.
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#### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Department organization, amend chs 1, 21, 50, 163; rescind chs 38, 42, 43, 45, 52, 101, 131 IAB 5/14/03 <b>ARC 2461B</b>	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	June 3, 2003 2 p.m.
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#### ENERGY AND GEOLOGICAL RESOURCES DIVISION[565]

Programs designed to promote energy efficiency and renewable energy applications, rescind chs 4, 7, 8, 16, 17, 19; 18.1 to 18.5 IAB 4/30/03 <b>ARC 2453B</b>	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	May 22, 2003 9 to 11 a.m.
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#### ENVIRONMENTAL PROTECTION COMMISSION[567]

Controlling pollution—exemptions for specific types of equipment, 22.1(2) IAB 5/14/03 <b>ARC 2467B</b>	Conference Rooms 2 and 3 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	June 13, 2003 1 p.m.
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#### LOTTERY DIVISION[705]

Background checks; purchasing, 1.30, 4.1, 4.2, 4.12, 4.16 IAB 4/30/03 <b>ARC 2450B</b>	2015 Grand Avenue Des Moines, Iowa	May 22, 2003 9 a.m. (If requested)
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Pull-tab prizes, 11.6 IAB 4/30/03 <b>ARC 2449B</b>	2015 Grand Avenue Des Moines, Iowa	May 22, 2003 10 a.m. (If requested)
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#### MEDICAL EXAMINERS BOARD[653]

Convenience fee for on-line renewal, 8.4(1) IAB 4/30/03 <b>ARC 2428B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	May 20, 2003 3 p.m.
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**REAL ESTATE COMMISSION[193E]**

Trust accounts and closings, 13.1 IAB 4/30/03 <b>ARC 2429B</b> (See also <b>ARC 2456B</b> )	Conference Room, Second Floor 1920 SE Hulsizer Ankeny, Iowa	May 20, 2003 10 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Rules review pursuant to Executive Order Number 8, amend chs 201, 800, 802, 810, 811, 820, 821, 830, 831 IAB 5/14/03 <b>ARC 2464B</b>	First Floor South Conference Room Administration Bldg. 800 Lincoln Way Ames, Iowa	June 5, 2003 10 a.m. (If requested)
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**UTILITIES DIVISION[199]**

Customer service rules revisions, 6.2, 6.3(3), 6.5(2), 19.4, 20.4 IAB 4/2/03 <b>ARC 2378B</b>	Hearing Room 350 Maple St. Des Moines, Iowa	May 28, 2003 10 a.m.
Alternate energy production, amendments to ch 15; 20.9(2) IAB 3/5/03 <b>ARC 2329B</b>	Hearing Room 350 Maple St. Des Moines, Iowa	May 16, 2003 10 a.m.
Alternate energy purchase programs, 15.1, 15.17, 20.9(2) IAB 5/14/03 <b>ARC 2459B</b>	Hearing Room 350 Maple St. Des Moines, Iowa	June 27, 2003 10 a.m.

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

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

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

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

The following list will be updated as changes occur:

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Agricultural Development Authority[25]

Soil Conservation Division[27]

**ATTORNEY GENERAL[61]**

**AUDITOR OF STATE[81]**

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CAPITAL INVESTMENT BOARD, IOWA[123]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

**COMMERCE DEPARTMENT[181]**

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

**CORRECTIONS DEPARTMENT[201]**

Parole Board[205]

**CULTURAL AFFAIRS DEPARTMENT[221]**

Arts Division[222]

Historical Division[223]

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

City Development Board[263]

Iowa Finance Authority[265]

**EDUCATION DEPARTMENT[281]**

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]

**ELDER AFFAIRS DEPARTMENT[321]**

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

**EXECUTIVE COUNCIL[361]**

FAIR BOARD[371]

**GENERAL SERVICES DEPARTMENT[401]**

HUMAN INVESTMENT COUNCIL[417]

**HUMAN RIGHTS DEPARTMENT[421]**

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

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

Status of Women Division[435]

**HUMAN SERVICES DEPARTMENT[441]**

**INFORMATION TECHNOLOGY DEPARTMENT[471]**

INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Foster Care Review Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board for[575]  
PERSONNEL DEPARTMENT[581]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
    BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
    Emergency Management Division[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
    Substance Abuse Commission[643]  
    Professional Licensure Division[645]  
    Dental Examiners Board[650]  
    Medical Examiners Board[653]  
    Nursing Board[655]  
    Pharmacy Examiners Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
    Archaeologist[685]  
REVENUE AND FINANCE DEPARTMENT[701]  
    Lottery Division[705]  
SECRETARY OF STATE[721]  
SEED CAPITAL CORPORATION, IOWA[727]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
    Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS COMMISSION[801]  
VETERINARY MEDICINE BOARD[811]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
    Labor Services Division[875]  
    Workers' Compensation Division[876]  
    Workforce Development Board and  
    Workforce Development Center Administration Division[877]

**ARC 2458B****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) and 163.1, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 60, “Poultry,” Iowa Administrative Code.

The purpose of this amendment is to update animal exhibition requirements to be used at Iowa county fairs, 4-H fairs or exhibitions, or similar exhibitions. The amendment restricts the sale of poultry at unregulated facilities and gatherings and requires that exhibitions involving poultry be registered with and approved by the state veterinarian at least 30 days prior to the exhibition.

Any interested persons may make written comments or suggestions on this proposed amendment by 4:30 p.m. on June 3, 2003. Such written materials should be directed to Dr. John Schiltz, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-4282. E-mail comments may be sent to [John.Schiltz@idals.state.ia.us](mailto:John.Schiltz@idals.state.ia.us).

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

Pursuant to 2003 Iowa Acts, House File 636, the Department finds that the fiscal impact of this amendment does not meet the threshold requirements.

This amendment is intended to implement Iowa Code chapter 163.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 2479B**. The content of that submission is incorporated by reference.

**ARC 2473B****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 13, “Special Licenses,” and Chapter 15, “Fees,” Iowa Administrative Code.

These amendments allow the Board to issue a temporary permit authorizing the permit holder to practice dentistry or dental hygiene on a short-term basis in Iowa at a specific location or locations to fulfill an urgent need or to serve an

educational purpose. The amendments specify the general requirements for a permit, eligibility requirements, and grounds for permit denial. The amendments also establish an application fee of \$100 for a temporary permit.

These amendments will be subject to waiver at the sole discretion of the Board in accordance with the rules adopted governing the issuance of waivers or variances. However, the application fee is not subject to waiver pursuant to 650—15.9(17A,147,153,272C).

Any interested person may make written comments or suggestions on the proposed amendments on or before June 3, 2003. 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](mailto:jhart@bon.state.ia.us).

Also, there will be a public hearing on June 3, 2003, at 10 a.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 April 16, 2003, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code section 153.19.

The following amendments are proposed.

ITEM 1. Adopt **new** rule 650—13.3(153) as follows:

**650—13.3(153) Temporary permit.** The board may issue a temporary permit authorizing the permit holder to practice dentistry or dental hygiene on a short-term basis in Iowa at a specific location or locations to fulfill an urgent need or to serve an educational purpose. A temporary permit may be granted on a case-by-case basis.

**13.3(1) General provisions.**

a. The temporary permit is intended for dentists and dental hygienists with short-term assignments in Iowa that fulfill an urgent need or serve an educational purpose and clearly have no long-term implications for licensure. If the need changes or if the permit holder wishes to continue in short-term assignments in other Iowa locations, the permit holder is expected to seek permanent licensure. A temporary permit is not meant as a way to practice before a permanent license is granted or as a means to practice because the applicant does not fulfill the requirements for permanent licensure.

b. The board may issue a temporary permit authorizing the permit holder to practice at a specific location or locations in Iowa for a specified period up to three months.

c. Following expiration of the permit, a permit holder shall be required to obtain a new temporary permit or a permanent license in order to practice dentistry or dental hygiene in Iowa.

d. A person may be issued not more than three temporary permits.

e. The board may cancel a temporary permit if the permit holder has practiced outside the scope of the permit or for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code chapters 147, 153, and 272C and 650—30.4(147,153,272C). When cancellation of a permit is proposed, the board shall promptly notify the permit holder by sending a statement of charges and notice of hearing by certified mail to the last-known address of the permit holder. The provisions of 650—Chapter 51 shall govern

## DENTAL EXAMINERS BOARD[650](cont'd)

a contested case proceeding following notice of intent to cancel the permit.

f. A temporary permit shall be displayed in the primary location of practice.

g. A temporary permit holder shall notify the board in writing of any change in name or mailing address within seven days of the change. A certified copy of a marriage license or a certified copy of court documents is required for proof of a name change.

**13.3(2)** Eligibility for a temporary permit. An application for a temporary permit shall be filed on the form provided by the board and must be completely answered, including required credentials and documents. To be eligible for a temporary permit, an applicant shall provide all of the following:

a. Satisfactory evidence of graduation with a DDS or DMD degree for applicants seeking a temporary permit to practice dentistry or satisfactory evidence of graduation from a dental hygiene school for applicants seeking a temporary permit to practice dental hygiene.

b. The nonrefundable application fee as specified in 650—Chapter 15.

c. Evidence that the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.

d. A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges against the applicant.

e. Evidence that the applicant holds an active, permanent license to practice in at least one United States jurisdiction and that no formal disciplinary action is pending or has ever been taken.

f. Certification from the appropriate examining board from each jurisdiction in which the applicant has ever held a license. At least one license must be issued on the basis of clinical examination.

g. A request for the temporary permit from those individuals or organizations seeking the applicant's services that establishes, to the board's satisfaction, the justification for the temporary permit, the dates the applicant's services are needed, and the location or locations where those services will be delivered.

**13.3(3)** Dental hygiene committee review. The dental hygiene committee shall make recommendations to the board regarding the issuance or denial of any temporary permit to practice dental hygiene. The board's review of the dental hygiene committee's recommendation is subject to 650—Chapter 1.

**13.3(4)** Denial of temporary permit. The board may deny a temporary permit in accordance with 650—11.9(147,153) or, at the sole discretion of the board, for failure to justify the need for a temporary permit. The procedure for appealing the denial of a permit is set forth in 650—11.10(147).

This rule is intended to implement Iowa Code section 153.19.

ITEM 2. Adopt **new** subrule 15.1(16) as follows:

**15.1(16)** The fee for an application for a temporary permit is \$100.

**ARC 2474B****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 15, "Fees," Chapter 20, "Dental Assistants," and Chapter 33, "Child Support Noncompliance," Iowa Administrative Code.

The proposed amendments further define expanded functions for dental assistants and allow a dentist to delegate an expanded function to a dental assistant if the assistant has completed a Board-approved course of training. Nine expanded function duties are proposed; the existing rules specify only six expanded functions.

Items 1, 3, and 4 of the proposed amendments eliminate the need to submit an application and pay an application fee for issuance of an expanded function registration. The supervising dentist and registered dental assistant shall be responsible for maintaining in the office of practice documentation of training.

Item 6 establishes standards for expanded function course approval. An expanded function course shall be eligible for Board approval if the Board determines that the course is offered through a program accredited by the Commission on Dental Accreditation of the American Dental Association or another program prior-approved by the Board. Dentists who would like to train their own assistants in expanded functions may develop and submit a training program for Board approval. To be eligible for approval, the course must consist of the components identified in rule 20.16(153). In all cases, clinical training for expanded functions may take place under the supervising dentist's personal supervision while the assistant is concurrently enrolled in the training program.

Expanded function training and delegation are voluntary. Any dentist who does not want to delegate expanded functions to a dental assistant may choose not to participate. Dental assistant participation in the training and performance of expanded functions is also voluntary. These rules will not affect the existing practice of dentistry or dental assisting if practitioners choose not to participate. The list of duties proposed for expanded functions does not restrict existing practice because all of the expanded function duties have traditionally been outside the scope of practice for dental assistants, either by rule or declaratory order.

These amendments will be subject to waiver at the sole discretion of the Board in accordance with the rules adopted governing the issuance of waivers or variances.

Any interested person may make written comments or suggestions on the proposed amendments on or before June 3, 2003. 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](mailto:jhart@bon.state.ia.us).

Also, there will be a public hearing on June 3, 2003, at 10 a.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

## DENTAL EXAMINERS BOARD[650](cont'd)

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 April 16, 2003, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapter 153.

The following amendments are proposed.

ITEM 1. Rescind and reserve subrules **15.1(14)** and **15.2(7)**.

ITEM 2. Amend rule 650—20.3(153,78GA,ch1002) as follows:

**650—20.3(153,78GA,ch1002) Scope of practice.**

**20.3(1)** In all instances, a dentist assumes responsibility for determining, on the basis of diagnosis, the specific treatment patients will receive and which aspects of treatment may be delegated to qualified personnel as authorized in these rules.

**20.3(2)** A lawfully licensed dentist may delegate to a dental assistant those procedures for which the dental assistant has received training. This delegation shall be based on the best interests of the patient. The dentist shall exercise supervision and shall be fully responsible for all acts performed by a dental assistant. A dentist may not delegate to a dental assistant any of the following:

- a. Diagnosis, examination, treatment planning, or prescription, including prescription for drugs and medicaments or authorization for restorative, prosthodontic or orthodontic appliances.
- b. Surgical procedures on hard and soft tissues within the oral cavity and any other intraoral procedure that contributes to or results in an irreversible alteration to the oral anatomy.
- c. Administration of local anesthesia.
- d. Placement of sealants.
- e. Removal of any plaque, stain, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish, or removal of any calculus.
- f. Dental radiography, unless the assistant is qualified pursuant to 650—Chapter 22.
- g. Those procedures that require the professional judgment and skill of a dentist.

**20.3(3)** *A dentist may delegate an expanded function duty to a registered dental assistant if the assistant has completed board-approved training pursuant to rule 20.16(153) in the specific expanded function that will be delegated and the dentist provides direct supervision.*

**20.3(4)** *A dentist may delegate any of the following expanded functions to a dental assistant who meets the requirements of this rule:*

- a. *Taking occlusal registrations;*
- b. *Placement and removal of gingival retraction;*
- c. *Taking final impressions;*
- d. *Fabrication and removal of provisional restorations;*
- e. *Applying cavity liners and bases, desensitizing agents, and bonding systems;*
- f. *Placement and removal of dry socket medication;*
- g. *Placement of periodontal dressings;*
- h. *Testing pulp vitality; and*
- i. *Monitoring of nitrous oxide inhalation analgesia.*

**20.3(3 5)** A dental assistant may perform duties consistent with these rules under the supervision of a licensed dentist. The specific duties dental assistants may perform are based upon:

- a. The education of the dental assistant.
- b. The experience of the dental assistant.

ITEM 3. Amend rule 650—20.4(153,78GA,ch1002), introductory paragraph, as follows:

**650—20.4(153,78GA,ch1002) Categories of dental assistants.** There are ~~three~~ *two* categories of dental assistants. Both the supervising dentist and dental assistant are responsible for maintaining documentation of training. Such documentation must be maintained in the office of practice and shall be provided to the board upon request.

ITEM 4. Rescind subrules **20.4(3)** and **20.6(3)**.

ITEM 5. Amend rule 650—20.11(153,78GA,ch1002), introductory paragraph, as follows:

**650—20.11(153,78GA,ch1002) Renewal of registration.** A certificate of registration as a registered dental assistant ~~or expanded function dental assistant~~ must be renewed biennially.

ITEM 6. Adopt new rule 650—20.16(153) as follows:

**650—20.16(153) Expanded function course approval.** An expanded function course shall be eligible for board approval if the board determines that the course is offered through a program accredited by the Commission on Dental Accreditation of the American Dental Association or another program prior-approved by the board and that it consists of the following:

1. An initial assessment to determine the base entry level of all participants in the program. At a minimum, participants must be currently certified by the Dental Assisting National Board or must have two years of clinical dental assisting experience;
2. A didactic component;
3. A laboratory component, if necessary;
4. A clinical component, which may be obtained under the personal supervision of the participant's supervising dentist while the participant is concurrently enrolled in the training program; and
5. A postcourse competency assessment at the conclusion of the training program.

ITEM 7. Amend rule **650—33.1(252J,598)**, definition of "registration," as follows:

"Registration" means registration to practice as a dental assistant trainee, *or* registered dental assistant, ~~or expanded function dental assistant.~~

## ARC 2461B

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 1, "Organization," and Chapter 21, "Division Responsibilities"; rescind Chapter 38, "Iowa Intergovernmental Review

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

System,” Chapter 42, “Rural Resource Coordination Programs for Fire Services,” Chapter 43, “Main Street Linked Investments Loan Program,” and Chapter 45, “Housing Assessment and Action Planning Program”; amend Chapter 50, “Division Responsibilities”; rescind Chapter 52, “Self-Employment Business Assistance,” Chapter 101, “Division Responsibilities,” and Chapter 131, “Division Responsibilities”; and amend Chapter 163, “Division Responsibilities,” Iowa Administrative Code.

Item 1 amends Chapter 1 to update the description of the Department’s organizational structure and its mission statement.

Items 2, 4 and 10 update the descriptions of the Department’s divisions.

Items 3, 5, 7 and 9 propose the rescission of seven chapters. Explanations for rescission of five of the chapters are as follows:

Chapter 38, Iowa Intergovernmental Review System. Federal Executive Order 12372 allows each state to establish a system to review applications for federal funding of projects within the state. The purpose of the review process is to avoid duplication of or conflict with existing programs. Iowa’s process is designed so that the State Clearinghouse reviews applications from state agencies and the Area-wide Clearinghouses review applications from other entities for projects in each of the clearinghouses’ regions. It is anticipated that the responsibilities for this review system will be transferred to another agency on July 1, 2003, if Senate File 438 is enacted.

Chapter 42, Rural Resource Coordination Programs for Fire Services. No additional funds were allocated in FY02 or FY03 for this program. The Department of Public Health, Bureau of EMS, has a program which can fund the types of activities previously funded through this IDED program.

Chapter 43, Main Street Linked Investments Loan Program. This program was repealed by 1996 Iowa Acts, chapter 1058, sections 10 to 12.

Chapter 45, Housing Assessment and Action Planning Program. This chapter should have been rescinded when the Community Development Fund (CDF) rules, 261—Chapter 41, were adopted several years ago. These activities can be funded through the CDF.

Chapter 52, Self-Employment Business Assistance. Case management services are available through the Community Economic Betterment Account (CEBA) program so separate administrative rules are no longer necessary.

Chapters 101 and 131 are proposed to be rescinded, and applicable portions of those rules are being incorporated in other chapters amended herein.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on June 3, 2003. Interested persons may submit written or oral comments by contacting Melanie Johnson, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)242-4862; E-mail address: [melanie.johnson@ided.state.ia.us](mailto:melanie.johnson@ided.state.ia.us).

A public hearing to receive comments about the proposed amendments will be held on June 3, 2003, at 2 p.m. at the above address in the Northwest Conference Room on the second floor.

These amendments are intended to implement Iowa Code section 17A.3 and Executive Order Number 8.

The following amendments are proposed.

ITEM 1. Amend **261—Chapter 1** as follows:

**CHAPTER 1  
ORGANIZATION**

**261—1.1(15) Mission.** *The Iowa department of economic development was created by 1986 Iowa Acts, chapter 1245, effective July 1, 1986 established in 1986 pursuant to Iowa Code chapter 15. The authority delegated to the department had previously been delegated to the Iowa development commission and the office for planning and programming. The mission of the Iowa department of economic development is to enhance the economic development of the state and provide for job creation and increased prosperity and opportunities for the citizens of the state by providing direct financial and technical assistance and training to businesses and individuals and by coordinating other state, local and federal economic development programs continually improve the economic well-being of all Iowans by working in focused partnerships with businesses, entrepreneurs, communities and educational entities. The department’s primary responsibilities are in the areas of finance, marketing, local government and service coordination, exporting, tourism, job training and entrepreneurial assistance, and small business.*

**261—1.2(15) Definitions.** As used in these rules, unless the context otherwise requires:

“Board” or “IDED board” means the Iowa economic development board created by Iowa Code chapter 15.

“Department” or “IDED” means the Iowa department of economic development authorized by Iowa Code chapter 15.

“Director” means the director of the Iowa department of economic development or the director’s designee.

**261—1.3(15) Iowa Department department of economic development board.**

**1.3(1) Composition.** The board consists of 11 voting members appointed by the governor and 7 ex officio nonvoting members. The ex officio nonvoting members are 4 legislative members; ; 1 president, or the president’s designee, of the University of Northern Iowa, University of Iowa, or Iowa State University of Science and Technology designated by the state board of regents on a rotating basis, and ; 1 president, or the president’s designee, of a private college or university appointed by the Iowa association of independent colleges and universities; ; and 1 superintendent, or the superintendent’s designee, of a merged area school, appointed by the Iowa association of community college presidents.

**1.3(2) Meetings.** The board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. The chairperson and the vice chairperson shall not be from the same political party. The board shall meet at the call of the chairperson or when any six members of the board file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

**1.3(3) Duties.** The board shall perform the duties as outlined in Iowa Code section 15.104, and other functions as necessary and proper to carry out its responsibilities.

**261—1.4(15) Department structure.**

**1.4(1) General.** The department’s organizational structure consists of the director, deputy director, and ~~five~~ *three* administrative divisions.

**1.4(2) Director.** The Iowa department of economic development is administered by a director appointed by the governor, who serves at the pleasure of the governor, and is subject

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

to confirmation by the senate. The director is the chief administrative officer of the department and in that capacity administers the programs and services of the department in compliance with applicable federal and state laws and regulations. The duties of the director *are as authorized in Iowa Code section 15.106 and* include preparing a budget subject to board approval, establishing an internal administrative structure and employing personnel, reviewing and submitting to the board legislative proposals, recommending rules to the board, reporting to the board on grants and contracts awarded by the department, and other actions to administer and direct the programs of the department.

The administrators of the ~~five~~ *three* divisions and the deputy director report to the director.

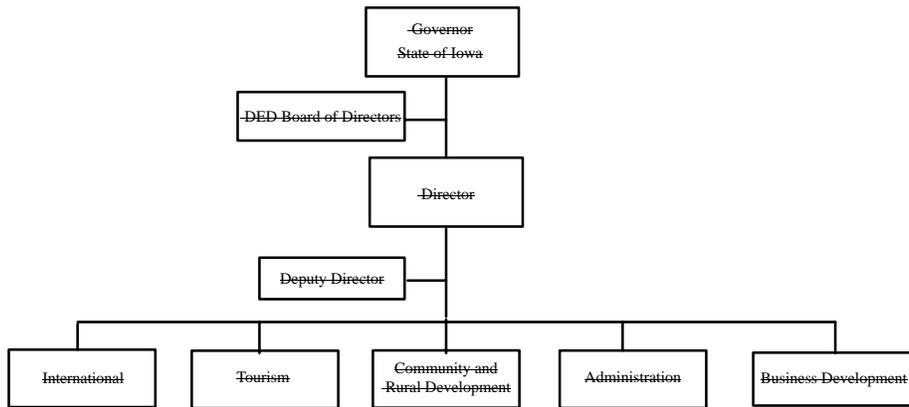
**1.4(3)** Deputy director. The deputy director, appointed by the director, directs and administers the department in the di-

rector's absence. ~~The deputy director also serves as the division administrator for the division of administration.~~

**1.4(4)** Divisions. The director has established the following administrative divisions within the department in order to most efficiently and effectively carry out the department's responsibilities:

1. ~~Division of administration~~ *Administration division;*
2. ~~Division of business~~ *Business development division;* and
3. ~~Division for community and rural~~ *Community development; division.*
4. ~~Division of tourism;~~ and
5. ~~International division.~~

**1.4(5)** Table of organization.



~~**1.4(6)** 1.4(5)~~ Attachment for administrative purposes; board support. ~~The following entities are Pursuant to Iowa Code section 7E.7(1), the Iowa finance authority is attached to the Iowa department of economic development for organizational and administrative purposes only. Iowa finance authority and the city development board. These organizations possess The Iowa finance authority has rule-making authority independent of the Iowa department of economic development, and their its administrative rules are located elsewhere under agency identification number 265 in the Iowa Administrative Code. The Iowa department of economic development provides office space and staff support to the city development board pursuant to Iowa Code sections 368.9 and 15.108(3)“a”(2). The department provides administrative support to the vision Iowa board pursuant to Iowa code section 15F.104.~~

**261—1.5(15) Information.** The general public may obtain information about the Iowa department of economic development by contacting the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4700; or through the department's Web site at [www.ided.state.ia.us](http://www.ided.state.ia.us).

These rules are intended to implement Iowa Code chapter 15 and section 17A.3.

ITEM 2. Amend the caption for Part III and amend **261—Chapter 21** as follows:

PART III  
DIVISION OF COMMUNITY AND RURAL  
DEVELOPMENT *DIVISION*  
  
CHAPTER 21  
DIVISION RESPONSIBILITIES

**261—21.1(15) Purpose Mission.** ~~The purpose of the division of community and rural development is to provide technical assistance, training and financial resources to assist communities in responding to change, capitalizing on opportunities and building organizational/physical infrastructure relating to community and economic development. The mission of the community development division is to continually develop the economic well-being and quality of life of Iowans by working with local governments, community organizations, businesses and others to build the organizational, entrepreneurial and physical capacity needed for community and economic improvement.~~

**261—21.2(15) Structure Division responsibilities.** ~~The division consists of two bureaus:~~

~~**21.2(1)** Bureau of community facilities and services. The bureau of community facilities and services is responsible for the following federal programs: Community Development Block Grant Nonentitlement Program (CDBG); Home Investment Partnership Program (HOME); the housing component of the enterprise zone program; and Emergency Shelter Grants Program (ESGP) as well as the state-funded Homeless Shelter Operating Grants (HSOG) and the Local Housing Assistance Program (LHAP). The bureau adminis-~~

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

ters available federal funds for housing through the housing fund and is also responsible for developing a consolidated state plan for infrastructure and housing.

**21.2(2) Bureau of community planning and development.** The bureau assists communities and businesses through training, grants and technical assistance to address industrial, commercial, work force and other community development issues. The programs include community outreach, the Iowa community betterment program, the manufacturing extension partnership and main street. The city development board and the Iowa rural development council are also staffed by this bureau.

This bureau also provides direct technical and financial assistance for comprehensive community and rural development, including but not limited to: local capacity building for business development, leadership and volunteer development, and growth management activities, including community planning and technical assistance for infrastructure investments.

*The division's primary responsibilities are tourism, investment management, community assistance, and infrastructure (project initiative and technical assistance).*

**21.2(1) Tourism office.** *The tourism office assists in diversifying Iowa's economy by supporting and promoting the Iowa hospitality industry and by enhancing the image of Iowa as a place to travel and live. To carry out its purpose, the office provides the following services and functions: advertising, fulfillments, group travel, Iowa film office, promotions and partnerships, publications, public relations and communications, tourism regions, welcome centers, and research.*

**21.2(2) Investment management.** *Investment management staff provide compliance and monitoring activities for programs including, but not limited to, the community development block grant (CDBG) program, community development fund (CDF) program, emergency shelter grants program (ESGP), homeless shelter operation grants (HSOG) program, HOME program, and revitalization assistance for community improvement (RACI).*

**21.2(3) Community assistance.** *Activities in the area of community assistance include, but are not limited to, staff support to the city development board; administration of the CDF program, community volunteerism and leadership, and downtown resource center—main street Iowa program; community assistance services provided by IDED consultants; and staff support to the rural development council.*

**21.2(4) Infrastructure (project initiative and technical assistance).** *Functions performed in this category include, but are not limited to, administration of the following programs: CDBG, community facilities and services, ESGP, HSOG, and HOME.*

These rules are intended to implement Iowa Code chapters chapter 15 and section 17A.3.

**ITEM 3. Rescind 261—Chapters 38, 42, 43 and 45.**

**ITEM 4.** Amend the caption for Part IV and amend **261—Chapter 50** as follows:

PART IV

DIVISION OF BUSINESS DEVELOPMENT DIVISION

CHAPTER 50

DIVISION RESPONSIBILITIES

**261—50.1(15) Mission.** The division's mission is to enhance the state's economy by providing site location and expansion assistance, financial assistance, and entrepreneurial

assistance to businesses that will lead to the diversification of the economy and the creation of quality jobs for Iowans *continually strengthen Iowa's presence in the domestic and international marketplace, promote Iowa goods and services worldwide, attract and retain skilled workers, attract and retain business investment and facilitate the growth of Iowa's entrepreneurial and existing businesses to create new opportunities and wealth for Iowans.*

**261—50.2(15) Structure Division responsibilities.** The division is divided into three segments: the marketing and business expansion bureau, bureau of business finance, and the small business resource office.

**50.2(1) Marketing and business expansion bureau.** The bureau has two sections: marketing and promotion and business expansion.

a.—The marketing and promotion section is responsible for promoting Iowa as a location for business site expansion. The section is responsible for implementation of the bureau's five-year marketing plan which includes marketing strategies for advertising, public relations, direct mail, trade shows, conference/seminars, and other programs aimed at recruiting new businesses and encouraging existing businesses to expand in the state.

b.—The business expansion section works one-on-one with business expansion clients to identify sites, buildings and communities which meet the client's location or expansion criteria. Once communities have been identified, IDED's site location managers work with the communities to prepare customized proposals for the client.

**50.2(2) Bureau of business finance.** The bureau provides financial assistance to businesses expanding in the state of Iowa, as well as to new business start-ups and business relocations to the state. The bureau administers the community economic betterment account (CEBA) which provides financial assistance to businesses and industries that require assistance in order to create new job opportunities or retain existing jobs which are in jeopardy. Other financial assistance programs administered by the bureau include the economic development set-aside (EDSA) program which is designed to encourage economic growth by providing financial assistance to businesses in communities of less than 50,000 in population and is aimed at providing employment opportunities for individuals from low- and moderate-income households; the value-added agricultural products and processes financial assistance program (VAAPFAP); the physical infrastructure assistance program (PIAP); the entrepreneurs with disabilities program (EWD); the entrepreneurial ventures assistance program (EVA); the self-employment loan program (SELP) which is designed to encourage self-employment for disadvantaged individuals; and the targeted small business financial assistance program (TSBFAP) which fosters the entrepreneurial spirit of women and minority owners by assisting with start-ups or expansions.

**50.2(3) Small business resource office (SBRO).** The SBRO's mission is to facilitate the growth of emerging small businesses in the state by providing entrepreneurial assistance, networking opportunities, and education programs. The SBRO is also responsible for identifying federal procurement opportunities for Iowa businesses. The SBRO's activities focus on the following three issues of concern to small business: procurement and marketing development, regulatory assistance, and entrepreneurial services. The SBRO is organized as follows:

a.—Procurement and marketing development team. The procurement and marketing development team includes the

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

Iowa procurement outreach center and the targeted small business marketing programs.

~~b. Regulatory assistance team. The regulatory assistance team focuses on providing key business, licensing and regulatory information for the management of small businesses.~~

~~c. Entrepreneurial services team. The entrepreneurial services team includes small business case management and the operation of the venture network of Iowa.~~

*The division's primary responsibilities are marketing, business assistance, operation of the office of science and technology, and business finance.*

**50.2(1) Marketing.** *Marketing activities include, but are not limited to, administration of the taste of Iowa program, business location assistance, assisting existing industry, export marketing, human resource recruitment consortium, reverse foreign investment and trade missions.*

**50.2(2) Business assistance.** *Business assistance includes, but is not limited to, administration of the following programs and services: business license information center (BLIC), economic development set-aside (EDSA) program, assistance to businesses and communities regarding immigration issues, brownfield redevelopment assistance, Iowa waste exchange program, physical infrastructure assistance program (PIAP), regional angel investors network (RAIN), recycle Iowa, regulatory assistance, venture network of Iowa (VNI), training assistance under Iowa Code chapters 260E and 260F, and accelerated career education (ACE) under Iowa Code chapter 260G.*

**50.2(3) Business finance.** *Business finance activities include, but are not limited to, program administration for community economic betterment account (CEBA), CEBA venture, comprehensive management assistance, entrepreneurs with disabilities, new jobs and income program (NJIP), enterprise zone (EZ) program, entrepreneurial ventures assistance (EVA) program, self-employment loan program (SELP), targeted small business financial assistance program (TSBFAP), and value-added agricultural products financial assistance program (VAAPFAP).*

**50.2(4) Office of science and technology.** *Reserved.*

These rules are intended to implement Iowa Code chapters chapter 15 and section 17A.3.

ITEM 5. Rescind **261—Chapter 52.**

ITEM 6. Rescind the caption for **Part V, “Division of Tourism.”**

ITEM 7. Rescind **261—Chapter 101.**

ITEM 8. Rescind the caption for **Part VI, “International Division.”**

ITEM 9. Rescind **261—Chapter 131.**

ITEM 10. Amend the caption for Part VII and amend **261—Chapter 163** as follows:

PART VII

DIVISION OF ADMINISTRATION *DIVISION*

CHAPTER 163

DIVISION RESPONSIBILITIES

**261—163.1(15) Mission.** The division's mission is to enhance the capacity of the department and staff to proactively address issues affecting economic development in Iowa and be responsive to customers, and to properly administer the resources available to the department for program operations.

**261—163.2(15) Structure.** The division is comprised of the director's office, the bureau of communications and technology, the bureau of and general administration and the Iowa film office.

**163.2(1) Director's office.** The office of the director provides overall oversight and management of all operations and programs administered by the department as well as providing for the development of strategic and economic development plans for the department and the state of Iowa. The office is the department's primary liaison with other agencies of state government. *Staff in the director's office provide services in the following areas: communications, legislative liaison, legal, support to the vision Iowa board, and regional strategies.*

**163.2(2) Communications and technology bureau.** The bureau provides support services for the entire department including the application of technology and communications equipment to the functions and responsibilities of each division. The bureau provides for the coordination and preparation of printed materials published by the department. The bureau also is responsible for communications with the public and news media and supports the department's efforts to maintain and utilize information about the state which is relevant to the agency's economic development mission. *General administration. Services provided by this area include, but are not limited to, accounting, human resource management, technology support, investment management, and research and evaluation.*

**163.2(3) Bureau of general administration.** The bureau provides for the necessary functions associated with the oversight and accounting of state and federal programs administered by the department. The bureau also is responsible for the management of human resources in the department.

**163.2(4) Iowa film office.** The primary functions of the Iowa film office are to market the state of Iowa as a location for the production of entertainment programs, to assist producers and location managers with the logistics associated with production activities in Iowa, to help Iowa communities capitalize on opportunities created by entertainment productions, and to support and encourage the development of entertainment professionals in Iowa.

*These rules are intended to implement Iowa Code chapter 15 and section 17A.3.*

## ARC 2467B

## ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

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

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

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

The purpose of this rule making is to establish two new exemptions that pertain to specific types of equipment used for nonproduction activities or that vent indoors and specific

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

types of manually operated equipment. It is important to note that the facility retains the obligation to determine whether other air permitting requirements still apply to those sources and, if such obligations exist, to meet those.

This rule making is the result of a cooperative negotiated rule-making process between the Department and representatives of the Iowa Association of Business and Industry (ABI). Both the Department and ABI are interested in reducing the regulatory burden on industry where the actual emissions of air contaminant sources are likely to have little or no environmental or human health consequences.

This Notice adds a new paragraph 22.1(2)“u,” establishing an exemption for equipment used for 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.

The Notice adds a new paragraph 22.1(2)“v,” establishing an exemption for manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning. Manually operated equipment is as currently defined in 567—22.100(455B).

The Department will seek an amendment to the Delegation Agreement with the U.S. EPA to include both of these exemptions in the State Implementation Plan.

Any person may make written suggestions or comments on the proposed amendment on or before June 13, 2003. 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](mailto:jim.mcgraw@dnr.state.ia.us).

A public hearing will be held on June 13, 2003, at 1 p.m. in Conference Rooms 2 and 3 at the Department’s Air Quality Bureau offices 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 June 13, 2003.

Any persons who intend to attend the public hearing and have 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.

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

The following amendment is proposed.

Amend subrule **22.1(2)** by adopting the following **new** paragraphs “u” and “v”:

u. Equipment for 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.

v. Manually operated equipment, as defined in 567—22.100(455B), used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning.

## ARC 2462B

### 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 rescind Chapter 1, “Iowa Ethics and Campaign Disclosure Board,” and adopt a new chapter with the same title, and rescind Chapter 12, “Codes of Conduct,” Iowa Administrative Code.

The proposed amendments combine two chapters of the Board’s rules concerning the Board’s establishment, organization, and duties. The proposed amendments rescind the current executive branch code of ethics, as the Board will adopt comprehensive rules on executive branch ethics in a future rule making.

The proposed rules would be subject to waiver pursuant to 351—Chapter 15.

Any interested person may make written comments on the proposed amendments on or before June 3, 2003. 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 chapter 68B.

The following amendments are proposed.

ITEM 1. Rescind 351—Chapter 1 and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 1 IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

##### **351—1.1(68A,68B) General agency description.**

**1.1(1)** The Iowa ethics and campaign disclosure board consists of six members appointed by the governor and confirmed by the senate. At the first meeting in each calendar year, the members shall elect a chair and a vice chair. Members may be reelected or elected to a different office.

**1.1(2)** Meetings of the board are held at the call of the chair or at the request of at least four members of the board. The chair sets the time, place, and date of the meetings except when a meeting is requested by at least four members of the board. Meetings may occasionally be conducted by electronic means. When possible, meetings will be announced at least one week in advance. However, when one week’s notice is not possible, meetings shall be announced at least 24 hours prior to the commencement of the meeting pursuant to Iowa Code section 21.4. Notice of meetings shall be given by public notice to the media and also posted in the lobby of the board’s offices and in the office of the Governor, Statehouse, Des Moines, Iowa. The notice contains the tentative agenda of the meeting.

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

**1.1(3)** Any interested party may attend and observe board meetings except for the portion that may be closed pursuant to Iowa Code section 21.5. Observers may use cameras or recording devices during the course of a meeting so long as the use of the devices does not materially hinder the proceedings. Open-session and closed-session proceedings shall be electronically recorded by the board. Minutes of meetings are available for viewing at the board offices or via the board's Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics). Copies may be obtained pursuant to the applicable copy fee schedule.

**1.1(4)** Four board members constitute a quorum for conducting business of the board. An affirmative vote of four board members is required for a motion to pass. The meetings shall be generally conducted according to rules of parliamentary procedure.

**1.1(5)** The duties of the board are listed in Iowa Code section 68B.32A and include but are not limited to: the receipt, examination, and preservation of documents required to be filed; the receipt and processing of complaints alleging violations of Iowa Code chapters 56 (campaign finance) and 68B (ethics); the holding of administrative hearings; and the development and dissemination of information and educational materials related to the law. The board employs an executive director, contracts or employs the services of a legal counsel, and employs other staff as it deems necessary. The executive director is responsible to the board and is responsible for administrative matters and general supervision of board staff. The board's legal counsel is responsible to the board and serves as the board's chief legal officer.

**1.1(6)** The board administers the provisions of Iowa Code chapter 56 relating to state and local campaigns for public office and for ballot issues. The board administers the provisions of Iowa Code chapter 68B as applied to executive branch officials, employees, candidates for statewide office, and the immediate family members of all the foregoing. The board administers the provisions of Iowa Code chapter 68B relating to the regulation of executive branch lobbyists. The board provides guidance to local governmental officials, employees, and candidates for local governmental office concerning the provisions of Iowa Code chapter 68B, but does not investigate complaints concerning alleged violations of the chapter by those individuals.

This rule is intended to implement Iowa Code sections 68B.32, 68B.32A, and 68B.32B.

**351—1.2(68B) Requirements for requesting board advisory opinions.** Any person subject to the board's jurisdiction may request a board advisory opinion on the application of a statute or rule to a particular factual situation. An authorized agent may seek a board opinion on behalf of any person. The board will not issue opinions to an unauthorized third party. The opinion request shall describe the specific transaction or activity that the requesting person plans to undertake or is presently undertaking. The board may issue opinions pertaining only to Iowa Code chapter 56 or 68B or rules adopted thereunder. The board may on its own motion issue opinions without receiving a formal request.

This rule is intended to implement Iowa Code section 68B.32A(11).

**351—1.3(68B) Processing of advisory opinion requests; routine administrative advice.**

**1.3(1)** Requests for board advisory opinions shall be sent to the Iowa Ethics and Campaign Disclosure Board, 514 East Locust, Suite 104, Des Moines, Iowa 50309.

**1.3(2)** After receiving a qualified opinion request, the board's legal counsel shall prepare a draft opinion for board

review. Upon an affirmative vote of at least four members, the board will issue a board advisory opinion. Advice contained in a board opinion, if followed, constitutes a defense to a complaint filed with the board.

**1.3(3)** A person who receives a board advisory opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request.

**1.3(4)** Board advisory opinions are public records and shall be made available at the board office and via the board's Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics).

**1.3(5)** Nothing in this rule precludes board staff from providing oral or written routine administrative advice when presented with oral or written inquiries from any person.

**1.3(6)** Nothing in this rule precludes a person who has received routine administrative advice from petitioning for a declaratory order. The board will refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requester demonstrates a significant change in circumstances from those in the board opinion.

**1.3(7)** On an annual basis the board shall review the advisory opinions issued for that year and determine which opinions should be adopted into rule pursuant to the procedures in Iowa Code chapter 17A.

This rule is intended to implement Iowa Code section 68B.32A(11).

**351—1.4(68B) Board agenda.** A person who wishes to be placed upon the board agenda for the board's next meeting shall file an oral or written request with the board's executive director at least 48 hours prior to the meeting.

This rule is intended to implement Iowa Code section 68B.32.

**351—1.5(22,68B) Availability of reports and information—copies provided; prohibitions.**

**1.5(1)** A price schedule of the costs and fees for copying and mailing shall be posted in the board office. The board shall review the price schedule on an annual basis.

**1.5(2)** Upon receipt of payment of copying costs and mailing costs, the board shall mail requested copies of reports to any person.

**1.5(3)** Information regarding individuals that is copied or otherwise obtained from reports and statements required under Iowa Code chapter 56 or 68B shall not be used by any person, other than statutory political committees, for the purpose of soliciting contributions or for any commercial purpose pursuant to Iowa Code section 68B.32A(6). For the purpose of this rule, "soliciting contributions" includes soliciting any type of contribution or donation of money or something of monetary value, such as political or charitable contributions. Information obtained from the reports and statements and used in newspapers, magazines, books, or other similar communications is permissible so long as the principal purpose of such communications is not to solicit contributions or for other commercial purpose.

This rule is intended to implement Iowa Code section 68B.32A.

**351—1.6(68B) Board code of ethics.**

**1.6(1)** Making monetary and in-kind contributions to the committees of candidates for Iowa public office is prohibited. However, contributions to candidates for federal office are permitted since the board has no jurisdiction over federal candidates.

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

**1.6(2)** Serving as an officer or member of a candidate's committee of a candidate for Iowa public office is prohibited, whether the service is volunteer or paid.

**1.6(3)** Making monetary or in-kind contributions to a political committee (PAC) is prohibited. However, contributions to a state party or a county central committee are permitted.

**1.6(4)** Running for or serving as an officer or member of any committee defined under Iowa Code chapter 56 is prohibited.

**1.6(5)** Public personal endorsement of a candidate or publicly taking a position in support of or opposition to a ballot issue is prohibited. This subrule does not prohibit a member of the board or staff from making a public personal endorsement of a federal candidate or a federal ballot issue since the board has no jurisdiction over federal candidates or federal ballot issues.

**1.6(6)** Running for or holding elective public office is prohibited.

**1.6(7)** Attendance at a political committee (PAC) or candidate event is prohibited except for the attendance at events for a federal candidate since the board has no jurisdiction over a federal candidate. However, attendance at a state party or county central committee event is permitted.

**1.6(8)** Serving as a delegate to a county or state political party convention is prohibited.

**1.6(9)** If a board member or employee is aware of a disqualifying conflict of interest, the member or employee shall provide notice of recusal stating the reason for recusal, and shall refrain from any participation in the matter.

**1.6(10)** Board employees shall not engage in any outside employment that creates a potential conflict of interest or that creates the appearance of a conflict without the authorization of the board.

**1.6(11)** The prohibitions in this rule shall not apply to the spouse or other family members of a board member or employee. However, actions by a spouse or other family member may create a potential conflict of interest on the part of the board member or employee that may necessitate recusal from a matter.

This rule is intended to implement Iowa Code sections 68B.2A and 68B.32.

**351—1.7(68B) Board sales of goods and services.** Board members and employees shall not sell, either directly or indirectly, any goods or services to any person that is subject to the regulatory authority of the board except as authorized by this rule. However, the sale of services or political consulting regarding Iowa Code chapters 56 and 68B, or the sale of materials regarding politics or chapters 56 and 68B, shall not be permitted in any case.

**1.7(1) Conditions of consent.** Consent shall be given by a majority of the members of the board. Consent shall not be given to a member or employee to sell goods or services to a person regulated by the board unless all of the following conditions are met:

a. The requester does not have authority to determine whether consent should be given.

b. The requester's duties or functions are not related to the board's regulatory authority over the person to whom the goods and services are being sold, or the selling of the good or service does not affect the requester's duties or functions.

c. The selling of the good or service does not include acting as an advocate to the board on behalf of the person.

d. The selling of the good or service does not result in the requester's selling a good or service to the board on behalf of the person.

**1.7(2) Authorized sales.**

a. A member or employee of the board may sell goods or services to a person regulated by the board if those goods or services are routinely provided to the general public as part of that person's regular business practice. This consent is granted because the sale of such goods or services does not affect the board member's or employee's duties or functions on the board. However, upon request by the board, the member or employee shall make full factual disclosure regarding the sale to ensure compliance with this rule and Iowa Code section 68B.4.

b. Individual application and approval are not required for a sale authorized by this subrule unless there are unique facts surrounding a particular sale that would cause the sale to affect the seller's duties or functions, would give the buyer an advantage in dealing with the board, or would otherwise present a conflict of interest.

**1.7(3) Application for consent.** Prior to selling a good or service to a person subject to the regulatory authority of the board, a member or employee shall obtain prior written consent unless the sale is specifically allowed in subrule 1.7(2). The request for consent shall be in writing and signed by the member or employee requesting consent. The application shall provide a clear statement of all relevant facts concerning the sale. The application shall identify the parties to the sale and the amount of compensation. The application shall explain why the sale should be permitted.

**1.7(4) Limitation of consent.** Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent may be revoked at any time by a majority vote of the members of the board upon written notice. Consent provided under these rules does not constitute authorization for any activity that is a conflict of interest under common law or that would violate any statute or rule. It is the responsibility of the member or employee requesting consent to ensure compliance with all applicable laws and rules.

This rule is intended to implement Iowa Code section 68B.4.

ITEM 2. Rescind and reserve **351—Chapter 12.**

**ARC 2478B**

**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 rescind Chapter 7, "Contested Case Procedures," and adopt new Chapter 7, "Personal Financial Disclosure," and to rescind Chapter 11, "Personal Financial Disclosure," and adopt new Chapter 11, "Contested Case Procedures," Iowa Administrative Code.

The proposed amendments renumber current Chapter 7 as Chapter 11 and renumber current Chapter 11 as Chapter 7. The Board is beginning the process of placing similar subject matters together by chapter in the Board's rules. The pro-

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

posed amendments also reflect current Board policies and procedures.

The proposed rules for contested case procedures contain waiver provisions. The proposed rules for personal financial disclosure would be subject to waiver pursuant to 351—Chapter 15.

Any interested person may make written comments on the proposed amendments on or before June 3, 2003. 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 chapter 17A and Iowa Code sections 68B.2A, 68B.4, 68B.32, 68B.32A, 68B.32C, 68B.33, 68B.35, and 68B.35A.

The following amendments are proposed.

ITEM 1. Rescind 351—Chapter 7 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 7

## PERSONAL FINANCIAL DISCLOSURE

**351—7.1(68B) Filing requirements and procedures.**

**7.1(1)** Time of filing. All persons who are required to file a personal financial disclosure statement (Form PFD) with the board pursuant to Iowa Code section 68B.35(2) shall file the statements with the board on or before April 30 of each year following a year during which the person holds a designated position, without regard to the length of time the position was occupied by the person. A person who held a designated position who leaves that position or state employment shall have a continuing obligation to file the statement for any year or portion of a year in which the position was held prior to termination.

**7.1(2)** Place of filing. Form PFD shall be filed with the board at 514 E. Locust, Suite 104, Des Moines, Iowa 50309. The form may also be filed by fax at (515)281-3701.

**7.1(3)** Persons holding more than one designated position. A person who is required to file a personal financial disclosure statement for more than one position shall only be required to file one statement for the reporting year. A member of the general assembly who files a form with the secretary of the senate or the chief clerk of the house shall not be required to file the form with the board for any designated position held in the executive branch.

**7.1(4)** Statewide candidates filing form. 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.

**7.1(5)** Period covered. Information shall be filed on Form PFD as designated by the board and shall cover the calendar year immediately preceding the year due. However, a statement filed by a person who has left a designated position during the course of a year need only contain information covering the portion of that year that has elapsed prior to the person's leaving the position.

**7.1(6)** Public record. Pursuant to Iowa Code section 68B.35A, forms filed with the board shall be forwarded to the secretary of state for the recording of the information through electronic means. A site shall be included in the board office

for public viewing and copying of the information on the forms.

This rule is intended to implement Iowa Code sections 68B.32A(4), 68B.35 and 68B.35A.

**351—7.2(68B) Information disclosed on form.**

**7.2(1)** Definitions. For the purpose of completing Form PFD, "income sources" includes those sources which are held jointly with one or more persons and which in total generate more than \$1000 of income. "Jointly" means that the ownership of the income source is undivided among the owners and that all owners have one and the same interest in an undivided possession, each with full rights of use and enjoyment of the total income. Sources of income that are co-owned but with ownership interests that are legally divisible, without full rights of use of enjoyment of the total income, need not be reported unless the person's portion of the income from that source exceeds \$1000.

**7.2(2)** Spousal income. For purposes of completing Form PFD, income earned solely by the spouse of a person subject to reporting is not income to that person and need not be reported as an income source.

This rule is intended to implement Iowa Code section 68B.35.

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

To determine which persons in the executive branch are required to file Form PFD, the board shall contact each agency on an annual basis and provide notification of the requirements in Iowa Code section 68B.35. 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 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](http://www.iowa.gov/ethics). The board shall have the final authority to determine whether a position requires that a Form PFD be filed.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.35.

**351—7.4(68B) Delinquent forms.**

**7.4(1)** Delinquent if not received or postmarked with a United States Postal Service postmark. A Form PFD is deemed to be delinquent if it is not physically received by the board on or before the reporting deadline. If mailed, the form is delinquent if it does not bear a United States Postal Service postmark dated on or before the reporting deadline.

**7.4(2)** Extension for holidays. If the reporting deadline falls on a Saturday or Sunday or holiday, the filing deadline shall be extended to the first working day following the deadline. This extension also applies to the required United States Postal Service postmark.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.35.

**351—7.5(68B) Penalties.**

**7.5(1)** Penalties for late personal financial disclosure statements. An individual holding a designated position in the executive branch who fails to timely file Form PFD shall be subject to an automatic civil penalty according to the following schedule:

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

Days Delinquent	Penalty Amount
1 to 14	\$25
15 to 30	\$50
31 and over	\$100

**7.5(2)** Additional penalty. If an individual holding a designated position in the executive branch fails to file a personal financial disclosure statement within 45 days of the required filing date, a contested case proceeding may be held to determine whether or not a violation has occurred. If after a contested case proceeding it is determined that a violation occurred, the board may impose any of the actions under Iowa Code section 68B.32D. Any action imposed under Iowa Code section 68B.32D would be in addition to an automatically assessed penalty in subrule 7.5(1).

**7.5(3)** Failure to file true statement. It shall be considered a violation of Iowa Code section 68B.35 for an individual holding a designated position in the executive branch to file a disclosure statement containing false or fraudulent information. Complaints concerning the filing of a false or fraudulent disclosure statement shall be handled by the procedures in Iowa Code section 68B.32B. If it is determined after a contested case proceeding that a false or fraudulent disclosure statement was filed, the board may impose any of the actions under Iowa Code section 68B.32D.

This rule is intended to implement Iowa Code sections 68B.32A(8) and 68B.35.

**351—7.6(68B) Requests for waiver of penalties.** If an individual holding a designated position in the executive branch believes that mitigating circumstances prevented the timely filing of Form PFD, the individual may make a written request to the board for waiver of the penalty. The request for waiver must be received by the board within 30 days of notification to the individual of the civil penalty assessment. 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 may be waived based on the circumstances.

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

**351—7.7(68B) Contested case challenge.**

**7.7(1)** Request. If the individual accepts administrative resolution concerning a late-filed Form PFD through the payment of the assessed penalty, the matter shall be closed. If the individual chooses to contest the board's decision to deny the request or grant a partial waiver of an assessed penalty, the individual shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

**7.7(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 contested case shall be conducted in accordance with the provisions of 351—Chapter 11. The burden shall be on the board's legal counsel to prove that a violation occurred.

**7.7(3)** Failure to request proceeding. The failure to request a contested case proceeding to contest the board's decision on a waiver request is a failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A.

This rule is intended to implement Iowa Code sections 68B.32A(8) and 68B.33.

**351—7.8(68B) Payment of penalty.** The remittance shall be made payable to the "State of Iowa General Fund" and for-

warded to Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. The remittance shall be deposited in the general fund of the state of Iowa.

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

ITEM 2. Rescind 351—Chapter 11 and adopt the following new chapter in lieu thereof:

CHAPTER 11  
CONTESTED CASE PROCEDURES

**351—11.1(17A,68B) Scope and applicability.** This chapter applies to contested case proceedings conducted by the Iowa ethics and campaign disclosure board.

**351—11.2(17A,68B) Definitions.** Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case.

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

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

"Presiding officer" means the board member designated to be the presiding officer or the administrative law judge assigned by the department of inspections and appeals division of administrative hearings. However, with regard to substantive or dispositive motions, "presiding officer" means all participating members of the board.

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

**351—11.3(17A,68B) Time requirements.** Time shall be computed as provided in Iowa Code subsection 4.1(34). For good cause, the presiding officer may extend or shorten the time to take any action except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**351—11.4(17A,68B) Requests for contested case proceeding.**

**11.4(1)** Who may file request. Any person claiming an entitlement to a contested case proceeding may file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question. Upon petition by any party in a matter that would be a contested case if there was a dispute over the existence of material facts, all of the provisions of this chapter, except those relating to presentation of evidence, shall be applicable even though there is no factual dispute in the particular case.

**11.4(2)** Form of request. The request for a contested case proceeding shall state the name and address of the requester, identify the specific board action that is disputed, and, when the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

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

**351—11.5(17A,68B) Notice of hearing.**

**11.5(1) Delivery.** Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail, address service requested; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

**11.5(2) Contents.** The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted;
- e. Identification of all parties including the name, address and telephone number of the person who will serve as the board's counsel during the proceeding;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer; and
- i. Notification of the time period in which a party may request, pursuant to subrule 11.8(3), that the presiding officer be an administrative law judge.

**11.5(3) Time.** The notice of hearing shall be served upon all parties at least 30 days before the scheduled hearing date.

**351—11.6(17A,68B) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

**351—11.7(17A,68B) Telephone proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer shall determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, shall be considered when location is chosen.

**351—11.8(17A,68B) Disqualification; request for administrative law judge.**

**11.8(1) Withdrawal.** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally prosecuted or advocated, in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

- d. Has personally investigated the pending contested case. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. It does not include either direction and supervision of assigned investigators or unsolicited receipt of oral information or documents which are relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17;

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

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

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

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

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

**11.8(2) Motion for disqualification.** If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.8(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(4). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If during the course of the hearing a party becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record. If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 351—11.24(17A,68B) and seek a stay under rule 351—11.28(17A,68B).

**11.8(3) Request for administrative law judge.** A party may, within ten days of delivery of a notice of hearing under subrule 11.5(1), request that the presiding officer be an administrative law judge assigned by the department of inspections and appeals division of administrative hearings. This request shall be sent to the board's legal counsel who shall then notify the board. Except as otherwise provided by statute, the board shall grant such a request unless the board finds, and states the reasons for such finding, that any of the following conditions exist:

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

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

b. A qualified administrative law judge is unavailable to hear the case within a reasonable time;

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

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

e. Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal;

f. The request was not timely filed; or

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

**11.8(4) Ruling on request.** The board shall issue a written ruling specifying the grounds for the decision within ten days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least ten days prior to hearing if an administrative law judge will not be available.

**11.8(5) Appeals.** All rulings by an administrative law judge acting as presiding officer are subject to appeal to the board pursuant to rules 351—11.24(17A,68B) and 11.25(17A,68B). A party must seek intra-agency appeal in order to exhaust administrative remedies.

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

### **351—11.9(17A,68B) Consolidation—severance.**

**11.9(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings when:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

**11.9(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

### **351—11.10(17A,68B) Pleadings.**

**11.10(1) When required.** Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

**11.10(2) Statement of charges.** The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the person is charged and shall be of sufficient detail to enable the efficient preparation of the respondent's defense. The statement of charges shall specify all statutes and rules that are alleged to have been violated and may also include additional information that the board deems appropriate to the proceeding. The statement of charges shall be consolidated with the notice of hearing described in rule 351—11.5(17A,68B).

**11.10(3) Answer.** A respondent is not required to file an answer in response to a statement of charges.

**11.10(4) Amendment.** Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

### **351—11.11(17A,68B) Service and filing of pleadings and other papers.**

**11.11(1) When service required.** Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record simultaneously with their filing. The party filing a document is responsible for service on all parties.

**11.11(2) Service.** Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**11.11(3) When filed.** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the office of the Iowa Ethics and Campaign Disclosure Board, 514 East Locust, Suite 104, Des Moines, Iowa 50309, or mailed with proof of mailing.

**11.11(4) Proof of mailing.** Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form: "I certify under penalty of perjury that on (date of mailing), I mailed copies of (describe document) addressed to the (board office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mail box with correct postage properly affixed or state interoffice mail)."

(Date) (Signature)

### **351—11.12(17A,68B) Discovery.**

**11.12(1) Applicable procedure.** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**11.12(2) Motion for discovery.** Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 11.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**11.12(3) Use of evidence.** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

### **351—11.13(17A,68B) Subpoenas.**

#### **11.13(1) Issuance.**

a. A board subpoena shall be issued to a party upon written request. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

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

**11.13(2) Motion to quash or modify.** The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

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

**351—11.14(17A,68B) Motions.**

**11.14(1)** Form. No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**11.14(2)** Who may file. Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**11.14(3)** Oral argument. The presiding officer may schedule oral argument on any motion.

**11.14(4)** Time. Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least 10 days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or by the presiding officer.

**11.14(5)** Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 15 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to appeal and rehearing pursuant to rules 351—11.26(17A,68B) and 11.27(17A,68B).

**351—11.15(17A,68B) Prehearing conference.**

**11.15(1)** Procedure. Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. The presiding officer shall give written notice of the prehearing conference to all parties. For good cause the presiding officer may permit variances from this rule.

**11.15(2)** Required subject matter. Each party shall bring to the prehearing conference:

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

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

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

**11.15(3)** Additional issues. In addition to the requirements of subrule 11.15(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;

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

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

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

**11.15(4)** Telephone conference. Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

**351—11.16(17A,68B) Continuances.** Unless otherwise provided, applications for continuances shall be made by the presiding officer.

**11.16(1)** Form. A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency when notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

**11.16(2)** Considerations for granting continuance. In determining whether to grant a continuance, the presiding officer shall consider:

a. Prior continuances;

b. The interest of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

**351—11.17(17A,68B) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

**351—11.18(17A,68B) Intervention.**

**11.18(1)** Motion. A motion to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**11.18(2)** When filed. A motion to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion

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

must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances that would delay the proceeding will ordinarily be denied.

**11.18(3)** Grounds for intervention. The intervenor shall demonstrate that:

- a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b. The intervenor is likely to be aggrieved or adversely affected by a final order in the proceeding; and
- c. The interests of the intervenor are not adequately represented by existing parties.

**11.18(4)** Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person permitted to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceedings.

**351—11.19(17A,68B) Hearing procedures.**

**11.19(1)** Role of presiding officer. The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**11.19(2)** Objections. All objections shall be timely made and stated on the record.

**11.19(3)** Representation. Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

**11.19(4)** Procedural rights. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument. Witnesses may be sequestered during the hearing.

**11.19(5)** Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**11.19(6)** Hearing process. The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

**11.19(7)** Proposed order. Within seven days after the closing of the hearing, either party may file a proposed order for the consideration of the presiding officer, who may adopt all or part of any proposed order. Copies of a proposed order shall be provided to the opposing party.

**351—11.20(17A,68B) Evidence.**

**11.20(1)** Admissibility. The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**11.20(2)** Stipulation of facts. Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**11.20(3)** Limitation of evidence. Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issues.

**11.20(4)** Exhibits. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**11.20(5)** Objections. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**11.20(6)** Offer of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**351—11.21(17A,68B) Default.**

**11.21(1)** Failure to appear. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**11.21(2)** Motion for default. Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**11.21(3)** Procedure. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 14 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 351—11.26(17A,68B). A motion to vacate must state all facts relied upon by the moving party that establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact.

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

**11.21(4) Time.** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**11.21(5) Motion to vacate.** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. If a request to do so is filed in a response, adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion.

**11.21(6) Good cause.** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

**11.21(7) Appeal.** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 351—11.24(17A,68B).

**11.21(8) Hearing reopened.** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**11.21(9) Relief granted.** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

**11.21(10) Timing of stay.** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay.

**351—11.22(17A,68B) Ex parte communication.**

**11.22(1) Prohibited communications.** Following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between any party or representative of any party in connection with any issue of fact or law in a case and any person assigned to render a proposed or final decision or make findings of fact or conclusions of law except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude persons assigned to render a proposed or final decision in a contested case or to make findings of fact or conclusions of law in such a case from seeking the advice or help of persons other than those with personal interest in, or those engaged in personally investigating as defined in subrule 11.8(1), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as that advice or help does not violate Iowa Code subsection 17A.12(8).

**11.22(2) Disclosure of prohibited communications.** Any person who receives a communication prohibited by subrule 11.22(1) shall disclose that communication to all parties. A copy of any prohibited written communication or a summary of any prohibited oral communication shall be submitted for inclusion in the record. Any party desiring to rebut the prohibited ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten days after notice of the communication. If the effect of an ex parte communication is so prejudicial that it cannot be cured by disclosure and rebuttal, a presiding officer who receives the communication shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

**11.22(3) Sanctions.** The board and any party may report any violation of this rule to appropriate authorities for any disciplinary proceedings provided by law. The presiding officer or the board may impose appropriate sanctions for violations of this rule. Possible sanctions include a decision against the offending party; censure, suspension, or revocation of the privilege to practice before the board; and censure, suspension, dismissal, or other disciplinary action against board personnel.

**11.22(4) Affidavit.** A party to a contested case proceeding may file a timely and sufficient affidavit alleging a violation of any provision of this rule. The board shall determine the matter as part of the record in the case. When the board makes such a determination with respect to a board member or board employee, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

**351—11.23(17A,68B) Recording costs.** Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

**351—11.24(17A,68B) Interlocutory appeals.** Upon written request of a party or on its own motion, the board may review an order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

**351—11.25(17A,68B) Final decision.** The board shall automatically conduct a review of all proposed decisions that are issued by a presiding officer. The proposed decision becomes the final decision of the board without further proceedings unless there is a proper application for rehearing under rule 351—11.27(17A,68B).

**351—11.26(17A,68B) Board review.**

**11.26(1) Statement of exceptions.** Within 14 days after issuance of a proposed decision, any party may serve a statement of exceptions taken with the proposed decision, if any, together with a brief and argument, if any, by delivery of the original and five copies of each document to the board's legal counsel, and shall also serve copies to the opposing party. This time requirement may be extended by stipulation of the parties and approval by the presiding officer.

**11.26(2) Request for oral argument.** At the time designated for filing briefs and arguments, either party may request oral argument. The board may complete its review on the briefs or may grant an opportunity for oral argument. If a request for oral argument is granted or such is required by the board on its own motion, the board's legal counsel shall notify all parties of the date, time, and place. The chairperson or the chairperson's designee shall preside at the oral argument and determine the procedural order of the proceedings.

**11.26(3) Record on review.** The record on review shall be the entire record made before the hearing panel or presiding officer.

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

**11.26(4)** Additional evidence. A written request to present additional evidence must be filed within 14 days of issuance of the proposed decision. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**11.26(5)** Final decision. The board's decision on review of a proposed decision is a final decision.

**351—11.27(17A,68B) Application for rehearing.**

**11.27(1)** By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

**11.27(2)** Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. The application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 11.26(4), the applicant requests an opportunity to submit additional evidence.

**11.27(3)** Time of filing. The application shall be filed with the board within 20 days after issuance of the final decision.

**11.27(4)** Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

**11.27(5)** Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

**351—11.28(17A,68B) Stay of agency actions.**

**11.28(1)** When available.

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding pending review by the board. The petition for a stay shall be filed with the statement of exceptions and shall state the reasons justifying a stay. The board may rule on the stay or authorize the presiding officer to do so.

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

**11.28(2)** When granted. In determining whether to grant a stay, the presiding officer or board, as appropriate, shall consider whether substantial questions exist as to the propriety of the order for which a stay is requested, whether the party will suffer substantial and irreparable injury without the stay, and whether the interests of the public and other persons will be adversely affected by such a stay.

**11.28(3)** Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

**351—11.29(17A,68B) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs, and oral argument shall be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code sections 68B.32A and 68B.32C.

**ARC 2477B**

**LANDSCAPE ARCHITECTURAL  
EXAMINING BOARD[193D]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 544B.5, the Landscape Architectural Examining Board hereby gives Notice of Intended Action to rescind Chapters 1 to 8 and adopt new Chapter 1, “Description of Organization,” Chapter 2, “Examinations and Licensing,” Chapter 3, “Continuing Education,” and Chapter 4, “Rules of Professional Conduct,” Iowa Administrative Code.

Chapters 1 to 4 contain rules specific to the practice of landscape architecture. Rescinded Chapters 5, 6, 7 and 8 are chapters that contain rules identical or similar to rules outlined in each of the professions within the Professional Licensing and Regulation Division [193] and are now a part of that Division's rules.

This amendment implements 2002 Iowa Acts, chapter 1045, which became effective July 1, 2002. This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the new chapters received on or before June 3, 2003. Comments should be addressed to Kay Halloran, Landscape Architectural Examining Board, 1920 S.E. Hulsizer, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to [kay.halloran@comm7.state.ia.us](mailto:kay.halloran@comm7.state.ia.us).

This amendment is intended to implement Iowa Code chapters 17A, 272C, and 544B.

The following amendment is proposed.

Rescind **193D—Chapters 1 to 8** and adopt the following **new 193D—Chapters 1 to 4** as follows:

**CHAPTER 1**

**DESCRIPTION OF ORGANIZATION**

**193D—1.1(544B,17A) Definitions.** As used in these rules, the following definitions of words and terms shall apply:

“Board” means the Iowa landscape architectural examining board.

“Landscape architect” means a person who obtains a license and engages in the practice of landscape architecture under the authority of Iowa Code chapter 544B. For the purpose of these rules, a “professional landscape architect” may be referred to as a “landscape architect.”

“Practice of landscape architecture” means the rendering of professional service or offering to render professional service to clients, including any one or any combination of the professional services defined in Iowa Code section 544B.1 and 193D—subrule 2.2(1).

**193D—1.2(544B,17A) Organization and duties.** The board consists of five members who are licensed professional landscape architects and two members who are not licensed professional landscape architects and who represent the general public. The board elects annually from its members a chairperson and a vice chairperson. A quorum of the board shall be four members, and all final motions and actions must

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

receive a quorum vote. The board enforces the provisions of Iowa Code chapter 544B and maintains a roster of all licensed professional landscape architects in the state.

**1.2(1) Chairperson.** The chairperson shall, when present, preside at meetings, appoint committees, and perform all duties and powers of the chairperson.

**1.2(2) Vice chairperson.** The vice chairperson shall, in the absence or incapacity of the chairperson, exercise the duties and powers of the chairperson.

**193D—1.3(544B,17A) Meetings.** Calls for meetings shall be issued in accordance with Iowa Code section 21.4.

**193D—1.4(544B,17A) Order of business.** The chairperson or the chairperson's designee shall prepare an agenda listing all matters to be discussed at meetings. A copy of this agenda shall be available to each member of the board. Procedures shall be in accordance with Robert's Rules of Order.

**193D—1.5(22) Public records and fair information practices.** Board rules on public records and fair information practices may be found in the uniform rules for the division of professional licensing and regulation at 193 IAC 13.

**193D—1.6(68B) Sales of goods and services.** Board rules on the sale of goods and services by board members may be found in the uniform rules for the division of professional licensing and regulation at 193 IAC 11.

**193D—1.7(17A) Petitions for rule making.** Persons wishing to file a petition for rule making should consult the uniform rules for the division of professional licensing and regulation at 193 IAC 9.

**193D—1.8(17A) Declaratory orders.** Persons wishing to seek a declaratory order from the board should consult the uniform rules for the division of professional licensing and regulation at 193 IAC 10.

**193D—1.9(252J,261) Denial of issuance or renewal of license for nonpayment of child support or student loan.** Board rules on the denial of issuance or renewal of a license based on nonpayment of child support or student loan obligations may be found in the uniform rules for the division of professional licensing and regulation at 193 IAC 8.

**193D—1.10(17A) Waivers and variances.**

**1.10(1)** Persons who wish to seek waivers or variances from board rules should consult the uniform rules for the division of professional licensing and regulation at 193 IAC 5.

**1.10(2)** In addition to the provisions of 193 IAC 5, the following shall apply for interim rulings:

a. The board chairperson, or vice chairperson if the chairperson is not available, may rule on a petition for waiver or variance when it would not be timely to wait for the next regularly scheduled board meeting for a ruling from the board.

b. The executive officer shall, upon receipt of a petition that meets all applicable criteria established in 193 IAC 5, present the request to the board chairperson or vice chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

c. The chairperson or vice chairperson shall reserve the right to hold an electronic meeting of the board when prior board precedent does not clearly resolve the request, input of the board is deemed required and the practical result of waiting until the next regularly scheduled meeting would be a denial of the request due to timing issues.

d. A waiver report shall be placed on the agenda of the next regularly scheduled board meeting and recorded in the minutes of the meeting.

e. This subrule on interim rulings does not apply if the waiver or variance was filed in a contested case.

**193D—1.11(544B,17A,272C) Investigations and investigatory subpoenas.** Board rules regarding investigations and investigatory subpoenas may be found in the uniform rules for the division of professional licensing and regulation at 193 IAC 6.

**193D—1.12(544B,17A,272C) Contested case procedures.** Board rules on contested case procedures may be found in the uniform rules for the division of professional licensing and regulation at 193 IAC 7.

**193D—1.13(272C) Impaired licensees.** Board rules governing impaired licensee review committees may be found in the uniform rules for the division of professional licensing and regulation at 193 IAC 12.

These rules are intended to implement Iowa Code sections 544B.3, 544B.5, and 544B.15 and chapters 252J, 261, and 272C.

## CHAPTER 2 EXAMINATIONS AND LICENSING

**193D—2.1(544B,17A) Definitions.** As used in these rules, the following definitions of words and terms shall apply:

“CLARB” means the Council of Landscape Architectural Registration Boards.

“Evidence” means any document or record of any kind of drawings, specifications, photographs, diplomas, registrar's statements, published data and certified personal statements as may be required as a part of any action on the part of the board. Each item of evidence shall be clearly marked to ensure positive and certain identification. It shall be the entire responsibility of the applicant to satisfy the board as to the sufficiency of the record and the evidence.

“Years of practical experience” means, for each year of practical experience the applicant has worked performing landscape architectural services, a minimum of 2,080 hours per year.

**193D—2.2(544B,17A) Application.** An application to take the written examination shall be submitted on the form provided by the board and must be received in the board office no later than the last day of March for the June examination and the last day of September for the December examination. Candidates who successfully complete the examination may make application for certificate of licensure after meeting the requirements of Iowa Code section 544B.9.

**2.2(1)** The “practice of landscape architecture” means the performance of professional services such as consultations, investigations, reconnaissance, research, planning, design, or responsible supervision in connection with projects involving the arrangement of land and the elements thereon for public and private use and enjoyment, including the alignment of roadways and the location of buildings, service areas, parking areas, walkways, steps, ramps, pools and other structures, and the grading of the land, surface and subsoil drainage, erosion control, planting, reforestation, and the preservation of the natural landscape and aesthetic values, in accordance with accepted professional standards of public health, welfare and safety. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this chapter but shall not include the design of structures or

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

facilities with separate and self-contained purposes for habitation or industry, or the design of public streets and highways, utilities, storm and sanitary sewers, and sewage treatment facilities, such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of land surveys or final land plats for official approval or recording. Nothing contained in this chapter shall be construed as authorizing a professional landscape architect to engage in the practice of architecture, engineering, or land surveying.

**2.2(2)** Each applicant shall submit with the formal application for a certificate of licensure evidence of the years of practical experience.

**193D—2.3(544B,17A) Procedure for processing applications.** Each application shall be considered individually by the board. A personal appearance before the board, if required, shall be at the time and place designated by the board. Failure to supply additional evidence or information within 30 days from the date of the written request from the board, or failure to appear before the board when an appearance is requested, may be considered cause for disapproval of the application. Unless otherwise provided by law, a request for a rehearing before the board shall be filed with the board in accordance with 193 IAC 7.39(543,272C). A judicial review can be filed in accordance with Iowa Code section 17A.19.

**193D—2.4(544B,17A) Examination of applicants.** Examinations shall be conducted by the board at least once annually. Applicants need not meet preconditions to take the professional landscape architectural licensure examination, but applicants must meet requirements of Iowa Code section 544B.9 for registration.

**193D—2.5(544B,17A) Written examination.** The written examination shall consist of the professional landscape architectural licensure examination published by CLARB and may include supplementary questions developed by the board.

**2.5(1) Instructions.** A copy of examination instructions and notice of the date and location of the examination will be furnished to each applicant at least 30 days in advance of the examination. The examination is divided into several sections. An applicant may sit for any or all of the sections at a single sitting. Sections which are passed are not required to be repeated. An applicant who intends to sit for any sections not previously passed must file an application for reexamination with the proper fee(s) on a form provided by the board which must be received in the board office no later than the last day of March for the June examination and the last day of September for the December examination.

**2.5(2) Grades.** The board shall notify the examinee of the examination grade.

**2.5(3) Examinations review process.** Candidates may review their own graded examinations using the following procedures:

a. Within a maximum of 30 days from the date of the notification of failure, a written request by the candidate may be filed with the Iowa landscape architectural examining board to include:

- (1) Candidate number or name.
- (2) Date of examination.
- (3) Examination section requested to be reviewed.

b. The review time for each failed section may be limited by the board.

c. A board member or staff person must be present to observe and to provide assistance to the candidate.

d. There shall be no copying or tracing allowed; however, a candidate may take notes.

e. A candidate shall be allowed to review all of the candidate's examination, including evaluation guides and evaluators' score sheets.

f. The candidate shall sign a statement stating the terms of the review procedure.

**193D—2.6(544B,17A) Exemption from written examination.** The board may exempt from written examination an applicant who meets one of the following criteria:

1. The applicant holds a current CLARB certificate; or
2. The applicant holds a license to practice landscape architecture issued upon written examination by another jurisdiction, and has submitted a certificate from the jurisdiction of original licensure verifying that the applicant passed the examination in that jurisdiction.

**193D—2.7(544B,17A) Certificate of licensure.** Applicants will be notified by the board of their eligibility or ineligibility.

**2.7(1) Payment.** Upon payment of the license fee, the board will issue the certificate of licensure to an eligible professional landscape architect.

**2.7(2) License number.** The certificate will indicate the license number of the landscape architect which must appear on the professional landscape architect's seal and on all works signed by the professional landscape architect.

**2.7(3) Certificate.** Only one certificate of licensure shall be issued to a professional landscape architect. The certificate shall be displayed in a conspicuous place at the place of employment.

**193D—2.8(544B,17A) Biennial renewal of license.** Original licenses expire June 30 following the date of issuance. Thereafter, the license period is for two years ending June 30. An application to renew a license may be obtained from the board or on the board's Web site. While the board generally mails renewal applications preceding license expiration, neither the board's failure to mail an application nor a licensee's failure to receive an application shall excuse the requirement to timely renew and pay the renewal fee.

**2.8(1)** A completed renewal application, renewal fee and continuing education report are due in the board office by June 30. The license shall be renewed without further penalty if the renewal application, renewal fee and continuing education affidavit are received by July 30. If the renewal application, renewal fee and continuing education affidavit are not received by July 30, the license shall lapse.

**2.8(2)** Licensees shall notify the board within 30 days of any change of address or business connection.

**193D—2.9(544B,17A) Reinstatement of license.** An application for the reinstatement of a lapsed certificate of licensure shall include a description of the professional activities of the applicant during the period of nonlicensure. All of the following must be supplied prior to reinstatement: the current renewal fee, a \$100 penalty, and continuing education required by the board.

**193D—2.10(544B,17A) Fee schedule.** The appropriate examination fee or examination exemption filing fee shall accompany the application. Filing fees are not refundable.

Examination fee	not to exceed \$1000
Initial examination filing fee	\$50
Proctoring fee	\$50
Examination exemption fee	\$300
Certificate reissuance fee	\$50

(This certificate is to be effective to the June 30 which is at least 12 months beyond the date of application.)

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

Certificate of license fee	\$15/month
(This certificate of license is to be effective the day of board action until June 30.)	
Biennial registration fee	\$350
These rules implement Iowa Code chapter 17A and 544B.	

CHAPTER 3  
CONTINUING EDUCATION

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

“Hours” of continuing education means a contact hour spent in either structured educational activities or individually planned activities intended to increase the professional landscape architect’s knowledge and competence in public protection subjects and related practice subjects. “Contact hour” is defined as the typical 50-minute classroom instructional session or its equivalent. One continuing education unit (CEU) offered by an accredited sponsor shall be considered equivalent to ten contact hours of continuing education.

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

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

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

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

**193D—3.2(544B,17A) Continuing education requirements.**

**3.2(1)** Hours required. Each registrant shall complete during each two-year licensing term a minimum of 36 hours of continuing education approved by the board. Compliance with the continuing education requirements is a prerequisite for license renewal.

**3.2(2)** Within any biennial renewal period during which 36 contact hours must be acquired, at least 12 contact hours shall be in public protection subjects acquired in structural educational activities. (All 36 hours may be acquired in pub-

lic protection subjects and activities.) Twenty-four hours may be in related practice subjects acquired through either individually planned activities or structured educational activities. Hours acquired in any 24-month renewal period may not be carried over to a subsequent 24-month renewal period. Continuing education hours need not be acquired in this state, but may be acquired in any location.

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

**3.2(4)** Sources of continuing education. The following suggested list may be used by all licensees to determine the types of activities which may fulfill the continuing education requirements.

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

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

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

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

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

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

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

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

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

**3.2(5)** Financing. It is the responsibility of each licensee to finance the costs for continuing education.

**193D—3.3(544B,17A) Reporting.** Each professional landscape architect shall file with the board a signed report, under penalty of perjury, on forms provided by the board, setting forth the continuing education in which the professional land-

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

scape architect has participated and shall request approval of the completed continuing education activities. The report shall be filed with the renewal application for each two-year renewal period in which the claimed continuing education hours were completed. The information in the report shall include:

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

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

**193D—3.4(544B,17A) Hearings.** In the event of denial, in whole or in part, of any application for approval of credit for continuing education activity, the licensee shall have the right, within 20 days after the date of notification of the denial by mail, to request a hearing by the board. The hearing shall be held within 60 days after receipt of the request for the hearing. The decision of the board shall be final.

**193D—3.5(544B,17A) Physical disability, illness, hardship, or extenuating circumstances.** The board may, in individual cases involving physical disability, illness (certified by a medical doctor), hardship, or extenuating circumstances, grant waivers of the continuing education requirements for a period of time not to exceed one year. No waiver or extension of time shall be granted unless the licensee makes a written request to the board for such action.

**193D—3.6(544B,17A) Methods of compliance and exemptions.** A licensee licensed to practice as a professional landscape architect shall be deemed to have complied with the continuing education requirements during the continuing education compliance period that the licensee:

1. Serves honorably on active duty in the military service; or
2. Resides in another state or district having a continuing education requirement for the occupation or profession and meets all the requirements of that state or district for practice therein; or
3. Is a government employee working as a professional landscape architect and assigned to duty outside the United States; or
4. Is approved by the board for periods of active practice and absence from the state.

If the licensee was not engaged in active practice as a professional landscape architect and will maintain inactive status during the period for which renewal is requested, the board may exempt the licensee from continuing education. No exemption shall be granted without a written request from the licensee.

**193D—3.7(544B,17A) Grounds for denial of license renewal.** Failure of a licensee to complete the continuing

education requirements as set forth in this chapter, or failure to file a report of completed continuing education, or failure to submit a written request for waiver or exemption shall be grounds for the board to deny renewal of the license.

These rules are intended to implement Iowa Code chapter 544B.

## CHAPTER 4

## RULES OF PROFESSIONAL CONDUCT

**193D—4.1(544B,17A) Rules of conduct.** Failure by a licensee to adhere to the provisions of Iowa Code chapters 272C and 544B and rules implementing either chapter shall be grounds for disciplinary action.

**4.1(1) Definitions.** The following definition applies as used in Iowa Code chapter 544B and this chapter, unless the context otherwise requires:

“Official copy” means technical submission for purposes of required approval.

**4.1(2) Competence.**

a. When practicing landscape architecture, a professional landscape architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by a landscape architect of good standing practicing in the same locality.

b. When designing a project, a professional landscape architect shall take into account all applicable state and municipal building laws and regulations. While professional landscape architects may rely on the advice of other professionals (e.g., attorneys, architects, engineers and other qualified persons) as to the intent and meaning of the regulations, once such advice is obtained, a landscape architect shall not knowingly design a project in violation of these laws and regulations.

c. A professional landscape architect shall undertake to perform professional services only when the professional landscape architect together with those whom the professional landscape architect may engage as consultants are qualified by education, training and experience in the specific technical areas involved.

d. No person shall be permitted to practice landscape architecture if, in the board's judgment upon receipt of medical testimony or evidence, the person's professional competence is substantially impaired by physical or mental disabilities or substance abuse.

**4.1(3) Conflict of interest.**

a. A professional landscape architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to (such disclosures and agreement to be in writing) by all interested parties.

b. If a professional landscape architect has any business association or direct or indirect financial interest which is substantial enough to influence judgment in connection with the professional landscape architect's performance of professional services, the professional landscape architect shall fully disclose, in writing, to the client or employer the nature of the business association or financial interest. If the client or employer objects to the association or financial interest, the professional landscape architect shall either terminate such association or interest or offer to give up the commission or employment.

c. A professional landscape architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing the products.

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

d. When acting as the interpreter of building contract documents and the judge of contract performance, a professional landscape architect shall render decisions impartially, favoring neither party to the contract.

**4.1(4) Full disclosure.**

a. A professional landscape architect making public statements on landscape architectural questions shall disclose when compensation is being received for making the statements.

b. A professional landscape architect shall accurately represent to a prospective or existing client or employer the professional landscape architect's qualifications and the scope of the professional landscape architect's responsibility in connection with work for which the professional landscape architect is claiming credit.

c. If, in the course of work on a project, a professional landscape architect becomes aware of an action taken by the employer or client against the professional landscape architect's advice which violates applicable state or municipal building laws and regulations and which will, in the professional landscape architect's judgment, adversely affect the safety to the public of the finished project, the professional landscape architect shall:

(1) Report the decision to the local building inspector or other public official charged with enforcement of the applicable state or municipal building laws and regulations,

(2) Refuse to consent to the decision, and

(3) In circumstances when the professional landscape architect reasonably believes that other decisions will be taken, notwithstanding the landscape architect's objection, terminate the professional landscape architect's services with reference to the project. In the case of a termination in accordance with this clause, the professional landscape architect shall have no liability to the professional landscape architect's client or employer on account of such termination.

d. A professional landscape architect shall not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with application for licensure or renewal of license.

e. A professional landscape architect shall not assist in the application for licensure of a person known by the professional landscape architect to be unqualified with respect to education, training, experience or character.

f. A professional landscape architect possessing knowledge of a violation of these rules by another professional landscape architect shall report the knowledge to the board.

**4.1(5) Compliance with laws.**

a. A professional landscape architect shall not, in the conduct of landscape architectural practice, knowingly violate any state or federal criminal law.

b. A professional landscape architect shall neither offer nor make any payment to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the professional landscape architect is interested.

c. A professional landscape architect shall comply with the registration laws and regulations governing the landscape architect's professional practice in any United States jurisdiction.

**4.1(6) Professional conduct.**

a. Each office maintained for the preparation of drawings, specifications, reports or other professional work shall have a professional landscape architect regularly employed in or assigned to that office who has responsible control of such work.

b. A professional landscape architect shall not sign or seal drawings, specifications, reports or other professional work for which the landscape architect does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of professional work prepared by the landscape architect's consultants, registered under this or another professional registration law of this jurisdiction, the professional landscape architect may sign or seal that portion of the professional work if the architect has reviewed that portion, has coordinated its preparation and intends to be responsible for its adequacy.

c. A professional landscape architect shall neither offer nor make any gifts to any public official with the intent of influencing the official's judgment in connection with a project in which the professional landscape architect is interested. Nothing in this rule shall prohibit a professional landscape architect from providing landscape architect services as a charitable contribution.

d. A professional landscape architect shall not engage in conduct involving fraud or wanton disregard of the rights of others. Failure by a licensee to adhere to these rules of conduct shall cause the license to be reviewed by the board and shall, at the discretion of the board, be cause for a reprimand or suspension or revocation of the license.

**4.1(7) Seal and certificate of responsibility.**

a. Each professional landscape architect shall procure a seal with which to identify all technical submissions issued by the professional landscape architect for use in Iowa as provided in Iowa Code section 544B.12.

b. Description of seal. The diameter of the outside circle shall be approximately 1¾ inches. The seal shall include the name of the professional landscape architect and the words "Professional Landscape Architect." The Iowa license number and the word "Iowa" shall be included. The seal shall substantially conform to the sample shown below:



c. A legible rubber stamp, an electronic image or other facsimile of the seal may be used.

d. Each technical submission to a building official, hereinafter referred to as the official copy, shall contain an information block on its first page or on an attached cover sheet with application of a seal by the professional landscape architect in responsible charge and an information block with application of a seal by each professional consultant contributing to the technical submission. The seal and original signature shall be applied only to a final technical submission. Each official copy of a technical submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the technical submission. Each information block shall display the seal of the individual responsible for that portion of the technical submission. The area of responsibility for each sealing professional shall be designated in the area provided in the information block, so

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

that responsibility for the entire technical submission is clearly established by the combination of the stated seal responsibilities. The information block shall substantially conform to the sample shown below:

SEAL	I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly licensed professional landscape architect under the laws of the state of Iowa.
	Printed or typed name
	Signature
	Pages or sheets covered by this seal:
License Expires:	

e. The information requested in each information block must be typed or legibly printed in permanent ink or digital signature as defined in or governed by Iowa Code chapter 544B on each official copy. The seal implies responsibility for the entire technical submission unless the area of responsibility is clearly identified in the information accompanying the seal.

f. It shall be the responsibility of the professional landscape architect who signed the original submission to forward copies of all changes and amendments to the technical submission, which shall become a part of the official copy of the technical submission, to the public official charged with the enforcement of the state, county or municipal building code.

g. A professional landscape architect is responsible for the custody and proper use of the seal. Improper use of the seal shall be grounds for disciplinary action.

h. The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the responsible control of the individual named on that seal.

**4.1(8) Communications.** A professional landscape architect shall, when requested, respond to communications from the board within 30 days of the mailing of such communication by certified mail. Failure to respond to such communication may be grounds for disciplinary action against the professional landscape architect.

**193D—4.2(544B,17A) Receipt of complaints.** The board shall receive and review all complaints which the board reasonably believes indicate that a licensee may have committed an act that is cause for disciplinary action.

**4.2(1) Complaints.** Any person may file a complaint with the board charging that a licensee may have committed an act that is in violation of applicable law or rules. The complaint shall be written and signed by the complainant and accompanied with substantial evidence indicating when, where, and how the licensee committed the violation. All complaints filed with the board shall be privileged and held confidential by all board members, peer review committee members and staff. A person filing a complaint shall receive immunities in accordance with Iowa Code chapter 272C.

**4.2(2) Board-instigated complaints.** Upon presentation of evidence by a board member, the board's staff, or other state agency, the board may determine that a complaint should be formulated to charge that a licensee may have committed an act that is in violation of applicable law or rules. A majority

vote of the board approving a written motion stating the charges and containing evidence as to when, where, and how the violation might have occurred shall constitute a complaint to be processed by the complaint procedure.

**193D—4.3(544B,17A) Peer review committee.** At any point during the complaint procedure or the investigatory procedure and prior to determining whether probable cause exists that a violation has occurred, the board may appoint a peer review committee to assist the board in reaching its decision by conducting an investigation(s) of the complaint.

**4.3(1) Makeup of the peer review committee.** The committee shall consist of one or more professional landscape architects who are selected for their knowledge and experience in the particular aspect of landscape architecture involved in the complaint. The following are ineligible for membership:

- a. Members of the board.
- b. Close relatives of the alleged violator(s) or complainant.
- c. Individuals employed by the same firm or governmental unit as the alleged violator or complainant.

**4.3(2) Authority.** The committee's investigation shall be limited to interviewing of complainants, the alleged violator, individuals with knowledge of the alleged violation, and individuals with knowledge of the alleged violator's reputation in the community. The committee may not hire legal counsel, investigators, secretarial help or any other assistants without written authorization from the board.

**4.3(3) Compensation.** Committee members may receive per diem compensation equal to that received by board members for performing board duties. Committee members may be paid reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties within a budget limitation established by the board.

**193D—4.4(544B,272C) Investigation report.** Upon completion of the investigation, the investigator(s) shall prepare for the board's consideration a report containing the position or defense of the licensee so the board may determine what further action is necessary. The board may:

- 1. Order the matter be further investigated.
- 2. Allow the licensee who is the subject of the complaint an opportunity to appear before the committee for an informal discussion regarding the circumstances of the alleged violation.
- 3. Determine there is no probable cause to believe that a violation has occurred and close the case.
- 4. Determine there is probable cause to believe that a violation has occurred.

**193D—4.5(544B,272C) Dispensation.** The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

- 1. Dismiss the charges.
- 2. Revoke the professional landscape architect's license.
- 3. Suspend the professional landscape architect's license as authorized by law.
- 4. Impose civil penalties, the amount of which shall be set at the discretion of the board but shall not exceed \$1000. Civil penalties may be imposed for any of the disciplinary violations of Iowa Code section 544B.15 and Iowa Code sections 272C.9(2) and 272C.9(3) and these rules or for repeated offenses.
- 5. Impose a period of probation, either with or without conditions.
- 6. Require reexamination, using one or more parts of the examination given to professional landscape architectural licensee candidates.

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

7. Require additional professional education, reeducation, or continuing education.
8. Issue a citation or warning.
9. Issue a consent order.
10. Accept voluntary surrender of license. Voluntary surrender of a license is considered a disciplinary action.

These rules are intended to implement Iowa Code chapters 17A, 544B and 272C.

**ARC 2464B****TRANSPORTATION  
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 201, "Intermodal Pilot Project Program," Chapter 800, "Items of General Application," Chapter 802, "Reporting of Railroad Accidents/Incidents," Chapter 810, "Railroad Safety Standards," Chapter 811, "Highway-Railroad Grade Crossing Warning Devices," Chapter 820, "Highway Grade Crossing Safety Fund," Chapter 821, "Highway-Railroad Grade Crossing Surface Repair Fund," Chapter 830, "Rail Assistance Program," and Chapter 831, "Railroad Revolving Loan Fund," Iowa Administrative Code.

Amendments to these chapters were identified as a result of reviews conducted in accordance with Executive Order Number 8. The amendments correct the name of the Department's contact office for rail matters, change Interstate Commerce Commission to Surface Transportation Board, update citations to Iowa statutes and the Code of Federal Regulations, simplify procedures, remove verbiage that is unnecessary or redundant, and make other minor corrections. More significant revisions are discussed in the following paragraphs:

Item 6 rescinds subrule 201.5(4), which requires the Department to publish a newspaper announcement of each complete intermodal project application submitted and to receive comments for 20 days after publication. This is not done for any other rail-related application.

Item 7 deletes a requirement that the staff's recommendation on an intermodal project application be sent to the Commissioners and applicant at least 14 days in advance of the Commission meeting. This is a mailing separate from the standard process used for distributing Commission meeting agendas and related materials.

Item 8 addresses submission of approved intermodal projects to the Department of Natural Resources once the Iowa Energy Fund Disbursement Council is dissolved.

Item 14 amends subrule 800.15(4), which pertains to the Department's approval of a local train speed ordinance or resolution, to comply with an Attorney General's opinion. The amended language provides that the Department may approve the proposed ordinance or resolution only if the proposal satisfies the requirements of 49 U.S.C. 20106: (1) it is necessary to eliminate or reduce a local safety hazard; (2) it is not incompatible with a federal law, regulation or order; and (3) it does not unreasonably burden interstate commerce. Amended subrule 800.15(4) also provides that generally, the

Department does not consider highway-railroad grade crossings or rail lines located near schools, residences, or commercial activities to be local safety hazards that can be remedied by train speed restrictions.

Item 26 rewrites four rules pertaining to the highway grade crossing safety fund. References to the use of the grade crossing safety fund to install active warning devices have been deleted. The fund is no longer used for this purpose. Rather, the grade crossing safety fund is used to participate in the maintenance cost of active warning devices ordered or agreed to be installed on or after July 1, 1973, as stated in the individual orders or agreements. The revised rules also more accurately reflect the way reimbursements of maintenance costs are processed.

Item 27 amends 761—Chapter 821, which pertains to the use of the grade crossing surface repair fund. This chapter is being amended to streamline the agreement process and involve the Department more directly in the final acceptance of surface repair projects.

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: [julie.fitzgerald@dot.state.ia.us](mailto:julie.fitzgerald@dot.state.ia.us).
5. Be received by the Director's Staff Division no later than June 3, 2003.

A meeting to hear requested oral presentations is scheduled for Thursday, June 5, 2003, at 10 a.m. in the Administration Building, First Floor South Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Director's Staff Division at the address listed in this Notice by June 16, 2003.

These amendments are intended to implement Iowa Code chapters 307, 327C, 327F, 327G, and 327H.

Proposed rule-making actions:

ITEM 1. Amend **761—Chapter 201** as follows:

Amend the parenthetical implementation statute in each rule number by striking "72GA,Ch230" and inserting in lieu thereof "473".

ITEM 2. Amend rule 761—201.1(473) as follows:

**761—201.1(473) General information.**

**201.1(1) Scope of chapter.** This chapter establishes procedures for an intermodal pilot project program using funds transferred to the department by 1987 Iowa Acts, chapter 230, *section 1*, and 1998 Iowa Acts, *chapter 1211, section 1*,

## TRANSPORTATION DEPARTMENT[761](cont'd)

for grants and loans for one or more pilot projects of intermodal transportation facilities.

**201.1(2)** Information. Information about the program, project guidelines, requests for assistance, and answers to questions about the preparation and submission of project applications for funding may be obtained by contacting the department at the following address: ~~Rail and Water Division Office of Rail Transportation~~, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1367 1140. *Submissions to the department under this chapter shall be sent or delivered to this address.*

ITEM 3. Rescind and reserve subrule **201.5(1)**.

ITEM 4. Amend subrule 201.5(2), introductory paragraph, as follows:

**201.5(2)** Application. The applicant shall submit an original and four copies of an application for financial assistance to the ~~rail and water division department~~ at the address given in subrule 201.1(2). The application shall include, but not be limited to, the following information:

ITEM 5. Amend paragraph **201.5(3)“c”** as follows:

c. If the department determines that the application is complete, the department shall notify the applicant by ~~certified mail~~ within ten working days that the application is ~~accepted complete~~ and shall be processed.

ITEM 6. Rescind subrule **201.5(4)**.

ITEM 7. Amend subrule 201.8(1) as follows:

**201.8(1)** The staff shall present the ~~complete~~ application and the staff analysis and recommendation to the commission at a ~~public meeting for approval~~. The staff shall send to the ~~commission and the applicant~~ copies of the analysis and recommendation at least 14 days before the presentation date.

ITEM 8. Amend subrule 201.8(3) as follows:

**201.8(3)** If financial assistance is approved by the commission, the ~~department shall submit the project~~ shall be submitted to the Iowa energy fund disbursement council for approval. If *the project is approved* by the Iowa energy fund disbursement council, the ~~department shall submit the project~~ shall be submitted to the U.S. Department of Energy for approval.

*Pursuant to Iowa Code section 473.11, the Iowa energy fund disbursement council will be dissolved on June 30, 2003. Thereafter, the department will submit projects to the department of natural resources rather than the Iowa energy fund disbursement council.*

ITEM 9. Amend subrule 201.9(1) as follows:

**201.9(1)** After the commission and other necessary authorities have approved financial assistance, the ~~rail and water division department and the applicant~~ shall negotiate and enter into a contract with the applicant which that complies with all the approval terms and requirements specified. The contract shall require the applicant to indemnify the state and its officers and employees to the full extent permitted by law.

ITEM 10. Rescind and reserve subrule **201.9(4)**.

ITEM 11. Amend **761—Chapter 201**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 473.11, and 1987 Iowa Acts, chapter 230, sections 1, and 4, 5, 6 and 7 and 1998 Iowa Acts, chapter 1211, section 1.

ITEM 12. Amend **761—Chapter 800**, chapter title, as follows:

CHAPTER 800  
ITEMS OF GENERAL APPLICATION  
FOR RAILROADS

ITEM 13. Amend rules 761—800.2(17A) to 761—800.4(327C) as follows:

**761—800.2(17A) Location and submission of documents.** All documents, ~~including applications, petitions, complaints, notices, reports, and forms,~~ concerning railroad matters which, according to statute or rule, must be submitted to the ~~rail and water division department~~ shall be submitted to ~~this~~ the following address: *Office of Rail Transportation, Iowa Department of Transportation, Rail and Water Division, 800 Lincoln Way, Ames, Iowa 50010.* ~~This includes all documents concerning railroad matters which, according to statute, must be submitted to the department.~~

This rule is intended to implement Iowa Code section 17A.3.

**761—800.3(327C) Accounts.** All railroads operating in Iowa, except those whose accounts are regulated by the ~~interstate commerce commission~~ *Surface Transportation Board*, shall maintain accounts using the generally accepted accounting principles of the financial standards accounting board. The accrual method of accounting shall be used.

This rule is intended to implement Iowa Code section 327C.42.

**761—800.4(327C) Annual reports.**

**800.4(1)** A railroad company submitting an annual report to the ~~interstate commerce commission~~ *Surface Transportation Board* under 49 CFR Part 1241 shall submit a copy of this report to the ~~rail and water division department~~ no later than March 31 following the close of the calendar year. Included with this report shall be a “State Statistics” report which shall include the following: annual data on additions and deletions of mileage within the state; mileage operated within the state at the end of the year; railway operating revenues earned within the state; statistics on rail line operations within the state including locomotive unit-miles, car-miles and ton-miles; revenue freight carried within the state by commodity class; and a freight density map showing gross ton-miles for the railroad company’s system within the state.

**800.4(2)** A railroad company not required to submit an annual report to the ~~interstate commerce commission~~ *Surface Transportation Board* under 49 CFR Part 1241 shall submit an annual report to the ~~rail and water division department~~ on Form 010030 no later than March 31 following the close of the calendar year.

This rule is intended to implement Iowa Code sections 327C.28, 327C.38, 327C.41 and 327C.43.

ITEM 14. Amend subrule 800.15(4) as follows:

**800.15(4)** *The department shall issue an order approving or disapproving the ordinance/resolution in accordance with the following:*

a. *The department may approve the proposed ordinance/resolution only if the proposal satisfies the requirements of 49 U.S.C. 20106: (1) it is necessary to eliminate or reduce a local safety hazard; (2) it is not incompatible with a federal law, regulation or order; and (3) it does not unreasonably burden interstate commerce.*

b. *Generally, the department does not consider highway-railroad grade crossings or rail lines located near schools,*

## TRANSPORTATION DEPARTMENT[761](cont'd)

residences, or commercial activities to be local safety hazards that can be remedied by train speed restrictions.

c. In making the its decision, the department may also consider the following factors considered by the department may include, but are not limited to, the following:

- a. (1) Traffic density and speed.
- b. (2) Accident frequency.
- c. (3) Causes of accidents.
- d. (4) Obstructions to visibility.
- e. (5) Traffic controls at crossings.
- f. (6) Population density.
- g. (7) Resulting burden on the rail transportation system.
- h. (8) Resulting benefit to residents of the political subdivision.

ITEM 15. Rescind subrule **800.15(8)**.

ITEM 16. Amend subrule 800.15(9) as follows:

**800.15(9) 800.15(8)** A submission to the rail and water division department under this rule shall be deemed timely submitted if it is delivered to the rail and water division or postmarked within the time period specified.

ITEM 17. Amend rule **761—800.15(327F)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 327F.31 and 2002 Iowa Op. Att'y Gen. \_\_\_\_\_ (#01-5-2).

ITEM 18. Amend subrule 800.20(1) as follows:

**800.20(1)** 49 CFR Part 1152 contains the regulations governing the abandonment and discontinuance of railroad lines and rail transportation under 49 U.S.C. 10903 et seq. This part also contains the regulations and procedures for the acquisition or use of railroad rights-of-way proposed for abandonment for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d).

For the purpose of this rule, this part is adopted as of October 1, 1989 2002.

ITEM 19. Amend subrule 802.1(1) as follows:

**802.1(1)** When required. A railroad filing with the Federal Railroad Administration any of the forms listed in subrule 802.1(2) shall, at the same time, file a copy with the rail and water division department at the following address if the accident or incident occurred in Iowa: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 20. Amend rule 761—802.2(327C) as follows:

**761—802.2(327C) Immediate reporting of personal injury or death.** Any accident/incident involving train movement which results in personal injury requiring hospitalization or in death shall be reported immediately to the rail and water division department.

**802.2(1)** No change.

**802.2(2)** Method of immediate reporting. During normal business hours the immediate report shall be filed with the rail and water division office of rail transportation by telephone at (515)239-4367 1140. At other times, the report shall be filed with the office of motor carrier services of the motor vehicle division of the department by telephone at (515)243-2478. This 24-hour number allows rail and water division personnel to be notified immediately at all times.

This rule is intended to implement Iowa Code section 327C.37.

ITEM 21. Amend rule 761—810.1(307,327C) as follows:

**761—810.1(307,327C) Track standards.** The department adopts the railroad track safety standards contained in 49 CFR Part 213 (October 1, 1988 2002).

This rule is intended to implement Iowa Code sections 307.26, 327C.2, and 327C.4.

ITEM 22. Rescind and reserve subrule **810.2(2)**.

ITEM 23. Amend rule 761—810.5(327F) as follows:

**761—810.5(327F) Worker transportation.**

**810.5(1)** Heater requirement. Pursuant to Iowa Code subsection 327F.39(4), a motor vehicle used to transport railroad workers shall be equipped with a heating system that maintains a reasonable comfort level in the vehicle spaces where the workers are required to ride. The heating system shall comply with the safety standards established in 49 CFR 393.77, as adopted in subrule 761—520.1(1), paragraph "a." rule 761—520.1(321).

**810.5(2)** Report procedure.

a. A person shall report an alleged violation in writing to the responsible railroad company at its corporate headquarters. If within 30 days the railroad company does not respond or if the response is unsatisfactory, the person may report the alleged violation to the administrator of the rail and water division department at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. No change.

c. The administrator department may request additional information from the person or the railroad. The administrator director of the office of rail transportation or the director's designee shall issue a decision within 20 days after the report is received by the rail and water division department or after the additional information is received. The administrator department shall notify the person and the railroad of the decision, which shall be is the final decision of the department.

This rule is intended to implement Iowa Code section 327F.39.

ITEM 24. Amend rule 761—811.1(307,327G) as follows:

**761—811.1(307,327G) Standards.** All highway-railroad grade crossing warning devices installed shall be in conformance with conform to "Part VIII Part 8, "Traffic Control Systems Controls for Railroad-Highway Highway-Rail Grade Crossings," of the "Manual on Uniform Traffic Control Devices for Streets and Highways" as adopted in rule 761—130.1(321) 761—Chapter 130.

This rule is intended to implement Iowa Code paragraph 307.26(5)"b" and section sections 321.252 and 327G.2.

ITEM 25. Amend rule **761—820.1(327G)** by striking the implementation clause at the end of the rule.

ITEM 26. Rescind rules 761—820.2(327G) to 761—820.5(327G) and adopt in lieu thereof the following **new** rules:

**761—820.2(327G) Purpose.** The purpose of this chapter is to set out the requirements for use of the highway grade crossing safety fund to reimburse railroads for a portion of the maintenance costs associated with active warning devices.

**761—820.3(327G) Information and submissions.** Information about this chapter may be obtained by contacting the department at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln

## TRANSPORTATION DEPARTMENT[761](cont'd)

Way, Ames, Iowa 50010; telephone (515)239-1140. Submissions to the department under this chapter shall be sent or delivered to this address.

**761—820.4(327G) Participation in the maintenance costs of eligible warning devices.** The highway grade crossing safety fund shall be used to participate in the annual maintenance costs of active warning devices ordered or agreed to be installed on or after July 1, 1973, as stated in the individual order or agreement.

**820.4(1)** Orders or agreements that provide for revision of the maximum amount that can be expended from the highway grade crossing safety fund by reason of amendment to Iowa Code section 327G.15 are binding. These orders and agreements were amended to read: The fund's participation for calendar years preceding 1977 shall be equal to that of the railroad but limited to a maximum of \$450 for any one year, for any one crossing; and for calendar year 1977 and subsequent years, the fund may participate in an amount of up to 75 percent of annual maintenance costs of active warning devices, based upon a cost for each eligible AAR signal unit.

**820.4(2)** Orders or agreements issued on or after March 8, 1978, shall provide that the highway grade crossing safety fund may be used to participate in an amount of up to 75 percent of the annual maintenance costs of active warning devices, based upon a cost for each eligible AAR signal unit.

**820.4(3)** Participation in annual maintenance costs is on a reimbursement basis.

**761—820.5(327G) Reimbursement.**

**820.5(1)** Calculations. Reimbursement to a railroad for its active warning devices that are eligible for reimbursement under rule 761—820.4(327G) shall equal the number of AAR signal units for that railroad's eligible active warning devices times the average annual maintenance cost per AAR signal unit times the percentage of participation.

a. Each railroad shall tabulate the number of AAR signal units for each eligible warning device and furnish this tabulation to the department. The department shall review the railroads' tabulations for conformance with AAR guidelines.

b. Each year, the department shall compute an average annual maintenance cost per AAR signal unit. This unit cost shall be used by all railroads for billing purposes.

c. The percentage of participation shall not exceed 75 percent.

**820.5(2)** Billing. Before April 15 of each year, each railroad shall submit one billing to the department covering maintenance costs for the preceding calendar year for all eligible warning devices. Prior to reimbursement, the department may audit the billings to determine conformity of the billings with the orders or agreements. Reimbursement to a railroad may be denied if the railroad fails to submit its billing before April 15.

**820.5(3) Proration.**

a. If, in any year, the balance of the highway grade crossing safety fund is inadequate to fully reimburse all railroads, the department shall reimburse each railroad on a pro-rata basis.

b. If a warning device has been in operation for less than one calendar year, the maintenance costs shall be prorated from the date the device was placed in operation to the end of that calendar year.

These rules are intended to implement Iowa Code sections 327G.15 and 327G.19.

ITEM 27. Amend 761—Chapter 821 as follows:

CHAPTER 821  
HIGHWAY-RAILROAD GRADE CROSSING SURFACE  
REPAIR FUND

**761—821.1(327G) Definitions.** The following terms when used in this chapter of rules shall have the following meanings:

**821.1(1)** "Grade crossing surface repair".—~~Repair or maintenance of that portion of the grade crossing surface above the top elevation of the ties, unless it is determined that the surface cannot be improved without complete renovation of the crossing in which case the renovation shall constitute surface repair~~ means the partial or complete renovation of a highway-railroad grade crossing and the highway approaches to the crossing.

**821.1(2)** "Jurisdiction".—~~The~~ means the authority having primary control over a highway, street, or alley.

**821.1(3)** "Repair fund".—~~The~~ means the grade crossing surface repair fund established in Iowa Code section 327G.29, and administered by the department.

~~This rule is intended to implement Iowa Code sections 327G.29 and 327G.30.~~

**761—821.2(327G) General information.**

**821.2(1)** *The repair fund shall be used for grade crossing surface repair.*

**821.2(2)** *Information about the repair fund may be obtained by contacting the department at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1140. Submissions to the department under this chapter shall be sent or delivered to this address.*

**761—821.2(327G) 761—821.3(327G) Procedures for the use of grade crossing surface repair funds.**

**821.2(1) 821.3(1)** Notification to department. If a railroad and a jurisdiction enter into negotiations for grade crossing surface repair and desire to use the repair fund agree to use the repair fund for grade crossing surface repair, written notification of the action signed by both parties shall be sent to the rail and water division by both parties department.

a. ~~The notification may be in the form of a single statement signed by both parties and shall include the total estimated cost of the anticipated repair.~~

b a. The notification shall include the American Association of Railroads—Department of Transportation (AAR-DOT) crossing number, *the total estimated cost of the repair, and a statement that the railroad and the jurisdiction each agree to pay 20 percent of the cost of the repair.*

e b. Notification shall be accepted by the rail and water division department in order of receipt.

**821.2(2) 821.3(2)** Availability of funds *Processing an agreement. The rail and water division shall notify the jurisdiction if funds are available in the repair fund.*

a. *The department shall determine if the agreed-upon work constitutes grade crossing surface repair and may consult with the jurisdiction or the railroad if further information is needed.*

b. *If the work constitutes grade crossing surface repair and when funds are available in the repair fund, the rail and water division department shall furnish the railroad and the jurisdiction with three copies of a standard draft an agreement for grade crossing surface repair.*

c. *The railroad and the jurisdiction shall sign all three copies of the agreement and return them to the department.*

d. *The department shall:*

## TRANSPORTATION DEPARTMENT[761](cont'd)

(1) Approve the agreement and obligate from the repair fund an amount equal to 60 percent of the cost of the agreed-upon work.

(2) Sign all three copies of the agreement, retain one copy of the fully executed agreement, transmit one copy to the jurisdiction, and transmit one copy to the railroad, authorizing work to proceed.

**821.2(3)** Submission of agreement to the department. If the jurisdiction and the railroad reach an agreement for grade crossing surface repair whereby each contributes 20 percent of the cost, all three copies of the agreement shall be transmitted to the rail and water division by the jurisdiction. The agreement shall include the AAR-DOT crossing number.

**821.2(4)** Allocation of funds. If funds are available, the department shall allocate 60 percent of the total estimated cost of the repair from the repair fund, after receipt of a fully executed agreement.

**821.2(5)** Resolution of disagreement. If an agreement cannot be reached, either the railroad or the jurisdiction may request a hearing. The request shall be submitted in writing to the rail and water division.

**821.2(6)** Need for additional information. The department shall determine if the agreed-upon work constitutes surface repair of the crossing and shall consult with the jurisdiction or the railroad if further justification or information is needed.

**821.2(7)** Approval and preaudit of the agreement. If the agreed-upon work constitutes surface repair of the crossing, the department shall approve the agreement. An amount equal to 60 percent of the cost of the agreed-upon work shall then be obligated from the repair fund.

a. **821.3(3)** *Preaudit*. Prior to approval of the agreement, the department may perform a preaudit evaluation of the railroad.

b. The preaudit evaluation may include: An examination of the railroad's accounting methods and procedures to determine the railroad's ability to segregate and accumulate costs to be charged against the surface repair project; an examination of the railroad's cost factors to assure ensure their propriety and allowability; and an examination of any other general information available which might be pertinent or necessary in determining the railroad's auditability.

**821.2(8)** Work authorization. Upon approval by the rail and water division, two copies of the agreement shall be transmitted to the jurisdiction. The jurisdiction shall then transmit one copy of the approved agreement to the railroad and authorize the railroad to order necessary materials and proceed with the work. The third copy shall be retained by the rail and water division.

**821.2(9)** **821.3(4)** Certification of project completion *Review of completed project*. Upon completion of the agreed-upon work, the department, the railroad and the jurisdiction shall complete Form 640003, "Certificate of Completion and Final Acceptance of Agreement Work," certifying project completion and shall send it to the rail and water division *review the project to determine satisfactory completion*.

**821.2(10)** **821.3(5)** Project billing and payment.

a. The railroad shall submit to the jurisdiction and the department a final detailed billing covering the actual and necessary costs incurred by the railroad for the agreed-upon work.

b. The jurisdiction and the department shall review the billing for reasonable conformance with the agreement. The billing, if approved by the jurisdiction, shall be sent to the rail and water division for payment from the repair fund. The department may audit the billing to determine the allowability

and propriety of the billing costs in accordance with the agreement.

**821.2(11)** Final payment—department. The department, prior to approval of the billing, may perform an audit of the submitted billing to determine the allowability and propriety of the billing costs in accordance with the executed agreement.

c. Upon approval of *Once the department approves* the billing, the department shall pay to the railroad from the repair fund an amount equal to 60 percent of the actual cost of the agreed-upon work.

**821.2(12)** d. Final payment—jurisdiction. Upon approval of the billing, the rail and water division shall notify the jurisdiction of the approval. The jurisdiction shall pay to the railroad an amount equal to 20 percent of the actual cost of the agreed-upon work.

This rule is *These rules are* intended to implement Iowa Code sections 312.2(5), 327G.29, 327G.30, and 327G.31.

ITEM 28. Amend rule 761—830.2(327H) as follows:

**761—830.2(327H) General information.**

**830.2(1)** No change.

**830.2(2)** Information regarding rail assistance projects is available from the department's office of program management; telephone (515)239-1145 *department at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1140. Submissions to the department regarding rail assistance projects shall be sent or delivered to this address.*

**830.2(3)** Information regarding economic development projects is available from the department's office of project planning; telephone (515)239-1225. Written communications should be directed to the attention of the appropriate office at the following address: (name of office), *department at the following address: Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664. Submissions to the department regarding economic development projects shall be sent or delivered to this address.*

ITEM 29. Amend subrule 830.3(2) as follows:

**830.3(2)** Application. The applicant shall submit the application for a rail assistance project to the office of program management *address in subrule 830.2(2)*. Applications may be submitted at any time. The department shall evaluate each rail assistance project application within a reasonable period of time.

ITEM 30. Amend subrule 830.3(4) as follows:

**830.3(4)** Evaluation and approval.

a. The department *Department staff* shall evaluate each rail assistance project application and shall rank the projects in priority order. Priority shall be based on immediacy of need, funding availability, economic analysis, financial participation by other sources, financial analysis and other identifiable benefits to the state. An application for completion of a phased project may be given funding preference.

b. *Department staff shall present its recommendations to the commission for approval. The commission shall be responsible for determining the projects to be funded and the amount to be funded for each project.*

b c. ~~The department and the applicant shall negotiate a contract specifying~~ *After a project is approved by the commission, the department shall negotiate and enter into a contract with the applicant. The contract shall specify the obligations and responsibilities of each party. The contract*

## TRANSPORTATION DEPARTMENT[761](cont'd)

shall be submitted to the commission for approval. If appropriate *applicable*, the department shall *also* submit the contract to the federal railroad administration and shall apply for federal funds.

ITEM 31. Amend subrule 830.4(2) as follows:

**830.4(2)** Application. The applicant city or county shall submit the application for an economic development project to the office of project planning *address in subrule 830.2(3)*.

ITEM 32. Amend rule 761—831.3(327H) as follows:

**761—831.3(327H) Information and forms.** Information, instructions and application forms may be obtained from the department at the following address: Office of Program Management Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-4445 1140. Completed applications shall be submitted to this address.

ITEM 33. Amend subrule 831.10(1) as follows:

**831.10(1)** Submission.

a. The applicant shall submit an original and three copies of a project application to the address in rule 761—831.3(327H). ~~The An application shall be submitted to the office of program management and may be submitted at any time.~~

b. and c. No change.

d. The date of receipt of an application is the day a complete application is received in the office of program management by the department.

## ARC 2459B

### UTILITIES DIVISION[199]

#### Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A, 476.1B, and 476.47, the Utilities Board (Board) gives notice that on April 21, 2003, the Board issued an order in Docket No. RMU-03-8, *In re: Alternate Energy Purchase Programs, “Order Commencing Rule Making.”* The Board is proposing additions to 199 IAC 15.1(476), a new rule 199 IAC 15.17(476), and a new subparagraph 199 IAC 20.9(2)\*b\*(9). The proposed amendments are in response to Iowa Code section 476.47, which requires all electric utilities to offer by January 1, 2004, “alternate energy purchase programs that allow customers to contribute voluntarily to the development of alternate energy in Iowa.”

The Board will not detail here the reasons for proposing the amendments because those reasons have been delineated in the Board’s order, referred to above. This order is available at the Board’s Web site, <http://www.state.ia.us/iub>. This order is also available in hard copy for review or purchase at the Board’s Records Center, 350 Maple Street, Des Moines, Iowa 50319-0069; telephone (515)281-5563.

Pursuant to Iowa Code sections 17A.4(1)\*a” and \*b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before June 3, 2003, by filing an original and ten

copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author’s name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on June 27, 2003, in the Board’s hearing room at the address listed above.

A separate waiver provision is included for municipal utilities and cooperatives, but the Board’s general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) will be generally applicable to these rules.

These amendments are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and 476.47.

The following amendments are proposed.

ITEM 1. Amend rule **199—15.1(476)** by adding the following **new** definitions in alphabetical order:

“Allocated joint program costs” means embedded costs recovered through the utility’s base tariff rates, portions of which are allocated to the utility’s alternate energy purchase program.

“Alternate energy purchase program” means a utility program through which customers may contribute voluntarily to increase the utility’s share of electricity produced by or purchased from alternate energy production (AEP) facilities in Iowa.

“Directly assigned program costs” means incremental costs associated with the utility’s alternate energy purchase program not otherwise recovered through the utility’s base tariff rates, and electricity costs dedicated to the program and separated from the utility’s 199—20.9(476) energy or AEP automatic adjustment clauses.

ITEM 2. Add **new** rule 199—15.17(476) as follows:

**199—15.17(476) Alternate energy purchase programs.**

**15.17(1)** Obligation to offer programs.

a. Beginning January 1, 2004, each electric utility, whether or not subject to rate regulation by the board, shall offer an alternate energy purchase program that allows customers to contribute voluntarily to the increased development of alternate energy in Iowa. The program shall be based on energy produced by AEP facilities in Iowa, not including AEP facilities for which the utility has sought cost recovery under rule 199—20.9(476) prior to July 1, 2001.

b. The electric utility may base its program on energy produced by AEP facilities located outside of Iowa under any of the following circumstances:

(1) The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility;

(2) The electric utility has a financial interest, as of July 1, 2001, in the AEP facility that is located outside of Iowa or in an entity that has a financial interest in an AEP facility located outside of Iowa; or

(3) The energy is purchased by an electric utility that is not rate-regulated and that is required to purchase all of its electric power requirements from a single supplier that is physically located outside of Iowa.

c. This rule shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.

d. Any electric cooperative corporation or association or any municipally owned electric utility may apply to the board for a waiver under this rule.

## UTILITIES DIVISION[199](cont'd)

**15.17(2)** Customer notification.

a. Each electric utility shall notify customers of its alternate energy purchase program and proposed program modifications at least 60 days prior to implementation of the program or program modification. The notification shall include:

(1) A description of the availability and purpose of the program, clarifying that customer contributions will be used for purchases that serve the utility system as a whole rather than individual customers;

(2) The effective date of the program or program modification;

(3) Customer classes eligible for participation;

(4) Forms and levels of customer contribution available to program participants;

(5) A utility telephone number for receiving customers' questions about the program; and

(6) A sign-up form for authorizing customer participation.

b. In addition to the notification requirements under 15.17(2)"a," each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall:

(1) Include fuel report information described under 15.17(5); and

(2) Submit the proposed notification to the board for approval at least 30 days prior to the proposed date of issuance of the notification.

**15.17(3)** Program plan filing requirements for rate-regulated utilities. On or before October 1, 2003, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a plan for the utility's alternate energy purchase program. Initial program plans and any subsequent modifications will be subject to board approval. The program plan shall include:

a. The program tariff;

b. The program effective date;

c. A sample of the customer notification, including a description of the method of distribution;

d. Customer classes eligible for participation and the schedule for extending participation to all customer classes;

e. Identification of each AEP facility used for the program, including:

(1) Fuel type;

(2) Nameplate capacity;

(3) Estimated annual kWh output;

(4) Estimated in-service date;

(5) Ownership, including any utility affiliation;

(6) A copy of any contract for utility purchases from the facility;

(7) A description of the method or procedure used to select the facility, whether through competitive bid or some other method;

(8) A description of how kWh from the facility will be brought into the utility's Iowa service area; and

(9) If the facility is located outside of Iowa, an explanation of how the facility qualifies under 15.17(1)"b";

f. The forms and levels of customer contribution available to program participants, including:

(1) kWh rate premiums applied to percentages of participant kWh usage, with an explanation of how the kWh rate premiums are derived; or

(2) kWh rate premiums applied to fixed kWh blocks of participant usage, with an explanation of how the kWh rate premiums are derived;

g. The maximum allowable time lag between the beginning of customer contributions and the in-service date for identified AEP facilities, and the procedures for suspending customer contributions if the maximum time lag is exceeded;

h. The intended treatment of program participants under 199—20.9(476) energy automatic adjustment and AEP automatic adjustment clauses;

i. An accounting plan for identifying and tracking participant contributions and program costs, including:

(1) Identification of directly assigned program costs and allocated joint program costs for: program start-up and administration; program marketing; and program energy and capacity from identified AEP facilities;

(2) Methods for quantifying, assigning, and allocating costs of the program and for segregating these costs in the utility's accounts; and

(3) Methods for independently verifying that program energy and capacity from identified AEP facilities are not used to meet any other AEP or renewable energy regulatory requirements; and

j. A marketing and customer information plan, including schedules and copies of all marketing and information materials.

**15.17(4)** Annual reporting requirements for rate-regulated utilities. On or before April 1, 2005, and annually thereafter, each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall file with the board a report of program activity for the previous calendar year. The annual report shall include:

a. The following information, by month:

(1) The number of program participants, by customer class;

(2) Participant contribution revenues, by customer class, by form and level of contribution, and associated participant kWh sales;

(3) Program electricity delivered to the utility's Iowa service area, and associated costs, by identified AEP facility; and

(4) Other directly assigned and allocated joint program costs, by cost;

b. An annual reconciliation of participant contributions and program costs, in which:

(1) The excess of participant contributions over total annual program costs is an annual program surplus, and the excess of any unrecovered total annual program costs over participant contributions is an annual program deficit;

(2) Annual program surpluses and deficits are cumulative over successive years;

(3) Participant contributions and the cumulative program surplus shall first be applied toward directly assigned program costs;

(4) Any deficit in the recovery of directly assigned program costs shall be recovered through the utility's 199—20.9(476) AEP automatic adjustment clause;

(5) Any participant contributions and cumulative program surplus in excess of directly assigned program costs shall be applied toward allocated joint program costs;

(6) Any participant contributions and cumulative program surplus applied toward allocated joint program costs, and not exceeding the total annual program costs, shall be credited through the utility's 199—20.9(476) AEP automatic adjustment clause;

(7) Any participant contributions in excess of total annual program costs, and applied toward a cumulative program

## UTILITIES DIVISION[199](cont'd)

deficit, shall be credited through the utility's 199—20.9(476) AEP automatic adjustment clause; and

(8) Any participant contributions in excess of total annual program costs and the cumulative program deficit shall become, or be added to, the cumulative program surplus;

c. Independent verification that program energy and capacity from identified AEP facilities are not used to meet any other AEP or renewable energy regulatory requirements;

d. A description of program marketing and customer information activities, including schedules and copies of all marketing and information materials related to the program;

e. Program modifications and uses for any program surplus that are under consideration, including procurement or assignment of additional electricity from AEP facilities; and

f. A copy of the utility's annual fuel report to customers under 15.17(5).

**15.17(5)** Annual fuel reporting requirements for rate-regulated utilities.

a. Each electric utility subject to rate regulation by the board, excluding utilities that elect rate regulation pursuant to Iowa Code section 476.1A, shall annually report to all its Iowa customers its percentage mix of fuel and energy inputs used to produce electricity. The report shall specify percentages of electricity produced by coal, nuclear energy, natural gas, oil, AEP electricity produced for the utility's alternate energy purchase program, and non-program AEP electricity. The percentages for AEP electricity shall further specify percentages of electricity produced by wind, solar, hydropower, biomass, and other technologies.

b. The report shall include an estimate of sulfur dioxide (SO<sub>2</sub>), nitrogen oxide (NO<sub>x</sub>), and carbon dioxide (CO<sub>2</sub>) emissions per kWh, for each fuel and energy input type.

**15.17(6)** Program plan filing requirements for non-rate-regulated utilities.

a. On or before January 1, 2004, each electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A shall file

with the board a plan for the utility's alternate energy purchase program. Initial program plans and any subsequent modifications shall be filed for informational purposes only. The program plan shall include:

(1) The program tariff;

(2) The program effective date;

(3) A sample of the customer notification, including a description of the method of distribution;

(4) Customer classes eligible for participation;

(5) Identification of each AEP facility used for the program, including: fuel type; nameplate capacity; estimated annual kWh output; estimated in-service date; ownership, including any utility affiliation; a description of how kWh from the facility will be brought into the utility's Iowa service area; and, if the facility is located outside of Iowa, an explanation of how the facility qualifies under 15.17(1)"b"; and

(6) Forms and levels of customer contribution available to program participants.

b. Joint filings. An electric utility that is not subject to rate regulation by the board or that elects rate regulation pursuant to Iowa Code section 476.1A may file its program plan jointly with other non-rate-regulated utilities or through an agent. A joint plan shall contain the information required by paragraph 15.17(6)"a," separately identified for each utility participating in the joint plan. The information for each utility may be provided by reference to an attached document or to a section of the joint plan. A joint plan filed by an agent shall state the agent's relationship to each utility and include a document from each utility authorizing the agent to act on the utility's behalf.

ITEM 3. Add **new** subparagraph **20.9(2)"b"(9)** as follows:

(9) Eligible costs or credits associated with the utility's annual reconciliation of its alternate energy purchase program under 199—15.17(4)"b."

**ARC 2479B****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1, the Department of Agriculture and Land Stewardship hereby amends Chapter 60, "Poultry," Iowa Administrative Code.

The purpose of this amendment is to update animal exhibition requirements to be used at Iowa county fairs, 4-H fairs or exhibitions, or similar exhibitions. The amendment restricts the sale of poultry at unregulated facilities and gatherings and requires that exhibitions involving poultry be registered with and approved by the state veterinarian at least 30 days prior to the exhibition.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because of the recent finding of Exotic Newcastle Disease and low pathogenic (H7) Avian Influenza in this country. These diseases present a significant threat to the poultry industry in Iowa.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing, as it confers immediate, reasonable mitigation of the risk of these diseases to the Iowa poultry industry.

This amendment is also published herein under Notice of Intended Action as **ARC 2458B** to allow for public comment.

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

Pursuant to 2003 Iowa Acts, House File 636, the Department finds that the fiscal impact of this amendment does not meet the threshold requirements.

This amendment is intended to implement Iowa Code chapter 163.

This amendment became effective April 18, 2003.

The following amendment is adopted.

Amend 21—Chapter 60 by adding the following **new** rule:

**21—60.4(163) Registration of exhibitions involving poultry.** For the purposes of this rule, poultry includes egg-type chickens, meat-type chickens, turkeys, domestic waterfowl, domestic game birds, and exhibition poultry. All exhibitions which include the exhibition of poultry must be registered with and approved by the state veterinarian at least 30 days prior to the exhibition.

**60.4(1)** A licensed accredited veterinarian shall inspect all poultry on the premises of the poultry exhibition, show or sale the day of the activity. All poultry showing signs of any contagious disease shall be removed from the premises immediately.

**60.4(2)** All poultry present at exhibitions, shows or sales must come from U.S. Pullorum-Typhoid clean or equivalent flocks, or have had a negative Pullorum-Typhoid test within 90 days prior to the event, and the test must have been performed by an authorized tester.

**60.4(3)** Sales of poultry will not be allowed at unregulated facilities or events, such as flea markets and swap meets, unless such facilities or events have been registered with and

approved by the state veterinarian at least 30 days prior to the event.

[Filed Emergency 4/18/03, effective 4/18/03]

[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

**ARC 2480B****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1, the Department of Agriculture and Land Stewardship hereby adopts amendments to Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The purpose of these amendments is to update animal exhibition requirements in Iowa to be used at county fairs, 4-H fairs or exhibitions, or similar exhibitions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 19, 2003, as **ARC 2292B**. No comments were received.

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

Pursuant to Iowa Code section 17A.5(2)"b"(2), these amendments became effective upon filing. This emergency filing is necessary to allow for the advancement of the status of Iowa in the pseudorabies national disease eradication program and for the resultant benefit to producers, requiring less testing of exhibition swine entered in terminal exhibitions.

No waiver provision is included in these amendments because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to the rules amended in this filing.

These amendments are intended to implement Iowa Code chapter 163.

These amendments became effective April 18, 2003.

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 [64.34, 64.35] is being omitted. These amendments are identical to those published under Notice as **ARC 2292B**, IAB 2/19/03.

[Filed Emergency After Notice 4/18/03, effective 4/18/03]

[Published 5/14/03]

[For replacement pages for IAC, see IAC Supplement 5/14/03.]

**ARC 2481B****PUBLIC SAFETY  
DEPARTMENT[661]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 321.4, the Department of Public Safety hereby amends Chapter 7, "De-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

VICES and Methods to Test Body Fluids for Alcohol or Drug Content," Iowa Administrative Code.

The technology available for evidentiary testing of breath for the presence and concentration of alcohol is an evolving area. For many years, Iowa has used the Intoxilyzer 4011A as the instrument of choice for processing evidentiary breath samples. While it represented a great step forward when it was introduced nearly a quarter of a century ago, the technology of the Intoxilyzer has been surpassed. The instrument of choice for evidentiary breath testing in Iowa is the Datamaster cdm. The transition from the Intoxilyzer to the Datamaster in Iowa is complete.

The amendments adopted here through emergency rule making clarify the procedural requirements for certification and operation of evidentiary breath testing equipment. Additionally, since the Intoxilyzer is no longer in use in Iowa, approval for its use is eliminated from the rules. The rules currently require operators of evidentiary breath testing equipment in Iowa to be certified in the use of the equipment by the Division of Criminal Investigation Criminalistics Laboratory or a designee of the laboratory and to follow "instructions provided by the Division of Criminal Investigation Criminalistics Laboratory." Differences between the Intoxilyzer and the Datamaster cdm, which operates in a more automated fashion than the Intoxilyzer, have led to some confusion. One court ruling has held that procedures currently in place for use of the Datamaster cdm do not adhere to the current rules. The changes made here to clarify the procedural requirements should allay the confusion regarding use of the Datamaster cdm and clarify the requirements for use of the instrument.

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 procedural requirements for calibration and operation of evidentiary breath testing equipment currently in use be clarified as soon as possible.

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 May 1, 2003, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by facilitating the continuing use of evidentiary breath testing equipment in the enforcement of Iowa Code chapter 321J.

A Notice of Intended Action including the amendments adopted herein and including additional changes to Chapter 7 will be proposed in the near future. The Notice of Intended Action will provide for a period of public comment and participation, including a public hearing. This process will culminate in the adoption of these amendments through normal rule-making procedures which allow for receipt and consideration of public input.

These amendments are intended to implement Iowa Code chapter 321J.

These amendments became effective May 1, 2003.

The following amendments are adopted.

Amend rule 661—7.2(321J) as follows:

Amend subrule 7.2(1) as follows:

**7.2(1)** A peace officer desiring to perform direct testing of a subject's breath for the purpose of determining the alcohol concentration shall employ, or cause to be used, a breath testing device of a type meeting the minimum performance requirements established by Highway Safety Programs; Standard for Devices to Measure Breath Alcohol, Federal Register, Vol. 49, No. 242 (December 14, 1984), pp. 48854-48855,

or by Highway Safety Programs; Model Specifications for Devices to Measure Breath Alcohol, Federal Register, Volume 58, No. 179 (September 17, 1993), pp. 48705-48708. All devices so used must be certified to be in proper working order within a period of one year immediately preceding use according to procedures specified for that device.

*Procedures for certification or recertification of the Datamaster cdm are contained in the document Certification or Re-certification of the Datamaster cdm, published by the division of criminal investigation criminalistics laboratory. A copy of the current version of this document may be obtained by contacting the division of criminal investigation criminalistics laboratory at the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319, or at the Web site of the department of public safety [www.state.ia.us/government/dps](http://www.state.ia.us/government/dps).*

*The operator of the an evidentiary breath testing device shall have been certified as competent in the operation of the breath testing device, and shall proceed in accordance with the instructions included in an operational checklist and an operating manual furnished by the division of criminal investigation criminalistics laboratory, and shall have been certified as competent in the operation of the breath testing device. An operating manual, with number and date, specific to a particular approved device and prepared by the division of criminal investigation criminalistics laboratory shall be available to operators using the device. The current version of the operating manual for each device currently approved for use in Iowa may be obtained by contacting the division of criminal investigation criminalistics laboratory at the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319, or from the department's Web site at [www.state.ia.us/government/dps](http://www.state.ia.us/government/dps).*

*NOTE: The operating manual for the Datamaster cdm is titled "Operating the Datamaster cdm."*

All certifications of devices shall be made by the division of criminal investigation criminalistics laboratory. All certifications of operators shall be made by the division of criminal investigation criminalistics laboratory or a designee. A designee shall be a person trained and certified by the division of criminal investigation criminalistics laboratory.

Amend subrule **7.2(3)** by rescinding and reserving paragraph "a."

[Filed Emergency 4/24/03, effective 5/1/03]

[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

**ARC 2482B**

**PUBLIC SAFETY  
DEPARTMENT[661]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 321.4, the Department of Public Safety hereby amends Chapter 8, "Criminal Justice Information," Iowa Administrative Code.

The rules contained in 661—Chapter 8, Division II, govern the collection, handling, and distribution of criminal intelligence information in Iowa. The amendments being adopted here through emergency rule-making procedures are intended to reconcile provisions of Division II with amendments to Iowa Code chapter 692 contained in 2003 Iowa

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Acts, House File 216. 2003 Iowa Acts, House File 216, was signed into law by the Governor on April 9, 2003, with an immediate effective date. Provisions of 2003 Iowa Acts, House File 216, modify certain of the requirements contained in Iowa Code chapter 692 for the handling of criminal intelligence information.

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 collection, analysis, and dissemination of criminal intelligence information be reconciled with revisions made in Iowa Code chapter 692 as soon as possible. This compatibility between the revised statute and the rules will reduce ambiguity and confusion in the handling of criminal intelligence information.

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 May 1, 2003, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by facilitating the use of criminal intelligence information, while reducing opportunities for confusion in the application of restrictions on the use of that information.

A Notice of Intended Action including the amendments adopted herein and including additional changes to Chapter 8, Division II, will be proposed in the near future. The Notice of Intended Action will provide for a period of public comment and participation, including a public hearing. This process will culminate in the adoption of these amendments through normal rule-making procedures which allow for receipt and consideration of public input.

These amendments are intended to implement Iowa Code chapter 692 as amended by 2003 Iowa Acts, House File 216.

These amendments became effective May 1, 2003.

The following amendments are adopted.

ITEM 1. Amend rule 661—8.201(692) by adding the following **new** subrule:

**8.201(7)** “Threat of imminent serious harm” means a credible impending threat to the safety of a person or property. A threat of imminent serious harm justifies the dissemination of intelligence data for the purpose of protecting a person or property from the threat.

ITEM 2. Amend subrules 8.202(7) and 8.202(8) as follows:

**8.202(7)** Dissemination. Criminal intelligence files from ICIS may be disseminated only to peace officers, criminal justice agencies, or state or federal regulatory agencies. Criminal intelligence files from ICIS may be disseminated only when there is a right to know and a need to know in the performance of a law enforcement activity. Criminal intelligence files from ICIS shall not be disseminated to any user whose authorization to access ICIS has been terminated and not reinstated.

EXCEPTION: Criminal intelligence files may be released to a government official or to any other individual when necessary to avoid imminent danger to life or property. *Intelligence data may also be disseminated to any agency, organization, or person for an official purpose and in order to protect a person or property from the threat of imminent serious harm as defined in 8.201(7).*

**8.202(8)** Redissemination. Recipients of criminal intelligence files from ICIS shall not redisseminate these files or information contained therein unless all of the following apply:

a.—The information is for official purposes in connection with prescribed duties of the recipient, who is a peace officer, criminal justice agency, or state or federal regulatory agency.

b.—The recipient is not a previously authorized user of ICIS whose authorization to access the system has been terminated and not reinstated.

c.—The agency redisseminating the information maintains a record of the persons receiving the information and the date and purpose of the redissemination.

d.—The request for the information is based upon name, fingerprints, or other individual identifying characteristics of the subject of the criminal intelligence information. *An agency, organization, or person receiving intelligence data from the department pursuant to Iowa Code chapter 692 as amended by 2003 Iowa Acts, House File 216, may redisseminate the intelligence data only if authorized by the agency or peace officer who originally provided the data and the data is for an official purpose in connection with the prescribed duties of the recipient. If the agency, organization, or person receiving the information is not a peace officer, criminal or juvenile justice agency, or state or federal regulatory agency, redissemination is allowed only if such redissemination is to protect a person or property from the threat of imminent serious harm. The department may also place restrictions on the redissemination by the agency, organization, or person receiving the intelligence data. Any agency, organization, or person who redisseminates intelligence data pursuant to Iowa Code chapter 692 as amended by 2003 Iowa Acts, House File 216, must maintain a list of the agencies, organizations, and persons receiving the intelligence data and the purpose of the redissemination.*

ITEM 3. Amend rule 661—8.203(692) as follows:

Amend the exception to subrule **8.203(6)** as follows:

EXCEPTION: Criminal intelligence files may be released to a government official or to any other individual when necessary to avoid imminent danger to life or property. *Intelligence data may also be disseminated to any agency, organization, or person for an official purpose and in order to protect a person or property from the threat of imminent serious harm as defined in subrule 8.201(7).*

Amend subrule 8.203(7) as follows:

**8.203(7)** Redissemination. Recipients of criminal intelligence files from a criminal intelligence system shall not redisseminate these files or information contained therein unless all of the following apply:

a.—The information is for official purposes in connection with prescribed duties of the recipient, who is a peace officer, criminal justice agency, or state or federal regulatory agency.

b.—The recipient is not a previously authorized user of ICIS or the criminal intelligence system from which the information was obtained whose authorization to access the system has been terminated and not reinstated.

c.—The agency redisseminating the information maintains a record of the persons receiving the information and the date and purpose of the redissemination.

d.—The request for the information is based upon name, fingerprints, or other individual identifying characteristics of the subject of the criminal intelligence information. *An agency, organization, or person receiving intelligence data from a criminal or juvenile justice agency, state or federal regulatory agency, or peace officer pursuant to Iowa Code chapter 692 as amended by 2003 Iowa Acts, House File 216, may redisseminate the intelligence data only if authorized by the agency or peace officer who originally provided the data and the data is for an official purpose in connection with the prescribed duties of the recipient. If the agency, organiza-*

PUBLIC SAFETY DEPARTMENT[661](cont'd)

*tion, or person receiving the data is not a peace officer, criminal or juvenile justice agency, or state or federal regulatory agency, redissemination is allowed only if such redissemination is to protect a person or property from the threat of imminent serious harm. A criminal or juvenile justice agency, state or federal regulatory agency, or peace officer may also place restrictions on the redissemination by the agency, organization, or person receiving the intelligence data. Any agency, organization, or person who redisseminates intelligence data pursuant to Iowa Code chapter 692 as amended*

*by 2003 Iowa Acts, House File 216, must maintain a list of the agencies, organizations, and persons receiving the intelligence data and the purpose of the redissemination.*

[Filed Emergency 4/24/03, effective 5/1/03]

[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

**ARC 2471B****AGRICULTURAL DEVELOPMENT  
AUTHORITY[25]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 175.6, the Agricultural Development Authority hereby amends Chapter 4, "IADA Loan Participation Program," and rescinds Chapter 6, "Iowa Agricultural Loan Assistance Program," Iowa Administrative Code.

These amendments increase the net worth limitations for participation in the loan participation program to better reflect the current prices for real estate. The amendments increase the maximum net worth to \$300,000 to match the Beginning Farmer Loan Program and increase the maximum participation amount to \$100,000.

The amendments also eliminate rules for a defunct loan guarantee program and eliminate some provisions which merely pertain to clerical and office procedures. The removal of these provisions will not materially affect the program rules or producer eligibility.

These amendments were proposed in a Notice of Intended Action, which was published in the Iowa Administrative Bulletin on March 19, 2003, as **ARC 2359B**. No public comment was received on the proposed amendments. The adopted amendments are identical to those published under Notice of Intended Action.

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

These amendments will become effective on June 18, 2003.

These amendments are intended to implement Iowa Code chapter 175.

The following amendments are adopted.

ITEM 1. Amend subrule 4.3(7) as follows:

**4.3(7) Net worth.**

a. For an individual, an aggregate net worth of the individual and the individual's spouse and minor children (if any) shall be less than ~~\$200,000~~ **\$300,000**.

b. For a partnership, an aggregate net worth of all partners, including each partner's net capital in the partnership, together with each partner's spouse and minor children, shall be less than ~~\$400,000~~ **\$600,000**. However, the aggregate net worth of each partner, including the partner's net capital in the partnership together with that of the partner's spouse and minor children, shall not exceed ~~\$200,000~~ **\$300,000**.

c. For a corporation, an aggregate net worth of all corporate shareholders, including each shareholder's net capital in the corporation plus the net capital of the corporation, ~~all of which~~ shall not exceed ~~\$400,000~~ **\$600,000**. The aggregate net worth of each shareholder, including the shareholder's net capital in the corporation together with that of the shareholder's spouse and minor children (if any), shall not exceed ~~\$200,000~~ **\$300,000**.

d. For a limited liability company, an aggregate net worth of all members, including each member's ownership interest in the limited liability company, together with *that of* each member's spouse and minor children, shall be less than ~~\$400,000~~ **\$600,000**. However, the aggregate net worth of each member, including the member's ownership interest in the limited liability company together with *that of the mem-*

*ber's spouse and minor children,* shall not exceed ~~\$200,000~~ **\$300,000**.

ITEM 2. Amend subrule **4.6(1)**, paragraph "**b**," as follows:

b. ~~Fifty~~ *One hundred* thousand dollars.

ITEM 3. Amend rule 25—4.7(175), introductory paragraph, as follows:

~~**25—4.7(175) Loan application procedures.** If an application is received in the IADA office by the tenth of the month it will be reviewed at the next board meeting. Lender and borrower are to submit a completed application and \$100 application fee along with the items covered below.~~

ITEM 4. Amend rule 25—4.7(175) by rescinding subrules **4.7(1)**, **4.7(5)**, and **4.7(11)** and renumbering subrules **4.7(2)** through **4.7(10)** as **4.7(1)** through **4.7(8)**.

ITEM 5. Amend subrule 4.7(8) as follows:

**4.7(8) Fees.** The lender or borrower must submit to the authority a nonrefundable application fee in the amount of \$100 when the application is submitted. A participation closing fee equal to ~~1~~ **1.25** percent of the IADA participation will be deducted from the participation proceeds by the IADA. A minimum participation closing fee of ~~\$200~~ **\$300** will be charged.

ITEM 6. Rescind and reserve **25—Chapter 6**.

[Filed 4/25/03, effective 6/18/03]

[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

**ARC 2457B****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1, the Department of Agriculture and Land Stewardship hereby adopts amendments to Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The purpose of the amendments is to modify the definitions of "monitored CWD cervid herd" and "official cervid identification" for farm deer enrolled in the chronic wasting disease (CWD) surveillance and monitoring program, and to require the CWD herd status to revert to the status of any new animal addition if the status of the animal(s) added is lower than the herd status prior to the addition. The amendments also change the requirements for obtaining a certified herd status from four years to five years to more closely conform to proposed federal standards. The amendments also modify the import requirements for Cervidae into Iowa to provide additional safeguards to protect the Iowa farm deer industry.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 19, 2003, as **ARC 2319B**. Public comments from the elk industry and an elk breeder were received during the public comment period. Changes were made from the Notice of Intended Action and are detailed below.

1. In rule 21—64.104(163), the definition for "official cervid identification" has been modified to include accep-

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

tance of tags issued by the North American Elk Breeders Association as an official form of identification.

2. Rule 21—64.117(163), recognition of monitored CWD herds, has been modified to change the letter classification of CWD monitored status to a numerical system that corresponds to the number of years enrolled in the monitoring program.

3. Rule 21—64.120(163), import requirements, has been modified to increase from two years to three years the number of years that an animal must have spent in a recognized CWD monitoring program prior to importation into Iowa. Also, the statement required on the Certificate of Veterinary Inspection for imported Cervidae has been modified to require no diagnosis, signs, or epidemiologic evidence in the herd of origin for the preceding five years.

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

These amendments will become effective on June 18, 2003.

These amendments are intended to implement Iowa Code chapter 163.

The following amendments are adopted.

ITEM 1. Amend rule **21—64.104(163)** by amending the definitions for “monitored CWD cervid herd” and “official cervid identification” as follows:

“Monitored CWD cervid herd” means a herd of Cervidae that is in compliance with the CCWDSI program as defined in this rule. Monitored herds are defined as one-year, two-year, three-year, and four-year, and five-year monitored herds in accordance with the time in years such herds have been in compliance with the CCWDSI program.

“Official cervid identification” means *one of the following*:

1. a A USDA-approved identification ear tag that conforms to the alphanumeric national uniform ear tagging system as defined in 9 CFR Part 71.1, Chapter 1, revised as of January 1, 2000.

2. A plastic or other material tag that includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.

3. A legible tattoo which includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.

4. A plastic or other material tag which provides unique animal identification and is issued and approved by the North American Elk Breeders Association.

ITEM 2. Amend rule 21—64.106(163) by adding a **new** subrule as follows:

**64.106(3)** Identification. Effective June 1, 2003, animals not identified with a tattoo must be identified with two forms of official identification.

ITEM 3. Amend subrule 64.113(2) as follows:

**64.113(2)** Upon request and with proof by records, a herd owner shall be issued a certified CWD cervid herd certificate by complying with the CCWDSI program for a period of four five years.

ITEM 4. Amend rule 21—64.115(163) as follows:

**21—64.115(163) Movement into a certified CWD cervid herd.**

**64.115(1)** Animals originating from certified CWD cervid herds may move into another certified CWD cervid herd *with no change in the status of the herd of destination.*

**64.115(2)** ~~Animals~~ *The movement of animals* originating from noncertified or lesser status herds ~~that are moving into certified CWD cervid herds cannot be certified until they remain in the certified CWD cervid herd for four years will result in the redesignation of the herd of destination to the lesser status.~~

~~**64.115(3)**—Animals originating from CWD monitored herds cannot be certified until a combination of the years in CWD monitored status and the years present in the certified CWD herd totals four years.~~

ITEM 5. Amend rule 21—64.116(163) as follows:

**21—64.116(163) Movement into a monitored CWD cervid herd.**

**64.116(1)** Animals originating from a monitored CWD cervid herd may move into another monitored CWD cervid herd of the same status.

~~**64.116(2)** *Animals* The movement of animals originating from a herd which is not a monitored CWD cervid herd or from a lower status monitored CWD cervid herd will progress annually in status level on an individual animal basis until completion of CWD certification result in the redesignation of the herd of destination to the lesser status.~~

ITEM 6. Amend rule 21—64.117(163) as follows:

**21—64.117(163) Recognition of monitored CWD herds.**

The state veterinarian shall issue a monitored CWD cervid herd certificate, including CWD monitored herd status as CWD monitored Level A 1 during the first calendar year, CWD monitored Level B 2 during the second calendar year, CWD monitored Level C 3 during the third calendar year, CWD monitored Level D 4 during the fourth calendar year, *CWD monitored Level 5 during the fifth calendar year*, and CWD certification at the completion of the fifth year and thereafter.

ITEM 7. Amend rule 21—64.119(163) as follows:

**21—64.119(163) Intrastate movement requirements.**

**64.119(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. *Movement, other than direct movement to slaughter, shall only be allowed from herds that have satisfactorily completed at least one year in the Iowa CWD monitoring program.*

**64.119(2)** Such intrastate movement certificate shall include all of the following:

- a. Consignor's name and address.
- b. Consignee's name and address.
- c. Individual, *official* identification of each animal ~~by an official ear tag.~~
- d. ~~The following statement: “There has been no diagnosis, signs, or epidemiologic evidence of CWD in this herd for the past year.”~~ *CWD herd premises number, the herd status level, the anniversary date, and the expiration date.*

ITEM 8. Amend rule 21—64.120(163) as follows:

**21—64.120(163) Import requirements.** *For the purpose of this rule, cervidae shall mean all animals belonging to the Cervidae family. Movement, other than direct movement to slaughter, shall only be allowed from herds which have satis-*

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

*factorily completed at least three years in an official, recognized CWD monitoring program.*

**64.120(1)** All Cervidae entering Iowa must be accompanied by all of the following:

a. An official certificate ~~Certificate of veterinary inspection~~ *Veterinary Inspection.*

b. A permit number requested by the licensed, accredited veterinarian signing the certificate and issued by the state veterinarian prior to movement. *The permit number must be recorded on the certificate.*

c. ~~One of the~~ *The following statements* statement must appear on the certificate:

~~“All Cervidae on this certificate have been part of the herd of origin for at least one year or were natural additions to this herd. There has been no diagnosis, signs, or epidemiologic evidence of CWD in this herd for the past year”;~~ or

“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, signs, or epidemiologic evidence of CWD in this herd for the past *five year years.*”

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 be officially identified, and all forms of identification must be listed on the certificate.*

**64.120(2)** ~~If the Cervidae listed on the certificate are enrolled in a CWD program, the anniversary date and program status for each individual animal must be listed. 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.~~

[Filed 4/18/03, effective 6/18/03]

[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

## ARC 2472B

### 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 27, “Standards of Practice and Principles of Professional Ethics,” Iowa Administrative Code.

This amendment rescinds subrule 27.7(8), which states that “Recommending removal of restorations or removing said restorations from the nonallergic patient for the alleged purpose of removing toxic substances from the body, when such activity is initiated by the dentist, is an improper and unacceptable treatment regimen.” Board discipline of licensees on matters related to removal of these restorations will continue to be based on existing Board rules and prior adjudications in similar cases.

The Board is rescinding the subrule in light of concerns that the rule may not be sufficiently detailed to fully guide dentists in adhering to prior decisions of the Board on the removal of restorations. Rescission of the subrule will give the Board additional time to consider whether a rule is needed to set forth professional standards for removal of restorations,

as established in the Board's prior adjudications, including Board of Dental Examiners v. Hufford, 461 N.W.2d 194 (Iowa Supreme Court, 1990).

The Hufford case involved charges that a dentist had improperly diagnosed and established a treatment plan for a patient who was suffering from multiple sclerosis. Based on the determination that the patient was suffering health complications caused by her silver amalgams, the dentist extracted all her teeth and prescribed substances ostensibly used to remove mercury from her body. Although the dentist assured the patient that removal of her amalgams would improve her health and stop the progress of multiple sclerosis, the patient's condition was exacerbated. The Board charged that the dentist had fraudulently treated the patient. The Iowa Supreme Court upheld the suspension of the dentist's license.

A number of scientific studies have been conducted concerning the safety of mercury amalgam fillings. Several national and international organizations, including the Food and Drug Administration, United States Public Health Service, World Health Organization, National Institutes of Health, American Dental Association, and several foreign government agencies have concluded that there is no credible scientific evidence that shows that amalgams cause adverse health effects and that removing amalgams will remove toxic substances from the body. Most recently, the Food and Drug Administration concluded, “FDA believes that valid scientific evidence exists to determine the safety and effectiveness of dental amalgam.”

Although the subrule is being rescinded at this time to allow the Board to consider whether to redraft another subrule to specifically address amalgam restorations, the Board's position concerning the removal of serviceable restorations has not changed. In the absence of this specific subrule, the Board will continue to pursue disciplinary action in appropriate cases based on the general statutes and rules administered by the Board. Under appropriate circumstances the Board is authorized to prosecute a dentist for making medical diagnoses outside the scope of the practice of dentistry, incompetent or substandard practice, fraudulent or misleading representations in the practice of dentistry, willful or gross malpractice, or subjecting a patient to needless or harmful treatment regimes.

This amendment is not subject to waiver or variance because it only rescinds an existing subrule.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2147B**. A public hearing on the amendment was held on January 7, 2003. Written and oral comments on the amendment were received. The amendment is identical to that published under Notice.

This amendment was approved at the April 16, 2003, meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 147, 153, and 272C.

This amendment will become effective on June 18, 2003. The following amendment is adopted.

Rescind and reserve subrule **27.7(8)**.

[Filed 4/25/03, effective 6/18/03]

[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

**ARC 2475B****EMPLOYMENT APPEAL  
BOARD[486]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 10A.601(6), the Employment Appeal Board hereby amends Chapter 1, "Organization," Chapter 3, "Unemployment Insurance Appeals," Chapter 4, "Rules of Procedure for OSHA Appeals," Chapter 5, "Personnel Appeals," and Chapter 11, "Boilers and Unfired Steam Pressure Vessels Appeals," Iowa Administrative Code.

These amendments implement Executive Order Number 8 and correct the mailing address of the Employment Appeal Board.

Notice of Intended Action was published in the March 19, 2003, Iowa Administrative Bulletin as **ARC 2350B**. No public comment was received on these amendments. The adopted amendments are identical to those published under Notice.

The Board adopted these amendments on April 23, 2003.

These amendments will become effective on June 18, 2003.

These amendments are indented to implement Iowa Code section 10A.601(6) and Executive Order Number 8.

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 [1.1(2), 1.2(3), 3.1(2), 4.7(7), 4.8(1), 4.70(3), 5.1(1), 11.1(1)] is being omitted. These amendments are identical to those published under Notice as **ARC 2350B**, IAB 3/19/03.

[Filed 4/25/03, effective 6/18/03]  
[Published 5/14/03]

[For replacement pages for IAC, see IAC Supplement 5/14/03.]

**ARC 2465B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 28, "Ambient Air Quality Standards," Iowa Administrative Code.

The purpose of this rule making is to implement the recommendations for ambient air quality standards contained in "The Iowa Concentrated Animal Feeding Operations Air Quality Study (Final Report)," February 2002, prepared by the Iowa State University and the University of Iowa Study Group. This report (hereafter referred to as the University Study) contained the following recommendations:

**"Hydrogen Sulfide.** It is recommended that hydrogen sulfide, measured at the CAFO property line, not exceed 70 parts per billion (ppb) for a 1-hour time-weighted average (TWA) period. In addition, the concentration at a residence or public use area shall not exceed 15 ppb, measured in the same manner as the property line. It is recommended that

each CAFO have up to seven days (with 48-hour notice) each calendar year when they are allowed to exceed the concentration for hydrogen sulfide.

**"Ammonia.** It is recommended that ammonia, measured at the CAFO property line, not exceed 500 ppb for a 1-hour TWA period. In addition, the concentration at a residence or public use area shall not exceed 150 ppb, measured in the same manner as the property line measurement. It is recommended that each CAFO have up to seven days (with 48-hour notice) each calendar year when they are allowed to exceed the concentration for ammonia."

In proposing to adopt the ambient air quality standard recommendations found in the University Study for the draft rule presented, the Department made the following modifications for the Notice of Intended Action:

- Omitted air quality standards for odor.
- Omitted the recommended fence-line standards for ammonia and hydrogen sulfide.
- Omitted the recommended 48-hour notice requirement.
- Adopted an interpretation of the ambient air quality standards that allows for seven days of exceedances of the health standard at each monitoring site, regardless of the number of neighboring sources that impact the monitor.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 21, 2002, as **ARC 1876B**. An Amended Notice to extend the public comment period until November 6, 2002, was published in the Bulletin on October 2, 2002, as **ARC 2043B**. An Amended Notice to extend the public comment period until January 6, 2003, was published in the Bulletin on December 11, 2002, as **ARC 2186B**. An information meeting was held on September 11, 2002, and five public hearings were held around the state. This amendment has been modified from that published under Notice of Intended Action, based on the public comments received.

As part of its review procedure, the Department issued a responsiveness summary that contains each public comment that was submitted to the Department and the Department's response to those comments.

In response to public comment, the Department has made the following modifications to the rule published under Notice.

- Addition of a three-year average to the form of standard, similar to that for the current federal ambient ozone standard. The addition of a three-year average to the standards means that over three years, sources must average no more than seven exceedances per year for each standard. A benefit of using a three-year averaging period to formulate the standards is that it will reduce the effect of meteorological variability in the attainment status of a monitoring site.

- Removal of the definition of "community-oriented monitoring site." Removing the definition of "community-oriented monitoring site" means that the adopted standards would apply at any off-site location and measurements could be taken at any off-site location (outside of a facility property line). It also provides flexibility when choosing a monitoring location to help ensure that the Department meets EPA monitor siting criteria. Because the definition of "community-oriented monitoring site" was not adopted, other definitions proposed for 567—Chapter 20 are not needed and are, therefore, not adopted in this rule making.

The provisions of Iowa Code section 459.207 provide additional conditions related to monitoring for animal feeding operations. Iowa Code section 459.207 does not limit where the Department may monitor around an animal feed-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ing operation. However, Iowa Code section 459.207 does limit the Department's ability to implement comprehensive plans and programs for animal feeding operations.

- Revision of language regarding implementation. The provisions of Iowa Code section 459.207 prevent the implementation of an air quality standard prior to December 1, 2004, for animal feeding operations. This change, which removes a reference to "enforcement," more accurately reflects how ambient air quality standards are put into practice. To maintain equity between animal feeding operations and non-animal feeding operations, the date of earliest implementation is December 1, 2004.

- Changed the units of the standards from parts per million (ppm) to parts per billion (ppb). The units were changed from ppm to ppb to provide consistency with the units and related rounding conventions used in the Iowa Ambient Air Sampling Manual.

**Implementation.** The next step in developing ambient air quality standards is to establish an implementation schedule. The following is a brief outline of a possible departmental implementation schedule for determining attainment with the ambient standards for ammonia and hydrogen sulfide. The first step will be to develop and outline an official schedule using the formal rule-making process. Several of the steps listed below may incorporate the use of a technical advisory group or involve conducting an economic impact or risk/benefit analysis.

The steps in the implementation process may include but are not limited to:

- Developing and outlining an implementation process via departmental rule making.
- Proposing a schedule for a periodic review of the level of the standards.
- Continuing to gather monitoring data.
- Assessing attainment status based on available monitoring data.
- Developing comprehensive plans and programs to ensure attainment and maintenance of the ambient air quality standards.

The adopted rule making also includes criteria for determining compliance with these ambient air quality standards and prohibits implementation of the standards until after December 1, 2004.

This amendment is intended to implement Iowa Code sections 455B.133 and 459.207.

This amendment shall become effective June 18, 2003.

The following amendment is adopted.

EDITOR'S NOTE: The following amendment was nullified by SJR 5 in the 2003 Session of the Eightieth General Assembly.

Rescind rule 567—28.1(455B) and adopt the following **new** rule:

**567—28.1(455B) Ambient air quality standards.** The Iowa ambient air quality standards shall be the national ambient air quality standards and the Iowa ambient air quality standards.

**28.1(1) National ambient air quality standards.** The department adopts the national primary and secondary ambient air quality standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), 44 Federal Register 8202, 8220 (February 9, 1979), 52 Federal Register 24634-24669 (July 1, 1987), and 62 Federal Register 38651-38760, 38855-38896 (July 18, 1997). The department shall implement these rules in a

time frame and schedule consistent with implementation schedules in federal laws, regulations and guidance documents.

**28.1(2) Iowa ambient air quality standards.** The following additional ambient air quality standards apply within the state of Iowa:

a. Iowa ambient air quality standard for ammonia:

(1) The level of the Iowa ambient air quality standard for ammonia, measured by a method approved in the "Iowa Ambient Air Sampling Manual\*," is 150 ppb, daily maximum one-hour average.

(2) The Iowa ambient air quality standard for ammonia is met at an ambient air monitoring site when the three-year average of the annual eighth-highest daily maximum hourly average ammonia concentration is less than or equal to 150 ppb, as determined in the "Iowa Ambient Air Sampling Manual\*."

b. Iowa ambient air quality standard for hydrogen sulfide:

(1) The level of the Iowa ambient air quality standard for hydrogen sulfide, measured by a method approved in the "Iowa Ambient Air Sampling Manual\*," is 15 ppb, daily maximum one-hour average.

(2) The Iowa ambient air quality standard for hydrogen sulfide is met at an ambient air monitoring site when the three-year average of the annual eighth-highest daily maximum hourly average hydrogen sulfide concentration is less than or equal to 15 ppb, as determined in the "Iowa Ambient Air Sampling Manual\*."

c. Implementation. Implementation of these standards shall not occur prior to December 1, 2004.

\*Available from the department.

[Filed 4/24/03, effective 6/18/03]

[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

**ARC 2468B**

**ENVIRONMENTAL PROTECTION  
COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 28, "Ambient Air Quality Standards," Iowa Administrative Code.

This rule making establishes an Iowa Ambient Air Sampling Manual that will be incorporated by reference in 567—Chapter 28 of the Iowa Administrative Code. This manual contains monitor siting requirements, data handling procedures, approved monitoring methods and equipment, quality assurance requirements and requirements for public availability of data required to implement new Iowa hydrogen sulfide and ammonia standards. This manual is intended to implement Iowa Code section 455B.133. The manual will be available from the Department upon request.

A Technical Advisory Group (TAG) consisting of stakeholders and experts in the field of ambient air monitoring was formed to assist with determining monitoring instrumentation and methodology for the confined animal feeding operations (CAFO) comprehensive field study mandated in Iowa Code section 459.207. The group meetings provided attend-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ees a chance to offer recommendations and to suggest alternative monitoring methods or approaches to the Department. TAG meetings were held on June 11 and June 25, 2002, at the Air Quality Bureau. There was consensus among the TAG members that the measurement methods for hydrogen sulfide and ammonia proposed by the Department, which are the basis for compliance monitoring in other agricultural states, represent the best monitoring methods currently available to implement an ambient air standard for these pollutants.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 18, 2002, as **ARC 1990B**. An Amended Notice to extend the public comment period until November 6, 2002, was published in the Iowa Administrative Bulletin on October 2, 2002, as **ARC 2045B**. The amendment has been modified from the one published under Notice of Intended Action based on the comments received.

As part of its review procedure, the Department issued a responsiveness summary that contains each public comment submitted to the Department and the Department's response to those comments.

In response to public comment, the Department has made the following modifications to the sampling manual presented in the Notice.

- Added definitions of molecular abbreviations and acronyms.
  - Reworded the "Flow Obstructions" paragraph.
  - Added a requirement that monitors be sited at a specified minimum distance from roadways.
  - Added language defining the level of the standards.
  - Reworded the "Computation of a Daily Maximum One-hour Average" paragraph to include a standard for completeness of hourly data.
  - Added "Computation of the Three-year Average" and deleted "Rounding Conventions." The inclusion of a three-year averaging period in the form of standards makes it similar to the current federal eight-hour ambient ozone standard. A benefit of using a three-year averaging period to formulate the standards is that it will reduce the effect of meteorological variability in the attainment status of a monitoring site. Rounding and truncation rules are also included in this new paragraph.
  - Removed the paragraph "Relationship between Exceedances and a Violation." This information is now included in the "Computation of the Three-year Average" paragraph.
  - Removed the requirement that measurements be performed at a "community-oriented monitoring site." This modification from the draft rule establishes that the Iowa Ambient Air Quality Standards apply at any location in ambient air. This provides flexibility when choosing a monitoring location to help ensure that the monitoring site meets EPA monitor siting criteria. Iowa Code section 459.207 does not limit where the Department may monitor around an animal feeding operation. However, Iowa Code section 459.207 does limit the Department's ability to implement comprehensive plans and programs for animal feeding operations.
  - Deleted the "Data Capture Requirements" paragraph and replaced it with an expanded "Data Completeness Requirements" paragraph. The data completeness requirements have been reworked to more closely match the federal requirements for ozone data completeness.
  - Added a provision to allow additional monitoring methods for hydrogen sulfide and ammonia to be used for determining attainment with ambient standards for hydrogen

sulfide and ammonia, where approved by the Director or the Director's designee.

- Added a provision that requires that the precision and accuracy of the ammonia and hydrogen sulfide monitoring network be assessed using procedures similar to those established by EPA for federally regulated pollutants.
- Added a provision that makes monitoring data available to the public in EPA's Air Quality System (AQS) database.

New rule 567—28.2(455B) requires that for determining compliance with the Iowa Ambient Air Quality Standards, monitor siting requirements, data handling procedures, approved monitoring methods and equipment, quality assurance requirements, and requirements for public availability of the monitor be in accordance with the Iowa Ambient Air Sampling Manual. The adopted manual is available from the Department on request.

This rule is intended to implement Iowa Code sections 455B.133 and 455B.166.

This rule will become effective June 18, 2003.

The following rule is adopted.

EDITOR'S NOTE: The following amendment was nullified by SJR 5 in the 2003 Session of the Eightieth General Assembly.

Adopt **new** rule 567—28.2(455B) as follows:

**567—28.2(455B) Iowa Ambient Air Sampling Manual.** Monitor siting requirements, data handling procedures, approved monitoring methods and equipment, quality assurance requirements, and requirements for public availability of the data for determining compliance with Iowa Ambient Air Quality Standards for hydrogen sulfide and ammonia, shall be in accordance with the Iowa Ambient Air Sampling Manual adopted by the commission on April 21, 2003, and incorporated in this rule by reference. The manual is available in the state law library and from the department.

[Filed 4/24/03, effective 6/18/03]

[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

## ARC 2466B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 459.103 and 455B.263, the Environmental Protection Commission hereby amends Chapter 65, "Animal Feeding Operations," Chapter 70, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 71, "Flood Plain or Floodway Development—When Approval Is Required," Chapter 72, "Criteria for Approval," and Chapter 75, "Management of Specific Flood Plain Areas," Iowa Administrative Code.

These amendments implement the provisions of 2002 Iowa Acts, chapter 1137, that prohibit the construction of confinement feeding operations on the flood plains of major water sources. The amendments also reiterate the requirement for persons to notify the Department if a proposed confined feeding operation will be located on alluvial soils and clarify the criteria for review of animal feeding operation

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

structures that would be located on the flood plain of any body of water that is not considered a major water source.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 8, 2003, as **ARC 2229B**. Six public hearings were held. Notices of the hearings were sent to statewide news network organizations, and written comments were accepted through February 21, 2003. Six individuals, representing themselves, and 11 organizations provided comments. A responsiveness summary of the comments provided has been prepared and filed with the Administrative Rules Coordinator.

The amendments have been modified from those proposed in the Notice to address comments from the public and the Administrative Rules Review Committee. The changes from the Notice are summarized below:

In Item 1, the definition of "one hundred year flood plain" included in rule 567—65.1(455B) now mirrors the definition in the statute, rather than cross-referencing the more technical definition previously proposed in 567—70.2(455B). The proposed definition of "one hundred year flood plain" in 567—70.2(455B) was not adopted. In addition, a definition of "Q100" has been added to 567—65.1(455B). "Q100" is already defined in 567—70.2(455B).

In Item 2, the phrase "of a major water source" has been deleted because the definition of "one hundred year flood plain" includes the phrase.

In Item 3, the phrase "of a major water source" in paragraph "d" has been deleted because the definition of "one hundred year flood plain" includes the phrase. In the first sentence of paragraph "e," the phrase "a declaratory order or a determination" replaces the term "verification." In subparagraph (1) of paragraph "e," the final sentence was truncated at the first occurrence of the word "plain." In subparagraph (2) of paragraph "e," the phrase "in the application" was added.

In Item 5, the phrase "the one hundred year flood plain of any water source" in paragraph "a" has been replaced by the phrase "land that would be inundated by Q100." In paragraph "b," the phrase "of a major water source" has been deleted because the definition of "one hundred year flood plain" includes the phrase.

In Item 6, an amendment to replace the term "the 100-year flood" with the term "Q100" in the existing definition of "encroachment limits" has been added to avoid confusion with the term "one hundred year flood plain" as defined in 567—65.1(455B). The definition of "Q100," "Q50," "Q25," "Q15," "Q10," et cetera, has been modified to delete the reference to the "100, 50, 25, 15, 10, et cetera year flood." The proposed definition of "one hundred year flood plain" was not adopted.

In Item 10, the phrase "land that would be inundated by Q100 and is adjacent to a major water source" replaced the phrase "the flood plain of a major water source" in the introductory paragraph of subrule 72.2(9).

In Item 11, the phrase "land that would be inundated by Q100" replaced the phrase "the one hundred year flood plain" in paragraph "b."

In Item 13, subrule 72.13(1), the phrase "land that would be inundated by Q100 and is adjacent to a major water source" replaced the phrase "the one hundred year flood plain of a major water source" and, in the last sentence, the term "Q100" replaced the term "one hundred year flood."

Items 12 and 14 to 17 have been added to replace all uses of the phrases "the 100-year flood" and "the 100-year recurrence interval flood" in 567—Chapters 72 and 75 with the term "Q100."

These amendments are intended to implement 2002 Iowa Acts, chapter 1137, section 32.

These amendments will become effective June 18, 2003. The following amendments are adopted.

ITEM 1. Amend rule **567—65.1(455B)** by inserting the following **new** definitions in alphabetical order:

"One hundred year flood plain" means the land adjacent to a major water source, if there is at least a 1 percent chance that the land will be inundated in any one year, according to calculations adopted by rules adopted pursuant to Iowa Code section 459.103. In making the calculations, the department shall consider available maps or data compiled by the Federal Emergency Management Agency.

"Q100," as defined in 567—70.2(455B,481A), means a flood having a 1 percent chance of being equaled or exceeded in any one year as determined by the department.

ITEM 2. Amend subrule **65.7(3)** by adding the following **new** paragraph "d":

d. The department shall not issue a construction permit for a confinement feeding operation structure that is proposed to be located on the one hundred year flood plain. Placing fill material on flood plain land to elevate the land above the one hundred year flood level will not be considered as removing the land from the one hundred year flood plain for the purpose of this subrule.

ITEM 3. Amend subrule **65.8(3)** as follows:

Amend paragraph "c" as follows:

c. ~~This rule Paragraphs "a" and "b"~~ shall not prohibit a person from completing the construction or expansion of an animal feeding operation structure, if either of the following applies:

(1) The person has an unexpired permit for the construction or expansion of the animal feeding operation structure.

(2) The person is not required to obtain a permit for the construction or expansion of the animal feeding operation structure.

Adopt **new** paragraphs "d" and "e" as follows:

d. A confinement feeding operation structure shall not be constructed on the one hundred year flood plain. Placing fill material on flood plain land to elevate the land above the one hundred year flood level will not be considered as removing the land from the one hundred year flood plain for the purpose of this paragraph.

e. A person shall not construct a confinement feeding operation structure on land that contains alluvial soils, according to the Soil Survey published by the Natural Resources Conservation Service of the United States Department of Agriculture, unless the person has received a declaratory order or a determination from the department of natural resources that the proposed location of the structure is not on the one hundred year flood plain. The declaratory order or determination may be obtained as follows:

(1) If the person does not apply for a construction permit as provided in Iowa Code section 459.303 and rule 567—65.9(455B), the person must petition the department for a declaratory order pursuant to Iowa Code section 17A.9 and 561—Chapter 6 to determine whether the location of the proposed confinement feeding operation structure is on the one hundred year flood plain. The person is strongly encouraged to contact the department prior to submitting the petition to determine the nature and extent of information required for the petition to be considered complete. To be considered complete, the petition must include all information pursuant to 567—Chapters 70 to 76 necessary to determine if the confinement feeding operation structure is proposed to be lo-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

cated on a one hundred year flood plain. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry. The department shall issue a declaratory order in response to a complete petition, notwithstanding any other provision provided in Iowa Code section 17A.9 to the contrary, within 30 days from the date that the complete petition is filed with the department. The declaratory order shall state whether or not the proposed location is on the one hundred year flood plain.

(2) If the person does apply for a construction permit as provided in Iowa Code section 459.303, the person must identify in the application whether or not the land contains alluvial soils. The department shall determine if the confinement feeding operation structure is proposed to be located on the one hundred year flood plain. If the proposed location of the confinement feeding operation structure is on the one hundred year flood plain, the department shall disapprove the construction permit. In the event that the proposed location of the confinement feeding operation structure is not on the one hundred year flood plain, the department may issue a construction permit as provided in Iowa Code section 459.303 and rule 567—65.9(455B) if all other applicable criteria are satisfied.

ITEM 4. Amend subrule **65.9(1)** by adopting **new** paragraph **“o”** as follows:

o. Information necessary for the department to determine: (1) if the confinement feeding operation is proposed to be located on a one hundred year flood plain; (2) if a flood plain development permit for the operation is required; and (3) if a flood plain development permit may be issued if one is required, pursuant to 567—Chapters 70 to 76. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry.

ITEM 5. Amend subrule 65.15(10) as follows:

**65.15(10)** Flooding protection. ~~The top of a manure storage structure shall be constructed at least one foot above the elevation of the 100-year flood.~~

a. *An animal feeding operation structure proposed to be constructed on land that would be inundated by Q100 shall meet requirements as specified in 567—Chapters 70 to 76, unless otherwise prohibited according to 65.15(10)“b.”*

b. *A confinement feeding operation structure shall not be constructed on the one hundred year flood plain.*

ITEM 6. Amend rule **567—70.2(455B)** as follows:

Amend the following definitions:

“Animal feeding operation structure,” *as defined in 567—65.1(455B)*, means ~~a confinement building, an anaerobic lagoon, formed manure storage structure, or egg washwater storage structure, earthen manure storage basin, or confinement building.~~

“Encroachment limits” means the boundaries of the floodway established in the flood plains and designating the width of the channel and minimum width of the overbank areas needed for the conveyance of the 100-year flood Q100.

“Height of dam” means the vertical distance from the top of the dam to the natural bed of the stream or ~~watercourse~~ *water source* measured at the downstream toe of the dam or to the lowest elevation of the outside limit of the dam if it is not across a ~~watercourse~~ *water source*.

“Nominated stream” means the stream or ~~watercourse~~ *water source* named in the petition described in 567—Chapter 72 that seeks designation of a stream as a protected stream.

“Probable maximum flood” means the flood that may be expected from the most severe combination of critical ~~meteorological~~ *meteorological* and hydrologic conditions that are reasonably possible in the region, and is derived from probable maximum precipitation, the theoretical greatest depth of precipitation for a given duration that is physically possible over a particular drainage area at a certain time of year. The probable maximum precipitation within designated zones in Iowa has been determined by the National Weather Service. The probable maximum flood for any location within Iowa is determined by the department.

“Q100,” “Q50,” “Q25,” “Q15,” “Q10,” et cetera,” means a flood having a 1, 2, 4, 6, 7, 10, et cetera, percent chance of being ~~equalled~~ *equaled* or exceeded in any one year (~~100, 50, 25, 15, 10, et cetera year flood~~) as determined by the department.

“Stream” means a ~~watercourse~~ *water source* that either drains an area of at least two square miles or has been designated as a protected stream in 567—Chapter 72.

“~~Watercourse~~” *Water source*, as defined in 567—65.1(455B), means any lake, river, creek, ditch or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes or ponds without outlet to which only one landowner is riparian.

Insert the following **new** definitions in alphabetical order:

“Animal feeding operation” means the same as defined in 567—65.1(455B).

“Confinement feeding operation,” as defined in 567—65.1(455B), means an animal feeding operation in which animals are confined to areas which are totally roofed.

“Confinement feeding operation building” or “confinement building,” as defined in 567—65.1(455B), means a building used in conjunction with a confinement feeding operation to house animals.

“Confinement feeding operation structure,” as defined in 567—65.1(455B), means an animal feeding operation structure that is part of a confinement feeding operation.

“Major water source,” as defined in 567—65.1(455B), means a water source that is a lake, reservoir, river or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Appendix B, Table 1 and Table 2 of 567—Chapter 65.

“Manure storage structure,” as defined in 567—65.1(455B), means a formed manure storage structure or an unformed manure storage structure, as defined in 567—65.1(455B). A manure storage structure does not include an egg washwater storage structure.

ITEM 7. Amend subrule **70.4(3)**, paragraph **“a,”** as follows:

a. General requirement of certified plans. An application shall not be considered complete until sufficient engineering plans have been submitted to enable the department to determine whether the project as proposed satisfies applicable criteria. The engineering plans shall contain information, *as specified by the department, which is needed for the department to conduct a technical review pursuant to paragraph 70.5(3)“b.”* *The engineering plans shall including include* specifications, operation procedures and other information relating to environmental impacts. The engineering plans and other engineering information shall be certified by a registered professional engineer or, if applicable, a regis-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

tered land surveyor, as required by Iowa Code chapter 542B. Duplicate copies of certified plans are required so that one copy can be returned to the applicant upon approval or disapproval of the application. An additional copy of the certified plans shall be required if the plans are incorporated as part of an approval or disapproval order which is filed with a county recorder.

ITEM 8. Amend rule 567—71.3(455B), introductory paragraph, as follows:

**567—71.3(455B) Dams.** Approval by the department for construction, operation, or maintenance of a dam in the floodway or flood plain of any ~~waterecourse~~ *water source* shall be required when the dimensions and effects of such dam exceed the thresholds established by this rule. EXCEPTION: Public road embankments with culverts which impound water only in temporary storage are exempt from the requirements of this rule and shall be reviewed under rules 567—71.1(455B) and 567—72.1(455B). Approval required by this rule shall be coordinated with approval for storage of water required by 567—Chapter 51. Approval by the department shall be required in the following instances:

ITEM 9. Amend 567—Chapter 71 by adding **new** rule 567—71.13(455B) as follows:

**567—71.13(455B) Animal feeding operation structures.** Approval by the department for construction, operation, and maintenance of animal feeding operation structures shall be required in the following instances.

**71.13(1) Rural areas.** In rural areas, any such facilities on the flood plain or floodway of any stream draining more than ten square miles.

**71.13(2) Urban areas.** In urban areas, any such facilities on the flood plain or floodway of any stream draining more than two square miles.

**71.13(3) Adjacent to an impoundment.** Any such facilities if any part of the facility is located on land that is naturally lower than the top of the dam.

ITEM 10. Amend subrule 72.2(9) as follows:

**72.2(9) Encroachment on an animal a confinement feeding operation structure.** A major water source, as identified in Appendix B, Tables 1 and 2 of 567—Chapter 65, or a ~~waterecourse~~ *water source other than a major water source* shall not be constructed, expanded or diverted if the ~~waterecourse~~ *water source or major water source* as constructed, expanded, or diverted is closer than the following distances from an ~~animal a confinement~~ *feeding operation structure unless a secondary containment barrier according to 567—subrule 65.15(17) is in place.* Measurement shall be from the closest point of the ~~animal confinement~~ *feeding operation structure* to the top of the bank of a stream channel or the ordinary high water mark of a lake, pond, *impoundment* or reservoir. *Farm ponds, privately owned lakes, and confinement feeding operations constructed with a secondary containment barrier pursuant to 567—subrule 65.15(17) are exempt from the separation distance requirements. The provisions of this subrule shall not be construed to allow construction of a confinement feeding operation structure on land that would be inundated by Q100 and is adjacent to a major water source.*

a. Minimum ~~distance from~~ *separation between a watercourse to an animal water source other than a major water source and a confinement feeding operation structure* is ~~200~~ *500* feet.

b. Minimum ~~distance from~~ *separation between a major water source to an animal and a confinement feeding operation structure* is ~~500~~ *1,000* feet.

ITEM 11. Amend subrule 72.3(5) as follows:

**72.3(5) Encroachment on an animal a confinement feeding operation structure.** ~~The provisions of subrule 72.2(9) apply to any reservoir or impoundment resulting from the construction or modification of any dam. A dam shall not be constructed or modified so that the ordinary high water of the lake, pond or reservoir created by the dam is closer than the following distances from a confinement feeding operation structure unless a secondary containment barrier according to 567—subrule 65.15(17) is in place. Measurement shall be from the closest point of the confinement feeding operation structure to the water edge of the lake, pond or reservoir for a pool level at the elevation of the crest of the emergency spillway or at the top of dam elevation should the dam not have an emergency spillway.~~

a. *Minimum separation between a water source other than a major water source and a confinement feeding operation structure is 500 feet.*

b. *Minimum separation between a major water source and a confinement feeding operation structure is 1,000 feet or such distance that the structure is not located on land that would be inundated by Q100, whichever is greater.*

ITEM 12. Amend subrule **72.5(3)**, paragraphs “a” and “b,” as follows:

a. Obstruction. Buildings shall not be located in the floodway of a stream so as to result, individually or collectively, in any increase in the elevation of the ~~100-year flood~~ *Q100* as confined to the floodway. The floodway boundary applicable to an individual application shall be determined as necessary by the department in accordance with the criteria in rule 567—75.4(455B). Analysis of the effect that a building in the floodway would have on flood levels shall be based on the assumption that all similarly situated landowners would be allowed an equal degree of development in the floodway.

b. Public damages. Buildings shall be located to minimize public damages associated with isolation due to flooding of surrounding ground. In identifying the potential for public damages, the department shall determine whether there is a need for access passable by wheeled vehicles during the ~~100-year flood~~ *Q100*. The need for such access shall be determined on the basis of the criteria for evaluating flood warning and response time in 567—subrule 75.2(3).

ITEM 13. Amend 567—Chapter 72 by adding **new** rule 567—72.13(455B) as follows:

**567—72.13(455B) Animal feeding operation structures.** The following criteria shall apply to animal feeding operation structures.

**72.13(1) Confinement feeding operation structures** located on the flood plain of a major water source. As required by 567—Chapter 65, confinement feeding operation structures shall not be constructed on land that would be inundated by Q100 and is adjacent to a major water source. Placing fill material on flood plain land to elevate the land above the Q100 level will not be considered as removing the land from the one hundred year flood plain for the purpose of this subrule.

**72.13(2) Other animal feeding operation structures.** The following criteria shall apply to animal feeding operation structures located on the flood plain of any water source and confinement feeding operation structures located on the flood plain of a water source other than a major water source.

a. Location. Such structures shall not be located so as to individually or collectively conflict with rule 567—

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

75.4(455B) governing the establishment of encroachment limits.

b. Flood protection. Flood protection for such structures shall be provided to the level necessary for high damage potential buildings or building complexes, pursuant to rule 567—72.5(455B).

ITEM 14. Amend subrules 75.4(1) and 75.4(3) as follows:

**75.4(1)** Increase in water surface elevation. The increase in the water surface elevation of ~~the 100-year recurrence interval flood Q100~~ which would result from confining flood flows to the floodway shall not exceed one foot.

**75.4(3)** Protection of existing development. To the extent feasible, encroachment limits shall be located as follows:

a. To avoid the need to seek removal of a lawful existing structure in order to safely convey ~~the 100-year flood Q100~~;

b. To minimize any increase in the level of ~~the 100-year flood Q100~~ in an area where such increase would adversely affect an existing lawful structure;

c. No change.

ITEM 15. Amend subrule **75.5(1)**, paragraph “c,” as follows:

c. All structures used as dwellings shall be provided with an access which will remain passable by wheeled vehicles during ~~the 100-year flood Q100~~. But this criterion shall not apply where the department or its local designee determines that this access is not required for effective protection of life and property on the basis of the criteria for determining flood warning and response time as set forth in subrule 75.2(3).

ITEM 16. Amend subrule **75.5(2)**, paragraph “a,” as follows:

a. No building or other structure, deposit of fill, or other potential obstruction shall be allowed in the floodway if the development individually or collectively would increase the level of ~~the 100-year flood Q100~~. An analysis of the effect a development would have on flood levels shall be based on the assumption that all similarly situated landowners would be allowed an equal degree of development.

ITEM 17. Amend rule 567—75.6(455B) as follows:

**567—75.6(455B) Preexisting nonconforming development and associated uses.** Regulations established by a department flood plain management order or an approved local ordinance shall identify the conditions under which nonconforming development and associated uses which lawfully existed prior to the effective date of the regulations may continue. The conditions shall include criteria for additions, reconstruction, replacement and changes in use. The criteria should generally encourage improvements or replacement construction which would provide an adequate degree of flood protection commensurate with the damage potential. The criteria should prohibit the improvements or replacement only where extension of the useful life of the structure by improvement or replacement would contribute to: perpetuation of an individual or collective obstruction which causes a significant increase in the level of ~~the 100-year flood Q100~~; perpetuation of a significant hazard to health or safety during floods; or perpetuation of the potential for significant flood damages to property and associated public costs.

[Filed 4/24/03, effective 6/18/03]

[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

## ARC 2463B

### 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 rescinds Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code, and adopts a new Chapter 4 with the same title.

This amendment rescinds the Board’s current rules on campaign disclosure procedures to eliminate rules that have been previously rescinded and reserved. No changes have been made to the language of the rules except to correct internal references to renumbered rules; to make nonsubstantive, technical changes; and to reflect the passage of 2003 Iowa Acts, House File 601, as explained below.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on March 5, 2003, as **ARC 2325B**. No oral or written comments on the amendment were received. The following change has been made to the Notice to account for the passage of 2003 Iowa Acts, House File 601, effective July 1, 2003:

The wording of adopted subrule 4.20(1) reflects the requirement for candidates to disclose campaign property one time after the property has a value of less than \$100 and now reads as follows:

**“4.20(1) Ongoing inventory.** Equipment, supplies, or other materials purchased with campaign funds or received in kind are campaign property. Campaign property, other than consumable campaign property, with a value of \$500 or more when acquired by the committee shall be listed on the inventory section of the schedule. The property shall be listed on each report until it is disposed of by the committee or its residual value falls below \$100 and the property is listed once as having a residual value of less than \$100. “Consumable campaign property” means stationery, yard signs, and other campaign materials that have been permanently imprinted to be specific to a candidate or election. For property purchased by the committee, the date purchased shall be the earlier of the date the committee attained physical possession of the property or the date the committee issued payment for the property. For in-kind contributions, the date received shall be the date on which the committee attained physical possession of the property. The committee shall provide the complete date (month/day/year). The schedules shall include the purchase price of property purchased by the committee and the actual or estimated fair market value of property received as an in-kind contribution, as well as the actual or estimated current fair market value of the property at the end of the current reporting period.”

The Board adopted this amendment on April 10, 2003.

This amendment is intended to implement Iowa Code chapter 56 as amended by 2003 Iowa Acts, House File 601, and chapter 68B.

This amendment will become effective July 1, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 4] is being omitted. With the exception of the

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

change noted above, these rules are identical to those published under Notice as **ARC 2325B**, IAB 3/5/03.

[Filed 4/23/03, effective 7/1/03]  
[Published 5/14/03]

[For replacement pages for IAC, see IAC Supplement 5/14/03.]

## ARC 2476B

### 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 rescinds Chapter 9, "Indigent Defense—Claims for Compensation," and adopts new Chapter 9, "Indigent Defense Claims Processing," Iowa Administrative Code.

The amendment updates the Department's administrative rules governing the processing of indigent defense fund claims by prescribing the services eligible for reimbursement and setting forth the reporting and reimbursement requirements for claimants. In addition, the amendment complies with Executive Order Number 8, which requires that outdated, redundant, overly broad, ineffective, unnecessary, or otherwise undesirable rules be eliminated.

Notice of Intended Action was published in the March 19, 2003, Iowa Administrative Bulletin as **ARC 2349B**. A public hearing on the amendment was held April 8, 2003. No public comment was received on the amendment. The adopted amendment is identical to that published under Notice.

The Department adopted the amendment on April 24, 2003.

This amendment will become effective on June 18, 2003.

This amendment is intended to implement Iowa Code section 232.141 and chapters 10A and 815.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 9] is being omitted. These rules are identical to those published under Notice as **ARC 2349B**, IAB 3/19/03.

[Filed 4/25/03, effective 6/18/03]  
[Published 5/14/03]

[For replacement pages for IAC, see IAC Supplement 5/14/03.]

## ARC 2470B

### TREASURER OF STATE[781]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 12C.22(5), the Treasurer of State hereby rescinds Chapter 13, "Deposit and Security of Public Funds in Banks," Iowa Administrative Code, and adopts a new Chapter 13 with the same title.

This rule making is warranted by and provides for the implementation of a new system for securing deposits of public

funds in banks and savings and loans through the pledge of eligible collateral.

Notice of Intended Action was published on March 19, 2003, in the Iowa Administrative Bulletin as **ARC 2358B**. A public hearing was conducted on April 8, 2003, and written comments were accepted on or before that date as well. Written comments were received from counsel for one out-of-state bank and said comments were primarily to request clarification of definitions and perceived syntax errors. No one from the public attended the public hearing.

In response to the written comments received by the Department and from discussion within the Department, the following changes were made to the rules published under Notice:

- In rule 13.2(12C), definitions for "control" and "out-of-state bank" were added. In the definition of "Letter of Credit," a sentence was added to clarify that Letters of Credit will be held in the treasurer's vault.
- In subrule 13.4(10), the reference to Letters of Credit was deleted.
- Subrule 13.5(1) was changed to clarify that selection of approved custodians will not be determined by a Request for Proposal (RFP) and their approved custodian status will not be limited to a period of three years.
- Subrule 13.6(3) was reworded to clarify that the approved custodian must verify that the pledging bank has completed and signed the Certificate and Approval for Withdrawal, Substitution or Addition of Collateral form and that the calculation of its total collateral market value, after the current withdrawals, substitutions, or additions, is equal to or exceeds its current total excess public funds.
- In subrule 13.6(4), the reference to Letters of Credit was deleted.
- In paragraph 13.6(8)"e," the reference to Letters of Credit was deleted.
- Subrule 13.7(2) was reworded to clarify that any withdrawals, substitutions, or additions of eligible pledged collateral are conditional upon the pledging bank's correct calculation that its total collateral market value, after the current withdrawals, substitutions, or additions, is equal to or exceeds its current total excess public funds.

These rules are intended to implement Iowa Code chapter 12C.

These rules will become effective June 18, 2003.

The following amendment is adopted.

Rescind 781—Chapter 13 and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 13 DEPOSIT AND SECURITY OF PUBLIC FUNDS IN BANKS

#### 781—13.1(12C) Scope and transition procedures.

**13.1(1)** Iowa Code chapter 12C grants authority to the treasurer of state to establish administrative rules and procedures to implement a system for securing deposits of public funds in banks, savings and loans, and credit unions through the pledge of eligible collateral. This chapter shall apply to the system for securing certain deposits of public funds in Iowa banks as defined by Iowa Code section 12C.1, subsection (2a).

**13.1(2)** Any form, communication, or transaction contemplated by this chapter may be completed and signed by wire transfer or other electronic means authorized by this chapter or as otherwise permitted or accepted by the treasurer.

## TREASURER OF STATE[781](cont'd)

er. The treasurer may require that communications from an approved custodian to the treasurer be electronic.

**781—13.2(12C) Definitions.** As used in this chapter:

“Approved custodian” means a financial institution that has facilities for the safekeeping of securities and that has been approved under this chapter by the treasurer of state to serve as the treasurer’s agent in safekeeping collateral pledged to the treasurer of state to secure uninsured deposits of public funds.

“Bank” means “bank” as defined in Iowa Code section 12C.1, subsection (2a).

“Control,” including controlling, controlled by, and under common control, shall be presumed to exist if a pledging bank, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any approved custodian. Control, including controlling, controlled by, and under common control, shall also be presumed to exist if an approved custodian, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any pledging bank.

“Eligible collateral” means any one or any combination of the securities or other forms of collateral as described in Iowa Code section 12C.22, subsection 6, and acceptable to the treasurer. Cash shall be considered eligible collateral.

“Excess public funds” means:

1. For a bank, the amount by which the public funds deposited by a public unit having an aggregate market value plus accrued interest that exceeds the total capital of the bank as defined in Iowa Code section 12C.22, subsection 2.

2. For an out-of-state bank, the amount by which the public funds deposited by a public unit in an Iowa branch of the out-of-state bank having an aggregate market value plus accrued interest that exceeds the Iowa branch capital of the out-of-state bank as determined under Iowa Code section 12C.22, subsection 3.

“Letter of Credit” means an irrevocable and nontransferable Letter of Credit, upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America or in the form prescribed by the treasurer as provided on the treasurer’s Web site at [www.treasurer.state.ia.us](http://www.treasurer.state.ia.us) or in the treasurer’s office pursuant to rule 781—13.3(12C). Letters of Credit will be held in the treasurer’s vault.

“Market value” means the value of a pledged security calculated by the treasurer or the treasurer’s designee using the average of the closing bid and ask price from a nationally recognized pricing source (including but not limited to the Wall Street Journal, Bloomberg Financial Markets, Telerate, Reuter’s, or a nationally recognized broker dealer). If no nationally recognized pricing source is available, the market value shall mean pricing in a commercially reasonable manner or manner consistent with standard industry practices. Market value does not include accrued interest.

“Minimum collateral market value amount” means the minimum dollar amount of eligible collateral required to be pledged by a pledging bank to the treasurer to secure all uninsured public funds which shall at all times equal or exceed excess public funds.

“Out-of-state bank” means a bank that is chartered in a state other than Iowa and operates one or more branches in Iowa.

“Pledged collateral” or “pledged securities” means eligible collateral pledged by the pledging bank under the Master Custodial Agreement for the Deposit of Public Funds in

Banks, the Pledge and Security Agreement, and any collateral additions or substitutions thereto evidenced by a joint receipt of custody or other evidence of control acceptable to the treasurer.

“Pledging bank” means a bank that is required to pledge eligible collateral pursuant to Iowa Code section 12C.22 and this chapter.

“Public funds” or “public deposits” means “public funds” or “public deposits” as defined in Iowa Code section 12C.1, subsection (2e).

“Public units” means the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body; an electric power agency; federal and state grant moneys of a quasi-public state entity under Iowa Code section 12C.1, subsection (2e), and this chapter. Public units additionally include, but are not limited to:

1. Transit authorities.
2. Municipal housing programs.
3. Solid waste agencies.
4. Waterworks.
5. City cemeteries.
6. County fair boards.
7. Regional planning agencies.
8. County care facilities.
9. County conservation boards.
10. Sanitary districts.
11. Iowa family farm development authority.
12. Iowa railway finance authority.
13. State board of regents.
14. State fair board.
15. State racing and gaming commission.
16. Iowa college student aid commission.
17. Iowa higher education loan authority.
18. Area education agencies.
19. Community action programs.
20. Community colleges.

Federal agencies, or political subdivisions thereof, are not public units under this chapter. Cooperatives, police and fire pension funds deposited for the benefit of the beneficiaries and fully covered by federal insurance, and bond sinking funds deposited pursuant to a bond covenant and which are fully covered by federal insurance are not public units.

“Rate-setting notice” means the monthly electronic posting of minimum deposit rates to public units by the rate-setting committee.

“Superintendent” means the superintendent of banking of the state of Iowa.

“Treasurer” means the treasurer of the state of Iowa.

“Uninsured public funds” or “uninsured public deposits” means any amount of public funds of a public funds depositor on deposit in an account at a financial institution that exceeds the amount of public funds in that account that are insured by the Federal Deposit Insurance Corporation.

**781—13.3(12C) Forms.** The following forms are required for compliance with Iowa Code chapter 12C and this chapter. Current versions of each form utilized by banks, pledging banks and approved custodians are available on the treasurer’s Web site at [www.treasurer.state.ia.us](http://www.treasurer.state.ia.us) and in the treasurer’s office.

1. Master Custodial Agreement for the Deposit of Public Funds in Banks.
2. Pledge and Security Agreement.

TREASURER OF STATE[781](cont'd)

3. Letter of Credit.
4. Electronic Mail Protocol.
5. Securities Account Control Agreement.
6. Certificate and Approval for Withdrawal, Substitution or Addition of Collateral.
7. Statement of Accounts.
8. Public Depositor Claim Form.
9. Release by Public Deposit.

**781—13.4(12C) Duties and responsibilities of a pledging bank.**

**13.4(1)** A pledging bank shall complete, sign, and submit to the treasurer an executed Pledge and Security Agreement.

**13.4(2)** A savings and loan shall calculate and certify to the superintendent of banking the amount of public funds on deposit at the savings and loan on or before the tenth day of February, May, August, and November of each year as of the end of the previous calendar quarter. An out-of-state bank that has one or more branches in Iowa shall calculate and certify to the superintendent of banking the amount of public funds on deposit at each such branch of the out-of-state bank on or before the tenth day of February, May, August, and November of each year as of the end of the previous calendar quarter.

**13.4(3)** A pledging bank shall deposit and maintain eligible collateral with the treasurer's approved custodian which at all times has a total market value of not less than the minimum collateral market value amount.

**13.4(4)** A pledging bank shall at all times be eligible to accept public deposits as required by Iowa Code sections 12C.6A and 12C.23A, subsection 1.

**13.4(5)** A pledging bank shall grant a perfected security interest to the treasurer in all pledged collateral to secure the repayment of uninsured public funds deposited in a pledging bank and for satisfying any future assessments made against the pledging bank by the treasurer pursuant to Iowa Code chapter 12C. The pledging bank shall take all steps necessary to ensure that the treasurer has a valid, perfected, enforceable, first priority security interest in any pledged collateral. This security interest shall be perfected by entering into a Pledge and Security Agreement with the treasurer and by transferring the eligible collateral to the treasurer's approved custodian. By accepting public funds for deposit, a pledging bank agrees to waive any defenses it may have with respect to any failure of the Pledge and Security Agreement to effect a viable, perfected, enforceable, first priority security interest.

**13.4(6)** A pledging bank shall promptly and in a timely manner remit to the treasurer's approved custodian payment for fees associated with the treasurer's approved custodian's services as safekeeping agent upon receipt of a statement from the treasurer's approved custodian.

**13.4(7)** A pledging bank shall not utilize the services of an approved custodian in which the pledging bank or an affiliate has control with the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an approved custodian, including but not limited to the ownership of voting securities. In addition, a pledging bank shall not utilize the services of an approved custodian which is an office of the pledging bank or an affiliate or a subsidiary of the same bank holding company of which the pledging bank is a subsidiary or affiliate as defined in Iowa Code section 12C.22, subsection 1.

**13.4(8)** A pledging bank shall not use the safekeeping services of more than one approved custodian for the purposes of meeting the requirements of Iowa Code chapter 12C and this chapter.

**13.4(9)** A pledging bank shall notify the treasurer and the treasurer's approved custodian, in writing or via the treasurer's Web site, of any change in its name or charter location prior to the effective date of such change.

**13.4(10)** A pledging bank shall provide the treasurer's approved custodian with proper instructions for the delivery of cash and collateral which the treasurer's approved custodian has authorized for the release of collateral to the pledging bank.

**781—13.5(12C) Requirements for becoming an approved custodian.**

**13.5(1)** An approved custodian shall complete, sign, and submit to the treasurer an executed Master Custodial Agreement for the Deposit of Public Funds in Banks.

**13.5(2)** To become an approved custodian, a financial institution chartered outside the state of Iowa must submit a legal opinion acceptable to the treasurer prepared by counsel licensed to practice in the state in which the financial institution is principally located regarding the compatibility of Iowa Code chapter 554 with the uniform commercial code of the state in which the financial institution is principally located.

**13.5(3)** To be designated as an approved custodian, a financial institution must be capable of maintaining book-entry accounts with a Federal Reserve Bank and must be capable of safekeeping eligible collateral.

**13.5(4)** An approved custodian shall not hold pledged collateral for any pledging bank in which the approved custodian or an affiliate has control with the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a pledging bank, including but not limited to the ownership of voting securities. In addition, an approved custodian shall not hold pledged collateral for any pledging bank which is an office of the approved custodian or an affiliate or a subsidiary of the same bank holding company of which the approved custodian is a subsidiary or affiliate as defined in Iowa Code section 12C.22, subsection 1.

**781—13.6(12C) Duties and responsibilities of an approved custodian.**

**13.6(1)** An approved custodian shall accept only eligible collateral as defined in Iowa Code section 12C.22. Cash shall be considered eligible collateral.

**13.6(2)** An approved custodian shall segregate all collateral, maintaining open, notorious, continuous, active and exclusive possession of the collateral for the sole and exclusive benefit of the treasurer as an agent for public units.

**13.6(3)** An approved custodian shall permit the withdrawal, substitution, and addition of eligible pledged securities and other eligible pledged collateral upon receipt of the Certificate and Approval for Withdrawal, Substitution or Addition of Collateral form from the pledging bank. However, before the approved custodian may act upon the written request of the pledging bank, the approved custodian shall verify that the pledging bank has completed and signed the above form and that the calculation of its total collateral market value, after the current withdrawals, substitutions, or additions, is equal to or exceeds its current total excess public funds.

**13.6(4)** An approved custodian shall issue to the treasurer, by regular mail on the same day, a joint receipt specifically describing and identifying any substituted or additional securities or other collateral pledged to the treasurer.

**13.6(5)** An approved custodian shall establish a fee schedule for its services. Any and all such fees shall be the sole

TREASURER OF STATE[781](cont'd)

responsibility of, and be billed directly to, the respective pledging bank. Under no circumstances will the treasurer be responsible or liable for any fees, charges, or expenses of an approved custodian.

**13.6(6)** In the event that the treasurer notifies an approved custodian of the default of a pledging bank, the approved custodian shall thereafter act only upon the treasurer's instructions with regard to any pledged collateral, cash, and Letters of Credit.

**13.6(7)** An approved custodian shall, no later than the twentieth day following the end of a calendar quarter, provide a written report to the treasurer in a format approved by the treasurer. The following items shall be provided for each pledging bank for which it serves as approved custodian:

- a. The pledging bank's name and its location.
- b. An inventory of all pledged collateral, as of the last day of the calendar quarter, which provides the CUSIP (the industry's numerical identification code given to each class and issue of security), description, coupon, maturity date, par amount, and market value of each security pledged by each pledging bank.
- c. The total par amount and the total market value of all pledged collateral as of the last day of the calendar quarter for each pledging bank.
- d. A history providing the CUSIP, description, coupon, maturity date, par amount, market value and date of all additions, substitutions and withdrawals of pledged collateral during the calendar quarter for each pledging bank.

**13.6(8)** The approved custodian shall also provide such additional information and reports to the treasurer and the superintendent as they or either of them shall request at any time.

**781—13.7(12C) Withdrawals, substitutions, and additions of pledged collateral.**

**13.7(1)** A pledging bank shall pledge and maintain eligible collateral with the treasurer's approved custodian, the market value of which at all times equals or exceeds the amount by which the public funds deposits in the pledging bank exceed the total capital of the pledging bank.

**13.7(2)** A pledging bank shall complete, sign, and submit to the approved custodian a Certificate and Approval for Withdrawal, Substitution or Addition of Collateral form for all withdrawals, substitutions or additions of eligible pledged collateral. Any withdrawals, substitutions or additions of eligible pledged collateral are conditional upon the pledging bank's correct calculation that its total collateral market value amount, after the current withdrawals, substitutions, or additions, is equal to or exceeds its current total excess public funds.

**13.7(3)** The approved custodian will issue its joint receipt of custody to the treasurer and to the pledging bank evidencing the substitution for or the addition of pledged collateral under the Master Custodial Agreement for the Deposit of Public Funds in Banks.

**13.7(4)** If a pledged security matures, then the principal amount of the cash shall be held in trust by the approved custodian for the treasurer until the pledging bank completes, signs, and submits a Certificate and Approval for Withdrawal, Substitution or Addition of Collateral form to the approved custodian to release the cash. Any withdrawal of cash is conditional upon the pledging bank's correct calculation that its total collateral market value amount, after the current withdrawal of cash, is equal to or exceeds its current total excess public funds.

**13.7(5)** Any request by a pledging bank to an approved custodian for the withdrawal or substitution of pledged

collateral is conditional upon the approved custodian's receiving proper delivery instructions from the pledging bank for the pledged collateral being released. Furthermore, the release of pledged collateral in a transaction in which substituted collateral is to be pledged in lieu of pledged collateral which is being withdrawn is conditional upon the approved custodian's receiving the substituted collateral before releasing the pledged collateral.

**13.7(6)** Under no circumstance shall the treasurer be liable for any loss incurred to a pledging bank for failing to release pledged collateral. The treasurer is not liable for any loss incurred by a pledging bank as a result of the pledging bank's failure to substitute new collateral for any pledged collateral which matures.

**781—13.8(12C) Eligible collateral provisions.**

**13.8(1)** Pledged collateral shall be one or more of those securities or other items of collateral specified in 781—13.2(12C), definition of "eligible collateral," and shall be acceptable to the treasurer.

**13.8(2)** The acceptance of a security or other items as collateral by the approved custodian does not prevent the treasurer from requiring substitution of such security or other items at a later time as a result of statutory amendment or other changes or circumstances which affect the valuation, marketability, liquidity, ownership, or perfectibility.

**781—13.9(12C) Suspension or termination of approved custodian designation.**

**13.9(1)** An approved custodian may request in writing that the treasurer remove its designation as an approved custodian. Following such a written request, the Master Custodial Agreement for the Deposit of Public Funds in Banks shall terminate pursuant to the terms of those agreements provided; however, no such agreement shall terminate until the pledging bank(s) has secured the services of another approved custodian and all pledged collateral has been properly withdrawn and placed in safekeeping with the successor custodian.

**13.9(2)** If the treasurer determines that an approved custodian has violated any provisions of Iowa Code chapter 12C, or any other documents or agreements as prescribed by the treasurer, or has failed to fulfill its duties or otherwise committed a breach or default as set out in the Master Custodial Agreement for the Deposit of Public Funds in Banks, the treasurer may immediately suspend or terminate an approved custodian's designation as an approved custodian. The treasurer shall provide the suspended or terminated approved custodian with written notice of its suspension or termination. Upon suspension or termination, each pledging bank utilizing the services of the suspended or terminated approved custodian shall immediately secure the services of another approved custodian, and all pledged collateral shall be immediately withdrawn and placed in safekeeping with the successor approved custodian.

**781—13.10(12C) Sale or merger of an approved custodian.** If a pledging bank acquires control, direct or indirect, or ownership of its approved custodian, or the approved custodian acquires control, direct or indirect, or ownership of a pledging bank for which it is holding pledged collateral, or if a holding company will become owner of both the approved custodian and the pledging bank, the approved custodian shall immediately notify the treasurer in writing. Each pledging bank that utilizes the services of the approved custodian over which it has acquired control or that is now controlled by the approved custodian shall immediately secure the services of another approved custodian, and all pledged collateral

TREASURER OF STATE[781](cont'd)

shall be immediately withdrawn and placed in safekeeping with the successor approved custodian.

**781—13.11(12C) Suspension or termination.**

**13.11(1)** If the treasurer determines that a pledging bank has violated any provisions of Iowa Code chapter 12C, or any other documents or agreements as prescribed by the treasurer, or has failed to fulfill its duties or otherwise committed a breach or default as set out in the Pledge and Security Agreement or the Securities Account Control Agreement, or applicable federal deposit insurance coverage is suspended or terminated, the treasurer may immediately suspend or terminate a pledging bank's ability to accept uninsured public funds. The treasurer shall provide the suspended or terminated bank and the superintendent with written notice of its suspension or termination. Upon suspension or termination, all uninsured public funds held by the suspended or terminated pledging bank in excess of federal deposit insurance coverage shall be immediately remitted, with interest, to the applicable public unit(s).

**13.11(2)** Public units having public funds on deposit at a terminated or suspended pledging bank shall be notified of the termination or suspension of a pledging bank by notices included in the monthly rate-setting notice posted on the treasurer's Web site.

**781—13.12(12C) Sale or merger of a pledging bank.**

**13.12(1)** The responsibility of a pledging bank to pledge collateral for the security of the uninsured public funds in banks shall not be altered by any merger, takeover, or acquisition, except to the extent that such duty is assumed by the successor entity. No assets shall be released to the successor entity until collateral of an equal value is substituted or all excess public funds are withdrawn from the successor entity.

**13.12(2)** A pledging bank shall notify the treasurer and the approved custodian, in writing, of its merger, takeover or acquisition by a successor entity prior to the effective date of such an event.

**781—13.13(12C) Procedures upon default or closing of a bank.**

**13.13(1)** The acceptance of public funds by a bank constitutes agreement by the bank to pledge collateral as required by Iowa Code section 12C.22, consent by the bank to the disposition of the collateral, consent by the bank to assessments by the treasurer, and agreement by the bank to provide accurate information and to otherwise comply with the requirements of Iowa Code chapter 12C and this chapter.

**13.13(2)** The treasurer may liquidate the eligible collateral pledged by a pledging bank, including, without limitation, drawing on any Letter of Credit pledged as collateral to the treasurer by a pledging bank, if the treasurer verifies that any of the following have occurred:

a. A public unit notifies the treasurer, or the treasurer determines that said pledging bank has failed to pay a check, draft or warrant drawn by a public officer.

b. A pledging bank has acted contrary to or otherwise breached a term or condition of any agreement which it has entered into with a public unit, the treasurer or an approved custodian.

c. The pledging bank has failed to pay an assessment ordered by the treasurer as required in Iowa Code chapter 12C, or has, as determined by the treasurer, otherwise violated these rules or Iowa Code chapter 12C.

**13.13(3)** In the event that a pledging bank is closed by any state or federal regulatory officials, the treasurer may proceed to liquidate the collateral pledged by the closed pledging bank, including drawing on any Letters of Credit pledged

to the treasurer by the closed pledging bank, notwithstanding the purchase and assumption of the closed pledging bank, and without the necessity of notice to the closed pledging bank, a successor receiver or an assuming entity. When a pledging bank accepts public funds, the pledging bank acknowledges and agrees that in the event of its closure or default, any eligible collateral is subject to unconditional sale or liquidation by the treasurer, with this condition and covenant inuring to and binding any receiver or successor in interest to the closed pledging bank.

**13.13(4)** In the event the deposits of a closed bank are not purchased and assumed by another bank, the public units with uninsured deposits in the pledging bank shall notify the treasurer of the amount of any claim within 30 days of the closing. The treasurer shall implement the following procedures:

a. The treasurer shall take such steps as are necessary to ensure that the approved custodian acts only upon the treasurer's instructions with regard to any pledged collateral.

b. The treasurer shall provide each public unit which has contacted the treasurer with a Statement of Accounts, a Public Depositor Claim Form, and a Release by Public Depositor. Included with these forms shall be instructions for completing and filing them and the estimated date when the treasurer will pay claims.

c. It shall be the duty and responsibility of each public unit with a potential claim to complete the above forms in cooperation with regulatory officials handling the closing of the pledging bank and to receive the signed confirmation of such officials as to the amount of the claim. The Statement of Accounts shall include the balances of all accounts on the date of closing, any amounts reimbursed by federal insurance coverage, and all interest accrued, at the applicable rate, on unreimbursed balances to the date of payment of claims and the amount of uninsured public funds on deposit. The Statement of Accounts and the Public Depositor Claim Form must be returned to the treasurer within 30 days of the date of the closing of the bank or from the date of receipt from the treasurer.

d. In cooperation with the responsible regulatory officials for the closed bank and the receipt of all Statements of Accounts and Public Depositor Claim Forms, the treasurer shall validate the amount of public funds deposit insurance coverage applicable to the public funds deposits of the closed bank. The treasurer may request that warrants be drawn on the state sinking fund for public funds deposits in banks to reimburse each public unit that has a verified claim.

e. Upon the specified date of payment of claims, warrants for the amounts of verified claims shall be delivered to the public units to the extent funds in the sinking fund are sufficient to cover public funds depositors' claims and expenses of the treasurer including, but not limited to, legal and administrative expenses. The public unit shall sign and deliver the Release by Public Depositor to the treasurer prior to receiving a warrant.

**13.13(5)** If the applicable deposit insurance, the liquidation of pledged collateral, or the funds received from drawing on any Letters of Credit, and the assets of the bank which are liquidated within 30 days of the closing of the bank are not sufficient to satisfy the loss to public units, then the treasurer shall obtain the additional amount needed to satisfy all remaining claims from the state sinking fund for public deposits in banks to the extent funds in the sinking fund are sufficient to cover public funds depositors' claims and expenses of the treasurer including, but not limited to, legal and administrative expenses.

TREASURER OF STATE[781](cont'd)

**13.13(6)** If the funds in the sinking fund for public deposits in banks are inadequate to cover the remaining loss, the treasurer shall make assessments against all remaining banks whose public funds deposits exceed federal deposit insurance coverage to satisfy the remaining loss. The assessment against each bank shall be calculated pursuant to Iowa Code chapter 12C and shall be paid by each bank to the treasurer within three business days of the bank's receipt of the treasurer's written assessment notice. If a pledging bank refuses or fails to pay its assessment when due, the treasurer shall satisfy the assessment in whole or in part by liquidating the collateral pledged by any pledging bank or drawing on any Letters of Credit which were pledged as collateral by that pledging bank.

**13.13(7)** If a pledging bank refuses or fails to pay any assessment and the liquidation of collateral pledged by that pledging bank or the funds received from drawing upon any Letters of Credit pledged as collateral by the pledging bank are not sufficient to satisfy the assessment, the treasurer shall make additional assessments as necessary against other banks which hold uninsured public funds deposits to satisfy any unpaid assessment. Additional assessments shall be determined, collected and satisfied in the same manner as the first assessment.

**781—13.14(12C) Fees of the treasurer.** The treasurer shall be entitled to reimbursement of all of the treasurer's actual and necessary costs and expenses incurred in the administration of Iowa Code chapter 12C and these rules including, but not limited to, legal expenses and administrative expenses. Such costs and expenses shall be reimbursed by withdrawal from the state sinking fund for public deposits in banks wherein a balance, acceptable to the treasurer and sufficient to meet legal and administrative expenses, shall be maintained. In the event at any time funds in the state sinking fund for public deposits in banks are not sufficient to pay any such reimbursement, the treasurer may make an assessment in the manner provided by Iowa Code section 12C.23A, subsection (3d), provided that no such assessment shall exceed the anticipated costs and expenses in the administration of Iowa Code chapter 12C and these rules for a period greater than one year after the assessment is made.

These rules are intended to implement Iowa Code chapter 12C.

[Filed 4/24/03, effective 6/18/03]

[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

## ARC 2460B

### UTILITIES DIVISION[199]

#### Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A and 476.1B and chapter 478, the Utilities Board (Board) gives notice that on April 24, 2003, the Board issued an order in Docket No. RMU-02-11, In re: Electric Franchise and Related Rules, "Order Adopting Rules." The Board is adopting revisions to 199 IAC 11 and 25 in response to Governor Vilsack's Executive Order Numbers 8 and 9 and 2002 Iowa Acts, House File 2341. House File 2341 amended Iowa Code section 478.13 to provide that electric line franchise exten-

sion applications are to be less extensive than original applications and proceedings. Prior to passage of the amendment, Iowa Code chapter 478 did not differentiate between original franchise and franchise extension proceedings.

On November 22, 2002, the Board issued an order in Docket No. RMU-02-11 to consider the amendments. Notice of Intended Action for the proposed rule making was published in IAB Vol. XXV, No. 12 (12/11/02) p. 885, **ARC 2173B**. The Consumer Advocate Division of the Department of Justice, the Iowa Association of Municipal Utilities, the Iowa Association of Electric Cooperatives, MidAmerican Energy Company, and Interstate Power and Light Company filed written comments or statements. An oral presentation was held on February 14, 2003. All those who made written filings participated.

The Board will not detail here the reasons for adopting the rules because those reasons have been delineated in the "Order Commencing Rule Making" issued November 22, 2002, and the "Order Adopting Rules" issued April 24, 2003. Those orders are available at the Board's Web site, <http://www.state.ia.us/iub>. The orders are also available in hard copy for review or purchase at the Board's Records Center, 350 Maple Street, Des Moines, Iowa 50319-0069; telephone (515)281-6240.

The changes to the amendments published under Notice of Intended Action are in response to comments or are minor, such that the Board believes no additional notice is required. There is no specific waiver provision in the adopted amendments because the Board's general waiver rule 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these amendments.

These amendments are intended to implement Iowa Code section 476.1, 476.1A and 476.1B and chapter 478.

These amendments will become effective June 18, 2003.

The following amendments are adopted.

ITEM 1. Rescind rule 199—11.1(478) and adopt the following **new** rule in lieu thereof:

#### **199—11.1(478) General information.**

**11.1(1) Authority.** The standards pertaining to electric transmission lines in this chapter are prescribed by the Iowa utilities board pursuant to Iowa Code sections 478.18(1), 478.19 and 478.20. This chapter shall apply to any individual, company, corporation, or city engaged in the construction, operation, and maintenance of electric transmission lines to the extent provided in Iowa Code chapter 478.

**11.1(2) Purpose.** The purpose of this chapter is to establish standards for electric franchise proceedings before the Iowa utilities board.

**11.1(3) Iowa electrical safety code.** Overhead and underground electric supply line minimum requirements to be applied in installation, operation, and maintenance are found in 199—Chapter 25, Iowa electrical safety code.

**11.1(4) Date of filing.** A petition for franchise shall be considered filed with the board on the date of the United States Postal Service postmark if the filing is made by mail, or on the date received at the board's records center if the filing is made in person or sent other than by United States mail.

**11.1(5) Franchise—when required.** An electric franchise shall be required for the construction, operation, and maintenance of any electric line which is capable of operating at 69,000 volts or more outside of cities, except that a franchise is not required for electric lines located entirely within the boundaries of property owned by an electric company or an end user.

## UTILITIES DIVISION[199](cont'd)

**11.1(6) Definitions.** For the administration and interpretation of this chapter, the following words and terms, when used in these rules, shall have the meanings indicated below:

“Board” means the utilities board within the utilities division of the department of commerce.

“Capable of operating” shall mean the standard voltage rating at which the line, wire, or cable can be operated consistent with the level of the insulators and the conductors used in construction of the line, wire, or cable based on manufacturer’s specifications, industry practice, and applicable industry standards.

**11.1(7) Route selection.** The planning for a route that is the subject of a petition for franchise must begin with routes that are near and parallel to roads, railroad rights-of-way, or division lines of land, according to the government survey, consistent with the provisions of Iowa Code section 478.18(2). When a route near and parallel to these features has points where electric line construction is not practicable and reasonable, deviations may be proposed at those points, when accompanied by a proper evidentiary showing, generally of engineering reasons, that the initial route or routes examined did not meet the practicable and reasonable standard. Although deviations based on landowner preference or minimizing interference with land use may be permissible, the petitioner must be able to demonstrate that route planning began with a route or routes near and parallel to roads, railroad rights-of-way, or division lines of land.

Further, no transmission line shall be constructed outside of cities, except by agreement, within 100 feet of any dwelling house or other building, except where such line crosses or passes along a public highway or is located alongside or parallel with the right of way of any railroad company, consistent with the provisions of Iowa Code section 478.20.

ITEM 2. Rescind rule 199—11.2(478) and adopt the following **new** rule in lieu thereof:

**199—11.2(478) Forms of petition for franchise, extension, or amendment of franchise.**

**11.2(1) Forms of petition for a new or amended franchise.** A petition for a new or amended franchise filed with the board shall be made in the following manner. A petition shall be made on forms prescribed by the board, shall be notarized, and shall have all required exhibits attached. Exhibits in addition to those required by this rule may be attached when appropriate.

a. Exhibit A. A legal description of the route. The description shall include the name of the county, the maximum and nominal voltages, the beginning and ending points of the line, and whether the route is on public, private, or railroad right-of-way. In the case of the multicounty projects, the description shall identify all counties involved in the total project and any termini located in other counties.

b. Exhibit B. A map showing the route of the line drawn with reasonable accuracy considering the scale. Two copies shall be submitted. The map may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile. The following minimum information shall be provided:

(1) The route of the electric line which is the subject of the petition, including starting and end points and, when paralleling a road or railroad, which side it is on. Line sections with double circuit construction or underbuild shall be designated.

(2) The name of the county, county and section lines, section numbers, and the township and range numbers.

(3) The location and identity of roads, major streams and bodies of water, and any other pertinent natural or man-made features influencing the route.

(4) The name and corporate limits of cities.

(5) The name and boundaries of any public lands or parks, recreational areas, preserves or wildlife refuges.

(6) All electric supply lines, including petitioner’s, within six-tenths of a mile of the route, including the nominal voltage and whether overhead or buried, and the name and address of the owners. Any lines to be removed or relocated shall be designated.

(7) The location of railroad rights-of-way, including the name and address of the owners.

(8) The location of airports or landing strips within one mile of the route, along with the name and address of the owners.

(9) The location of pipelines used for the transportation of any solid, liquid, or gaseous substance, except water, within six-tenths of a mile of the route, along with the name and address of the owners.

(10) The name and address of the owners of telephone, communication, or cable television lines within six-tenths of a mile of the route. The location of these lines need not be shown.

(11) The name and address of the owners of rural water districts organized pursuant to Iowa Code chapter 357A with facilities within six-tenths of a mile of the route. The location of these facilities need not be shown.

c. Exhibit C. Technical information and engineering specifications describing typical materials, equipment and assembly methods as specified on forms provided by the board.

d. Exhibit D. The exhibit shall consist of a written text containing the following:

(1) An allegation, with supporting testimony, that the line is necessary to serve a public use, plus such additional substantiated allegations as may be required by Iowa Code section 478.3(2).

(2) If the route or any portion thereof is not near and parallel to railroad right-of-way or along division lines of the lands, according to government surveys, a showing of why such parallel routing is not practicable or reasonable.

(3) If the route and manner of construction would result in separate pole lines for two or more electric supply lines occupying the same road right-of-way in a manner not in compliance with 199 IAC 11.6(1), a request that the board authorize separate pole lines and justification for the authorization.

(4) Any other information or explanations in support of the petition.

(5) If a new franchise must be sought for an existing electric line, historical information as specified in 199 IAC 11.2(2)“d”(1) to (4).

e. Exhibit E. This exhibit is required only if the petition requests the right of eminent domain. This exhibit shall be in its final form prior to issuance of the form of notice by the board pursuant to 199 IAC 11.5(2)“a.” It shall consist of a map of the route showing the location of each property for which the right of eminent domain is sought, and for each property:

(1) The legal description of the property.

(2) The legal description of the desired easement.

(3) A specific description of the easement rights being sought.

(4) The names and addresses of all persons with an ownership interest in the property and of all tenants.

## UTILITIES DIVISION[199](cont'd)

(5) A map drawn to an appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of all electric lines and supports within the proposed easement, the location of and distance to any building within 100 feet of the proposed electric line, and any other features pertinent to the location of the line and its supports or to the rights being sought.

f. Exhibit F. The showing of notice to potentially affected parties as required by 199 IAC 11.5(4).

g. Exhibit G. The affidavit required by Iowa Code section 478.3 on the holding of an informational meeting. Copies of the mailed notice letter and the published notice(s) of the informational meeting shall be attached to the affidavit. This exhibit is required only if an informational meeting was conducted.

**11.2(2)** Form of petition for extension of franchise. A petition for an extension of franchise filed with the board shall be made in the following manner. A petition shall be made on forms prescribed by the board, shall be notarized, and shall have all required exhibits attached. Exhibits in addition to those required by this rule may be attached when appropriate.

a. Exhibit A. A legal description of the route. The description shall include the name of the county, the maximum and nominal voltages, the beginning and ending points of the line, and whether the route is on public, private, or railroad right-of-way. The description shall identify any termini located in other counties.

b. Exhibit B. A map showing the route of the line drawn with reasonable accuracy considering the scale. Two copies shall be submitted. The map may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile. The following minimum information shall be provided:

(1) The route of the electric line which is the subject of the petition, including starting and end points and, when paralleling a road or railroad, which side it is on. Line sections with double circuit construction or underbuild shall be designated. The nominal voltage and ownership of other circuits or underbuild shall be indicated.

(2) The name of the county, county and section lines, section numbers, and the township and range numbers.

(3) The location and identity of roads, railroads, major streams and bodies of water, and any other significant natural or man-made features or landmarks.

(4) The name and corporate limits of cities.

c. Exhibit C. Technical information and engineering specifications describing typical materials, equipment and assembly methods as specified on forms provided by the board.

d. Exhibit D. The exhibit shall consist of a written text containing the following:

(1) A listing of all existing franchises for which extension in whole or in part is sought, including the docket number, franchise number, date of issue, county of location, and to whom granted.

(2) A listing of all amendments to the franchises listed in (1), including the docket number, amendment number, date of issue, and the purpose of the amendment.

(3) A description of any substantial rebuilds, reconstructions, alterations, relocations, or changes in operation not included in a prior franchise or amendment action.

(4) A description of any changes in ownership or operating and maintenance responsibility.

(5) An allegation, with supporting testimony, that the line remains necessary to serve a public use and represents a rea-

sonable relationship to an overall plan of transmitting electricity in the public interest.

(6) Any other information or explanations in support of the petition.

ITEM 3. Amend paragraph **11.3(2)“a”** as follows:

a. A petition for franchise shall be filed with the board for the construction of any electric line outside of a city which is capable of operating at a nominal voltage of 69 kilovolts or more, *except that a franchise is not required for electric lines located entirely within the boundaries of property owned by an electric company or an end user.*

ITEM 4. Amend paragraph **11.3(2)“c”** by adding **new** subparagraph **(4)**:

(4) An amendment to franchise shall not be required for a voltage increase, additional circuit, or electric line relocation where such activity takes place entirely within the boundaries of property owned by an electric company or an end user.

ITEM 5. Amend paragraph **11.5(2)“a”** as follows:

a. Whenever a petition for a franchise, extension of franchise, or amendment of franchise is filed with the board, the board shall prepare a notice addressed to the citizens of each county through which the line or lines extend. The petitioner shall cause this notice to be published in a newspaper located in each county for two consecutive weeks. Proof of publication ~~and proof of payment of publication costs~~ shall be filed with the board. This published notice shall constitute sufficient notice to all parties of the proceeding, except owners of record and parties in possession of land to be crossed for which voluntary easements have not been obtained at the time of the first publication of the notice.

ITEM 6. Amend subrule 11.5(4) as follows:

**11.5(4)** Notice to other parties. Petitioners for a franchise, ~~extension of franchise,~~ or amendment to franchise shall give written notice by ordinary mail, mailed at the time the petition is filed with the board, accompanied by a map showing the route of the proposed electric supply line, to the affected parties described in 11.2(3)“e” (1)“b”(6) through “j” (11) and the Iowa department of transportation. One copy of each letter of notification or one copy of the letter accompanied by a written statement listing all parties to which it was mailed, ~~and~~ the date of mailing, *and a copy of the map sent with the letters* shall accompany the petition when it is filed with the board.

ITEM 7. Amend subrule **11.5(5)** by adding **new** paragraph **“c”** as follows:

c. If the facilities authorized by a franchise are not constructed in whole or in part within two years of the date the franchise is granted, or within two years after final unappealable disposition of judicial review of a franchise order or of condemnation proceedings, the franchise shall be forfeited unless the franchise holder petitions the board for an extension of time pursuant to Iowa Code section 478.21.

ITEM 8. Rescind and reserve subrule **11.5(6)**.

ITEM 9. Amend subrule 11.6(1) as follows:

**11.6(1)** Common use construction. Whenever an overhead electric line capable of operating at ~~34.5~~ 69 kilovolts or more is built or rebuilt on public road rights-of-way *located outside of cities*, all parallel overhead electric supply circuits on the same road right-of-way shall be attached to the same or common line of structures unless the board authorizes, for good cause shown, the construction of separate pole lines.

## UTILITIES DIVISION[199](cont'd)

ITEM 10. Rescind and reserve subrule **11.6(2)**.

ITEM 11. Adopt the following **new** rule:

**199—11.8(478) Fees and expenses.** The petitioner shall pay the actual unrecovered cost incurred by the board attributable to the processing, investigation, and inspection related to a petition requesting an electric franchise.

ITEM 12. Rescind rule 199—25.1(476,476A,478) and adopt the following **new** rule in lieu thereof:

**199—25.1(476,476A,478) General information.**

**25.1(1) Authority.** The standards relating to electric and communication facilities in this chapter are prescribed by the Iowa utilities board pursuant to Iowa Code sections 476.1, 476.1B, 476.2, 476A.12, 478.19, and 478.20.

**25.1(2) Purpose.** The purpose of this chapter is to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities. The rules apply to electric and communication utility facilities located in the state of Iowa and shall supersede all conflicting rules of any such utility. This rule shall in no way relieve any utility from any of its duties under the laws of this state.

ITEM 13. Amend subrules 25.2(2) and 25.2(3) as follows:

**25.2(2) Modifications and qualifications to ANSI C2.** The standards set forth in ANSI C2 are modified or qualified as follows:

a. Introduction to the National Electrical Safety Code.

(1) The following paragraph is added to NESC 011B: "The National Electrical Safety Code (NESC) covers utility facilities and functions from the point of generation by the utility, or delivery from another entity, of electricity or communications signals through the utility system to the point of delivery to a customer's facilities."

(2) NESC 013A2 is modified to read as follows: "Types of construction and methods of installation other than those specified in the rules may be used experimentally to obtain information, if done where: ~~qualified supervision is provided and prior approval is obtained from the board.~~

1. *Qualified supervision is provided,*
2. *Equivalent safety is provided,*
3. *On joint-use facilities, all affected parties agree, and*
4. *Prior approval is obtained from the Iowa utilities board."*

b. Minimum clearances.

(1) In any instance where minimum clearances are provided in Iowa Code chapter 478 which are greater than otherwise required by these rules, the statutory clearances shall prevail.

(2) The following clearances shall apply to all lines regardless of date of construction: NESC 232, vertical clearances for "Water areas not suitable for sailboating or where sailboating is prohibited," "Water areas suitable for sailboating . . .," and "Public or private land and water areas posted for rigging and launching sailboats *Established boat ramps and associated rigging areas . . .*"; and NESC 234E, "Clearance of Wires, Conductors, or Cables *or Unguarded Rigid Live Parts Installed Over or Near Swimming Areas With No Wind Displacement.*"

(3) Table 232-1, Footnote 19 21, is changed to read: "Where the U.S. Army Corps of Engineers or the state, or a surrogate thereof, issues a crossing permit, the clearances of that permit shall govern if equal to or greater than those re-

quired herein. Where the permit clearances are less than those required herein and water surface use restrictions on vessel heights are enforced, the permit clearances may be used."

(4) Except for clearances near grain bins, for measurements made under field conditions, the board will consider compliance with the overhead vertical line clearance requirements of Subsection 232 and Table 232-1 of the 1987 NESC indicative of compliance with the ~~1997~~ *1990 through 2002 editions of the NESC*. (For an explanation of the differences between 1987 and subsequent code edition clearances, see Appendix A of the ~~1997~~ *1990 through 2002 editions of the NESC*.)

c. Reserved.

d. Rule 264E.1 is changed to read:

"The ground end of anchor guys exposed to pedestrian or vehicle traffic shall be provided with a substantial marker not less than eight feet long. The guy marker shall be of a conspicuous color such as yellow, orange, or red. Green, white, gray or galvanized steel colors are not reliably conspicuous against plant growth, snow, or other surroundings. Noncomplying guy markers shall be replaced as part of the utility's inspection and maintenance plan."

e. There is added to Rule 381G:

(3) Pad-mounted *and other aboveground* equipment not located within a fenced or otherwise protected area shall have affixed to its outside access door or cover a prominent "Caution Warning" or other appropriate warning sign of highly visible color, warning of hazardous voltage and including the name of the utility. ~~These signs shall be in place on or before December 31, 1992. This rule shall apply to all signs placed or replaced after June 18, 2003.~~

f. There is added to the first paragraph of Rule 110.A.1, after the sentence stating, "Entrances not under observation of an authorized attendant shall be kept locked," the following sentences:

Entrances may be unlocked while authorized personnel are inside. However, if unlocked, the entrance gate must be fully closed and must also be latched or fastened if there is a gate-latching mechanism.

**25.2(3) Grain bins.**

a. *Utilities Electric utilities* shall conduct annual public information campaigns to inform farmers, farm lenders, grain bin merchants, and city and county zoning officials of the hazards of and standards for construction of grain bins near power lines.

b. An electric utility may refuse to provide electric service to any grain bin built near an existing electric line which does not provide the clearances required by The American National Standards Institute (ANSI)C2-~~1997~~ *2002* "National Electrical Safety Code," Rule 234F. This paragraph "b" shall apply only to grain bins loaded by portable augers, conveyors or elevators and built after September 9, 1992, or to grain bins loaded by permanently installed augers, conveyors, or elevator systems installed after December 24, 1997.

ITEM 14. Rescind subrule 25.2(4) and adopt the following **new** subrule in lieu thereof:

**25.2(4) General rules.**

a. Joint-use construction. Where it is mutually agreeable between the electric supply company and the communication or cable television company, communication circuits or cables may be buried in the same trench or attached to the same supporting structure, provided this joint use is permitted by, and is constructed in compliance with, the Iowa electrical safety code.

UTILITIES DIVISION[199](cont'd)

b. Lines. In order to limit the residual currents and voltages arising from line unbalances, the resistance, inductance, capacitance and leakage conductance of each phase conductor of an electric supply circuit in any section shall be as nearly equal as practical to the corresponding quantities in the other phase conductors in the same section.

The ampacity of a multigrounded neutral conductor of an electric supply circuit shall be adequate for the load which it is required to carry. The ampacity of a multigrounded neutral conductor of an electric supply circuit shall not be less than 60 percent of that of any phase conductor with which it is associated, except for three phase four wire wye circuits where it shall have ampacity not less than 50 percent of that of any associated phase conductor. In no case shall the resistance of a multigrounded neutral conductor exceed 3.6 ohms per mile. (This does not modify the mechanical strength requirements for conductors.) A multigrounded conductor installed and utilized primarily for lightning shielding of the associated phase conductors need not comply with the above percentage ampacity requirements for neutral conductors.

Where the neutral conductor of the electric supply circuit is not multigrounded or in an inductive exposure involving communication or signal circuits and equipment where the controlling frequencies are 360 Hertz or lower, any neutral conductor shall have the same ampacity as the phase conductors with which it is associated.

ITEM 15. Amend the first sentence of rule 199—25.5(476,478) as follows:

**199—25.5(476,478) Accident reports.** *A* An electric utility shall file with the board a written report on any accident to an employee or other person involving contact with its energized electrical supply facilities which results in a fatality, admission to a hospital, \$10,000 in damages to the property of the utility and others, or any other accident considered significant by the utility.

[Filed 4/24/03, effective 6/18/03]  
[Published 5/14/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/03.

**ARC 2469B**

**WORKFORCE DEVELOPMENT  
DEPARTMENT[871]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby amends Chapter 23, "Employer's Contributions and Charges," Iowa Administrative Code.

The amendments to this chapter make corrections that were identified as a result of reviews conducted in accordance with Executive Order Number 8.

Notice of Intended Action was published in the March 19, 2003, Iowa Administrative Bulletin as **ARC 2351B**. These amendments are identical to those published under Notice.

These amendments will become effective on June 18, 2003.

These amendments are intended to implement Iowa Code sections 96.5(5)"a," 96.7, 96.7(2), 96.7(2)"c," 96.7(2)"c"(3), 96.7(2)"d," 96.7(3), 96.7(7)"b," 96.7(11), 96.7(12), 96.8, 96.8(4)"b," 96.8(5), 96.11(1), 96.19(1), 96.19(6)"a"(1), 96.19(6)"a"(6), 96.19(8), 96.19(13), 96.19(16)"m," 96.19(18)"g"(6), 96.19(37), 96.19(41) and 96.20(2).

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 23] is being omitted. These amendments are identical to those published under Notice as **ARC 2351B**, IAB 3/19/03.

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