



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

KATHLEEN K. WEST, Administrative Code Editor
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Notice, Certified users who may request a waiver—clarification of application process, 9.1 **ARC 5961B** 1700

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CITATION of Administrative Rules

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

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

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

Schedule for Rule Making 2007

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 27 '06	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	***June 27***	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 27	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
Aug. 22	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	***Dec. 12***	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	***Dec. 26***	Jan. 16 '08	Feb. 20 '08	May 19 '08
Nov. 14	Dec. 5	Dec. 25	Jan. 9 '08	Jan. 11 '08	Jan. 30 '08	Mar. 5 '08	June 2 '08
Nov. 30	Dec. 19	Jan. 8 '08	Jan. 23 '08	Jan. 25 '08	Feb. 13 '08	Mar. 19 '08	June 16 '08
Dec. 12	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
Dec. 26	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
2	Wednesday, June 27, 2007	July 18, 2007
3	Friday, July 13, 2007	August 1, 2007
4	Friday, July 27, 2007	August 15, 2007

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*****

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, July 10, 2007, and Wednesday, July 11, 2007, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the July 4, 2007, Iowa Administrative Bulletin.

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]"umbrella"

Debt cancellation products, ch 5, Notice **ARC 5930B** 6/6/07

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Renewable fuel infrastructure program—criteria for waiver of repayment requirements,

314.5(4), 314.5(5), Filed **ARC 5947B** 6/20/07

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Fee for extension of coaching authorization renewal, 14.121(1)"b"(10),

19.5(2), Notice **ARC 5945B** 6/6/07

Statement of professional recognition for school nurses, 14.140(11)"b,"

Notice **ARC 5917B**, also Filed Emergency **ARC 5916B** 6/6/07

Business teaching endorsement, 14.141(3) to 14.141(5), Notice **ARC 5942B** 6/6/07

Mathematics teaching endorsement—coursework in geometry,

14.141(13)"b," Notice **ARC 5946B** 6/6/07

Evaluator license renewal—coursework, 20.58(1), Notice **ARC 5943B** 6/6/07

EDUCATION DEPARTMENT[281]

Teacher librarians; media programs, 12.2, 12.3(11), 12.3(12), Filed **ARC 5919B** 6/6/07

Statewide voluntary preschool program, ch 16, Notice **ARC 5968B**,

also Filed Emergency **ARC 5969B** 6/20/07

Special education, ch 41, Notice **ARC 5920B** 6/6/07

Practitioner preparation programs, 79.2 to 79.7, 79.10 to 79.15, Notice **ARC 5921B** 6/6/07

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Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Land surveying licensure—experience, education, 5.1(1), Notice **ARC 5944B** 6/6/07

Certification of documents—use of electronic signature, 6.1(9), Notice **ARC 5941B** 6/6/07

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Continuing education for local emergency management coordinators,

7.4(4), Notice **ARC 5975B** 6/20/07

Emergency management performance grants, 7.7(3), Notice **ARC 5970B** 6/20/07

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HUMAN SERVICES DEPARTMENT[441]

Food assistance program—eligible students, 65.26, Filed **ARC 5918B** 6/6/07

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76.9(2), 80.5(1), 88.5(1), 88.46(5), 88.63(2), 88.63(6), 92.6, Filed **ARC 5940B** 6/6/07

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78.10(3)"b," 78.10(3)"c"(3) and (4), 78.10(4), 78.10(4)"a" and "b," 78.28(1)"b," "d" and "i,"

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182.8(2)"c," Filed **ARC 5937B** 6/6/07

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Regulation of securities offerings and those who engage in the securities business,

ch 50, Filed **ARC 5974B** 6/20/07

INTERIOR DESIGN EXAMINING BOARD[193G]Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

- Professional conduct, ch 4, Filed **ARC 5931B** 6/6/07
- Grounds for discipline; disciplinary authority, investigations,
and proceedings, chs 5 to 7, Filed **ARC 5932B** 6/6/07

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- Employee discrimination complaints; OSHA standards—adoption by reference,
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- Professional boxing and shoot fighting—blood-borne disease testing, 173.54, 177.5(11),
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- Professional shoot-fighting events—promoter responsibilities, 177.2(2), Notice **ARC 5929B** 6/6/07
- Professional shoot-fighting events—attendance of labor commissioner, 177.9, Notice **ARC 5928B** 6/6/07
- Insurance coverage for professional shoot fighters, 177.10, Notice **ARC 5934B** 6/6/07

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

- Game management areas, 51.10, Filed **ARC 5950B** 6/20/07
- Wildlife refuges, 52.1(2)"a," Filed **ARC 5952B** 6/20/07
- Commercial fishing on the Mississippi, 82.2(2), 82.2(5)"c," 82.2(8) to 82.2(10), Notice **ARC 5956B** 6/20/07
- Game harvest reporting; landowner-tenant registration, 95.1(1), 95.2, 95.2(2),
95.2(4), Filed **ARC 5951B** 6/20/07
- Wild turkey spring hunting, 98.2(3), 98.9(2), 98.10, 98.11(1), Filed **ARC 5953B** 6/20/07
- Wild turkey fall hunting, 99.4, 99.5(1), Filed **ARC 5954B** 6/20/07
- Rabbit and squirrel hunting, 107.1, 107.3, Filed **ARC 5955B** 6/20/07

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Overpayment of fees, 1.7, Notice **ARC 5964B** 6/20/07
- Return and reuse of prescription drugs, 6.15(3), Notice **ARC 5965B** 6/20/07
- Bulk drug counting machines; continuous quality improvement program;
pharmacy licensure, 8.5(8), 8.26, 8.35(8), Filed **ARC 5925B** 6/6/07
- Delivery of filled prescriptions; fax transmission of prescription drug orders,
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- Sterile compounding practices, 8.30, ch 13, Filed **ARC 5924B** 6/6/07
- Automated medication distribution systems, 9.7, Amended Notice **ARC 5933B** 6/6/07
- Controlled substances, 10.16, 10.31 to 10.33, 10.34(6), 10.34(7), 10.35, Filed **ARC 5926B** 6/6/07
- Wholesale drug licensure, 17.3(6), 17.6, Filed **ARC 5923B** 6/6/07
- Emergency/first dose drug supply, 22.7(1), 22.7(7), Filed **ARC 5922B** 6/6/07

PUBLIC HEALTH DEPARTMENT[641]

- Radiation, amendments to chs 38, 39, 41, 42, 45, 46, Notice **ARC 5912B** 6/6/07
- Brain injury services program, ch 56, Notice **ARC 5915B**, also Filed Emergency **ARC 5914B** 6/6/07
- Abuse education review panel, 93.2(1), 93.3, Notice **ARC 5913B** 6/6/07

REAL ESTATE APPRAISER EXAMINING BOARD[193F]Professional Licensing and Regulation Bureau[193]
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- Appraisal logs; course requirements, 4.1(6), 5.2(1), 6.2(3), 13.2(3),
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- Monthly logs; initial certification; license renewal, 4.1(7), 5.4, 6.4,
11.2(1)"d," Filed **ARC 5972B** 6/20/07

REAL ESTATE COMMISSION[193E]Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

- Salesperson prelicense education; continuing education audit, 4.1, 16.2(3) to 16.2(6),
16.5(3), Filed **ARC 5967B** 6/20/07

SECRETARY OF STATE[721]

- Local sales and services tax reimposition elections, 21.800(3)"b"(2),
Filed Emergency **ARC 5927B** 6/6/07

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

- Advisory committees; agency organization and duties; address change, 1.3“3,” 1.5(2),
1.6(1), Notice **ARC 5948B** 6/20/07
- Address change, 2.3(1), Notice **ARC 5949B** 6/20/07
- Address change, 3.1, 3.3(3), 3.5, 3.6(2), Notice **ARC 5957B** 6/20/07
- Address change, 4.12(3) to 4.12(5), Notice **ARC 5958B** 6/20/07
- Address change; authorized spending limit, 5.2(4)“a,” 5.17, 5.19(3), Notice **ARC 5959B** 6/20/07
- Name change of central switching hub, 7.1, Notice **ARC 5960B** 6/20/07
- Request for waiver of network use, 9.1, Notice **ARC 5961B** 6/20/07
- Address change, 16.6, Notice **ARC 5962B** 6/20/07
- Address change, 18.5(1), 18.5(5), 18.6(2), 18.11(1), Notice **ARC 5963B** 6/20/07

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

- Prohibition of unauthorized changes in telecommunications service,
22.23(2)“a”(5), Filed **ARC 5938B** 6/6/07
- Equipment distribution program income limit, 37.3(8), Filed **ARC 5939B** 6/6/07

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR’S NOTE: Terms ending April 30, 2011.

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CREDIT UNION DIVISION[189]		
Debt cancellation products, ch 5 IAB 6/6/07 ARC 5930B	Division Conference Room 200 East Grand Ave. Des Moines, Iowa	June 26, 2007 10 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Fee for extension for renewal of coaching authorization, 14.121(1), 19.5(2) IAB 6/6/07 ARC 5945B	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	June 27, 2007 1 p.m.
Statement of professional recognition for school nurses, 14.1040 IAB 6/6/07 ARC 5917B (See also ARC 5916B)	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	June 27, 2007 1 p.m.
Business teaching endorsements, 14.141 IAB 6/6/07 ARC 5942B	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	June 27, 2007 1 p.m.
Mathematics teaching endorsement, 14.141(13) IAB 6/6/07 ARC 5946B	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	June 27, 2007 1 p.m.
Renewal of evaluator endorsement or license, 20.58(1) IAB 6/6/07 ARC 5943B	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	June 27, 2007 1 p.m.
EDUCATION DEPARTMENT[281]		
Statewide voluntary preschool program, ch 16 IAB 6/20/07 ARC 5968B (See also ARC 5969B herein) (ICN Network)	ICN Room, Second Floor E. 14th St. and Grand Ave. Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 9 a.m. to 12 noon
	Rm. 56, North Polk High School 315 NE 141st Ave. Alleman, Iowa	July 10, 2007 9 a.m. to 12 noon
	Fiber Optic Room Bedford Community High School 906 Pennsylvania Ave. Bedford, Iowa	July 10, 2007 9 a.m. to 12 noon
	Louisa Rm., Mississippi Bend AEA 9 729 21st St. Bettendorf, Iowa	July 10, 2007 9 a.m. to 12 noon
	Burlington High School 421 Terrace Dr. Burlington, Iowa	July 10, 2007 9 a.m. to 12 noon
	AEA 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	July 10, 2007 9 a.m. to 12 noon

EDUCATION DEPARTMENT[281] (Cont'd)

Rm. 203B, Linn Hall Kirkwood Comm. College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	July 10, 2007 9 a.m. to 12 noon
ICN Classroom Clear Lake High School 125 N. 20th St. Clear Lake, Iowa	July 10, 2007 9 a.m. to 12 noon
Loess Hills AEA 13 24997 Hwy. 92 Council Bluffs, Iowa	July 10, 2007 9 a.m. to 12 noon
Room 211, Instructional Center Southwestern Comm. College 1501 W. Townline Rd. Creston, Iowa	July 10, 2007 9 a.m. to 12 noon
Rm. 225, Wahlert High School 2005 Kane St. Dubuque, Iowa	July 10, 2007 9 a.m. to 12 noon
Keystone AEA 1 1400 2nd St. NW Elkader, Iowa	July 10, 2007 9 a.m. to 12 noon
Rm. 12, Fort Dodge High School 819 N. 25th St. Fort Dodge, Iowa	July 10, 2007 9 a.m. to 12 noon
Heartland AEA 11 6500 Corporate Dr. Johnston, Iowa	July 10, 2007 9 a.m. to 12 noon
AEA 267 909 S. 12th St. Marshalltown, Iowa	July 10, 2007 9 a.m. to 12 noon
Rm. 8, Mediapolis High School 725 North Northfield Mediapolis, Iowa	July 10, 2007 9 a.m. to 12 noon
Rm. 157, Voc. Tech. Bldg. Ottumwa High School 501 E. 2nd Ottumwa, Iowa	July 10, 2007 9 a.m. to 12 noon
Rm. 103, Northwest AEA 1382 4th Ave. NE Sioux Center, Iowa	July 10, 2007 9 a.m. to 12 noon
Rm. 311, Central Campus Individual Learning Center 1121 Jackson St. Sioux City, Iowa	July 10, 2007 9 a.m. to 12 noon
Special education, ch 41 IAB 6/6/07 ARC 5920B (ICN Network)	Department of Public Health Sixth Floor, NW Quad., Lucas State Office Bldg. Des Moines, Iowa June 26, 2007 2 to 4:30 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)

Bettendorf Public Library Kelinson Room 2950 Learning Campus Dr. Bettendorf, Iowa	June 26, 2007 2 to 4:30 p.m.
Cedar Falls Public Library 524 Parkade Cedar Falls, Iowa	June 26, 2007 2 to 4:30 p.m.
Xavier High School 6300 42nd St. NE Cedar Rapids, Iowa	June 26, 2007 2 to 4:30 p.m.
Centerville High School 600 High St. Centerville, Iowa	June 26, 2007 2 to 4:30 p.m.
Educational Services Center 12 Scott St. Council Bluffs, Iowa	June 26, 2007 2 to 4:30 p.m.
Southwestern Comm. College Room 107 1501 W. Townline Rd. Creston, Iowa	June 26, 2007 2 to 4:30 p.m.
Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa	June 26, 2007 2 to 4:30 p.m.
Keystone AEA 1 1400 2nd St. NW Elkader, Iowa	June 26, 2007 2 to 4:30 p.m.
St. Edmond High School Room 101 501 N. 22nd St. Fort Dodge, Iowa	June 26, 2007 2 to 4:30 p.m.
Harlan High School Room 123 2102 Durant Harlan, Iowa	June 26, 2007 2 to 4:30 p.m.
Iowa Valley Comm. College, Dist. 1 Room 86 3702 S. Center St. Marshalltown, Iowa	June 26, 2007 2 to 4:30 p.m.
North Iowa Area Comm. College Room 119 500 College Dr. Mason City, Iowa	June 26, 2007 2 to 4:30 p.m.
Muscatine Comm. College Room 60, Larson Hall 152 Colorado St. Muscatine, Iowa	June 26, 2007 2 to 4:30 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)

	DMACC, Newton Campus 2 Room 118 600 N. 2nd Ave. W. Newton, Iowa	June 26, 2007 2 to 4:30 p.m.
	Indian Hills Comm. College Videoconferencing & Training Ctr. 651 Indian Hills Dr. Ottumwa, Iowa	June 26, 2007 2 to 4:30 p.m.
	Sioux Center High School Room 125 550 9th St. NE Sioux Center, Iowa	June 26, 2007 2 to 4:30 p.m.
	Central Campus Individual Learning Ctr., Room 311 1121 Jackson St. Sioux City, Iowa	June 26, 2007 2 to 4:30 p.m.
	Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	June 26, 2007 2 to 4:30 p.m.
	Villisca Community High School 205 S. 4th Ave. Villisca, Iowa	June 26, 2007 2 to 4:30 p.m.
Special education, ch 41 IAB 6/6/07 ARC 5920B (ICN Network)	Department of Education, 2nd Floor Grimes State Office Bldg. Des Moines, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Mississippi Bend AEA 9 Louisa Room 729 21st St. Bettendorf, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Burlington Public Library 210 Court St. Burlington, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	National Guard Armory Dewey Road RR1 Box 125B Centerville, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Cedar Rapids Public Library Conference Rm., Second Floor 500 1st St. SE Cedar Rapids, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Council Bluffs Public Library 400 Willow Ave. Council Bluffs, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Matilda J. Gibson Memorial Library 200 W. Howard St. Creston, Iowa	June 28, 2007 2:30 to 4:30 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)

Keystone AEA 1 Room 2 2310 Chaney Rd. Dubuque, Iowa	June 28, 2007 2:30 to 4:30 p.m.
Central Comm. Jr-Sr High School Room 119 Elkader, Iowa	June 28, 2007 2:30 to 4:30 p.m.
Fort Madison High School Room 506 2001 Avenue B Fort Madison, Iowa	June 28, 2007 2:30 to 4:30 p.m.
Heartland AEA 11 6500 Corporate Dr. Johnston, Iowa	June 28, 2007 2:30 to 4:30 p.m.
AEA 267, Regional Office 909 S. 12th St. Marshalltown, Iowa	June 28, 2007 2:30 to 4:30 p.m.
North Iowa Area Comm. College Room 106, Activities Ctr. 500 College Dr. Mason City, Iowa	June 28, 2007 2:30 to 4:30 p.m.
Muscatine Comm. College Room 60, Larson Hall 152 Colorado St. Muscatine, Iowa	June 28, 2007 2:30 to 4:30 p.m.
DMACC, Newton Campus 2 Room 118 600 N. 2nd Ave. W. Newton, Iowa	June 28, 2007 2:30 to 4:30 p.m.
Indian Hills Comm. College Videoconferencing & Training Ctr. 651 Indian Hills Dr. Ottumwa, Iowa	June 28, 2007 2:30 to 4:30 p.m.
AEA 4 Room 103 1382 4th Ave. NE Sioux Center, Iowa	June 28, 2007 2:30 to 4:30 p.m.
Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	June 28, 2007 2:30 to 4:30 p.m.
Villisca Community High School 205 S. 4th Ave. Villisca, Iowa	June 28, 2007 2:30 to 4:30 p.m.
Practitioner preparation programs, amendments to ch 79 IAB 6/6/07 ARC 5921B	State Board Room Grimes State Office Bldg. Des Moines, Iowa June 26, 2007 11 a.m. to 12 noon

ENVIRONMENTAL PROTECTION COMMISSION[567]

Criteria for chemical constituents, 61.3(3) IAB 5/23/07 ARC 5898B	Washington Community Y 121 E. Main St. Washington, Iowa	June 21, 2007 7 p.m.
	5th Floor Conference Rooms Wallace State Office Bldg. 502 East 9th St. Des Moines, Iowa	June 26, 2007 1 p.m.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Continuing education for local coordinators, 7.4(4) IAB 6/20/07 ARC 5975B	Conference Room, Building W-4 Camp Dodge Johnston, Iowa	July 13, 2007 9 a.m.
Allocation of emergency management performance grant moneys, 7.7(3) IAB 6/20/07 ARC 5970B	Conference Room, Building W-4 Camp Dodge Johnston, Iowa	July 13, 2007 9 a.m.
Enhanced 911 telephone systems, 10.9(3), 10.14(4) IAB 6/20/07 ARC 5976B	Conference Room, Building W-4 Camp Dodge Johnston, Iowa	July 13, 2007 9 a.m.

LABOR SERVICES DIVISION[875]

Professional shoot fighting— promoter responsibilities, 177.2(2) IAB 6/6/07 ARC 5929B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	June 27, 2007 8:30 a.m. (If requested)
Professional shoot fighting— attendance of commissioner, 177.9 IAB 6/6/07 ARC 5928B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	June 27, 2007 10 a.m. (If requested)
Professional shoot fighting— health insurance, 177.10 IAB 6/6/07 ARC 5934B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	June 27, 2007 1:30 p.m. (If requested)

NATURAL RESOURCE COMMISSION[571]

Commercial fishing on the Mississippi, 82.2 IAB 6/20/07 ARC 5956B	Musser Public Library 304 Iowa Ave. Muscatine, Iowa	July 16, 2007 7 p.m.
	Cafeteria, Clinton Cty. Admin. Bldg. 1900 N. 3rd St. Clinton, Iowa	July 17, 2007 7 p.m.
	Guttenberg Municipal Bldg. 502 S. 1st St. Guttenberg, Iowa	July 18, 2007 7 p.m.

PUBLIC HEALTH DEPARTMENT[641]

Radiation, amendments to chs 38, 39, 41, 42, 45, 46 IAB 6/6/07 ARC 5912B	Room 523 Lucas State Office Bldg. Des Moines, Iowa	June 26, 2007 8:30 a.m.
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PUBLIC HEALTH DEPARTMENT[641] (Cont'd)

Brain injury services program, ch 56 IAB 6/6/07 ARC 5915B (See also ARC 5914B)	Room 518 Lucas State Office Bldg. Des Moines, Iowa	June 26, 2007 1 to 2:30 p.m.
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TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Organization; administration; advisory committees, 1.3, 1.5(2), 1.6(1) IAB 6/20/07 ARC 5948B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Change of address, 2.3(1) IAB 6/20/07 ARC 5949B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Change of address, 3.1, 3.3(3), 3.5, 3.6(2) IAB 6/20/07 ARC 5957B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Change of address, 4.12 IAB 6/20/07 ARC 5958B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Authorized spending limit; change of address, 5.2(4), 5.17, 5.19(3) IAB 6/20/07 ARC 5959B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Central switching hub name change, 7.1 IAB 6/20/07 ARC 5960B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Request for waiver of network use, 9.1 IAB 6/20/07 ARC 5961B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Change of address, 16.6 IAB 6/20/07 ARC 5962B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Change of address, 18.5 IAB 6/20/07 ARC 5963B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.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:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 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 Bureau[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]
 Interior Design Examining Board[193G]
 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]
 Grow Iowa Values Board[264]
 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]
 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]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 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 DEPARTMENT[701]
SECRETARY OF STATE[721]
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, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
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]

ADMINISTRATIVE SERVICES DEPARTMENT

Public Notice

NOTICE OF OFFICIAL PUBLICATION RATE INCREASE
FOR THE FISCAL YEAR COMMENCING JULY 1, 2007,
AND ENDING JUNE 30, 2008

In accordance with Iowa Code section 618.11, the Iowa Department of Administrative Services hereby publishes the lineage rate* for newspaper publications of any order, citation, or other publication required or allowed by law (also known as official publications) for the period commencing on July 1, 2007, and ending on June 30, 2008, in the following amounts:

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

One insertion = 41 cents
Each subsequent insertion = 27.9 cents

The rate becomes effective on July 1, 2007. The rate was determined by applying the formula specified in the statute. According to the federal Department of Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers increased 2.8% from March 2006 to March 2007. The March index was the most recent index available as of May 15, 2007, the date on which this notice was submitted for publication.

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

Questions with respect to this notice may be directed to:

Lorrie Tritch, ITE Infrastructure/
Printing Administrator
Iowa Department of Administrative Services
1305 E. Walnut
Des Moines, Iowa 50319
Telephone: (515)242-5898
E-Mail: Lorrie.Tritch@iowa.gov

ARC 5968B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to adopt new Chapter 16, "Statewide Voluntary Preschool Program," Iowa Administrative Code.

These rules implement the statewide voluntary preschool program created in 2007 Iowa Acts, House File 877. The legislation provided that the State Board of Education adopt emergency rules to identify the preschool program requirements that will be used to determine whether a local program implemented by a school district qualifies for state funding under the legislation, to identify the requirements imposed upon school districts implementing such programs and, as

otherwise necessary, to implement the statewide voluntary preschool program as provided in the legislation.

An agencywide waiver provision is provided in 281—Chapter 4.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 5969B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference. These rules become effective July 1, 2007, the effective date of the underlying legislation in 2007 Iowa Acts, House File 877, which gives the State Board of Education authority to adopt emergency rules.

Any interested person may make written comments on the proposed rules on or before July 10, 2007. Comments should be directed to Penny Milburn, Grimes State Office Building, Third Floor, East 14th and Grand Avenue, Des Moines, Iowa 50319-0146. Comments may be sent by fax to (515) 242-6019 or submitted by E-mail to penny.milburn@iowa.gov.

A public hearing will be held on July 10, 2007, from 9 a.m. to 12 noon, originating in the ICN Room on the second floor of the Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should advise the Department of Education of their specific needs by calling (515)281-5295. The remote ICN sites are as follows:

North Polk High School
Room 56
315 NE 141st Avenue
Alleman

Bedford Community High School
Fiber Optic Room
906 Pennsylvania Avenue
Bedford

Mississippi Bend Area Education Agency 9
Louisa Room
729 21st Street
Bettendorf

Burlington High School
421 Terrace Drive
Burlington

Area Education Agency 267
3712 Cedar Heights Drive
Cedar Falls

Kirkwood Community College
Linn Hall, Room 203B
6301 Kirkwood Blvd. SW
Cedar Rapids

Clear Lake High School
ICN Classroom
125 N. 20th Street
Clear Lake

Loess Hills Area Education Agency 13
24997 Hwy. 92
Council Bluffs

EDUCATION DEPARTMENT[281](cont'd)

Southwestern Community College
Instructional Center, Room 211
1501 West Townline Road
Creston

Wahlert High School
Room 225
2005 Kane Street
Dubuque

Keystone Area Education Agency 1
1400 2nd Street NW
Elkader

Fort Dodge High School
Room 12
819 N. 25th Street
Fort Dodge

Heartland Area Education Agency 11
6500 Corporate Drive
Johnston

Area Education Agency 267
909 S. 12th Street
Marshalltown

Mediapolis High School
Room 8
725 North Northfield
Mediapolis

Ottumwa High School
Voc. Tech. Building, Room 157
501 E. 2nd
Ottumwa

Northwest Area Education Agency
Room 103
1382 4th Avenue NE
Sioux Center

Central Campus Individual Learning Center
Room 311
1121 Jackson Street
Sioux City

These rules are intended to implement 2007 Iowa Acts, House File 877.

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

ARC 5975B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8(3)"c," the Homeland Security and Emergency Management Division proposes to amend Chapter 7, "Local Emergency Management," Iowa Administrative Code.

The Homeland Security and Emergency Management Division proposes to amend subrule 7.4(4) to update continuing education requirements for local emergency management coordinators. This proposed amendment changes three course titles and eliminates one course, replacing it with another independent study course. This amendment was developed in consultation with the Iowa Emergency Management Association.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before July 10, 2007. Such written materials should be sent to the E911 Program Manager, Iowa Homeland Security and Emergency Management Division, 7105 N.W. 70th Ave., Camp Dodge, Building W-4, Johnston, Iowa 50319; fax (515) 725-3260.

Also, there will be a public hearing on July 13, 2007, at 9 a.m. in the Homeland Security and Emergency Management Division Conference Room on Camp Dodge, Johnston, Iowa, Building W-4, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code chapter 29C.

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

The following amendment is proposed.

Amend subrule 7.4(4) as follows:

7.4(4) Emergency management coordinator continuing education requirements. Each local coordinator shall meet the following educational development requirements. The administrator may extend the time frame for meeting these continuing education requirements upon request from the local or joint commission.

a. ~~By July 1, 2002, or within~~ *Within* five years of appointment as an emergency management coordinator, ~~whichever is later, completion of the person must complete the following~~ *ten* independent study courses *as prescribed by the Federal Emergency Management Agency:*

(1) Citizens Guide to Disaster Assistance *IS-7*.

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

(2) ~~Emergency Operations Center Role in Community Preparedness Response and Recovery Operations~~ *The EOC's Role in Community Preparedness, Response and Recovery Activities IS-275.*

(3) ~~Emergency Program Manager: An Orientation to the Position~~ *IS-1.*

(4) ~~Emergency Preparedness U.S.A. Are You Ready? An In-depth Guide to Citizen Preparedness~~ *IS-22.*

(5) ~~Hazardous Materials: A Citizen's Guide An Introduction to Hazardous Materials~~ *IS-5A.*

(6) ~~An Orientation to Community Disaster Exercise Introduction to Incident Command System~~ *IS-100.*

(7) ~~The Professional in Emergency Management ICS for Single Resources and Initial Action Incidents~~ *IS-200.*

(8) ~~Radiological Emergency Management~~ *IS-3.*

(9) ~~Introduction to Hazard Mitigation~~ *IS-393A.*

(10) ~~Basic Incident Command System The Professional in Emergency Management~~ *IS-513.*

b. ~~By July 1, 2002, or within~~ *Within five years of appointment as an emergency management coordinator, whichever is later, completion of the person must complete the professional development series of courses as prescribed by the Federal Emergency Management Agency.*

c. ~~Upon completion of the requirements established in subrule 7.4(4), paragraphs "a" and "b," annual completion of a person must complete annually~~ *a minimum of 24 hours of state-approved emergency management training. Since completion of the annual training will follow the federal fiscal year, October 1 to September 30, the requirement to complete 24 hours of annual training will commence on the next October 1.*

d. ~~The local emergency management coordinator must document completion of courses by submitting a copy of the certificate of completion, a letter indicating satisfactory completion, or other appropriate documentation.~~

e. ~~The Iowa homeland security and emergency management division, in conjunction with the Iowa Emergency Management Association, may substitute courses when deemed appropriate.~~

f. ~~An emergency management coordinator who has met the baseline requirements prior to October 1, 2006, will not be required to take any of the new courses listed above to re-establish the person's baseline.~~

ARC 5970B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8(3)"c," the Homeland Security and Emergency Management Division proposes to amend Chapter 7, "Local Emergency Management," Iowa Administrative Code.

The Homeland Security and Emergency Management Division proposes to amend subrule 7.7(3) to update the alloca-

tion and distribution process for Emergency Management Performance Grant moneys received from the federal Department of Homeland Security. This amendment specifies that the moneys will be allocated on a formula based on 50 percent of available funds allocated on an equal share for all applicants and 50 percent of available funds allocated based on population. This amendment was developed in consultation with the Iowa Emergency Management Association.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before July 10, 2007. Such written materials should be sent to the E911 Program Manager, Iowa Homeland Security and Emergency Management Division, 7105 N.W. 70th Ave., Camp Dodge, Building W-4, Johnston, Iowa 50319; fax (515)725-3260.

Also, there will be a public hearing on July 13, 2007, at 9 a.m. in the Homeland Security and Emergency Management Division Conference Room on Camp Dodge, Johnston, Iowa, Building W-4, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code chapter 29C.

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

The following amendment is proposed.

Amend subrule 7.7(3) as follows:

7.7(3) Allocation and distribution of funds.

a. ~~The emergency management division shall allocate funds to eligible local or joint commissions within 45 days of receipt of notice from the Federal Emergency Management Agency federal Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, that such funds are available. The division shall use a formula for the allocation of funds based upon the number of eligible applicants, the coordinator's salary and benefits and an equal distribution of remaining funds, not to exceed an individual applicant's request the part-time or full-time status of the coordinator, 50 percent equal-share base, and 50 percent population base. The total allocation of funds for an applicant may not exceed the lesser of \$33,000 or the amount requested by the applicant.~~

b. ~~The formula shall be applied in the following manner: The pass-through amount is divided equally between an equal-share base and a population base.~~

(1) ~~The amount of total equal-share base dollars is divided by the total number of EMPG counties to establish a per-county average. For counties with part-time coordinators, the per-county average is reduced by 50 percent to determine the part-time county allocation. The total baseline dollar amount, minus the cumulative total dollars already allocated to part-time counties, is then divided by the total number of counties with full-time coordinators to determine the full-time county allocation.~~

(2) ~~The population base amount for each county is determined by adding the populations of all counties together; then each county's population is divided by that total popula-~~

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

tion to determine a percentage. The total population base dollars are then multiplied by a county's percentage to determine that county's share of the population dollars.

c. Funds will be reimbursed to local and joint commissions on a federal fiscal year, quarterly basis; and such reimbursement will be based on eligible claims made against the local or joint commission's allocation. In no case will the allocation or reimbursement of funds be greater than one-half of the total cost of eligible emergency management related expenses.

ARC 5976B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Notice of Intended Action

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

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

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

The Homeland Security and Emergency Management Division proposes to amend subrule 10.9(3), paragraph "f," to reflect changes made to Iowa Code chapter 34A in 2007 Iowa Acts, Senate File 575, section 21. This proposed amendment changes the percentage of the collected quarterly wireless surcharge revenue from 24 percent to 25 percent.

Additionally, the Division proposes to amend subrule 10.14(4). This proposed amendment provides guidance to Local E911 Service Boards as they create and maintain Master Street Address Guides for E911 service. This amendment was developed in consultation with the E911 Communications Council.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before July 10, 2007. Such written materials should be sent to the E911 Program Manager, Iowa Homeland Security and Emergency Management Division, 7105 N.W. 70th Ave., Camp Dodge, Building W-4, Johnston, Iowa 50319; fax (515)725-3260.

Also, there will be a public hearing on July 13, 2007, at 9 a.m. in the Homeland Security and Emergency Management Division Conference Room on Camp Dodge, Johnston, Iowa, Building W-4, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapter 34A as amended by 2007 Iowa Acts, Senate File 575, section 21.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)

281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **10.9(3)**, paragraph "**f**," as follows:

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

Upon retirement of the outstanding obligations referred to in 10.9(3)"e," the amount allocated under 10.9(3)"f" shall be 24 25 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 service boards shall be \$1,000 per PSAP operated by the respective authority. Additional funds shall be allocated as follows:

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

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

ITEM 2. Amend subrule 10.14(4) as follows:

10.14(4) Voluntary standards. Current technical and operations operational standards applying to E911 systems and services can be found in the "American Society for Testing and Materials Standard Guide for Planning and Developing 911 Enhanced Telephone Systems" and in publications issued by the National Emergency Number Association. *Master street address guides are encouraged to be developed and maintained by using National Emergency Number Association technical standards 02-010 and 02-011.* Standards contained in these documents shall be considered as guidance, and adherence thereto shall be voluntary. Notwithstanding the minimum standards published in these rules, it is intended that E911 telephone service providers, and joint E911 service boards and operating authorities employ the best and most affordable technologies and methods available in providing E911 services to the public.

ARC 5971B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments implement the following changes to policy governing durable medical equipment, prosthetic devices, and medical supplies.

- The term “sickroom supplies” is replaced with the term “medical supplies,” as “sickroom supplies” is an outdated term.

- Coverage is provided for automated medication dispensers with prior authorization. Automated medication dispensers help to prevent forgotten medication times and overdoses that can result in costly medical complications and hospital emergency room visits or admissions for persons in independent living situations. The prior-authorization process is a more efficient method for consideration of this device than the exception-to-policy process.

- Coverage is provided for cranial orthotic devices with prior authorization. Cranial orthotic devices are currently authorized according to specific criteria under an exception to policy. The prior-authorization process is a more efficient method for consideration of the device.

- Coverage is provided for oral nutritional products in accordance with recognized standards of medical care. The current requirement that nutritional supplementation must provide 51 percent or more of the person’s daily caloric requirement does not allow for medically necessary continuation of the nutritional product as a person’s medical condition improves. Additionally, guidelines for treatment of such conditions as acquired immunodeficiency syndrome (AIDS); burns; cancer; failure-to-thrive syndrome; prolonged infections; problems with the kidney, liver, lungs, pancreas or stomach; surgery; trauma; and prolonged vomiting may include oral nutritional products for less than 51 percent of the person’s daily caloric requirement. The exception-to-policy process is an inefficient process for consideration of coverage.

- A request from the Medicaid member or the member’s caregiver is required before a refill of medical supplies can be provided. The Medicaid Fraud Control Unit in the Department of Inspections and Appeals reports numerous complaints that medical equipment providers are automatically providing monthly medical supplies, even though they are not needed or desired. The requirement would not reduce the availability of these items; it would only mandate that the order could not be refilled without documentation of the request for refill from the member or the caregiver.

There should be no cost to the Medicaid program for the proposed changes. There is a potential administrative savings by allowing for more efficient authorization of automated medication dispensers, cranial orthotic devices, and oral nutritional products and by reducing the distribution of unnecessary and unwanted medical supplies.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before July 11, 2007. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4.

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

The following amendments are proposed.

ITEM 1. Amend rule 441—77.10(249A) as follows:

441—77.10(249A) Medical equipment and appliances, prosthetic devices and sickroom medical supplies. All dealers in medical equipment and appliances, prosthetic devices and ~~sickroom~~ medical supplies in Iowa or in other states are eligible to participate in the program.

ITEM 2. Amend subrule **78.1(1)**, paragraph “b,” introductory paragraph, as follows:

b. Medical ~~and sickroom~~ supplies are payable when ordered by a legally qualified practitioner for a specific rather than incidental use. When a ~~recipient member~~ is receiving care in a nursing facility or residential care facility, payment will be approved only for the following supplies when prescribed by a legally qualified practitioner:

ITEM 3. Amend subrule **78.2(1)**, paragraph “b,” introductory paragraph, as follows:

b. Medical ~~and sickroom~~ supplies when ordered by a legally qualified practitioner for a specific rather than incidental use subject to the same conditions as specified in paragraph 78.1(2)“b.”

ITEM 4. Amend rule 441—78.10(249A) as follows:

Amend the catchwords of the rule as follows:

441—78.10(249A) Durable medical equipment (DME), prosthetic devices and sickroom medical supplies.

Amend subrule 78.10(1) as follows:

Amend the introductory paragraph and paragraph “a” as follows:

78.10(1) General payment requirements. Payment will be made for items of DME, prosthetic devices and ~~sickroom~~ medical supplies, subject to the following general requirements and the requirements of subrule 78.10(2), 78.10(3), or 78.10(4), as applicable:

a. DME, prosthetic devices, and ~~sickroom~~ medical supplies must be required by the ~~recipient member~~ because of the ~~recipient’s member’s~~ medical condition.

Amend paragraph “b,” introductory paragraph and subparagraph (1), as follows:

b. The item shall be necessary and reasonable either for the treatment of an illness or injury, or to improve the func-

HUMAN SERVICES DEPARTMENT[441](cont'd)

tioning of a malformed body member part. Determination will be made by the Iowa Medicaid enterprise medical services unit.

(1) An item is necessary when it can be expected to make a meaningful contribution to the treatment of a specific illness or injury or to the improvement in function of a malformed body member part.

Amend paragraph "i" as follows:

i. No allowance will be made for delivery, freight, postage, or other provider operating expenses for DME, prosthetic devices or ~~sickroom~~ medical supplies.

Amend subrule 78.10(2) as follows:

Amend paragraph "b" by adding the following new type of durable medical equipment in alphabetical order:

Automated medication dispenser. See 78.10(2)"d" for prior authorization requirements.

Amend paragraph "d" by adopting new subparagraph (4) as follows:

(4) Automated medication dispenser. Payment will be approved for an automated medication dispenser when prescribed for a member who meets all of the following conditions:

1. The member has a diagnosis indicative of cognitive impairment or age-related factors that affect the member's ability to remember to take medications.

2. The member is on two or more medications prescribed to be administered more than one time a day.

3. The availability of a caregiver to administer the medications or perform setup is limited or nonexistent.

4. Less costly alternatives, such as medisets or telephone reminders, have failed.

Amend subrule 78.10(3) as follows:

Amend paragraph "b" as follows:

b. Only the following types of prosthetic devices shall be covered through the Medicaid program:

Artificial eyes.

Artificial limbs.

Augmentative communications systems which are provided for persons members unable to communicate their basic needs through oral speech or manual sign language. Payment will be made for the most cost-effective item which that meets basic communication needs commensurate with the person's member's cognitive and language abilities. See 78.10(3)"c" for prior approval requirements.

Enteral delivery supplies and products. See 78.10(3)"c" for prior approval requirements.

Hearing aids. See rule 441—78.14(249A).

Oral nutritional ~~supplementation~~ products. See 78.10(3)"c" for prior approval requirements.

Orthotic devices. See 78.10(3)"c" for prior approval requirements.

Ostomy appliances.

Parenteral delivery supplies and products. Daily parenteral nutrition therapy is considered necessary and reasonable for a recipient member with severe pathology of the alimentary tract which that does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the recipient's member's general condition.

Prosthetic shoes. See rule 441—78.15(249A).

Tracheotomy tubes.

Vibrotactile aids. Vibrotactile aids are payable only once in a four-year period unless the original aid is broken beyond repair or lost. (Cross-reference 78.28(8))

Amend paragraph "c" as follows:

Amend subparagraph (3), introductory paragraph, as follows:

(3) Oral supplementation of a regular diet nutritional products. Payment for oral nutritional products shall be approved as medically necessary only when the recipient member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology, to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member's condition.

Adopt new subparagraph (4) as follows:

(4) Cranial orthotic devices. Payment shall be approved for cranial orthotic devices when the device is medically necessary for the postsurgical treatment of synostotic plagiocephaly. Payment shall also be approved when both of the following criteria are met:

1. There is photographic evidence supporting moderate to severe nonsynostotic positional plagiocephaly.

2. The member is between 3 and 5 months of age and has failed to respond to a two-month trial of repositioning therapy; or the member is between 6 and 18 months of age and there is documentation of either of the following conditions:

- Cephalic index at least two standard deviations above the mean for the member's gender and age; or
- Asymmetry of 12 millimeters or more in the cranial vault, skull base, or orbitotragial depth.

Amend subrule 78.10(4) as follows:

Amend the introductory paragraph as follows:

78.10(4) ~~Sickroom~~ Medical supplies. ~~Sickroom~~ Medical supplies are nondurable items consumed in the process of giving medical care, for example, nebulizers, gauze, bandages, sterile pads, adhesive tape, and sterile absorbent cotton. ~~Sickroom~~ Medical supplies are payable for a specific medicinal purpose. This does not include food or drugs. ~~Sickroom~~ Medical supplies are not to be dispensed at any one time for quantities exceeding a three-month supply. After the initial dispensing of medical supplies, the provider must document a refill request from the Medicaid member or the member's caregiver for each refill.

Amend paragraph "a," introductory paragraph, as follows:

a. Only the following types of ~~sickroom~~ medical supplies, and supplies necessary for the effective use of a payable item, can be purchased through the medical assistance program:

Amend paragraph "b," introductory paragraph, as follows:

b. Only the following types of ~~sickroom~~ medical supplies will be approved for payment for recipients members receiving care in a nursing facility or an intermediate care facility for the mentally retarded when prescribed by the physician, physician assistant, or advanced registered nurse practitioner:

ITEM 5. Amend subrule 78.28(1) as follows:

Adopt new paragraphs "b" and "d" as follows:

b. Automated medication dispenser. (Cross-reference 78.10(2)"b") Payment will be approved for an automated medication dispenser when prescribed for a member who meets all of the following conditions:

(1) The member has a diagnosis indicative of cognitive impairment or age-related factors that affect the member's ability to remember to take medications.

(2) The member is on two or more medications prescribed to be administered more than one time a day.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) The availability of a caregiver to administer the medications or perform setup is limited or nonexistent.

(4) Less costly alternatives, such as medisets or telephone reminders, have failed.

d. Cranial orthotic device. (Cross-reference 78.10(3)“c”) Payment shall be approved for cranial orthotic devices when the device is medically necessary for the postsurgical treatment of synostotic plagiocephaly. Payment shall also be approved when both of the following criteria are met:

(1) There is photographic evidence supporting moderate to severe nonsynostotic positional plagiocephaly.

(2) The member is between 3 and 5 months of age and has failed to respond to a two-month trial of repositioning therapy; or the member is between 6 and 18 months of age and there is documentation of either of the following conditions:

1. Cephalic index at least two standard deviations above the mean for the member's gender and age; or

2. Asymmetry of 12 millimeters or more in the cranial vault, skull base, or orbitotragial depth.

Amend paragraph “f” as follows:

i. Prior authorization is required for oral nutritional supplementation of a regular diet products. (Cross-reference 78.10(2)“c”) The department shall approve payment for oral nutritional products when the recipient member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology, to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member's condition.

(1) A request for prior approval shall include a physician's, physician assistant's, or advanced registered nurse practitioner's written order or prescription from a physician, physician assistant, or advanced registered nurse practitioner and documentation to establish the medical necessity for oral supplementation nutritional products pursuant to these standards. (4) The documentation shall include:

1. A statement of the recipient's member's total medical condition that includes a description of the recipient's member's metabolic, digestive, or psychological disorder or pathology.

2. Documentation of the medical necessity for commercially prepared products. The information submitted must identify other methods attempted to support the recipient's member's nutritional status and indicate that the recipient's member's nutritional needs were not or could not be met by regular food in pureed form.

3. Documentation to support the fact that regular foods will not provide sufficient nutritional value to the recipient member, if the request includes oral supplementation of a regular diet.

(2) Examples of conditions that will not justify approval of oral supplementation nutritional products are: weight-loss diets, wired-shut jaws, diabetic diets, and milk or food allergies (unless the recipient member is under five years of age and coverage through the Special Supplemental Nutrition Program for Women, Infant Infants, and Children's program Children is not available), supplementation to boost caloric or protein intake by less than 51 percent of the daily intake, and the absence of severe pathology of the body or psychological pathology or disorder.

ITEM 6. Amend subrule 79.1(13) as follows:

Strike the word “recipient” or “recipients” and insert the word “member” or “members” in lieu thereof wherever the word appears.

Amend paragraph “c,” introductory paragraph, as follows:

c. The recipient member shall pay \$2 copayment for total covered services rendered on a given date for medical equipment and appliances, prosthetic devices and ~~sickroom~~ medical supplies as defined in 441—78.10(249A), orthopedic shoes, services of audiologists, services of hearing aid dealers except the hearing aid, services of optometrists, opticians, rehabilitation agencies, and psychologists, and ambulance services.

ITEM 7. Amend subrule 81.10(5), paragraph “a,” subparagraph (3), as follows:

(3) Medical equipment and supplies including wheelchairs, ~~sickroom~~ medical supplies except for those listed in 441—paragraph 78.10(4)“b,” oxygen except under circumstances specified in 441—paragraph 78.10(2)“a,” and other items required in the facility-developed plan of care.

ARC 5956B

NATURAL RESOURCE
COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 82, “Commercial Fishing,” Iowa Administrative Code.

The proposed amendments provide for five changes in commercial fishing regulations on the Mississippi River: (1) no sturgeon less than 27 inches may be possessed in Iowa waters; (2) no sturgeon may be harvested from gear set prior to midnight on October 15; (3) the establishment of closed areas that prohibit the use of entanglement gear below locks and dams; (4) the establishment of restrictions on the use of entanglement gear; and (5) bowfin must remain intact until they reach the final processing facility or business.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 18, 2007. Such written materials should be directed to Marion Conover, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail marion.conover@dnr.state.ia.us. Persons who wish to convey their views orally should contact the Fisheries Bureau by telephone at (515)281-5208 or at the Bureau offices on the Fourth Floor of the Wallace State Office Building.

Also, there will be three public hearings as follows:

July 16, 2007	7 p.m.	Musser Public Library 304 Iowa Avenue Muscatine, Iowa
July 17, 2007	7 p.m.	Clinton County Administration Building, Cafeteria 1900 North Third Street Clinton, Iowa

NATURAL RESOURCE COMMISSION[571](cont'd)

July 18, 2007 7 p.m. Guttenberg Municipal Building
502 South First Street
Guttenberg, Iowa

At the public hearings, persons may present their views either orally or in writing. At the hearings, 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 intends to attend a public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, and 482.1.

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

The following amendments are proposed.

ITEM 1. Amend subrule 82.2(2) as follows:

82.2(2) Size limits. Fish less than a minimum length or longer than the maximum length shall be returned to the water unharmed. The minimum total length for all catfish is 15 inches. The minimum fork length for shovelnose sturgeon, *measured from the tip of the snout to the fork of the tail*, is 27 inches. No shovelnose sturgeon longer than 34 inches fork length may be harvested from waters of the Mississippi River bordering Wisconsin. *No shovelnose sturgeon less than 27 inches fork length may be possessed in Iowa waters.*

ITEM 2. Amend subrule **82.2(5)**, paragraph "c," as follows:

c. Gill nets and trammel nets shall be attended at least once every 24 hours during open water conditions, and at least once every 96 hours during ice cover conditions. *Dead set trammel nets with an inner bar mesh less than 3½ inches must be constantly attended. Any gill or trammel net hobbled to less than 80 percent its total height must be constantly attended. Constant attendance is defined as being within 200 yards of nets. No more than four nets totaling 600 feet in length may be constantly attended at one time by a licensee and the licensee's operators.*

ITEM 3. Amend subrule 82.2(8) as follows:

82.2(8) Seasons. There is a continuous open season for commercial fishing of all species listed in 82.2(1) except there is a closed season for shovelnose sturgeon from May 16 through October 14. *No shovelnose sturgeon may be harvested from gear set prior to midnight on October 15.*

ITEM 4. Amend subrule 82.2(9) as follows:

82.2(9) Special shovelnose and bowfin regulations. A shovelnose *Shovelnose* sturgeon and bowfin must remain intact until the fish reaches reach the final processing facility or business. For the purposes of this subrule, final processing facility does not include vessels or vehicles.

ITEM 5. Amend rule 571—82.2(482) by adopting the following **new** subrule:

82.2(10) Closed areas. The use of entanglement gear, including gill and trammel nets, is prohibited from the following areas of the Mississippi River.

- a. From Lock and Dam Number 9 downstream to the entrance to McDonald Slough near river mile 646.5.
- b. From Lock and Dam Number 10 downstream to the entrance of Ackermans Cut near river mile 613.8.
- c. From Lock and Dam Number 11 downstream to the railroad bridge near river mile 579.9.

d. From Lock and Dam Number 12 downstream to the mouth of Mill Creek near river mile 556.

e. From Lock and Dam Number 13 downstream to the downstream end of Stamp Island near river mile 521.5.

f. From Lock and Dam Number 14 downstream to the boat ramp near river mile 492.9.

g. From Lock and Dam Number 15 downstream to the Centennial Bridge near river mile 482.1.

h. From Lock and Dam Number 16 downstream to the downstream end of Hog Island near river mile 456.7.

i. From Lock and Dam Number 17 downstream to the downstream end of Ottetail Island near river mile 436.6.

j. From Lock and Dam Number 18 downstream to the downstream end of Mercer Island near river mile 409.5.

k. From Lock and Dam Number 19 downstream to the Keokuk Highway Bridge near river mile 363.8.

ARC 5964B**PHARMACY EXAMINERS
BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 1, "Purpose and Organization," Iowa Administrative Code.

The amendment was approved at the April 24, 2007, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment provides that any money submitted for payment of any license, registration, permit, or service fee that results in an overpayment of the required fee by an amount of \$10 or less shall not be refunded to the remitter.

Requests for waiver or variance of the discretionary provisions of this rule may be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on July 10, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

This amendment is intended to implement Iowa Code sections 124.301, 124B.11, 147.96, 155A.6, 155A.11, 155A.13, 155A.13A, 155A.14, and 155A.17.

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

The following amendment is proposed.

Adopt **new** rule 657—1.7(124,124B,147,155A) as follows:

PHARMACY EXAMINERS BOARD[657](cont'd)

657—1.7(124,124B,147,155A) Overpayment of fees. “Overpayment” refers to the payment of any license, registration, permit, or service fee in excess of the required amount of the fee. Overpayment of \$10 or less received by the board shall not be refunded.

ARC 5966B

**PHARMACY EXAMINERS
BOARD[657]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, “Universal Practice Standards,” and Chapter 21, “Electronic Data in Pharmacy Practice,” Iowa Administrative Code.

These amendments were approved at the April 24, 2007, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment to subrule 8.15(1) authorizes the delivery of a patient’s filled prescriptions to an outpatient medical care facility where the patient receives treatment and establishes requirements relating to such delivery. The proposed amendments to rule 21.9(124,155A) clarify existing requirements for the facsimile transmission of a prescription drug order and identify an exception to those requirements when the order is transmitted by someone other than the prescriber or an agent of the prescriber from an outpatient medical care facility to the patient’s pharmacy pursuant to subrule 8.15(1), paragraph “d.”

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on July 10, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.301 and 155A.13.

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

The following amendments are proposed.

ITEM 1. Amend subrule 8.15(1) as follows:

8.15(1) Alternative methods. A licensed pharmacy may, by means of its employee or by use of a common carrier, pick up or deliver prescriptions to the patient or the patient’s caregiver as follows:

- a. At the office or home of the prescriber;
- b. At the residence of the patient or caregiver;
- c. At the hospital or medical care facility in which a patient is confined; ~~or~~.
- d. At an outpatient medical care facility where the patient receives treatment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient’s caregiver for receipt or delivery at the outpatient medical care facility;

ARC 5965B

**PHARMACY EXAMINERS
BOARD[657]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 6, “General Pharmacy Practice,” Iowa Administrative Code.

The amendment was approved at the April 24, 2007, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment clarifies which prescription drugs may be returned to the pharmacy and reused.

Requests for waiver or variance of this rule may not be considered because the limitations imposed by this rule are also imposed pursuant to regulations of the federal Drug Enforcement Administration.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on July 10, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

This amendment is intended to implement Iowa Code sections 124.301 and 155A.13.

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

The following amendment is proposed.

Amend subrule 6.15(3) as follows:

6.15(3) Noncontrolled substance Unit dose returns. Prescription drugs dispensed in unit dose packaging, excluding controlled substances, may be returned and reused as authorized in 657—subrule 22.1(6).

PHARMACY EXAMINERS BOARD[657](cont'd)

(2) *The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written authorization;*

(3) *A prescription authorized by a prescriber not treating the patient at the outpatient medical care facility may be transmitted to the pharmacy by the authorized agent via facsimile provided the written prescription is delivered to the pharmacy prior to delivery of the filled prescription to the patient; and*

(4) *The outpatient medical care facility shall store the patient's filled prescriptions in a secure area pending delivery to the patient.*

d e. At the patient's or caregiver's place of employment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the place of employment;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written authorization; and

(3) The pharmacy shall ensure the security of confidential information as defined in subrule 8.16(1).

ITEM 2. Amend rule 657—21.9(124,155A) as follows:

657—21.9(124,155A) Facsimile transmission (fax) of a prescription. A pharmacist may dispense noncontrolled and controlled drugs, excluding Schedule II controlled substances, pursuant to a prescription faxed to the pharmacy by the prescribing practitioner or the practitioner's agent. The faxed prescription drug order shall serve as the original prescription, shall be maintained for a minimum of two years from the date of last fill or refill, and shall contain all information required by Iowa Code section 155A.27, including the prescriber's signature or electronic signature. *The faxed prescription drug order, if transmitted by the practitioner's agent, shall identify the transmitting agent and shall include the prescriber's signature or electronic signature.* The receiving pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 21.3(124,155A). *This rule shall not apply to a prescription drug order transmitted pursuant to 657—subrule 8.15(1), paragraph "d."*

ARC 5973B

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

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 543D.6, the Real Estate Appraiser Examining Board hereby gives Notice of Intended Action to amend Chapter 4, "Associate Real Property Appraiser," Chapter 5, "Certified Residential Real Property Appraiser," Chapter 6, "Certified General Real Property Appraiser," Chapter 13, "Certified Residential Appraiser Education Requirements," and Chapter 14, "Certified

General Appraiser Education Requirements," Iowa Administrative Code.

The proposed amendments to Chapters 4 through 6 further define requirements for appraisal logs to bring the State of Iowa into compliance with federally mandated guidelines as set forth by the Appraisal Qualifications Board. The proposed amendments to Chapters 13 and 14 further define college course requirements to bring the State of Iowa into compliance with federally mandated guidelines as set forth by the Appraisal Qualifications Board.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before July 10, 2007. Comments should be addressed to Sylvia King, Professional Licensing and Regulation Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa 50021 or faxed to (515) 281-7411. E-mail may be sent to sylvia.king@iowa.gov.

These amendments are intended to implement Iowa Code chapters 543D and 272C.

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

The following amendments are proposed.

ITEM 1. Amend subrule 4.1(6) as follows:

4.1(6) An appraisal log shall be maintained by the associate appraiser and shall, at a minimum, include the following for each appraisal:

- a. Type of property;
- b. Date of report;
- c. Address of appraised property;
- d. Description of work performed *by the associate appraiser and scope of review and supervision of the supervising appraiser*;
- e. Number of work hours;
- f. Signature of supervising appraiser.

ITEM 2. Amend subrule 5.2(1) as follows:

5.2(1) An appraisal log shall be provided. The appraisal log shall, at a minimum, include the following for each appraisal:

- a. Type of property;
- b. Date of report;
- c. Address of appraised property;
- d. Description of work performed *by the associate appraiser and scope of review and supervision of the supervising appraiser*;
- e. Number of work hours;
- f. Signature of supervising appraiser.

ITEM 3. Amend subrule 6.2(3) as follows:

6.2(3) The verification for experience credit claimed by an applicant should include:

- a. Type of property;
- b. Date of report;
- c. Address of appraised property;
- d. Description of work performed *and scope of review and supervision of the supervising appraiser*.

ITEM 4. Amend subrule 13.2(3) as follows:

13.2(3) In lieu of the associate degree, an applicant for the certified residential license shall successfully pass the following collegiate subject matter courses from an accredited college, community college, or university:

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

- a. English composition;
- b. Principles of economics (micro or macro);
- c. Finance;
- d. Algebra, geometry, or higher mathematics;
- e. Statistics;
- f. ~~Introduction to computers word processing/ spreadsheet~~ *Computer science*; and
- g. Business or real estate law.

Total credits are the total hours of equivalent college courses in lieu of an associate degree or 21 semester credit hours for the certified residential appraiser. If an accredited college or university accepts the College-Level Examination Program (CLEP) examination(s) and issues a transcript for the examination showing its approval, the examination will be considered as credit for the college course.

ITEM 5. Amend subrule 14.2(3) as follows:

14.2(3) In lieu of the bachelor's degree, an applicant for the certified general license shall successfully pass the following collegiate subject matter courses from an accredited college, community college, or university:

- a. English composition;
- b. Microeconomics;
- c. Macroeconomics;
- d. Finance;
- e. Algebra, geometry, or higher mathematics;
- f. Statistics;
- g. ~~Introduction to computers word processing/ spreadsheet~~ *Computer science*;
- h. Business or real estate law; and
- i. Two elective courses in accounting, geography, ag-economics, business management, or real estate.

Total hours of equivalent college courses in lieu of a bachelor's degree: 30 semester credit hours or its equivalent for the certified general appraiser. If an accredited college or university accepts the College-Level Examination Program (CLEP) examination(s) and issues a transcript for the examination showing its approval, the examination will be considered as credit for the college course.

ARC 5948B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

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 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 1, "Description of Organization," Iowa Administrative Code.

These amendments align the rules with the change made to Iowa Code section 8D.6 and allow for the Commission to dissolve as well as establish advisory committees. These amendments reassign functions to the appropriate divisions/bureaus/offices due to an internal reorganization. These

amendments reflect the change of contact information since the Iowa Communications Network has changed the location of its offices.

These amendments are subject to waiver or variance pursuant to 751—Chapter 16.

Any interested person may make written comments or suggestions on the proposed amendments on or before July 10, 2007. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on July 10, 2007, beginning at 1 p.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, 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 those related to hearing or mobility impairments, should contact the Commission and advise of special needs.

These amendments were approved at the May 17, 2007, meeting of the Iowa Telecommunications and Technology Commission.

These amendments are intended to implement Iowa Code section 8D.3.

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

The following amendments are proposed.

ITEM 1. Amend rule **751—1.3(17A,8D)**, numbered paragraph "**3**," as follows:

3. The commission may ~~appoint~~ *establish or dissolve* other committees and advisory groups from time to time as necessary.

ITEM 2. Amend subrule 1.5(2) as follows:

1.5(2) Administrative elements. In order to carry out the functions of the commission, the following divisions/bureaus/offices have been established:

a. The office of the deputy director is responsible for agency information systems functions, legislative liaison, public information, ~~facilities management~~ *maintenance of a circuit database*, and administrative support to the commission. The office also provides information and education to the public about the commission and the fiberoptic network and maintains the commission's World Wide Web page on the Internet.

b. The finance division is responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims for payments of goods and services, processing cash receipts, purchasing and contracting activities, *facilities management* and other duties as assigned from time to time.

c. The operations bureau is responsible for provisioning of video services, data/Internet services, and voice services for authorized users. It is responsible for all operational aspects of the fiberoptic network.

d. The engineering bureau is responsible for the technical operation of the fiberoptic network, including research and development, and network systems support. It oversees

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

all physical aspects of the network's equipment and circuits and performs other duties as assigned from time to time.

e.—The customer service and provisioning bureau is responsible for the delivery of services related to the operation of the network.

f e. The sales and marketing bureau coordinates the activities between the engineers, individual sites, and authorized users. It is responsible for *providing* cost estimates for a-site services, tracking service requests, executing installation services, maintaining a circuit data base, and assisting authorized users in finding the best structure to meet the users' needs.

ITEM 3. Amend subrule 1.6(1) as follows:

1.6(1) Main office. ~~The main office is located in Building W 4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131. The mailing address is P.O. Box 587, Johnston, Iowa 50131-0587. The telephone number is (515)725-4692. The toll-free number is 1-800-645-8860. The fax number is (515)725-4751. The main office is located in the Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. The telephone number is (515)725-4692. The toll-free number is 1-877-426-4692. The fax number is (515)725-4727. The E-mail address is info@icn.state.ia.us ICN.info@iowa.gov. The home page address on the World Wide Web is <http://www.icn.state.ia.us>.~~

requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of special needs.

This amendment was approved at the May 17, 2007, meeting of the Iowa Telecommunications and Technology Commission.

This amendment is intended to implement Iowa Code sections 8D.3 and 8D.6.

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

The following amendment is proposed.

Amend subrule 2.3(1) as follows:

2.3(1) Location of record. A request for access to a record should be directed to the executive director or the particular commission office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Executive Director, ICN, P.O. Box 587, Johnston, Iowa 50131-0587 at the ICN main office location as listed in 751—subrule 1.6(1). If a request for access to a record is misdirected, commission personnel will promptly forward the request to the appropriate person within the commission.

ARC 5949B

**TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION,
IOWA[751]**

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 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 2, “Public Records and Fair Information Practices,” Iowa Administrative Code.

This amendment reflects the change of contact information since the Iowa Communications Network has changed the location of its offices.

This amendment is subject to waiver or variance pursuant to 751—Chapter 16.

Any interested person may make written comments or suggestions on the proposed amendment on or before July 10, 2007. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on July 10, 2007, beginning at 1 p.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, 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 amendment. Any person who plans to attend the public hearing and who may have special

ARC 5957B

**TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION,
IOWA[751]**

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 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 3, “Declaratory Orders,” Iowa Administrative Code.

These amendments reflect the change of contact information since the Iowa Communications Network changed the location of its offices.

These amendments are subject to waiver or variance pursuant to 751—Chapter 16.

Any interested person may make written comments or suggestions on the proposed amendments on or before July 10, 2007. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on July 10, 2007, beginning at 1 p.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, 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

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of special needs.

These amendments were approved at the May 17, 2007, meeting of the Iowa Telecommunications and Technology Commission.

These amendments are intended to implement Iowa Code chapter 17A.

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

The following amendments are proposed.

ITEM 1. Amend rule 751—3.1(17A), introductory paragraph, as follows:

751—3.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa telecommunications and technology commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission at ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587 the ICN main office location as listed in 751—subrule 1.6(1). A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 2. Amend subrule 3.3(3), introductory paragraph, as follows:

3.3(3) A petition for intervention shall be filed at ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587 the ICN main office location as listed in 751—subrule 1.6(1). Such a petition is deemed filed when it is received by that office. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 3. Amend rule 751—3.5(17A) as follows:

751—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587 at the ICN main office location as listed in 751—subrule 1.6(1).

ITEM 4. Amend subrule 3.6(2) as follows:

3.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Telecommunications and Technology Commission, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587 at the ICN main office location as listed in 751—subrule 1.6(1). Petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa telecommunications and technology commission.

ARC 5958B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

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 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 4, “Contested Cases,” Iowa Administrative Code.

These amendments reflect the change of contact information since the Iowa Communications Network has changed the location of its offices.

These amendments are subject to waiver or variance pursuant to 751—Chapter 16.

Any interested person may make written comments or suggestions on the proposed amendments on or before July 10, 2007. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on July 10, 2007, beginning at 1 p.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, 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 those related to hearing or mobility impairments, should contact the Commission and advise of special needs.

These amendments were approved at the May 17, 2007, meeting of the Iowa Telecommunications and Technology Commission.

These amendments are intended to implement Iowa Code chapters 8D and 17A.

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

The following amendments are proposed.

ITEM 1. Amend subrule 4.12(3) as follows:

4.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Executive Director of the Commission, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587 at the ICN main office location as listed in 751—subrule 1.6(1). All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission name.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

ITEM 2. Amend subrule 4.12(4) as follows:

4.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the ICN, ~~Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587~~ *main office location as listed in 751—subrule 1.6(1)*, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

ITEM 3. Amend subrule 4.12(5) as follows:

4.12(5) 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 and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Telecommunications and Technology Commission, ~~ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587, at the ICN main office location as listed in 751—subrule 1.6(1)~~ and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
(Date) (Signature)

ARC 5959B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

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 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 5, “Purchasing,” Iowa Administrative Code.

These amendments reflect the change of contact information since the Iowa Communications Network has changed the location of its offices and implement the change in the authorized spending limit included in 2007 Iowa Acts, House File 851.

These amendments are subject to waiver or variance pursuant to 751—Chapter 16.

Any interested person may make written comments or suggestions on the proposed amendments on or before July 10, 2007. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on July 10, 2007, beginning at 1 p.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, 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 those related to hearing or mobility impairments, should contact the Commission and advise of special needs.

These amendments were approved at the May 17, 2007, meeting of the Iowa Telecommunications and Technology Commission.

These amendments are intended to implement Iowa Code section 8D.3(3)“b” and section 8D.11 as amended by 2007 Iowa Acts, House File 851, section 2.

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

The following amendments are proposed.

ITEM 1. Amend paragraph **5.2(4)“a”** as follows:

a. The commission may purchase items at auction when the auction is conducted electronically, digitally or otherwise. For any single item, the commission may spend up to ~~\$1 million~~ *the maximum amount permitted by Iowa Code section 8D.11 as amended by 2007 Iowa Acts, House File 851, section 2*, to acquire the item. However, the commission shall not make a bid for any item for which the bid price at the auction exceeds the reasonable market price of an item. The commission shall perform a market analysis prior to the auction to determine the market price for items available by auction. The commission shall retain the market analysis with any other documentation for the purchase of the item at the auction.

ITEM 2. Amend rule 751—5.17(8D), introductory paragraph, as follows:

751—5.17(8D) Vendor appeals. Any vendor whose bid or proposal has been timely filed and that is aggrieved by the commission’s notice of intent to award may appeal the decision by filing a written notice of appeal before the Iowa telecommunications and technology commission, within five days of the date of the notice of intent to award, exclusive of Saturdays, Sundays, and legal state holidays. The commission’s ~~physical address is Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131-0587. The commission’s mailing address is P.O. Box 587, Johnston, Iowa 50131-0587~~ *address is listed in 751—subrule 1.6(1)*. The commission must actually receive the notice of appeal at this address within the specified time frame to be considered timely. The notice shall state the following:

ITEM 3. Amend subrule 5.19(3) as follows:

5.19(3) A party appealing a proposed decision shall mail or deliver the notice of appeal to the Executive Director, *of the Iowa Telecommunications and Technology Commission, Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131-0587 at the ICN main office location as listed in 751—subrule 1.6(1). The mailing address is P.O. Box 587, Johnston, Iowa 50131-0587.* Failure to request review will preclude judicial review unless the commission reviews a decision on its own motion. Notice of the review will be sent to all parties participating in the appeal.

ARC 5960B**TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION,
IOWA[751]****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 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 7, “Authorized Use and Users,” Iowa Administrative Code.

This amendment reflects the name change of the location of the central switching hub of the network.

This amendment is subject to waiver or variance pursuant to 751—Chapter 16.

Any interested person may make written comments or suggestions on the proposed amendment on or before July 10, 2007. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on July 10, 2007, beginning at 1 p.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, 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 amendment. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of special needs.

This amendment was approved at the May 17, 2007, meeting of the Iowa Telecommunications and Technology Commission.

This amendment is intended to implement Iowa Code sections 8D.2, 8D.3(1), 8D.3(3)“b,” and 8D.13(14) to 8D.13(19).

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

The following amendment is proposed.

Amend rule **751—7.1(8D)**, definition of “part I,” as follows:

“Part I” means the communications connections between the central switching hub of the network located at **STARC joint forces headquarters (JFHQ) armory** and the 15 community colleges, the universities governed by the board of regents and Iowa public television and the other regional switching centers for the remainder of the network. These are state-owned facilities.

ARC 5961B**TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION,
IOWA[751]****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 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 9, “Requests for Waiver of Network Use by Certified Users,” Iowa Administrative Code.

This amendment clarifies the application process by which certified users may request a waiver.

This amendment is subject to waiver or variance pursuant to 751—Chapter 16.

Any interested person may make written comments or suggestions on the proposed amendment on or before July 10, 2007. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on July 10, 2007, beginning at 1 p.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, 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 amendment. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of special needs.

This amendment was approved at the May 17, 2007, meeting of the Iowa Telecommunications and Technology Commission.

This amendment is intended to implement Iowa Code sections 8D.3(3)“b” and 8D.9(2)“b.”

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

The following amendment is proposed.

Rescind rule 751—9.1(8D) and adopt the following **new** rule in lieu thereof:

751—9.1(8D) Request for waiver. A certified user is entitled to file a request for a waiver pursuant to Iowa Code section 8D.9(2). For the purposes of this chapter, “certified user” means an area education agency, community college, regents institution, or private college that has certified with the commission that it is or will be a part of the network.

9.1(1) Conditions.

a. One of the following conditions shall be satisfied in the request:

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

(1) The costs to the certified user for services provided by the network are not competitive with the same services available from another provider.

(2) The certified user is under contract with another provider for such services, provided the contract was entered into prior to April 1, 1994. The certified user shall use the network for video, data, and voice requirements that are not provided pursuant to such contract.

b. A certified user shall have the burden of proof regarding the question of whether the services provided by the network are not competitive with the same services available from another provider.

9.1(2) Waiver submission. A request for waiver must be received at the ICN main office location as listed in 751—subrule 1.6(1) not less than 15 days prior to the next regularly scheduled commission meeting. A request for waiver renewal must be submitted not less than 15 days prior to the next scheduled commission meeting preceding the expiration of the current waiver. A listing of certified users not meeting this submission requirement shall be included in the commission's annual report related to the network.

This amendment was approved at the May 17, 2007, meeting of the Iowa Telecommunications and Technology Commission.

This amendment is intended to implement Iowa Code section 17A.9A and Executive Order Number 11.

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

The following amendment is proposed.

Amend rule 751—16.6(17A,ExecOrd11) as follows:

751—16.6(17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the commission shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Iowa Communications Network (ICN), Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa ICN main office location as listed in 751—subrule 1.6(1).

ARC 5962B

**TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION,
IOWA[751]**

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 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 16, “Uniform Waiver and Variance Rules,” Iowa Administrative Code.

This amendment reflects the change of contact information since the Iowa Communications Network has changed the location of its offices.

This amendment is subject to waiver or variance pursuant to Chapter 16.

Any interested person may make written comments or suggestions on the proposed amendment on or before July 10, 2007. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on July 10, 2007, beginning at 1 p.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, 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 amendment. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of special needs.

ARC 5963B

**TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION,
IOWA[751]**

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 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 18, “Procedure for Rule Making,” Iowa Administrative Code.

These amendments reflect the change of contact information since the Iowa Communications Network has changed the location of its offices.

These amendments are subject to waiver or variance pursuant to 751—Chapter 16.

Any interested person may make written comments or suggestions on the proposed amendments on or before July 10, 2007. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on July 10, 2007, beginning at 1 p.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, 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 those related to hearing or mobility impairments, should contact the Commission and advise of special needs.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

These amendments were approved at the May 17, 2007, meeting of the Iowa Telecommunications and Technology Commission.

These amendments are intended to implement Iowa Code chapter 17A.

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

The following amendments are proposed.

ITEM 1. Amend subrule 18.5(1) as follows:

18.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Executive Director, ICN, ~~Camp Dodge, W 4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587 at the ICN main office location as listed in 751—subrule 1.6(1),~~ or to the person designated in the Notice of Intended Action.

ITEM 2. Amend subrule 18.5(5) as follows:

18.5(5) Accessibility. The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Executive Director, ~~ICN, Camp Dodge, W 4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587, telephone (515)725-4692, at the ICN main office location as listed in 751—subrule 1.6(1)~~ in advance to arrange access or other needed services.

ITEM 3. Amend subrule 18.6(2), introductory paragraph, as follows:

18.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the commission's small business impact list by making a written application addressed to the Executive Director, ~~ICN, Camp Dodge, W 4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587 at the ICN main office location as listed in 751—subrule 1.6(1).~~ The application for registration shall state:

ITEM 4. Amend subrule 18.11(1) as follows:

18.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Executive Director of the Commission, ~~ICN, Camp Dodge, W 4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587 at the ICN main office location as listed in 751—subrule 1.6(1).~~ The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for June is 6.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

- 74A.2 Unpaid Warrants Maximum 6.0%
- 74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective June 11, 2007, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 2.15%
- 32-89 days Minimum 2.95%
- 90-179 days Minimum 3.35%
- 180-364 days Minimum 3.80%
- One year to 397 days Minimum 3.85%
- More than 397 days Minimum 3.90%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 5969B**EDUCATION DEPARTMENT[281]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 256.7(5) and 2007 Iowa Acts, House File 877, section 10, the State Board of Education adopts new Chapter 16, “Statewide Voluntary Preschool Program,” Iowa Administrative Code.

These rules implement the statewide voluntary preschool program created in 2007 Iowa Acts, House File 877. The legislation provided that the State Board of Education adopt emergency rules to identify the preschool program requirements that will be used to determine whether a local program implemented by a school district qualifies for state funding under the legislation, to identify the requirements imposed upon school districts implementing such programs and, as otherwise necessary, to implement the statewide voluntary preschool program as provided in the legislation.

The State Board of Education approved these rules May 29, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of these emergency rules are unnecessary because emergency rule making was authorized by 2007 Iowa Acts, House File 877, section 10. Notice and public comment are provided for in the Notice of Intended Action, published herein as **ARC 5968B**.

In compliance with Iowa Code section 17A.5(2)“b”(1) and (2), the Department and the State Board of Education find that the normal effective date of these rules, 35 days after publication, should be waived and these rules made effective July 1, 2007. These rules confer a benefit on school districts desiring to apply for funding under the program by making the criteria for funding available as soon as possible.

These rules are intended to implement 2007 Iowa Acts, House File 877.

These rules will become effective July 1, 2007.

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

The following amendment is adopted.

Adopt **new** 281—Chapter 16 as follows:

CHAPTER 16**STATEWIDE VOLUNTARY PRESCHOOL PROGRAM**

281—16.1(82GA,HF877) Purpose. Statewide voluntary preschool programs are established to create high-quality early learning environments for four-year-old children whose families choose to access such programs. The purpose of the program is to provide an opportunity for all young children in the state to enter school ready to learn by expanding voluntary access to quality preschool curricula for all children who are four years old. These rules set forth the procedures and conditions under which state funds shall be made available to assist local school districts in the implementation of voluntary preschool programs.

281—16.2(82GA,HF877) Definitions.

“Applicant” means a school district applying to become an approved local program. Only public school districts in Iowa may apply for state funds under this chapter.

“Approved local program” means a school district’s voluntary preschool program approved by the department of education to provide high-quality preschool instruction for eligible children.

“Assessment” means a systematic ongoing procedure for obtaining information from observations, interviews, portfolios, and tests that can be used to make judgments about the strengths and needs of individual children and plan appropriate instruction.

“Base year” means the same as defined in Iowa Code section 257.2.

“Budget year” means the same as defined in Iowa Code section 257.2.

“Community empowerment areas” means partnerships in local communities with broad representation to lead collaborative efforts involving education, health, and human services programs and services on behalf of children, families, and other citizens residing in the geographic area.

“Comprehensive services” means the provision of quality, developmentally appropriate early learning experiences consistent with age-relevant abilities or milestones; extended day child care services; developmental screenings, including health, hearing, and vision screenings; transportation; and family education and support services.

“Curriculum” means a research-based or evidence-based written framework that is comprehensive, addresses the needs of the whole child, and provides a guide for decision making about content, instructional methods, and assessment.

“Department” means the department of education.

“Developmentally appropriate” means practices that are based upon knowledge of how children develop and learn and that are responsive to the individual child’s learning strengths, interests, and needs.

“Director” means the director of the department of education.

“Early childhood special education” or “ECSE” means special education and related services for those individuals younger than six years of age as described in 281—Chapter 41.

“Eligible child” means a child who is a resident of Iowa and is four years of age on or before September 15 of the school year. If space and funding are available, a school district approved to participate in the preschool program may enroll a child who is younger or older than four years of age in the preschool program; however, the child shall not be counted for state funding purposes.

“Family education and support” means any developmentally appropriate activity or information, provided either formally or informally to parents, that supports the success of children and their families to reach desired results.

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

“Individuals with Disabilities Education Act” or “IDEA” refers to 20 U.S.C. §1401 et seq., formerly the Education of the Handicapped Act (EHA). The federal regulations implementing IDEA are found at 34 CFR Parts 300 and 303.

“Para-educator” means a certified educational assistant as defined in Iowa Code section 272.1(6) and licensed under 282—Chapter 22.

“Prekindergarten program” means an education program offered by a school district or by an accredited nonpublic school as defined in 281—subrule 12.5(1).

“Preschool budget enrollment” means the figure that is equal to 60 percent of the actual enrollment of eligible

EDUCATION DEPARTMENT[281](cont'd)

students who receive preschool program services provided by a school district approved to participate in the preschool program by the date provided in Iowa Code section 257.6.

“Preschool foundation aid” means the product of the regular program state cost per pupil for the budget year multiplied by the school district’s preschool budget enrollment. Preschool foundation aid is based on enrollment of eligible students in the school district’s approved program regardless of whether an eligible student is a resident of the school district of enrollment.

“Preschool program” means the statewide voluntary preschool program for four-year-old children created in 2007 Iowa Acts, House File 877.

“Program standards” means the expectations for the characteristics or quality of early childhood settings, centers, and schools approved by the department. Approved program standards include National Association for the Education of Young Children (NAEYC) Program Standards and Accreditation Criteria, Head Start Program Performance Standards, the Iowa Quality Preschool Program Standards (QPPS) and Criteria or other approved program standards as determined by the department.

“Regular program state cost per pupil” means the same as described in Iowa Code section 257.9.

“School district” means the same as defined in Iowa Code section 257.2.

“Staff member” means an individual who implements preschool activities under the direct supervision of a teacher. Staff members include para-educators, teacher aides and teacher associates. All staff members shall meet the program standards defined herein.

“Teacher” means an individual who holds a valid practitioner’s license issued by the board of educational examiners under Iowa Code chapter 272 and holds an endorsement from the board of educational examiners that includes prekindergarten or kindergarten. There is no requirement that the teacher be an employee of the applicant district; the teacher may be employed by a private provider or other public agency with which the district has entered into an agreement or contract under Iowa Code chapter 28E.

281—16.3(82GA,HF877) Preschool program standards. Approved program standards include Head Start Program Performance Standards, Iowa Quality Preschool Program Standards and Criteria, or the National Association for the Education of Young Children Program Standards and Accreditation Criteria. All approved local preschool programs shall adopt preschool program standards that meet the following requirements:

16.3(1) Personnel. A minimum of one teacher shall be present with eligible children during the voluntary preschool program instructional time.

16.3(2) Ratio of staff to children. There must be at least one teacher present for every 10 children in a classroom during the instructional time described in subrule 16.3(4). A minimum of one staff member and one teacher shall be present when 11 to 20 children are present. Staff members and teachers shall have reasonable line-of-sight supervision of all children.

16.3(3) Maximum class size. There shall be no more than 20 children per classroom.

16.3(4) Instructional time. Eligible children shall receive from the teacher at least ten hours per week of intentional instruction directly related to the program’s curriculum, such time to be exclusive of recess.

16.3(5) Child learning standards. The preschool program shall demonstrate how the curriculum, assessment, staff de-

velopment, and instructional strategies are aligned to the Iowa Early Learning Standards. The teacher shall provide instruction on the skills and knowledge included in the Iowa Early Learning Standards.

16.3(6) Curriculum. The preschool program shall adopt a research-based or evidence-based curriculum.

16.3(7) Assessment. The preschool program shall adopt a research-based or evidence-based assessment to provide information on children’s learning and development.

16.3(8) Staff development. The district shall make available to any teacher of a statewide voluntary preschool program who is not employed by the district staff development that the district offers to the district’s personnel to maintain the skills appropriate to the teacher’s role. Career development for school district preschool teachers shall be addressed in the school district’s career development plan implemented in accordance with Iowa Code section 284.6. The school district shall ensure that staff members for the program are provided appropriate staff development in early childhood education.

16.3(9) Space. The preschool program shall provide adequate and appropriate space and facilities in accordance with program standards.

16.3(10) Materials. The preschool program shall provide instructional materials and supplies consistent with the program standards and Iowa Early Learning Standards.

16.3(11) Meals. The preschool program shall provide adequate and appropriate meals or snacks in accordance with program standards.

16.3(12) Family education and support. The preschool program shall involve families through at least one home visit, one family night and at least two family-teacher conferences per year. Family involvement may include volunteering in the classroom, orientation to the preschool program, parent education, general communications, or other activities.

16.3(13) Integration of other preschool programs. The preschool program shall make provisions for the integration of children from other state and federally funded preschool programs including Head Start, IDEA, Title I, shared visions, and community empowerment.

16.3(14) Comprehensive services. The preschool program may collaborate with other agencies for the provision of the following:

- a. Quality, developmentally appropriate early learning experiences;
- b. Extended day child care;
- c. Transportation;
- d. Developmental screening, including health, hearing, and vision screening;
- e. Referral to other agencies providing health insurance, health care, immunizations, nutrition services, mental health and oral health services; and
- f. Family education and support.

281—16.4(82GA,HF877) Collaboration requirements.

16.4(1) Teacher requirements. The teacher shall collaborate with other agencies, organizations, and boards in the community to further the program’s capacity to meet the diverse needs of eligible children and their families. The teacher shall assist families in identifying and accessing available resources such as those described in subrule 16.3(14).

16.4(2) Program requirements. Preschool programs shall collaborate with participating families, early care providers, and community partners, including community empowerment area boards, Head Start programs, shared visions, and other programs provided under the auspices of the child

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development coordinating council; licensed child care centers; registered child development homes; area education agencies; child care resource and referral services provided under Iowa Code section 237A.26; early childhood special education programs; services funded by Title I of the federal Elementary and Secondary Education Act of 1965; and family support programs, to make available resources, including those described in subrule 16.3(14), required to meet the needs of the child. Preschool programs shall collaborate to ensure that children receiving care from other approved child care arrangements can participate in the voluntary preschool program with minimal disruptions to the student.

16.4(3) District requirements. The school district shall submit a collaborative application that demonstrates the involvement of multiple community stakeholders, including, as applicable, parents; other school districts; accredited nonpublic schools and faith-based representatives; the area education agency; the community empowerment area board; representatives of business, Head Start programs, shared visions and other programs provided under the auspices of the child development coordinating council; center-based and home-based providers of child care services, human services, public health, and economic development programs.

The methods by which such collaboration may be demonstrated include providing documentation of the development and maintenance of collaboration with community providers and other community stakeholders, evidence of a public hearing, collaboration agreements addressing operational procedures and other critical measures or assurances. The collaboration agreements between a school district and community-based providers of services may include four-year-old children who are enrolled in a child care center or child development home licensed or registered under Iowa Code chapter 237A, or in an existing public or private preschool program provided by the school district's local preschool program.

281—16.5(82GA, HF877) Applications for funding. All applications shall be submitted on forms provided by the department, and shall address the requirements found in rules 16.3(82GA, HF877), 16.4(82GA, HF877), and 16.13(82GA, HF877). Applicants shall submit a plan describing how they will fully meet the program standards within one year of the funding award. Points shall be awarded based on the applicant's provision of the following information:

1. Preschool program summary;
2. Research documentation;
3. Identification and documentation of local population;
4. Needs assessment of local programs providing services;
5. Evidence of collaboration with local agencies to provide comprehensive services; and
6. Letters of community support.

281—16.6(82GA, HF877) Application process.

16.6(1) Request for applications.

a. The department shall announce the commencement of the application period through public notice on the department's Web site and the department's regular monthly electronic publication.

b. Applications for preschool program funding shall be available on the department's Web site and otherwise distributed by the department upon request.

c. All applications shall be submitted to the department in accordance with instructions accompanying the applications.

16.6(2) Application process.

a. Applications that do not contain the specified information or that are not received by the specified date shall not be considered.

b. The department shall have the final discretion to award funds.

16.6(3) Notification of applicants. The department shall notify all applicants within 45 days following the due date for receipt of applications whether their requests shall be funded. The department shall provide to each successful applicant a contract to be signed by an official with authority to bind the applicant and to be returned to the department prior to the distribution of any funds under this program.

281—16.7(82GA, HF877) Award contracts. Funds for applications approved by the department shall be awarded through a contract entered into by the department and the approved local program.

281—16.8(82GA, HF877) Contract termination.

16.8(1) Termination for convenience. The contract may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the future expenditure of funds. The parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The applicant shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

16.8(2) Termination for cause. The contract may be terminated in whole or in part at any time before the date of completion whenever it is determined by the department that the applicant has failed to comply substantially with the conditions of the contract. The applicant shall be notified in writing by the department of the reasons for the termination and the effective date. The applicant shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

The department shall administer preschool program grants contingent upon availability of funding. If there is a lack of funds necessary to fulfill the fiscal responsibility of the preschool program grants, the contracts shall be terminated or renegotiated. The department may terminate or renegotiate a contract upon 30 days' notice when there is a reduction of funds by executive order.

The contract may be terminated in whole or in part by June 30 of the current fiscal year in the event that the applicant has not attained the program standards.

16.8(3) Responsibility of applicant at termination. Within 45 days of the termination, the applicant shall supply the department with a financial statement detailing all costs incurred up to the effective date of the termination. If the applicant expends moneys for other than specified budget items approved by the department, the applicant shall return moneys for unapproved expenditures.

281—16.9(82GA, HF877) Criteria for applications for funding. For the fiscal years in the period beginning July 1, 2007, and ending June 30, 2011, if the number of requests from school districts for initial participation in the preschool program exceeds the funding made available for the preschool program, the department shall utilize all of the

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following selection criteria in selecting the school districts that will be approved to participate in the preschool program:

16.9(1) Priority shall be given to school districts that have a high percentage of children in poverty, and such children shall receive first priority for the programs. Poverty shall be measured by the percentage of the elementary students in the applicant district who qualify for free or reduced price meals.

16.9(2) Priority shall be given to school districts that do not have existing preschool programming within the school district boundaries.

16.9(3) Consideration shall be given to school districts with established, high-quality community partnerships for the delivery of preschool program services that are seeking to expand access.

16.9(4) Consideration shall be given to the size of school districts in large, medium, and small categories in order for there to be equitable statewide distribution of preschool program services.

16.9(5) Only those applicants that certify the following assurances shall be considered for funding:

a. That the applicant has or will have an appropriately licensed teacher available for the program by October 1 of the school year for which funding is sought.

b. That the applicant has or will have sufficient numbers of staff available for the program by October 1 of the school year for which funding is sought.

c. That the applicant's program is or will be operational by October 1 of the school year for which funding is sought.

d. That, during the instructional time described in subrule 16.3(4), instruction shall be delivered in accordance with the applicant's curriculum and with the child learning standards described in subrule 16.3(5).

281—16.10(82GA, HF877) Appeal of application denial or termination. Any applicant may appeal to the director of the department the denial of a properly submitted preschool program funding application or the unilateral termination of an approved application. The jurisdictional criteria and procedures found in 281—Chapter 7 shall be applicable to any appeal of denial or termination.

281—16.11(82GA, HF877) Finance.

16.11(1) Preschool foundation aid amounts to districts.

a. For the initial school year for which a school district approved to participate in the preschool program receives that approval and implements the preschool program, the funding for the preschool foundation aid payable to that school district shall be paid from the appropriation made for that school year in accordance with 2007 Iowa Acts, House File 877, section 6. For that school year, the preschool foundation aid payable to the school district is the product of the regular program state cost per pupil for the school year multiplied by 60 percent of the school district's eligible student enrollment on a specific date in the school year determined by rule. An eligible child is not required to be a resident of the district in which the child is enrolled voluntarily in the approved local program.

b. For budget years subsequent to the initial school year for which a school district approved to participate in the preschool program receives that approval and implements the preschool program, the funding for the preschool foundation aid payable to that school district shall be paid from the appropriation made in accordance with Iowa Code section 257.16 as amended by 2007 Iowa Acts, House File 877, section 8, except that an eligible child is not required to be a resident of the district in which the child is enrolled voluntarily in the approved local program.

16.11(2) Aid payments. Preschool foundation aid shall be paid as part of the state aid payments made to school districts in accordance with Iowa Code section 257.16 as amended by 2007 Iowa Acts, House File 877, section 8, except that an eligible child is not required to be a resident of the district in which the child is enrolled voluntarily in the approved local program.

16.11(3) Commingling prohibited. No state funding received under this program shall be commingled with other state aid payments made under Iowa Code section 257.16 as amended by 2007 Iowa Acts, House File 877, section 8. All state funding received under this program shall be accounted for by the applicant district separately from other state aid payments.

16.11(4) Restriction on supplanting. State funding received under this program shall be used to supplement, not supplant, other public funding received by the applicant district as the result of the participation of any eligible children if the program is funded from another state or federal source such as Head Start, shared visions, or community empowerment. This restriction is applicable only for costs related to instructional time as described in subrule 16.3(4).

281—16.12(82GA, HF877) Transportation. Children participating in preschool in an approved local program under 2007 Iowa Acts, House File 877, may be provided transportation services. However, transportation services provided to such children are not eligible for reimbursement under this chapter.

281—16.13(82GA, HF877) Accountability requirements. An approved local program shall meet the program requirements for increased school readiness specified herein in rule 16.3(82GA, HF877). The program requirements are minimum standards. The department encourages approved local programs to exceed the minimum standards as programs work toward ongoing improvement.

16.13(1) Annual reports. Each approved local program shall provide an annual report to the department regarding program requirements on forms provided by the department. Failure to submit an annual report by the date specified therein shall result in suspension of financial payments to the applicant until such time as the report is received by the department.

16.13(2) Performance measures. The approved local program shall collect data on all of the following:

a. The number of eligible children participating in the preschool program.

b. The number of eligible children participating in a program that meets the requirements of NAEYC, Head Start, or Iowa Quality Preschool Program Standards and Criteria.

c. The curriculum.

d. The assessment as defined in rule 16.2(82GA, HF877).

e. The number of teachers.

f. The kindergarten literacy assessment as defined in Iowa Code section 279.60.

281—16.14(82GA, HF877) Monitoring. The department shall develop a monitoring system based on the annual reporting requirements and performance measures described in rule 16.13(82GA, HF877) to be implemented no later than one year after funding is first provided under this chapter. The monitoring system shall ensure that programs meet the provisions herein requiring a properly licensed teacher and adoption of program standards, and shall be designed to follow the academic progress of children who voluntarily participate in the statewide preschool program as the children progress

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through elementary and secondary grade levels. If feasible, it is the intent of the department to include postsecondary monitoring of such children.

281—16.15(82GA, HF877) Open enrollment not applicable. Iowa's open enrollment statute (Iowa Code section 282.18) is not applicable for the parent or guardian of an eligible child who desires to access an approved program in a school district not of the child's residence. Approved programs are open to all eligible Iowa children, regardless of a child's district of residence. Accordingly, it is neither necessary for a parent or guardian to file an open enrollment application, nor will open enrollment applications for approved preschool programs be allowed.

Participation by a child in an approved program under these rules does not provide "good cause," as defined in Iowa Code section 282.18(4)"b," for the child's parent or guardian to file for open enrollment after the deadlines specified in Iowa Code section 282.18, subsections 2 and 4, by claiming continuous enrollment in the receiving district. (See also 281—subrule 17.8(7).)

These rules are intended to implement 2007 Iowa Acts, House File 877.

[Filed Emergency 5/30/07, effective 7/1/07]

[Published 6/20/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/20/07.

ARC 5947B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 15.104, the Iowa Department of Economic Development hereby adopts amendments to Chapter 314, "Renewable Fuel Infrastructure Program Administration," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 11, 2007, as **ARC 5834B**.

On December 21, 2006, the Iowa Economic Development Board (IEDB) approved the filing of an emergency rule making that impacted the administration of the Renewable Fuel Infrastructure programs. The amendment established the length of a cost-share grant agreement to be five years and clarified the waiver requirement. This amendment became effective on December 21, 2006.

Grantees must use the infrastructure exclusively to store and dispense the type of renewable fuel approved by the Renewable Fuel Infrastructure Board (RFIB) for no less than five years. If a grantee ceases use of the approved fuel during this five-year period, the grantee must either pay back the grant award plus an additional 25 percent penalty or seek a waiver of the repayment requirements from the RFIB. The rules provide for an automatic waiver of the obligation to repay grant funds plus any penalty to all grant recipients that satisfy the terms and conditions of their cost-share grant agreements including, but not limited to, the five-year exclusive use of the renewable fuel requirement. A grant recipient seeking a waiver during the time period in which a cost-share grant agreement is in effect must submit a written waiver request to the RFIB. The rules did not then specify what criteria would be used by the RFIB when it acted on a waiver request.

At the February 2, 2007, meeting of the Administrative Rules Review Committee, concerns were expressed about the need for criteria that would be used to grant or deny a waiver request. Committee members asked that the RFIB and the IEDB consider adopting general criteria that would guide the RFIB when acting on rule waiver requests.

The RFIB met telephonically on March 6, 2007, and reviewed proposed rule waiver criteria. The RFIB voted unanimously to approve the proposed rule waiver criteria and to recommend to the IEDB that it submit a Notice of Intended Action to propose these criteria. On March 15, 2007, the IEDB accepted the recommendation of the RFIB and approved the submission of proposed amendments.

A public hearing to receive comments about the proposed amendments was held on May 1, 2007. No comments were received during the comment period. At the May 8, 2007, meeting of the Administrative Rules Review Committee, a Committee member expressed the opinion that paragraph 314.5(5)"c," temporary waiver, was confusing and asked the Department to review the paragraph to see if it could be reworded and simplified. The final amendments include changes to that paragraph in an effort to clarify its meaning.

The Iowa Economic Development Board adopted these amendments on May 17, 2007.

These amendments will become effective on July 25, 2007.

These amendments are intended to implement 2006 Iowa Acts, chapter 1142, sections 28 to 34.

The following amendments are adopted.

ITEM 1. Amend subrule 314.5(4) as follows:

314.5(4) Duration of grant agreement; repayment or board waiver.

a. The duration of a cost-share grant agreement shall be five years from the date of submission of verified documentation of project completion.

b. Grantees shall not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded with an additional 25 percent penalty. ~~A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board hereby grants a waiver of the obligation to repay grant funds plus any penalty to all grant recipients that satisfy the terms and conditions of their cost-share grant agreements, including, but not limited to, the five-year exclusive use of renewable fuel requirement.~~

ITEM 2. Adopt new subrule 314.5(5) as follows:

314.5(5) Waiver criteria. The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

a. Transition provision for awards made prior to December 21, 2006. A grant recipient that received an award prior to December 21, 2006, and signed a cost-share agreement contract that included the five-year exclusive use of renewable fuel requirement has up to 60 days after July 25, 2007, to request that the board rescind the contract and grant a permanent waiver of the 25 percent penalty. Any grant funds disbursed shall be paid back, the 25 percent penalty will be waived, and the contract will be terminated.

b. Permanent waiver.

(1) Waiver due to completion of contract obligations (no repayment and no 25 percent penalty). The board hereby grants a waiver of the obligation to repay grant funds plus any penalty to all grant recipients that satisfy the terms and conditions of their cost-share grant agreements including, but not limited to, the five-year exclusive use of renewable fuel requirement.

(2) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. "Good cause" includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.

2. Permanent closure of underground or aboveground storage tanks.

(3) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a "good faith" effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty

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will not be assessed, but the grant funds will be repaid as follows:

1. Months 1 through 10 of contract, 100 percent of grant amount.

2. Months 11 through 60 of contract, 2 percent of grant amount for each month remaining on contract.

c. Temporary waiver (temporary suspension of repayment and 25 percent penalty). A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board's satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient's request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

(1) A temporary waiver will not be granted during the first six months of a cost-share agreement.

(2) A temporary waiver will not shorten the grant recipient's obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of five years. If the board approves a temporary waiver, the contract duration will be extended by the length of the approved waiver period.

(3) A grant recipient may request a temporary waiver of up to six months. The board may approve a request to extend a temporary waiver for an additional six months, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.

(4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board's action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule, the five-year contract period will not be extended by the length of the temporary waiver.

[Filed 5/17/07, effective 7/25/07]

[Published 6/20/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/20/07.

ARC 5974B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 502.605(1), the Insurance Division hereby rescinds Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code, and adopts a new Chapter 50 with the same title.

Chapter 50 has undergone a complete review and rewriting of all existing rules. Substantive revisions were made to many rules, in large part due to changes in Iowa Code chapter 502. As a result, existing Chapter 50 is being rescinded, and new Chapter 50 is adopted.

These securities rules have been reorganized. The framework of the current rules dates from the first set of rules adopted after the Uniform Securities Act was first adopted in

Iowa in 1975. While some rules had been reserved, in recent years new rules were added after existing rules without regard to context. The language of the rules has been updated and clarified. However, a few rules in new Chapter 50 follow exactly some national models and thus have not been modified due to the need for uniformity of language from one state to the next. Many rules have also undergone substantial revisions or contain updated versions of national model language.

These rules were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on April 11, 2007, as **ARC 5835B**. A public hearing on the proposed rules was held on May 15, 2007. Written comments were received on the proposed rules. Based on a review of the written comments, changes to the proposed rules have been made.

First, several proposed rules have not been adopted. Proposed rule 50.60(502), registration and renewals of open-end management investment companies, unit investment trusts, and face amount certificate companies, was not adopted because it is outdated. Proposed rule 50.68(502), trust indenture requirements, was not adopted because review of debt offerings will use disclosure review instead of substantive requirements. Proposed rule 50.70(502), annual report to shareholders, was not adopted due to unclear statutory authority. Proposed rule 50.81(502), commissions on limited offerings, was not adopted since the statutory authority for it was provided only in a predecessor securities Act. The adopted rules published herein have been renumbered accordingly.

Second, several adopted rules have been modified since the Notice was published. Rule 50.69(502) regarding advertising was modified by adding an exemption from filing requirements for advertising that is filed with the National Association of Securities Dealers (NASD) or that meets SEC rules. Rule 50.101(502) regarding rescissions was changed by referring to a limitation included in Iowa Code chapter 502. Rule 50.103(502) regarding investment advisory contracts was clarified by adding a reference to SEC definitions. Additionally, minor changes in wording were made to adopted rules 50.50(502), 50.51(502), and 50.85(502), and some internal reference numbers also were corrected.

This chapter generally does not provide for waivers. Persons seeking waivers must petition the Division in the manner set forth under 191—Chapter 4.

These rules are intended to implement Iowa Code chapters 502, 252J and 261.

These rules will become effective July 25, 2007.

The following amendment is adopted.

Rescind 191—Chapter 50 and adopt the following **new** chapter in lieu thereof:

CHAPTER 50

REGULATION OF SECURITIES OFFERINGS AND THOSE WHO ENGAGE IN THE SECURITIES BUSINESS

DIVISION I

DEFINITIONS AND ADMINISTRATION

191—50.1(502) Definitions. For the purposes of this chapter, the definitions in Iowa Code chapter 502 and the following definitions shall apply unless the context otherwise requires:

"Act" means Iowa Code chapter 502, the Iowa Uniform Securities Act (Blue Sky Law).

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“Administrator” means the commissioner of insurance or the deputy administrator appointed under Iowa Code section 502.601.

“CCH NASAA Reports” means the official statements of policy of the North American Securities Administrators Association, Inc., printed by Commerce Clearing House, the official reporter for NASAA.

“CRD” means the Central Registration Depository.

“CSRU” means the Iowa child support recovery unit.

“FDIC” means the Federal Deposit Insurance Corporation.

“Form ADV” means Uniform Application for Investment Adviser Registration.

“Form ADV-H” means Notice of Hardship Application for Investment Adviser Registration.

“Form ADV-W” means Notice of Withdrawal from Registration as Investment Adviser.

“Form BD” means Uniform Application for Broker-Dealer Registration.

“Form BDW” means Uniform Request for Broker-Dealer Withdrawal.

“Form ICP” means Agricultural Cooperative Notice of Sales of Notes or Evidences of Indebtedness.

“Form D” means Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption, and includes the Appendix.

“Form F-7” means Registration Statement Under the Securities Act of 1933, for registration of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing security holders.

“Form F-8” means Registration Statement Under the Securities Act of 1933, for registration of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

“Form F-9” means Registration Statement Under the Securities Act of 1933, for registration of certain investment grade debt or investment grade preferred securities of certain Canadian issuers.

“Form F-10” means Registration Statement Under the Securities Act of 1933, for registration of securities of certain Canadian issuers.

“Form NF” means Uniform Investment Company Notice Filing.

“Form S-1” means Registration Statement Under the Securities Act of 1933, for registration of securities for which no other form is authorized or prescribed.

“Form SB-2” means Registration Statement Under the Securities Act of 1933, for registration of securities to be sold to the public by small business issuers.

“Form U-1” means Uniform Application to Register Securities.

“Form U-2” means Uniform Consent to Service of Process.

“Form U-2A” means Uniform Corporate Resolution.

“Form U-4” means Uniform Application for Securities Industry Registration or Transfer.

“Form U-5” means Uniform Termination Notice for Securities Industry Registration.

“Form U-6” means Uniform Disciplinary Action Reporting Form.

“Form U-7” means Small Corporate Offering Registration Form.

“Form USR-1” means Investment Company Report of Sales.

“Gift” means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.

“IARD” means the Investment Advisory Registration Depository.

“Immediate family” includes parent, mother-in-law, father-in-law, spouse, former spouse, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, child and stepchild. In addition, “immediate family” includes any other person who is supported, directly or indirectly, to a material extent by an agent.

“Investment contract” as used in Iowa Code section 502.102(28) includes:

1. Any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor.

(1) “Common enterprise” in this definition means an enterprise in which the fortunes of the investor are tied to the efficacy of the efforts and successes of those seeking the investment or of a third party.

(2) “Profit” in this definition includes income or a return on the investment, including a fixed rate of return, dividends, other periodic payments, or the increased value of the investment; or

2. Any investment by which an offeree furnishes initial value to an offerer, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of the initial value is induced by the offerer’s promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not exercise practical and actual control over the managerial decisions of the enterprise.

“Loan” means an agreement to advance property, including but not limited to money, in return for the promise that payment will be made for use of the property.

“NASAA” means the North American Securities Administrators Association, Inc.

“NASD” means the National Association of Securities Dealers.

“NASDAQ” means the NASDAQ Stock Market.

“NCUA” means the National Credit Union Association.

“NSMIA” means the National Securities Markets Improvement Act of 1996, Public Law 104-290.

“NYSE” means the New York Stock Exchange.

“OTC” means over the counter.

“SAI” means Statement of Additional Information.

“SEC” means the United States Securities and Exchange Commission as established pursuant to 15 U.S.C. Section 78(d).

“SOIF” means Solicitation of Interest Form.

This rule is intended to implement Iowa Code section 502.605(1).

191—50.2(502) Cost of audit or inspection.

50.2(1) A broker-dealer or investment adviser may be assessed the greater of a flat fee of \$100 or the costs of salaries, travel, lodging, and meals directly attributable to an audit or inspection made pursuant to Iowa Code section 502.411(4). The assessment of costs of salaries, travel, lodging, and meals, if any, shall be determined in accordance with the department of administrative services (DAS) state accounting enterprise Accounting Policy and Procedures Manual in effect at the time of the audit or inspection.

50.2(2) The administrator shall notify the broker-dealer or investment adviser of the expenses attributable to the audit or inspection as soon as practicable.

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50.2(3) Assessments collected by the administrator pursuant to this rule shall be remitted to the state treasury.

This rule is intended to implement Iowa Code section 502.411(4).

191—50.3(502) Interpretative opinions or no-action letters. Interested persons may request the administrator to issue an interpretative opinion pursuant to Iowa Code section 502.605(4). These requests will be answered by means of a no-action letter. Requests for confirmation of the availability of an exemption shall be answered in the same manner. The following procedure is recommended for the submission of such requests:

50.3(1) The request should be in writing and include the factual situation involved, a citation to the applicable part of the rule or statute, and the question sought to be answered. Any disclosure or informational materials which pertain to the issue should also be filed.

50.3(2) The administrator, or any person delegated under Iowa Code section 502.601(1), may respond to the request by determining to take or not to take a no-action position or by declining to reach a determination due to insufficient facts, conflicting case or administrative law or such other reasons as the administrator's discretionary power allows.

50.3(3) All no-action determinations shall be based upon the representations made by the requesting party in the letter and information filed, since any different facts or conditions might require a different conclusion. The no-action letter shall express the division's position on enforcement action only and shall not purport to express any legal conclusion on the questions presented. No determination shall take a position on whether or not any disclosure materials satisfactorily comply with the antifraud and civil liability sections of the Act.

50.3(4) A no-action determination issued under this rule may be provided to interested persons for a filing fee of \$100.

This rule is intended to implement Iowa Code section 502.605(4).

191—50.4 to 50.9 Reserved.

DIVISION II

REGISTRATION OF BROKER-DEALERS AND AGENTS

191—50.10(502) Broker-dealer registrations, renewals, amendments, succession, and withdrawals.

50.10(1) An applicant for an initial registration to conduct business as a broker-dealer must:

a. File a current Form BD. If the applicant is a member of NASD, Form BD shall be filed with CRD. If the applicant is not a member of NASD, Form BD shall be manually signed and notarized and filed with the administrator;

b. File with the administrator copies of the applicant's most recent audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and including, at a minimum, a balance sheet, income statement and net capital calculation;

c. Pay a \$200 filing fee. If the applicant is a member of NASD, the fee shall be remitted to the CRD. If the applicant is not a member of NASD, the fee shall be remitted to the administrator; and

d. File with the administrator a completed Iowa Broker-Dealer Affidavit form including:

(1) A signed and notarized statement indicating that the applicant engaged in no securities transactions with persons in Iowa prior to registration or, if applicable, identifying all past and current accounts of persons in Iowa; and

(2) A signed consent to service of process pursuant to Iowa Code section 502.611. The form may be obtained from the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066; via E-mail at iowa.sec@iid.state.ia.us; or from the division Web site at <http://www.iid.state.ia.us/division/securities>.

50.10(2) No application for initial registration will be deemed complete for purposes of Iowa Code section 502.406(3) until the applicant has been approved as a member of NASD.

50.10(3) An applicant that is a member of the NASD and that seeks renewal of a broker-dealer registration shall comply with the renewal time frames established by the NASD for renewal on the CRD system and shall:

a. File with CRD an updated Form BD;

b. File with the administrator the renewal applicant's most recent audited financial statements if they were not previously submitted to the administrator pursuant to subrule 50.10(1);

c. Pay to the CRD a \$200 renewal filing fee.

50.10(4) An applicant that is not a member of the NASD and that seeks renewal of a broker-dealer registration shall by November 30 of each year:

a. File with the administrator an updated Form BD, manually signed and notarized;

b. File with the administrator the renewal applicant's most recent audited financial statements if they were not previously submitted to the administrator pursuant to subrule 50.10(1);

c. Pay a \$200 renewal filing fee, which shall be remitted to the administrator.

50.10(5) Failure to comply with the requirements of subrule 50.10(3) or 50.10(4) shall be deemed a request for withdrawal of the broker-dealer registration, and the registration will be terminated as of December 31 of the renewal year.

50.10(6) A registered broker-dealer that is an NASD member shall submit a withdrawal request by filing an accurate and complete Form BDW with CRD. A registered broker-dealer that is not an NASD member shall submit a withdrawal request by filing an accurate and complete Form BDW with the administrator.

50.10(7) For purposes of Iowa Code section 502.406(2), a correcting amendment to the information or a record contained in either an initial or renewal application shall be considered to be filed "promptly" with the administrator if filed within 30 days of the event necessitating the correcting amendment.

50.10(8) Succession and change in registration.

a. In the case of an organizational change, including a change in the state of incorporation or form of organization, not involving a material change in financial condition or management, a broker-dealer shall file all applicable amendments to Form BD.

b. In the case of an organizational change, including a change in the state of incorporation or form of organization, involving a material change in financial condition or management, a broker-dealer shall file a new application for registration pursuant to subrule 50.10(1). The filing must include the fee pursuant to paragraph 50.10(1)"c" and registration fees for all Iowa-registered agents.

c. In the case of a change in name, a broker-dealer shall file all applicable amendments to Form BD.

50.10(9) Upon the administrator's oral or written request, a broker-dealer shall provide to the administrator the broker-dealer's most recent financial reports, audited or unaudited, within two business days of the request. A broker-dealer may utilize express mail delivery or transmission via electronic

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means to comply with a request pursuant to this subrule. Financial reports not received by the filing deadline are subject to a late fee of \$50 per day beyond the filing deadline, not to exceed an aggregate penalty of \$500. Imposition of the late fee is not a reportable event. In the event of the broker-dealer's continued noncompliance, the administrator may also pursue sanctions authorized by Iowa Code section 502.412.

This rule is intended to implement Iowa Code section 502.411(2).

191—50.11(502) Principals. Every registered broker-dealer shall have at least two officers or partners registered with NASD as principals, appropriate to the function(s) to be performed.

This rule is intended to implement Iowa Code section 502.406.

191—50.12(502) Agent and issuer registrations, renewals and amendments.

50.12(1) An applicant for registration as an Iowa-registered agent of an NASD or non-NASD member broker-dealer shall:

- a. Pass one of the following NASD examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62. In the event that an applicant for registration as an agent has received a waiver by the NASD of an NASD examination otherwise required by this paragraph, the NASD waiver will be accepted in lieu of the examination requirement;
- b. Pass the NASD Series 63 or Series 66 examination;
- c. File an accurate and complete Form U-4 with CRD; and
- d. Pay a \$30 filing fee to NASD if applying for registration as an agent of an NASD member broker-dealer, or to the administrator if applying for registration as an agent of a non-NASD member broker-dealer.

50.12(2) No application for an agent registration shall be considered for approval until all requirements of subrule 50.12(1), as applicable, are met. In the administrator's discretion, an applicant may be required to provide additional information regarding any aspect of the application. The application shall be considered incomplete until any such additional information is provided.

50.12(3) Renewals, amendments, and withdrawal requests.

a. A registered agent of an NASD member broker-dealer shall submit all renewals, renewal fees, amendments to Form U-4, and withdrawal requests to CRD. A withdrawal request shall be made by filing an accurate and complete Form U-5 with CRD.

b. A registered agent of a non-NASD member broker-dealer shall submit all renewals, renewal fees, amendments to Form U-4, and withdrawal requests to the administrator. A withdrawal request shall be made by filing an accurate and complete Form U-5 with the administrator.

50.12(4) An issuer seeking to employ persons as agents of the issuer within the meaning of Iowa Code section 502.102(2) must apply in writing to the administrator for such authority. The application shall include:

- a. A statement of the issuer's intent to employ agents for the sale of its securities;
- b. The name, address, social security number, and proof of satisfaction of subrule 50.12(1) for each agent;
- c. A complete description of the subject securities;
- d. A complete and accurate Form U-4; and
- e. A \$30 filing fee.

This rule is intended to implement Iowa Code section 502.406.

191—50.13(502) Agent continuing education requirements. Every registered agent shall comply with all applicable continuing education requirements adopted by NASD, NYSE, or any other self-regulatory agency. Failure to comply with any such requirements may be a basis for discipline pursuant to Iowa Code section 502.412(4)“n.”

This rule is intended to implement Iowa Code section 502.411(8).

191—50.14(502) Broker-dealer record-keeping requirements.

50.14(1) Unless otherwise provided by an SEC order, each broker-dealer registered or required to be registered under the Act shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3), 17a-4 (17 CFR 240.17a-4), 15c2-6 (17 CFR 240.15c2-6) and 15c2-11 (17 CFR 240.15c2-11).

50.14(2) To the extent that the SEC amends the above-referenced rules, broker-dealers complying with such rules as amended shall not be subject to enforcement action by the administrator for violating this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

This rule is intended to implement Iowa Code section 502.411(3).

191—50.15(502) Broker-dealer minimum financial requirements and financial reporting requirements.

50.15(1) Each broker-dealer registered or required to be registered under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1), 15c3-2 (17 CFR 240.15c3-2), and 15c3-3 (17 CFR 240.15c3-3).

50.15(2) Each broker-dealer registered or required to be registered under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11) and shall file with the administrator copies of annual audited financial reports and notices of financial deficiencies, as required under SEC Rules 17a-5(d) (17 CFR 240.17a-5(d)) and 17a-11 (17 CFR 240.17a-11).

50.15(3) To the extent that the SEC amends the above-referenced rules, broker-dealers complying with such rules as amended shall not be subject to enforcement action by the administrator for violations resulting solely from the broker-dealer's compliance with the amended rules.

This rule is intended to implement Iowa Code section 502.411(2).

191—50.16(502) Dishonest or unethical practices in the securities business.

50.16(1) Dishonest or unethical business practices by any person in the securities business, other than an agent, investment adviser, investment adviser representative, or federal covered investment adviser, as prohibited pursuant to Iowa Code section 502.412(4)“m” include, but are not limited to, the following:

a. Engaging in any unreasonable and unjustifiable delay in delivering securities purchased by any customers or paying, upon request, free credit balances reflecting completed transactions of any customers;

b. Inducing in a customer's account trading which is excessive in size or frequency relative to the financial resources and character of the account;

c. Recommending to a customer the purchase, sale or exchange of any securities without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

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- d. Executing a transaction on behalf of a customer without authorization;
- e. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for executing the orders;
- f. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement prior to the initial transaction in the account;
- g. Failing to segregate customers' free securities or securities held in safekeeping;
- h. Hypothecating a customer's securities without having a lien on them unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as otherwise permitted by SEC rules;
- i. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;
- j. Failing to furnish on or before the transaction confirmation date a final prospectus, or, if a final prospectus is not available, a preliminary prospectus together with additional documents which include all information that would be set forth in the final prospectus, to a customer purchasing securities in an offering registered pursuant to Iowa Code section 502.303 or 502.304 or that is subject to a notice filing made pursuant to Iowa Code section 502.302. If the offering is not registered, the broker-dealer shall furnish those disclosure documents that are customarily available;
- k. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collecting moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, custody of securities or other services regarding the securities business;
- l. Offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell the security at the stated price and under the conditions as stated at the time of the offer to buy or sell the security;
- m. Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling or under common control with such broker-dealer;
- n. Effecting any transaction in, or inducing the purchase or sale of, any security by any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, including but not limited to:
- (1) Effecting any transaction in a security involving no change in the beneficial ownership thereof;
 - (2) Entertaining an order for the purchase or sale of any security knowing that an order or orders of substantially the same size have been or will be entered by or for the same or different parties at substantially the same time and price for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance regarding the market for the security. Nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for the broker-dealer's customers;
- (3) Effecting, alone or with one or more persons, a series of transactions in any security which creates actual or apparent active trading in a security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;
- o. Guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;
- p. Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind purporting to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of such security, or purporting to quote the bid price or asked price for any security unless the broker-dealer believes that the quotation represents a bona fide bid for or offer of such security;
- q. Using any advertising or sales presentation in a deceptive or misleading fashion including but not limited to a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure or flyer, or display by words, pictures, graphs or other medium designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;
- r. Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control of the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security. The existence of any control or affiliation shall be disclosed to the customer in writing prior to completion of the transaction;
- s. Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether the securities were acquired by the broker-dealer as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member;
- t. Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled or to respond to a formal written request or complaint from the customer;
- u. Failing or refusing to provide information requested in writing by the administrator within 14 days or a later time as prescribed by the administrator;
- v. Extending credit to a customer in violation of the Securities Exchange Act of 1934 or the regulations of the Federal Reserve Board;
- w. Engaging in acts or practices enumerated in rule 191—50.100(502);
- x. Failing in the solicitation of a sale or purchase of an OTC non-NASDAQ security to promptly provide, upon the customer's request, the most current prospectus, the most recent periodic report filed pursuant to Section 13 of the Securities Exchange Act of 1934, or any other available research reports;
- y. Marking any order tickets or confirmations as unsolicited when the transaction is solicited;
- z. Failing to provide each customer, on no greater than a quarterly basis, a statement of account that, for all OTC non-NASDAQ equity securities in the account for which the firm has been a market maker during the reportable period, contains a value for each security based on the closing market bid

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on a date certain for any month in which activity has occurred in a customer's account;

aa. Failing to comply with any applicable provision of the NASD Conduct Rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC; and

bb. Engaging in or aiding in "boiler-room" operations or high-pressure tactics in connection with the promotion of speculative offerings or "hot issues" by means of an intensive telephone campaign or unsolicited calls to persons not known by, nor having an account with, the agent or broker-dealer represented by the agent, where the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of the purchaser's investment needs and objectives.

50.16(2) Dishonest or unethical practices by an agent in the securities business as prohibited pursuant to Iowa Code section 502.412(4)"m" include, but are not limited to, the following:

a. Lending money or securities to or borrowing money or securities from a customer or acting as a custodian for money, securities, or an executed stock power of a customer unless the customer is a member of the agent's immediate family and the act or practice is approved in advance by the agent's supervisory personnel;

b. Effecting securities transactions not recorded on the regular books or records of the broker-dealer the agent represents unless the transactions are authorized in writing by the broker-dealer prior to executing the transaction;

c. Establishing or maintaining an account containing fictitious information for the purpose of executing transactions otherwise prohibited;

d. Sharing, directly or indirectly, in profits or losses in any customer account without the written authorization of the customer and the broker-dealer the agent represents;

e. Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person who is not registered as an agent for the same broker-dealer or for a broker-dealer under direct or indirect common control;

f. Soliciting or accepting a gift, directly or indirectly, from an unrelated customer that in the aggregate exceeds \$250 in a calendar year. A gift accepted by an immediate family member from an unrelated customer shall be included in the aggregate limit. An agent shall not solicit or accept from a customer a gift transferred through a relative or third party to the agent's benefit that would have the effect of evading this paragraph;

g. Soliciting or accepting being named as a beneficiary, executor, or trustee in a will or trust of an unrelated customer;

h. Evading or otherwise negating the requirements of paragraph 50.16(2)"a," "f" or "g" by terminating the customer relationship for the purpose of soliciting or accepting a loan or gift or being named as a beneficiary, executor or trustee in a will or trust that the agent is otherwise not permitted to solicit or accept. An agent is not in violation of this paragraph if the agent has made a bona fide termination of the customer relationship and conducted no securities-related business or other business for a period of three years with the customer; and

i. Engaging in conduct specified in subrule 50.16(1), paragraphs "b" to "f," "i," "j," "n" to "q," "u," and "w" to "aa."

This rule is intended to implement Iowa Code section 502.412(4)"m."

191—50.17(502) Rules of conduct.

50.17(1) Each broker-dealer, after executing and before completing each transaction with its customer, shall give or send the customer a written confirmation. A broker-dealer not registered pursuant to the Securities Exchange Act of 1934 shall provide a written confirmation including, at a minimum:

a. A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold and any commission charged;

b. A statement as to whether the broker-dealer was acting for its own account, as the agent for the customer, as the agent for some other person, or as the agent for both the customer and some other person;

c. When the broker-dealer is acting as an agent for the customer, the name of the person from whom the security was purchased or to whom it was sold or the fact that such information will be furnished upon the customer's request.

50.17(2) A broker-dealer registered pursuant to the Securities Exchange Act of 1934 shall comply with all requirements of the Securities Exchange Act of 1934 and its implementing rules regarding written confirmations.

50.17(3) Each broker-dealer shall establish written supervisory procedures and a system for applying those procedures which may reasonably be expected to prevent and detect any violations of Iowa Code chapter 502, its implementing rules, and any orders issued pursuant to it. Each broker-dealer shall designate and qualify a number of supervisory employees reasonable in relation to the number of its registered agents, offices, and transactions in Iowa.

50.17(4) Each broker-dealer whose principal office is located in Iowa shall have at least one partner, officer or registered agent employed on a full-time basis at its principal office.

This rule is intended to implement Iowa Code sections 502.411(3) and 502.412(4)"i."

191—50.18(502) Limited registration of Canadian broker-dealers and agents.

50.18(1) A Canadian broker-dealer may register under this rule if the broker-dealer:

a. Files with the administrator an application in the form required by the jurisdiction in which the broker-dealer has its principal office;

b. Files with the administrator a consent to service of process on Form U-2;

c. Is registered as a broker-dealer and is in good standing in the jurisdiction from which the broker-dealer is effecting transactions into Iowa and files with the administrator satisfactory evidence thereof;

d. Is a member of a self-regulatory organization or stock exchange in Canada; and

e. Pays a \$200 filing fee.

50.18(2) An agent representing a Canadian broker-dealer registered under this rule in effecting transactions in securities in Iowa may register under this rule if the agent:

a. Files with the administrator an application in the form required by the jurisdiction in which the broker-dealer has its principal office;

b. Files with the administrator a consent to service of process;

c. Is registered and is in good standing in the jurisdiction from which the agent is effecting transactions into Iowa and files with the administrator satisfactory evidence thereof; and

d. Pays a \$30 filing fee.

50.18(3) A Canadian broker-dealer that is resident in Canada and has no office or other physical presence in Iowa may,

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provided that the broker-dealer is registered under this rule, effect transactions in Iowa:

a. With or for a person from Canada temporarily residing in Iowa with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States;

b. With or for a person from Canada currently residing in Iowa whose transactions are in a self-directed, tax-advantaged retirement plan in Canada of which the person is the holder or contributor; or

c. With or through:

(1) The issuers of the securities involved in the transactions;

(2) Other registered broker-dealers;

(3) Banks, savings institutions, trust companies, insurance companies, or investment companies as the term is defined in the Investment Company Act of 1940;

(4) Pension or profit-sharing trusts; or

(5) Other financial institutions or institutional investors, whether acting on their own behalf or as trustees.

50.18(4) An agent registered pursuant to subrule 50.18(2) representing a Canadian broker-dealer registered pursuant to subrule 50.18(1) may effect all securities transactions that the broker-dealer is authorized by subrule 50.18(3) to effect.

50.18(5) If no denial order is in effect and no proceeding is pending pursuant to Iowa Code section 502.304, a registration filed pursuant to this rule becomes effective on the forty-fifth day after an application is filed, unless otherwise provided by order of the administrator.

50.18(6) A Canadian broker-dealer registered under this rule shall:

a. Maintain provincial or territorial registration and membership in a self-regulatory organization or stock exchange and remain in good standing in each;

b. Provide, upon the administrator's request, all books and records relating to its business in Iowa as a broker-dealer;

c. Promptly inform the administrator of any criminal action taken against the broker-dealer or of any finding or sanction imposed on the broker-dealer as a result of a self-regulatory or other regulatory action involving fraud, theft, deceit, misrepresentation, or like conduct; and

d. Disclose in writing to each of the broker-dealer's clients in Iowa that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.

50.18(7) An agent of a Canadian broker-dealer registered under this rule shall:

a. Maintain the agent's provincial or territorial registration and remain in good standing; and

b. Promptly inform the administrator of any criminal action taken against the agent or of any finding or sanction imposed on the agent as a result of a self-regulatory or other regulatory action involving fraud, theft, deceit, misrepresentation, or like conduct.

50.18(8) Renewal applications for Canadian broker-dealers and agents under this rule must be filed before December 1 each year and may be made by filing with the administrator the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its principal office or, if no such renewal application is required, the most recent application filed pursuant to paragraph 50.18(1)"a" or 50.18(2)"a."

50.18(9) Every applicant for registration or renewal registration pursuant to this rule shall pay the applicable fee for broker-dealers and agents as set forth in Iowa Code section 502.410.

50.18(10) A Canadian broker-dealer or agent registered under this rule and in compliance with paragraph 50.18(3)"c" is exempt from all the requirements of the Act, except for the antifraud sections and the requirements set out in this rule.

50.18(11) All transactions in securities effected between Canadian broker-dealers or agents registered under this rule and Canadian persons meeting the requirements of paragraph 50.18(3)"a" or "b" are exempt from Iowa Code sections 502.301 and 502.504.

This rule is intended to implement Iowa Code section 502.401(4).

191—50.19(502) Brokerage services by national and state banks.

50.19(1) A bank may, without registering as a broker-dealer, effect:

a. Transactions pursuant to Iowa Code section 502.102(4)"c"; or

b. Transactions permitted by order of the administrator.

50.19(2) A bank that has entered into a contract with an Iowa-registered broker-dealer may provide the following ministerial securities services without registering as a broker-dealer:

a. Provide bank customers and the public with a telephone number of the broker-dealer and provide telephone facilities on bank premises for customers and members of the public to use in contacting the broker-dealer;

b. Distribute literature to bank customers and members of the public about particular services provided by the broker-dealer, subject to the requirements of subrule 50.19(4);

c. Provide broker-dealer account applications to bank customers and members of the public and provide assistance in completing the forms. The disclosures required pursuant to subrule 50.19(4), in the form prescribed by subrule 50.19(5), shall be included on either the account application or an attachment to the application. If the disclosures are provided on an attachment to the application, both the application and attachment must be signed by the applicant. The bank may mail the completed account applications to a broker-dealer;

d. Assist bank customers wishing to transfer funds into and out of their bank accounts for securities transactions; and

e. Provide mailers to bank customers and members of the public and assist them in transmitting securities and securities documents to the broker-dealer.

50.19(3) A bank that has entered into a contract with an Iowa-registered broker-dealer may attempt to effect and effect securities transactions without registering as a broker-dealer if all of the following requirements are met:

a. Any bank employee who attempts to effect and effects securities transactions is a registered agent of the broker-dealer and:

(1) Has passed an acceptable subject matter examination pursuant to paragraph 50.12(1)"a";

(2) Has passed the NASD Series 63 or Series 66 examination;

(3) Is registered with NASD; and

(4) Is registered as an agent of the broker-dealer pursuant to rule 191—50.12(502).

b. If the broker-dealer provides securities services in an area of public access on the bank premises in which banking services are not provided, the bank requires that the broker-dealer clearly distinguish the area in which securities services are provided. If securities services and banking services are provided in the same public area on the bank prem-

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ises, there shall be a sign clearly identifying the broker-dealer providing the securities services.

c. The bank receives only the following types of compensation from the broker-dealer:

- (1) Transaction-related compensation, subject to the restrictions provided by paragraph 50.19(7)“b”;
- (2) An administrative fee;
- (3) Payments for compensation of employees jointly employed by the bank and the broker-dealer; and
- (4) Lease payments.

50.19(4) A bank attempting to effect and effecting securities transactions pursuant to a contract with an Iowa-registered broker-dealer may distribute advertisements or promotional materials without registering as a broker-dealer if the advertisements or promotional materials clearly and prominently:

- a. Identify the broker-dealer;
- b. State in bold typeface that securities transactions and related earnings or profits are not insured by the FDIC;
- c. State that the securities offered by the broker-dealer are not guaranteed by, nor are they obligations of, the bank; and
- d. State that the bank and the broker-dealer are separate organizations.

50.19(5) The following or a similar statement printed in bold typeface and capital letters shall satisfy the disclosure requirements of subrule 50.19(4): [NAME OF BROKER-DEALER] IS NOT A BANK, AND SECURITIES OFFERED BY [NAME OF BROKER-DEALER] ARE NOT BACKED OR GUARANTEED BY ANY BANK NOR ARE THEY INSURED BY THE FDIC.

50.19(6) The disclosure requirements of subrule 50.19(4) shall not apply to radio or television advertisements not exceeding 30 seconds in length.

50.19(7) A bank shall not engage in the following securities activities:

- a. Distribute prospectuses to bank customers or to members of the public regarding securities unless done so:
 - (1) In the exercise of trust functions permitted to banks;
 - (2) Pursuant to registration as a broker-dealer; or
 - (3) In the performance of securities activities as permitted by subrule 50.19(1), 50.19(2), or 50.19(3);
- b. Allow registered joint bank and broker-dealer employees to split commissions or other transaction-related remuneration received from customers with unregistered bank employees;
- c. Transmit account statements, confirmations, or other broker-dealer communications to bank customers or members of the public unless the communications contain a disclosure statement as required by subrule 50.19(4);
- d. Permit bank employees who are not registered securities agents of the broker-dealer to receive or transmit orders to the broker-dealer from customers or the public, except as permitted by subrule 50.19(1); and
- e. Permit bank employees who are not registered agents of the broker-dealer to perform securities functions directly involving customer contact, except as provided in subrules 50.19(1) and 50.19(2).

This rule is intended to implement Iowa Code sections 502.102(4)“c” and 502.401.

191—50.20(502) Broker-dealers having contracts with national and state banks.

50.20(1) A broker-dealer engaging in securities activities with banks as permitted by subrules 50.19(2) and 50.19(3) shall maintain for three years and make available to the administrator upon request the following records:

a. Copies of all advertisements and promotional literature disseminated by the bank and broker-dealer regarding securities services and products offered by the broker-dealer to bank customers and the public;

b. Copies of each contract executed between the bank and the broker-dealer which propose to sell securities to bank customers or the public;

c. Copies of new account forms to be completed by bank customers or members of the public who open an account with the broker-dealer;

d. A list of every bank employee who is a registered securities agent of the broker-dealer and the employee’s social security number and CRD number; and

e. Copies of compliance and procedures manuals regarding the securities activities of the bank.

50.20(2) In addition to any responsibilities assumed pursuant to subrule 50.69(5), a broker-dealer engaging in securities transactions pursuant to a contract with a bank as permitted by subrules 50.19(2) and 50.19(3) shall not allow a person who is not an Iowa-registered securities agent of the broker-dealer to use the broker-dealer name, logo, or trademark on business cards or letterheads.

This rule is intended to implement Iowa Code sections 502.102(4)“c” and 502.401.

191—50.21(502) Brokerage services by credit unions, savings banks, and savings and loan institutions.

50.21(1) A credit union, savings bank, or savings and loan institution may, without registering as a broker-dealer, effect:

a. Transactions pursuant to Iowa Code section 502.102(4)“c”;

b. Transactions permitted by order of the administrator.

50.21(2) A credit union, savings bank, or savings and loan institution that has entered into a contract with an Iowa-registered broker-dealer may provide the following ministerial securities services without registering as a broker-dealer:

a. Provide customers and the public with a telephone number of the broker-dealer and provide telephone facilities on its premises for customers and members of the public to use in contacting the broker-dealer;

b. Distribute literature to its customers and members of the public about particular services provided by the broker-dealer, subject to the requirements of subrule 50.21(4);

c. Provide broker-dealer account applications to its customers and members of the public and provide assistance in completing the forms. The disclosures required pursuant to subrule 50.21(4) shall be included on either the account application or an attachment to the application. If the disclosures are provided on an attachment to the application, both the application and attachment must be signed by the applicant. The credit union, savings bank, or savings and loan institution may mail the completed account applications to a broker-dealer;

d. Assist its customers wishing to transfer funds into and out of their accounts for securities transactions; and

e. Provide mailers to its customers and members of the public and assist them in transmitting securities and securities documents to the broker-dealer.

50.21(3) A credit union, savings bank, or savings and loan institution that has entered into a contract with an Iowa-registered broker-dealer may attempt to effect and effect securities transactions without registering as a broker-dealer if all of the following requirements are met:

a. Any credit union, savings bank, or savings and loan institution employee who attempts to effect and effects securities transactions is a registered agent of the broker-dealer and:

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(1) Has passed an acceptable subject matter examination pursuant to paragraph 50.12(1)“a”;

(2) Has passed the NASD Series 63 or Series 66 examination;

(3) Is registered with NASD; and

(4) Is registered as an agent of the broker-dealer pursuant to rule 191—50.12(502).

b. If the broker-dealer provides securities services in an area of public access on the credit union, savings bank, or savings and loan institution premises in which credit union, savings bank, or savings and loan institution services are not provided, the credit union, savings bank, or savings and loan institution requires that the broker-dealer clearly distinguish the area in which securities services are provided. If securities services and credit union, savings bank, or savings and loan institution services are provided in the same public area on the bank premises, there shall be a sign clearly identifying the broker-dealer providing the securities services.

c. The credit union, savings bank, or savings and loan institution receives only the following types of compensation from the broker-dealer:

(1) Transaction-related compensation, subject to the restrictions provided by paragraph 50.19(7)“b”;

(2) An administrative fee;

(3) Payments for compensation of employees jointly employed by the credit union, savings bank, or savings and loan institution and the broker-dealer; and

(4) Lease payments.

50.21(4) Credit unions, savings banks, and savings and loan institutions attempting to effect and effecting securities transactions under contracts with Iowa-registered broker-dealers may distribute advertisements or promotional materials without registering as broker-dealers if the advertisements or promotional materials clearly and prominently:

a. Identify the broker-dealer.

b. Disclose in bold print that securities transactions and related earnings or profits are not insured by:

(1) The FDIC, in the case of savings banks and savings and loan institutions, or

(2) The NCUA, in the case of credit unions.

c. Disclose that securities offered by the broker-dealer are not guaranteed by, nor are they obligations of, the credit union, savings bank, or savings and loan institution.

d. Disclose that the credit union, savings bank, or savings and loan institution and the broker-dealer are separate organizations.

50.21(5) The following or a similar statement in bold print and capital letters will satisfy the disclosure requirements of subrule 50.21(4): [NAME OF BROKER-DEALER] IS NOT A [SAVINGS BANK, SAVINGS AND LOAN INSTITUTION, OR CREDIT UNION], AND SECURITIES OFFERED BY [NAME OF BROKER-DEALER] ARE NOT BACKED OR GUARANTEED BY ANY [SAVINGS BANK, SAVINGS AND LOAN INSTITUTION, OR CREDIT UNION] NOR ARE THEY INSURED BY THE [FDIC OR NCUA].

50.21(6) The disclosure requirements of subrule 50.21(4) shall not apply to radio or television advertisements not exceeding 30 seconds in length.

50.21(7) Credit unions, savings banks, and savings and loan institutions shall not:

a. Distribute prospectuses for securities to customers or to members of the public except:

(1) In the exercise of trust functions permitted to them;

(2) Pursuant to registration as a broker-dealer; or

(3) In the performance of securities activities as permitted by subrules 50.21(1) to 50.21(3); or

b. Engage in any of the activities proscribed if performed by an unregistered bank by paragraphs 50.19(7)“b” to “e.”

This rule is intended to implement Iowa Code sections 502.102(4)“c” and 502.401.

191—50.22(502) Broker-dealers having contracts with credit unions, savings banks, and savings and loan institutions.

50.22(1) A broker-dealer engaging in securities activities with credit unions, savings banks, or savings and loan institutions as permitted by subrules 50.21(2) and 50.21(3) shall maintain for three years and make available to the administrator upon request the following records:

a. Copies of all advertisements and promotional literature disseminated by the credit union, savings bank, or savings and loan institution and the broker-dealer regarding securities services and products offered by the broker-dealer to credit union, savings bank, or savings and loan institution customers and the public;

b. Copies of each contract executed between the credit union, savings bank, or savings and loan institution and the broker-dealer which proposes to sell securities to credit union, savings bank, or savings and loan institution customers or the public;

c. Copies of new account forms to be completed by credit union, savings bank, or savings and loan institution customers or members of the public who open an account with the broker-dealer;

d. A list of every credit union, savings bank, or savings and loan institution employee who is a registered securities agent of the broker-dealer and the employee’s social security number and CRD number; and

e. Copies of compliance and procedures manuals regarding the securities activities of the credit union, savings bank, or savings and loan institution.

50.22(2) In addition to any responsibilities assumed pursuant to subrule 50.69(5), a broker-dealer engaging in securities transactions pursuant to a contract with a credit union, savings bank, or savings and loan institution as permitted by subrules 50.21(2) and 50.21(3) shall not allow a person who is not an Iowa-registered securities agent of the broker-dealer to use the broker-dealer name, logo, or trademark on business cards or letterheads.

This rule is intended to implement Iowa Code sections 502.102(4)“c” and 502.401.

191—50.23 to 50.29 Reserved.

DIVISION III

REGISTRATION OF INVESTMENT ADVISERS,

INVESTMENT ADVISER REPRESENTATIVES,

AND FEDERAL COVERED INVESTMENT ADVISERS

191—50.30(502) Electronic filing with designated entity.

50.30(1) Designation. Pursuant to Iowa Code sections 502.406 and 502.608(3)“a,” the administrator designates the IARD operated by the NASD to receive and store filings and collect related fees from investment advisers on behalf of the administrator.

50.30(2) Use of IARD. Unless otherwise provided, all investment adviser applications, amendments, reports, notices, related filings and fees required to be filed with the administrator pursuant to the rules promulgated under the Act shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

a. Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized signatory of the applicant, as required, shall affix the duly authorized signato-

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ry's electronic signature to the filing by typing the duly authorized signatory's name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

b. When filed. Solely for purposes of a filing made through IARD, a document is considered filed with the administrator when all fees are received and the filing is accepted by IARD on behalf of the state.

This rule is intended to implement Iowa Code sections 502.102(8), 502.406 and 502.608(3)"a."

191—50.31(502) Investment adviser applications and renewals.

50.31(1) Investment adviser applications—required filings. The application for initial registration as an investment adviser shall be made by:

- a. Filing Form ADV Part I with IARD;
- b. Remitting the \$100 filing fee to IARD pursuant to Iowa Code section 502.410(3); and
- c. Filing Form ADV Part II with the administrator.

50.31(2) Investment adviser applications—discretionary filings. The administrator may require that an application for initial registration also include the following:

a. Financial statements as set forth in paragraph 50.42(1)"f" including, but not limited to, a copy of the balance sheet for the last fiscal year and, if the balance sheet is prepared as of a date more than 45 days from the date of the filing of the application, an unaudited balance sheet prepared in accordance with subrule 50.40(7);

b. A copy of the surety bond required pursuant to rule 191—50.41(502), if any; and

c. Any other information necessary for determining whether registration is appropriate.

50.31(3) Investment adviser renewals—required filings. Annual renewals by investment advisers shall be made by:

- a. Filing an annual renewal registration with IARD; and
- b. Remitting the \$100 filing fee to IARD as required pursuant to Iowa Code section 502.410(3).

50.31(4) Investment adviser renewals—discretionary filings. The administrator may require the filing of a copy of the surety bond, if any, required pursuant to rule 191—50.41(502).

50.31(5) Completion of filing. An application for initial or renewal registration is considered filed for the purposes of Iowa Code section 502.406 when the required fee and all required submissions have been received by IARD and the administrator.

50.31(6) Updates and amendments. The investment adviser is under a continuing obligation to update information provided on Form ADV as follows:

a. An updated Form ADV must be filed with IARD within 90 days of the end of the investment adviser's fiscal year; and

b. Any amendment to Form ADV must be filed with IARD within 30 days of the event causing the required amendment.

50.31(7) Succession and change in registration.

a. In the case of an organizational change, including a change in the state of incorporation or form of organization, not involving a material change in financial condition or management, an investment adviser shall file all applicable amendments to Form ADV.

b. In the case of an organizational change, including a change in the state of incorporation or form of organization, involving a material change in financial condition or management, an investment adviser must file a new application

for registration pursuant to subrule 50.31(1). The filing must include the fee pursuant to paragraph 50.31(1)"b" and registration fees for all Iowa-registered investment adviser representatives.

c. In the case of a change in name, an investment adviser shall file all applicable amendments to Form ADV.

This rule is intended to implement Iowa Code sections 502.102(8) and 502.406.

191—50.32(502) Application for investment adviser representative registration.

50.32(1) Designation. Pursuant to Iowa Code sections 502.406 and 502.608(3)"a," the administrator designates the CRD operated by the NASD to receive and store filings and collect related fees from investment adviser representatives on behalf of the administrator.

50.32(2) Initial application. The application for initial registration as an investment adviser representative made pursuant to Iowa Code section 502.406(1) shall be made by filing Form U-4 with the CRD. The following shall be submitted to the CRD with the application:

a. Proof of compliance by the investment adviser representative with the examination requirements of rule 191—50.33(502); and

b. If applicable, the \$30 fee required pursuant to Iowa Code section 502.410(4).

50.32(3) Annual renewal. Annual renewals by investment adviser representatives shall be made by:

- a. Filing an annual renewal registration with CRD; and
- b. If applicable, remitting the \$30 filing fee to CRD as required pursuant to Iowa Code section 502.410(4).

50.32(4) Completion of filing. An application for initial or renewal registration is considered filed for the purposes of Iowa Code section 502.406 when the required fee and all required submissions have been received by the CRD.

50.32(5) Updates, amendments, withdrawals and terminations. The investment adviser representative is under a continuing obligation to update information provided on Form U-4 as follows:

a. Any amendment to information provided on Form U-4 must be filed with CRD within 30 days of the event causing the required amendment; and

b. A withdrawal request or termination must be filed with CRD within 30 days of the event causing the necessity of a withdrawal request or termination. A withdrawal request shall be made by filing an accurate and complete Form U-5 with CRD.

This rule is intended to implement Iowa Code sections 502.102(8) and 502.406.

191—50.33(502) Examination requirements.

50.33(1) Except as exempted by subrule 50.33(2), a person applying to be registered as an investment adviser representative shall provide the administrator with proof that the person has obtained a passing score on one of the following examinations:

a. The Series 65 examination as implemented January 1, 2000; or

b. The Series 7 examination and Series 66 examination as implemented January 1, 2000. In the event that an applicant for registration as an investment adviser representative has received a waiver by the NASD of the Series 7 examination otherwise required by this paragraph, the NASD waiver will be accepted in lieu of the examination requirement.

50.33(2) Unless otherwise ordered by the administrator in connection with a violation of the Act, the following individ-

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uals shall be exempt from the examination requirements of subrule 50.33(1):

a. Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on or before January 19, 2000.

b. Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States after November 1, 2001, provided that the jurisdiction in which the investment adviser or investment adviser representative is registered requires the passage of the examinations in subrule 50.33(1).

c. Any individual who has not been registered as an investment adviser or investment adviser representative in any jurisdiction for a period of two years shall be required to comply with the examination requirements of this rule.

d. Any individual who currently holds one of the following professional designations:

(1) Certified Financial Planner or CFP designation awarded by the Certified Financial Planner Board of Standards, Inc.;

(2) Chartered Financial Consultant (ChFC) designation awarded by The American College, Bryn Mawr, Pennsylvania;

(3) Personal Financial Specialist (PFS) designation administered by the American Institute of Certified Public Accountants;

(4) Chartered Financial Analyst (CFA) designation granted by the Association for Investment Management and Research;

(5) Chartered Investment Counselor (CIC) designation granted by the Investment Counsel Association of America; or

(6) Any other professional designation recognized by order of the administrator.

This rule is intended to implement Iowa Code section 502.412(5).

191—50.34(502) Notice filing requirements for federal covered investment advisers.

50.34(1) Notice filing. The notice filing for a federal covered investment adviser pursuant to Iowa Code section 502.405 shall be filed with IARD on an executed Form ADV. A notice filing of a federal covered investment adviser shall be deemed filed for purposes of this subrule when Form ADV and the fee of \$100 required pursuant to Iowa Code section 502.410(5) are received by IARD.

50.34(2) Portions of Form ADV not yet accepted by IARD. Until such time, if any, that IARD provides for the filing of Part II of Form ADV, Part II of Form ADV is required to be filed only upon the administrator's request. Part II of Form ADV shall be deemed filed for purposes of this subrule if a federal covered investment adviser provides Part II of Form ADV to the administrator within five days of any oral or written request.

50.34(3) Renewal. The annual renewal of the notice filing for a federal covered investment adviser pursuant to Iowa Code section 502.405 shall be filed with IARD. The renewal of the notice filing shall be deemed filed for purposes of this subrule when the \$100 fee required pursuant to Iowa Code section 502.410(5) is accepted by IARD.

50.34(4) Updates and amendments. A federal covered investment adviser must file with IARD any amendments to the federal covered investment adviser's Form ADV.

This rule is intended to implement Iowa Code section 502.405.

191—50.35(502) Withdrawal of investment adviser registration. The application for withdrawal of registration as an investment adviser pursuant to Iowa Code section 502.409 shall be completed on Form ADV-W and filed with IARD.

This rule is intended to implement Iowa Code section 502.409.

191—50.36(502) Investment adviser disclosure statement.

50.36(1) Unless otherwise provided by order, an investment adviser, registered or required to be registered pursuant to Iowa Code section 502.403, shall furnish each advisory client and prospective advisory client with a written disclosure statement. The disclosure statement may be a copy of Part II of the investment adviser's Form ADV, written documents containing no less than the information contained in Part II of Form ADV, or any other form permitted by order of the administrator.

50.36(2) The written disclosure document shall be provided as follows:

a. An investment adviser shall deliver the written disclosure statement required by subrule 50.36(1) to an advisory client or prospective advisory client as follows:

(1) For all investment advisory services other than impersonal investment advisory services, not less than 48 hours prior to entering into an investment advisory contract with the client or prospective client or, alternatively, at the time of entering into the investment advisory contract, provided the advisory client has the right to terminate the contract without penalty within five business days after entering into the contract; and

(2) Without charge, on an annual basis thereafter or, alternatively, within seven days of a written request by the client, if the offer to provide the written disclosure statement upon request is provided to the advisory client in writing.

b. An advisory client receiving impersonal advisory services pursuant to a contract requiring a payment of \$200 or more must be given the written offer to provide the written disclosure statement at the time of entering into the contract. An investment adviser is not required to provide the written disclosure statement to an advisory client receiving impersonal advisory services pursuant to a contract requiring a payment of less than \$200.

50.36(3) An investment adviser rendering substantially different types of advisory services to different advisory clients may omit information required by Part II of Form ADV from the statement furnished to an advisory client or prospective advisory client if the omitted information applies only to a type of investment advisory service or fee which is not rendered or charged, or is proposed to be rendered or charged, to that client or prospective client.

50.36(4) Nothing in this rule shall relieve any investment adviser from any obligation under any other provision of the Act, its implementing rules, or other state or federal law to disclose any information to the investment adviser's advisory clients or prospective advisory clients.

50.36(5) For purposes of this rule:

a. "Contract for impersonal advisory services" includes any contract relating solely to the provision of investment advisory services:

(1) Through providing written material or making oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

(2) Through issuing statistical information in which no opinion is expressed as to the investment merits of a particular security; or

(3) Any combination of (1) and (2).

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b. The act of “entering into an investment advisory contract” does not include an extension or renewal of an investment advisory contract if there is no material change in the terms of the contract to be extended or renewed.

This rule is intended to implement Iowa Code section 502.411(7).

191—50.37(502) Cash solicitation.

50.37(1) Payment of a cash fee, directly or indirectly, by an investment adviser to a solicitor for solicitation activities shall constitute an act, practice, or course of conduct operating as a fraud or deceit upon a person, pursuant to Iowa Code section 502.502(2), if:

a. The solicitor:

(1) Is subject to an order issued by the administrator pursuant to Iowa Code section 502.412(4);

(2) Has been convicted of a felony or within the previous ten years has been convicted of a misdemeanor involving conduct described in Iowa Code section 502.412(4)“c”; or

(3) Is found by the administrator to have engaged or has been convicted of engaging in any of the conduct specified in Iowa Code section 502.505, 502.412(4)“b” or 502.412(4)“i”; has materially aided in violating Iowa Code section 502.412(4)“d”; or is subject to an order, judgment, or decree pursuant to Iowa Code section 502.412(4)“d” to “f.”

b. The cash fee is not paid pursuant to a written agreement to which the investment adviser is a party. If the cash fee is paid pursuant to a written agreement, the written agreement must:

(1) Describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received for the solicitation activities;

(2) Contain an undertaking by the solicitor to perform the solicitor’s duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and its implementing rules, as applicable; and

(3) Require that the solicitor, at the time of any solicitation activities for which compensation is paid or is to be paid by the investment adviser, provide the client with a current copy of the investment adviser’s written disclosure statement required by subparagraph 50.36(2)“a”(2) or SEC Rule 204-3, if applicable, and a separate written disclosure statement as described in subrule 50.37(2). Prior to or upon entering into a written or oral investment advisory contract with a client, the investment adviser shall obtain a signed and dated acknowledgment of receipt by the client of the investment adviser’s and solicitor’s written disclosure statements. Additionally, the investment adviser shall make a bona fide effort to ascertain whether the solicitor has complied in all aspects with the written agreement, and shall have a reasonable basis for believing that the solicitor has complied.

c. The cash fee is paid to a solicitor:

(1) For solicitation activities regarding anything other than impersonal advisory services; or

(2) Who is a partner, officer, director, or employee of the investment adviser or is a partner, officer, director, or employee of a person who controls, is controlled by, or is under common control with the investment adviser without disclosure of the status of the solicitor as a partner, officer, director, or employee of the investment adviser or other person and of any affiliation between the investment adviser and the solicitor to the client at the time of solicitation or referral.

50.37(2) The separate written disclosure statement required to be furnished pursuant to subparagraph 50.37(1)“b”(3) shall contain the following information:

a. The name of the solicitor;

b. The name of the investment adviser;

c. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

d. A statement that the solicitor will be compensated for the solicitor’s solicitation services by the investment adviser;

e. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

f. The amount, if any, the client will be charged for the cost of obtaining the client’s account in addition to the advisory fee, and the differential, if any, in advisory fees charged by the investment adviser if the differential is the result of the investment adviser’s agreement to compensate the solicitor for soliciting or referring clients.

50.37(3) Nothing in this rule relieves any person of any fiduciary duty or other obligation to which the person may be subject pursuant to contract or law.

50.37(4) For the purpose of this rule:

“Client” includes any prospective client.

“Impersonal advisory services” means investment advisory services provided solely through written materials or oral statements not purporting to meet the objectives or needs of the specific client, statistical information containing no expressions of opinion as to the investment merits of particular securities, or any combination of the foregoing.

“Principal place of business” of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

“Solicitor” means any person who, directly or indirectly, solicits any client for or refers any client to an investment adviser.

50.37(5) An investment adviser shall retain a copy of each written agreement, acknowledgment and solicitor disclosure statement required by this rule in accordance with Iowa Code section 502.411(3) and paragraph 50.42(1)“o.” However, an investment adviser registered in Iowa whose principal place of business is located outside Iowa shall not be subject to the record maintenance requirements of this subrule and the applicable provisions of paragraph 50.42(1)“o” if:

a. The investment adviser is registered or licensed as an investment adviser in the state in which the investment adviser maintains the investment adviser’s principal place of business;

b. The investment adviser complies with the applicable books and records requirements of the state in which the investment adviser maintains the investment adviser’s principal place of business; and

c. The provisions of this rule would require the investment adviser to maintain books or records in addition to those required by the laws of the state in which the investment adviser maintains the investment adviser’s principal place of business.

This rule is intended to implement Iowa Code section 502.502(2).

191—50.38(502) Dishonest or unethical business practices of investment advisers and investment adviser representatives, or fraudulent or deceptive conduct by federal covered investment advisers. An investment adviser, investment adviser representative, or a federal covered investment adviser has a fiduciary duty to act for the benefit of its clients. The federal statutory and regulatory provisions referenced in this rule apply to investment advisers and federal covered investment advisers, to the extent permitted by the NSMIA. This rule applies to federal covered investment ad-

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visers to the extent that the alleged conduct is fraudulent, deceptive, or as otherwise prohibited by the NSMIA.

50.38(1) An investment adviser, investment adviser representative, or a federal covered investment adviser shall not engage in dishonest or unethical business practices or fraudulent and deceptive conduct including, but not limited to:

a. Recommending to a client to whom supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

b. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order for a definite amount of a specified security shall be executed, or both;

c. Inducing in a client's account trading that is excessive in size or frequency compared to the financial resources, investment objectives, and character of the account;

d. Placing an order to purchase or sell a security for a client account without authority to do so;

e. Placing an order to purchase or sell a security for a client account upon instruction of a third party without first obtaining a written third-party trading authorization from the client;

f. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

g. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

h. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

i. Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing that fact. This prohibition does not apply when the investment adviser uses published research reports or statistical analyses to render advice or when an investment adviser orders such a report in the normal course of providing service;

j. Charging a client an unreasonable advisory fee;

k. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest regarding the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or its employees;

l. Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the investment adviser's services;

m. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless disclosed with the client's consent;

n. Taking any action, directly or indirectly, regarding securities or funds in which any client has any beneficial interest when the investment adviser is in violation of the custody requirements provided by rule 191—50.39(502);

o. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses:

(1) The services to be provided;

(2) The term of the contract;

(3) The advisory fee;

(4) The formula for computing the fee;

(5) The amount of prepaid fee to be returned in the event of contract termination or nonperformance;

(6) Whether the contract grants discretionary power to the investment adviser; and

(7) That no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;

p. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940;

q. Entering into, extending, or renewing any advisory contract in violation of Section 205 of the Investment Advisers Act of 1940. This provision applies to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or investment adviser representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940;

r. Providing in an advisory contract any condition, stipulation, or provisions which purport to bind any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940 or any other practice contrary to Iowa Code section 502.509(12) or Section 215 of the Investment Advisers Act of 1940;

s. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in violation of Section 206(4) of the Investment Advisers Act of 1940, regardless of whether the investment adviser or investment adviser representative is not registered or required to be registered pursuant to Section 203 of the Investment Advisers Act of 1940;

t. Engaging in conduct or any act, indirectly or through or by any other person, which is unlawful for such person to do directly under the provisions of this Act, its implementing rules, or order of the administrator;

u. Failing to disclose or providing incomplete disclosure to a client regarding any securities-related activities, or engaging in deceptive practices;

v. Soliciting or accepting a gift, directly or indirectly, from an unrelated customer that in the aggregate exceeds \$250 in a calendar year. A gift accepted by an immediate family member from an unrelated client shall be included in the aggregate limit. An investment adviser shall not solicit or accept from a client a gift transferred through a relative or third party to the investment adviser's benefit that would have the effect of evading this paragraph;

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w. Soliciting or accepting being named as a beneficiary, executor, or trustee in a will or trust of an unrelated customer; and

x. Evading or otherwise negating the requirements of paragraph 50.38(1)“f,” “g,” “v,” or “w” by terminating the customer relationship for the purpose of soliciting or accepting a loan or gift or being named as a beneficiary, executor or trustee in a will or trust that the agent is otherwise not permitted to solicit or accept. An investment adviser or investment adviser representative will not be in violation of this rule if the investment adviser or investment adviser representative has made a bona fide termination of the client relationship and conducted no securities-related business or other business for a period of three years with the client.

50.38(2) Except as otherwise provided in subrule 50.38(3), it shall constitute a dishonest or unethical practice within the meaning of Iowa Code section 502.412(4)“m” for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.

b. Refers to past specific recommendations of the investment adviser or investment adviser representative that were or would have been profitable to any person, except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser or investment adviser representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security.

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list.

c. Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person’s own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to the use of any graph, chart, formula or device.

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.

e. Represents that the administrator has approved any advertisement.

f. Contains any untrue statement of a material fact, or any statement that is otherwise false or misleading.

50.38(3) With respect to federal investment covered advisers, the provisions of this rule apply only to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

50.38(4) For the purposes of this rule, the term “advertisement” shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

a. Any analysis, report, or publication concerning securities.

b. Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

c. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

d. Any other investment advisory service with regard to securities.

This rule is intended to implement Iowa Code section 502.412(4)“m.”

191—50.39(502) Custody of client funds or securities by investment advisers.

50.39(1) Safekeeping required. An investment adviser registered or required to be registered pursuant to the Act will be deemed to have committed an unlawful and fraudulent, deceptive, or manipulative act, practice or course of business if the investment adviser has custody of client funds or securities unless:

a. The investment adviser promptly notifies the administrator in writing using Form ADV that the investment adviser has or may have custody.

b. A qualified custodian maintains client funds and securities:

(1) In a separate account for each client under each client’s name;

(2) In accounts that contain only the investment adviser’s client funds and securities under the investment adviser’s name as agent or trustee for the clients; or

(3) The client, or the client’s designated independent representative, is promptly notified in writing of the qualified custodian’s name, address, and the manner in which the funds or securities are maintained when the account is opened and following any changes to the information.

An investment adviser who intends to have custody of client funds or securities but is not able to utilize a “qualified custodian” as defined by paragraph 50.39(3)“c” must obtain approval from the administrator prior to taking custody and must comply with all of the applicable provisions of this rule including those provisions that are designated to be performed by a qualified custodian.

c. Account statements are sent:

(1) By a qualified custodian on no less than a quarterly basis to each client, or to the client’s designated independent representative, whose funds or securities are kept in custody identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period. The investment adviser is not required to confirm the receipt of the account statements, but must have a reasonable belief that the qualified custodian is complying with this requirement; or

(2) By the investment adviser on no less than a quarterly basis to each client, or the client’s designated independent representative, whose funds or securities are kept in custody identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period. An independent certified public accountant must verify all client funds and securities by actual examination at least once during each calendar

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year at a random time chosen by the accountant without prior notice or announcement to the investment adviser. The investment adviser shall direct the accountant to submit a copy of the auditor's report and financial statements to the administrator within 30 days after the completion of the examination, along with a letter indicating that the accountant examined the funds and securities and describing the nature and extent of the examination. The investment adviser shall also direct the accountant that the accountant is to directly notify the administrator in writing of any finding of a material discrepancy within one business day of the finding. The accountant may provide notice of the discrepancy to the administrator by either first-class mail or by electronic means followed by first-class mail; and

(3) By the investment adviser to each limited partner, member, or other beneficial owner, or the person's independent representative, if the investment adviser is a general partner of a limited partnership or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle.

d. An investment adviser who has custody as defined by subparagraph 50.39(3)"a"(3) and has fees directly deducted from client accounts provides the following safeguards:

(1) The investment adviser must obtain written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(2) Each time a fee is directly deducted from a client account, the investment adviser must concurrently:

1. Send the qualified custodian notice of the amount of the fee to be deducted from the client's account; and

2. Send the client an invoice itemizing the fee. The itemization must provide, at a minimum, the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee; and

(3) The investment adviser must notify the administrator in writing on Form ADV that the investment adviser intends to use the safeguards provided above.

e. An investment adviser who has custody as defined by subparagraph 50.39(3)"a"(3) and who does not meet the exception provided by paragraph 50.39(2)"c" complies, in addition to compliance with the safeguards set forth in paragraphs 50.39(1)"a" to "c," with the following:

(1) Engages an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts;

(2) Sends to the independent party all invoices and receipts detailing the amount of the fees, expenses, or capital withdrawals and providing the method of calculation so that the independent party can determine that a payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement). The investment adviser shall direct the independent party to forward approval for payment of the invoice to the qualified custodian with a copy to the investment adviser; and

(3) Notifies the administrator in writing on Form ADV that the investment adviser intends to use the safeguards provided above.

For purposes of this paragraph, an "independent party" is a person that is engaged by the investment adviser to act as a monitor of the payment of fees, expenses, and capital withdrawals from the pooled investment; that does not control and is not controlled by or under common control with the investment adviser; and that does not have and has not had within the past two years a material business relationship with the investment adviser.

f. When a trust retains an investment adviser, investment adviser representative, or employee, director or owner

of an investment adviser as trustee and the investment adviser acts as the investment adviser to that trust, the investment adviser:

(1) Notifies the administrator in writing that the investment adviser intends to use the safeguards provided in subparagraphs (2) and (3) below. Such notification is required to be given on Form ADV.

(2) Sends to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the cotrustee (other than the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, at the same time that the investment adviser sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

(3) Enters into a written agreement with a qualified custodian which specifies:

1. That the qualified custodian shall not deliver trust securities to the investment adviser, any investment adviser representative, or any employee, director or owner of the investment adviser, nor transmit any funds to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to the investment adviser, provided that:

- The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the cotrustee (other than the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay the fees;

- The statements for the fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

- The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the cotrustee (other than the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment adviser and the amount of trustees' fees paid to the trustee.

2. Except as otherwise set forth in the first bulleted paragraph below, that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser), whom the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the cotrustee (other than the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, shall only be made:

- To a trust company, bank trust department or brokerage firm independent of the investment adviser for the account of the trust to which the assets relate;

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- To the named grantors or to the named beneficiaries of the trust;
- To a third person independent of the investment adviser in payment of the fees or charges of the third person including, but not limited to, the attorney's, accountant's, or qualified custodian's fees for the trust; and taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;
- To third persons independent of the investment adviser for any other purpose legitimately associated with the management of the trust; or
- To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on a payment-against-delivery basis or a payment-against-trust receipt.

50.39(2) Exceptions.

a. Shares of mutual funds. With respect to the shares of an open-end company as it is defined by Section 5(a)(1) of the Investment Company Act of 1940, an investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subrule 50.39(1).

b. Certain privately offered securities. An investment adviser is not required to comply with subrule 50.39(1) with respect to securities that are:

(1) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(2) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(3) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

This exception is not available with respect to securities held for the account of a limited partnership, limited liability company, or other type of pooled investment vehicle unless the financial statements of the limited partnership, limited liability company, or other type of pooled investment vehicle are audited, the audited financial statements are distributed in compliance with paragraph 50.39(2)"c," and the investment adviser notifies the administrator in writing on Form ADV that the investment adviser intends to comply with this subrule.

c. Limited partnerships subject to annual audit. An investment adviser is not required to comply with paragraph 50.39(1)"c" with respect to the account of a limited partnership, limited liability company, or other type of pooled investment vehicle that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year. The investment adviser must notify the administrator in writing on Form ADV that the investment adviser intends to comply with this paragraph.

d. Registered investment companies. An investment adviser is not required to comply with this rule with respect to the account of an investment company registered pursuant to the Investment Company Act of 1940.

e. Beneficial trusts. An investment adviser is not required to comply with this rule or the net worth and bonding requirements of rules 191—50.40(502), 191—50.41(502), and 191—50.43(502) if the investment adviser has custody solely because the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser is a trustee for a beneficial trust and if all of the following conditions are met for each trust:

(1) The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the trustee, including "step" relationships;

(2) The investment adviser provides a written statement to each beneficial owner of the account setting forth a description of the requirements of subrule 50.39(1) and the reasons for noncompliance with the provisions of subrule 50.39(1);

(3) The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement; and

(4) The investment adviser retains a copy of the documents required by subparagraphs 50.39(2)"e"(2) and (3) until the account is closed or the investment adviser is no longer trustee.

50.39(3) Definitions. For the purposes of this rule:

a. "Custody" means holding, directly or indirectly, client funds or securities, having any authority to obtain possession of client funds or securities, or having the ability to appropriate client funds or securities. "Custody" includes:

(1) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in no case later than three business days following inadvertent receipt;

(2) Receipt of checks drawn by clients and made payable to unrelated third parties, the record of which is maintained by the investment adviser in compliance with paragraph 50.42(1)"v" unless forwarded to the third party within 24 hours of receipt;

(3) Any arrangement including, but not limited to, a general power of attorney pursuant to which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction; and

(4) Any capacity including, but not limited to, general partner of a limited partnership, managing member of a limited liability company, a comparable position for another type of pooled investment vehicle, or trustee of a trust that gives the investment adviser or a person supervised by the investment adviser legal ownership of or access to client funds or securities.

b. "Independent representative" means a person who:

(1) Acts as agent for an advisory client including, in the case of a pooled investment vehicle, limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle, and who is by law or contract required to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(2) Does not control, is not controlled by, and is not under common control with the investment adviser; and

(3) Does not have and has not had within the past two years a material business relationship with the investment adviser.

c. "Qualified custodian" means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the investment adviser in the previous two years:

(1) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(2) A registered broker-dealer holding client assets in customer accounts;

(3) A registered futures commission merchant registered pursuant to Section 4(f)(a) of the Commodity Exchange Act

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that is holding client funds and security futures or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon in customer accounts; and

(4) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

This rule is intended to implement Iowa Code section 502.411(5).

191—50.40(502) Minimum financial requirements for investment advisers.

50.40(1) An investment adviser registered or required to be registered under the Act that has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 except:

a. An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"d" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule;

b. An investment adviser having custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"e" or 50.39(2)"c" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule;

c. An investment adviser having custody solely due to meeting the definition of custody as defined by subparagraph 50.39(3)"a"(2) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule;

d. An investment adviser having custody solely by meeting the definition of custody as defined by subparagraph 50.39(3)"a"(3) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule; and

e. An investment adviser having custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"f" and the record-keeping requirements of subrule 50.42(4) is not required to comply with the net worth requirements of this rule.

50.40(2) An investment adviser registered or required to be registered pursuant to the Act that has discretionary authority over client funds or securities but does not have custody of the client funds or securities shall maintain a minimum net worth of \$10,000 at all times.

50.40(3) An investment adviser registered or required to be registered pursuant to the Act that accepts payment of more than \$500 from a client six or more months in advance of providing services shall maintain a positive net worth at all times.

50.40(4) Unless otherwise exempted, an investment adviser registered or required to be registered pursuant to the Act shall notify the administrator if the investment adviser's net worth is less than the minimum required. Notice must be filed in a report to the administrator no later than the close of business on the next business day following the decrease in net worth. Additionally, an investment adviser shall file by the close of business on the next business day a report with the administrator of the investment adviser's financial condition including, at a minimum, the following:

a. A trial balance of all ledger accounts;

b. A list of all client funds or securities which are not segregated;

c. A computation of the aggregate amount of client ledger debit balances; and

d. The total number of client accounts managed by the investment adviser.

50.40(5) The administrator may require the submission of a current appraisal for the purpose of establishing the worth of any asset.

50.40(6) An investment adviser that has its principal place of business in a state other than this state is not required to maintain the minimum capital required by this rule provided that the investment adviser is registered as an investment adviser in the state in which the investment adviser has its principal place of business and is in compliance with that state's laws regarding minimum capital requirements.

50.40(7) For purposes of this rule:

a. "Net worth" means an excess of assets over liabilities calculated in accordance with generally accepted accounting principles. The calculation of assets shall not include the following: prepaid expenses (except those prepaid expenses classified as assets under generally accepted accounting principles); deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature; home(s), home furnishings, automobile(s), or any other personal items not readily marketable; advances or loans to stockholders or officers; and advances or loans to partners.

b. "Custody" means the same as defined in paragraph 50.39(3)"a."

c. An investment adviser shall not be deemed to be exercising discretion when the investment adviser places trade orders with a broker-dealer pursuant to a third-party trading agreement if:

(1) The investment adviser has executed a separate investment adviser contract exclusively with the investment adviser's client which acknowledges that a third-party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;

(2) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

(3) A third-party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

This rule is intended to implement Iowa Code section 502.411(1).

191—50.41(502) Bonding requirements for investment advisers.

50.41(1) Every investment adviser registered or required to be registered under the Act having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser except:

a. An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"d" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with bonding requirements of this rule;

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b. An investment adviser that has custody of or discretionary authority over client funds or securities that does not meet the minimum net worth standard provisions of subrules 50.40(1) and 50.40(2) must be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000;

c. An investment adviser having custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“e” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the bonding requirements of this rule;

d. An investment adviser having custody solely due to meeting the definition of “custody” as defined by subparagraph 50.39(3)“a”(2) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;

e. An investment adviser having custody solely by meeting the definition of “custody” as defined by subparagraph 50.39(3)“a”(3) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;

f. An investment adviser having custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“f” and the record-keeping requirements of subrule 50.42(4) is not required to comply with the bonding requirements of this rule.

50.41(2) A bond required by this rule shall be issued by a company qualified to do business in this state in the form determined by the administrator and shall be subject to the claims of clients of the investment adviser regardless of the client’s state of residence.

50.41(3) An investment adviser that has a principal place of business in a state other than Iowa is exempt from this rule provided that the investment adviser is registered as an investment adviser in the state in which the investment adviser has its principal place of business and is in compliance with that state’s laws regarding bonding requirements.

50.41(4) For purposes of this rule, “custody” means the same as defined in paragraph 50.39(3)“a.”

This rule is intended to implement Iowa Code section 502.411(5).

191—50.42(502) Record-keeping requirements for investment advisers.

50.42(1) An investment adviser registered or required to be registered pursuant to the Act shall make and keep true, accurate and current the following books, ledgers and records:

a. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of any ledger entries.

b. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income, and expense accounts.

c. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memorandum shall describe the terms and conditions of the order, instruction, modification or cancellation; identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; indicate whether discretionary power was exercised; and indicate the account

for which entered, the date of entry, and, where applicable, the bank or broker-dealer by or through whom executed.

d. All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

e. All invoices, bills, or statements of expenses or debts, or copies of those documents, relating to the investment adviser’s business as an investment adviser regardless of whether the expense or debt is paid or unpaid.

f. All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser’s business as an investment adviser. For the purposes of this paragraph, “financial statements” means a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation, if applicable, as required by subrule 50.40(7).

g. Originals of all written communications received by and copies of all written communications sent by the investment adviser relating to:

(1) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(2) Any receipt, disbursement, or delivery of funds or securities; or

(3) The placing or execution of any order to purchase or sell any security, except:

1. The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

2. The investment adviser is not required to keep a record of the names and addresses of persons to whom a notice, circular, or other advertisement offering any report, analysis, publication or other investment advisory service is sent if sent to more than ten persons; however, if the notice, circular, or other advertisement is distributed to persons named on any list, the investment adviser must retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.

h. A list or other record of all accounts identifying the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

i. Copies of all powers of attorney and other documents granting discretionary authority by any client to the investment adviser.

j. Copies of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser’s business as an investment adviser.

k. A file containing copies of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons not affiliated with the investment adviser and, if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including one in electronic media format recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum indicating the investment adviser’s reasons for the recommendation.

l. A record of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has or by reason of any transaction acquires a direct or indirect beneficial ownership, except the follow-

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ing: transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The required record shall state, at a minimum, the title and amount of the security involved, the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition), the price at which the transaction was effected, and the name of the bank or broker-dealer with or through which the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction must be recorded no later than ten days after the end of the calendar quarter in which the transaction was effected. An investment adviser shall not be in violation of this paragraph because of a failure to record securities transactions of an advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required by this paragraph to be recorded.

(2) For purposes of this paragraph, the following definitions shall apply:

“Advisory representative” means any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee’s duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

1. Any person in a control relationship to the investment adviser;
2. Any affiliated person of a controlling person; and
3. Any affiliated person of an affiliated person.

“Control” means the power to exercise a controlling influence over the management or policies of a company, unless such power results solely from an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

m. Notwithstanding the provisions of paragraph “1,” when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(1) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; or

(2) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved, the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition), the price at which it was effected, and the name of the broker-dealer or bank with or through which the transaction was effected. The record

may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected. An investment adviser shall not be deemed to have violated the provisions of this subparagraph because of a failure to record securities transactions of an advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded. The terms “advisory representative” and “control” shall mean the same as defined in paragraph “1.”

n. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with rule 191—50.36(502), and a record of the dates on which each written statement, amendment and revision was given or offered to be given to any client or any prospective client who subsequently becomes a client.

o. For each client that was obtained by the investment adviser by means of a solicitor to whom a cash fee was paid by the investment adviser:

(1) A copy of any written agreement relating to the payment of a cash fee to which the investment adviser is a party;

(2) A signed and dated acknowledgment of receipt from the client evidencing the client’s receipt of the investment adviser’s disclosure statement and a written disclosure statement of the solicitor; and

(3) A copy of the solicitor’s written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be deemed to be in compliance if such documents comply with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

p. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations provided in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including electronic media, that is directly or indirectly circulated or distributed by the investment adviser to two or more persons (other than persons connected with the investment adviser). However, with respect to the performance of managed accounts only, the retention of all account statements reflecting all debits, credits, and other transactions in a client’s account for the period of the statement, and the retention of all worksheets necessary to demonstrate the calculation of the performance or rate of return of the managed account shall satisfy the requirements of this paragraph.

q. A file containing copies of all written communications received or sent regarding any litigation or customer or client complaints involving the investment adviser or any investment adviser representative or employee.

r. The basis, in writing, for any recommendation or investment advice provided to an investment advisory client.

s. Copies of all written procedures regarding the supervision of the employees and investment adviser representatives that are reasonably designed to achieve compliance with securities laws and regulations.

t. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization pertaining to the investment adviser or any in-

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vestment adviser representative, as defined by paragraph 50.42(1)“l,” including but not limited to all applications, amendments, renewal filings, and correspondence.

u. Original copies signed by the lawful signatory of the investment adviser and the investment adviser representative of each initial Form U-4 and each U-4 Amendment to Disclosure Reporting Pages (DRPs).

v. For each transaction in which the investment adviser inadvertently held or obtained the client’s securities or funds and returned them to the client within three business days or forwarded a third-party check within 24 hours, a ledger or list of all funds or securities held or obtained with the following information:

- (1) Issuer;
- (2) Type of security and series;
- (3) Date of issue;
- (4) For debt instruments, the denomination, interest rate and maturity date;
- (5) Certificate number, including alphabetical prefix or suffix;
- (6) Name in which registered;
- (7) Date submitted to the investment adviser;
- (8) Date sent to client or sender;
- (9) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and
- (10) Mail confirmation number, if applicable, or confirmation by client or sender of the return of the security or fund.

w. For each security exempted from the custody rules by paragraph 50.39(2)“b”:

(1) A record showing the issuer’s or current transfer agent’s name, address, telephone number, and other applicable contact information pertaining to the party responsible for recording the client’s interests in the securities; and

(2) A copy of any legend, shareholder agreement, or other agreement providing that the securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

50.42(2) In addition to the retention requirements of subrule 50.42(1), an investment adviser having custody of client funds or securities, as defined by paragraph 50.39(3)“a,” shall retain the following records:

a. Copies of all documents executed by each client, including but not limited to a limited power of attorney, pursuant to which the investment adviser is authorized or permitted to withdraw a client’s funds or securities;

b. A journal or other record for all accounts reflecting all purchases, sales, receipts, and deliveries of securities, including but not limited to certificate numbers, and all other debits and credits to the accounts;

c. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase or sale, and all debits and credits;

d. Copies of confirmations of all transactions effected by or for the account of any client;

e. A record for each security in which any client has a position showing, at a minimum, the name of each client having an interest in the security, the amount of interest of each client in the security, and the location of each security;

f. A copy of each client’s quarterly account statements as generated and delivered by the qualified custodian. Additionally, if the investment adviser generates a statement that is delivered to the client, the investment adviser shall retain copies of those statements along with information indicating the dates on which the statements were provided to the client;

g. If applicable, a copy of the special examination report, financial statements, and letter verifying the completion of and describing the nature and extent of an examination by an independent certified public accountant and documentation describing the nature and extent of the examination and a record regarding any findings of any material discrepancies found during the examination; and

h. If applicable, evidence of the client’s designation of an independent representative.

50.42(3) An investment adviser deemed, pursuant to paragraph 50.39(2)“c,” to have custody of client securities or funds because the investment adviser advises a pooled investment vehicle shall, in addition to any other applicable record retention requirements, keep the following records:

a. True, accurate, and current account statements;

b. If utilizing the exception provided by paragraph 50.39(2)“c,” the date(s) of the audit, a copy of the audited financial statements, and evidence of the mailing of the audited financial statements to all limited partners, members, or other beneficial owners within 120 days of the end of the fiscal year;

c. If subject to paragraph 50.39(1)“e,” a copy of the written agreement with the independent party reviewing all fees and expenses and describing the responsibilities of the independent third party, and copies of all invoices and receipts showing approval by the independent third party for payment through the qualified custodian.

50.42(4) An investment adviser deemed, pursuant to paragraph 50.39(2)“e,” to have custody because the investment adviser is acting as the trustee for a beneficial trust shall, in addition to any other applicable record retention requirements, retain the following records until the account is closed or the investment adviser is no longer acting as trustee:

a. A copy of the written statement provided to each beneficial owner of the account required pursuant to paragraph 50.39(2)“e”; and

b. A copy of the signed and dated statement from each beneficial owner acknowledging the receipt of the written statement pursuant to paragraph 50.39(2)“e.”

50.42(5) Each investment adviser subject to subrule 50.42(1) that renders investment supervisory or management services to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, retain the following records:

a. For each client, detailed information regarding the securities purchased and sold including, but not limited to, the date of the purchase or sale, the total dollar amount of the purchase or sale, and the price at which the security was purchased or sold.

b. For each security in which any client has a current position, the name of each client and current amount or interest of the client.

50.42(6) Records required to be retained pursuant to rule 191—50.42(502) shall be kept as follows:

a. Except as provided in paragraphs 50.42(6)“b” to “e,” all records shall be maintained and preserved in a readily accessible location for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, with no less than the first two years being kept in the principal office of the investment adviser.

b. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser.

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er and preserved until at least three years after termination of the enterprise.

c. Books and records required to be retained pursuant to paragraphs 50.42(1)“k” and 50.42(1)“p” shall be maintained and preserved in a readily accessible location for a period of not less than five years from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media, with no less than the first two years being kept in the principal office of the investment adviser.

d. Books and records required to be retained pursuant to paragraphs 50.42(1)“q” to “v” shall be maintained and preserved in a readily accessible location for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, with no less than the first two years being kept in the principal office of the investment adviser, or the time period during which the investment adviser is registered or required to be registered in this state, whichever is less.

e. An investment adviser that has rendered or renders investment advisory services shall maintain the following records at the investment adviser’s business location at all times during the applicable retention period:

(1) All records required to be preserved pursuant to paragraphs 50.42(1)“c,” “g” to “j,” “n,” “o,” and “q” to “s” and subrules 50.42(2) to 50.42(5); and

(2) All records required pursuant to paragraphs 50.42(1)“k” to “p” identifying the name of the investment adviser representative providing investment advice from that business location, or identifying the physical address, mailing address, electronic mailing address, or telephone number of the business location. The records will be maintained for the period described in paragraph 50.42(6)“a.”

50.42(7) An investment adviser subject to subrule 50.42(1) that ceases to conduct or discontinues business as an investment adviser shall arrange for and be responsible for the retention of the records required to be retained pursuant to this rule for the applicable retention period. The investment adviser shall notify the administrator in writing prior to ceasing to conduct or discontinuing business as an investment adviser of the exact address where the books and records will be maintained during the retention period.

50.42(8) An investment adviser required to retain records pursuant to this rule may maintain the records in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical code, alphabetical code, or similar designation.

50.42(9) Record maintenance.

a. Pursuant to subrule 50.42(5), the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser in:

(1) Paper or hard-copy form, as those records are kept in their original form; or

(2) Micrographic media, including microfilm, microfiche, or any similar medium; or

(3) Electronic storage media, including any digital storage medium or system, that meet the terms of this subrule.

b. The investment adviser must:

(1) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(2) Provide promptly any of the following that the administrator may request:

1. A legible, true, and complete copy of the record in the medium and format in which it is stored;

2. A legible, true, and complete printout of the record; and

3. Means to access, view, and print the records; and

(3) Separately store, for the time required for preservation of the original record, a duplicate copy of the record in any medium allowed by this subrule.

c. In the case of records created or maintained in electronic storage media, the investment adviser must establish and maintain procedures:

(1) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(2) To limit access to the records to properly authorized personnel and the administrator; and

(3) To reasonably ensure that any reproduction of a non-electronic original record in electronic storage media is complete, true, and legible when retrieved.

50.42(10) Compliance with any substantially similar record-keeping requirements of Rules 17a-3 [17 CFR 240.17a-3] and 17a-4 [17 CFR 240.17a-4] of the Securities Exchange Act of 1934 shall be deemed to be in compliance with this rule.

50.42(11) Every investment adviser that is registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is properly registered in that state and is in compliance with that state’s record-keeping requirements.

50.42(12) For purposes of this rule:

“Advisory representative” means any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee’s duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

1. Any person in a relationship of control with the investment adviser;

2. Any person affiliated with a controlling person; and

3. Any person affiliated with an affiliated person.

“Control” means the power to exercise a controlling influence over the management or policies of a company, unless that power results solely from an official position with the company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control the company.

An investment adviser shall not be deemed to be exercising a discretionary power as to the price at which or the time when a transaction is effected or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

“Investment adviser primarily engaged in a business or businesses other than advising investment advisory clients” means an investment adviser that for each of the most recent three fiscal years or for the period of time since organization, whichever is less, derives on an unconsolidated basis more than 50 percent of total sales and revenues and income (or loss) before income taxes and extraordinary items from busi-

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ness activities other than advising investment advisory clients.

“Investment supervisory services” means continuous advice regarding investment of funds provided to each client on the basis of the individual needs of the client.

“Solicitor” means any person or entity that for compensation acts as an agent of an investment adviser in referring potential clients.

This rule is intended to implement Iowa Code section 502.411(3).

191—50.43(502) Financial reporting requirements for investment advisers.

50.43(1) Every registered investment adviser that has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client shall file with the administrator an audited balance sheet as of the end of the investment adviser’s fiscal year. Each balance sheet filed pursuant to this rule must be:

a. Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

b. Audited by an independent certified public accountant; and

c. Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare the audit, the basis of included securities, and any other explanations required for clarity.

50.43(2) Every registered investment adviser that has discretionary authority over, but not custody of, client funds or securities shall file with the administrator a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser’s fiscal year.

50.43(3) The financial statements required by this rule shall be filed with the administrator within 90 days following the end of the investment adviser’s fiscal year.

50.43(4) Every investment adviser that has its principal place of business in a state other than this state shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state’s financial reporting requirements.

This rule is intended to implement Iowa Code section 502.411(2).

191—50.44(502) Solely incidental services by certain professionals.

50.44(1) General approach.

a. Certain professionals may rely on an exclusion from the definition of “investment adviser” contained in Iowa Code section 502.102(15)“b” for lawyers, accountants, engineers or teachers whose performance of investment advice is solely incidental to the practice of the person’s profession. Whether the exclusion from the definition of “investment adviser” is available to a lawyer, accountant, engineer or teacher providing investment advisory services within the meaning of Iowa Code section 502.102(15)“b” depends upon the relevant facts and circumstances.

b. In general, the administrator will determine whether the investment advisory services provided and the fees charged are solely incidental to the total services provided to the individual client by comparing whether the aggregate of such fees and services is solely incidental to the aggregate of services provided to all clients. In addition, the administrator

will take other relevant factors into consideration in determining the applicability of the exclusion including, but not limited to, whether the firm establishes a separate subsidiary, division, or other business entity to perform advisory services or maintains an investment adviser registration with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940. In this context, the administrator would refer to U.S. Securities and Exchange Commission Release IA-1092 relating to the analogous exclusion in the Investment Advisers Act of 1940 which states that “. . . the exclusion . . . is not available . . . to a lawyer or accountant who holds himself out to the public as providing financial planning, pension consulting, or other financial advisory services. In such a case it would appear that the performance of investment advisory services by the person would not be solely incidental to his practice as a lawyer or accountant.”

50.44(2) General versus specific advice. A lawyer, accountant, engineer or teacher, whether or not holding oneself out to the public as providing financial planning or other financial advisory services, who does not render advice with respect to investing in specific securities, types of securities, or categories of securities need not register as an investment adviser. Registration is not required when the securities advice provided to clients in this state is limited to a general recommendation that the client should be more aggressive or more conservative in securities investments, a general recommendation as to the percentage of the client’s assets that should be in securities, or a general recommendation that the client pursue an income-producing or growth-oriented investment strategy, provided the recommendation does not identify specific securities, types of securities, or categories of securities. For the purpose of this subrule, the phrase “types of securities” means classes of securities in which the issuer is not specifically identified, such as common stock, preferred stock, options, warrants, bonds, and mutual funds, and the phrase “categories of securities” means general areas of securities investments where neither the issuer nor the types of securities are identified such as cyclical securities, automotive industry securities, international securities, and NYSE securities. Asset allocation recommendations, however, generally do include advice on types of securities.

EXAMPLE: An accountant provides clients accounting and financial planning services. No advice with respect to specific securities, types of securities, or categories of securities is provided. The accountant need not register as an investment adviser.

50.44(3) Professional does not hold self out as a financial planner. When the securities advice is provided by a lawyer, accountant, engineer, or teacher who does not hold oneself out to the public as providing financial planning or other financial advisory services, the availability of the exclusion from the definition of “investment adviser” contained in Iowa Code section 502.102(15)“b” for securities advice rendered solely incidental to the profession will depend on those factors set forth in paragraph 50.44(1)“b.”

EXAMPLE A: An accountant who does not hold oneself out to the public as providing financial planning or other financial advisory services provides the client both accounting and financial planning services. The services involve advice with respect to specific securities, types of securities, or categories of securities. Whether the accountant is excluded from the definition of investment adviser depends on those factors set forth in paragraph 50.44(1)“b,” including a comparison of the extent of the securities advisory services provided to any client as contrasted with the accounting services

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provided to that client. The comparison is measured by the compensation paid for each service.

EXAMPLE B: An accountant provides a client financial planning services only. The financial planning services involve advice with respect to specific securities, types of securities, or categories of securities. The accountant is not excluded from the definition of investment adviser and therefore must register as an investment adviser.

50.44(4) Professional holds self out as a financial planner.

a. If the investment advice provided by a lawyer, accountant, engineer, or teacher who holds oneself out to the public as providing financial planning or other financial advisory services is part of the financial plan being provided to a financial planning client, the professional cannot rely on the exclusion from the definition of "investment adviser" contained in Iowa Code section 502.102(15)"b" for investment advice rendered incidentally to the practice of the profession.

EXAMPLE: An accountant who holds oneself out to the public as providing financial planning or other financial advisory services provides the client both accounting and financial planning services. The financial planning services involve advice with respect to specific securities, types of securities, or categories of securities. The accountant is not excluded from the definition of investment adviser no matter how insignificantly the securities advice compares to the other financial planning advice or accounting services rendered.

b. When a lawyer, accountant, engineer, or teacher holding oneself out to the public as providing financial planning or other financial advisory services does not provide advice on specific securities, types of securities, or categories of securities as part of financial planning services but provides such advice in connection with the practice of the profession, in most instances the exclusion from the definition of investment adviser would be unavailable because the professional is holding oneself out as a financial planner or financial adviser. If, however, securities advice is not part of financial planning services and is both limited and isolated, the exclusion may still be available.

EXAMPLE: An accountant who holds oneself out to the public as providing financial planning or other financial advisory services provides clients both accounting and financial planning services. No securities advice is rendered as part of the financial planning services. Clients, on a few occasions, request the accountant's advice on investing in certain limited partnerships. The fees charged to such a client for the advice total only a small percentage of the fees charged to that client for accounting services provided. The accountant is excluded from the definition of investment adviser. The example presented is intentionally narrow in order to illustrate that once the accountant holds oneself out as a financial planner or financial adviser, even if the only securities advice provided for compensation is not part of the financial planning or advisory activities, only limited and isolated securities advice may be provided without registration as an investment adviser.

This rule is intended to implement Iowa Code section 502.102(15)"b."

191—50.45 to 50.49 Reserved.

DIVISION IV

RULES COVERING ALL REGISTERED PERSONS

191—50.50(502) Internet advertising by broker-dealers, investment advisers, broker-dealer agents, investment adviser representatives, and federal covered investment advisers.

50.50(1) Broker-dealers, investment advisers, broker-dealer agents, investment adviser representatives, and federal covered investment advisers who use the Internet, the World Wide Web, or similar proprietary or common carrier electronic systems (collectively described as the "Internet") to disseminate information regarding products and services through communications directed generally to anyone having access to the Internet and transmitted through posting on bulletin boards, displays on home pages or similar methods (hereinafter "Internet communications") will not be considered to be transacting business in Iowa pursuant to Iowa Code section 502.401, 502.402, 502.403, 502.404, or 502.405 based solely on that communication, if:

a. The Internet communication contains a legend clearly stating that:

(1) The broker-dealer, investment adviser, broker-dealer agent, investment adviser representative, or federal covered investment adviser may only transact business in a state if first registered pursuant to or excluded or exempt from the state broker-dealer, investment adviser, broker-dealer agent, or investment adviser representative registration requirements, or federal covered investment adviser notice requirement; and

(2) The broker-dealer, investment adviser, broker-dealer agent, investment adviser representative, or federal covered investment adviser will not effect or attempt to effect transactions in securities or render personalized investment advice for compensation absent compliance with applicable state broker-dealer, investment adviser, broker-dealer agent, or investment adviser representative registration requirements, or federal covered investment adviser notice requirement or applicable exemption or exclusion;

b. The Internet communication contains a mechanism, including but not limited to technical firewalls or other policies and procedures, to ensure that, prior to effecting or attempting to effect transactions with customers in Iowa or prior to direct communication with prospective customers or clients in Iowa, the broker-dealer, investment adviser, broker-dealer agent, or investment adviser representative is first registered in Iowa or, in the case of a federal covered investment adviser, has made a notice filing, or qualifies for an exemption or exclusion from registration requirements;

c. The Internet communication is limited to general information regarding products and services, and the broker-dealer, investment adviser, broker-dealer agent, investment adviser representative, or federal covered investment adviser does not effect or attempt to effect transactions in securities in Iowa or provide personalized investment advice for compensation; and

d. In the case of a broker-dealer agent or investment adviser representative:

(1) The agent's broker-dealer, investment adviser, or federal covered investment adviser affiliation is prominently disclosed within the Internet communication;

(2) The broker-dealer, investment adviser, or federal covered investment adviser with whom the agent or representative is affiliated reviews and approves the content of any Internet communication by the broker-dealer agent or investment adviser representative;

(3) The broker-dealer, investment adviser, or federal covered investment adviser with whom the agent or representative is associated first authorizes the dissemination of information on the particular products and services through the Internet communication; and

(4) The broker-dealer agent or investment adviser representative acts within the scope of the authority granted by the broker-dealer, investment adviser, or federal covered invest-

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ment adviser in the dissemination of information through the Internet communication.

50.50(2) Nothing in this rule shall excuse broker-dealer, investment adviser, broker-dealer agent, investment adviser representative, and federal covered investment adviser compliance with applicable securities registration, notice filing, antifraud or related provisions.

50.50(3) Nothing in this rule shall be construed to affect the activities of any broker-dealer, investment adviser, broker-dealer agent, investment adviser representative, or federal covered investment adviser engaged in business in Iowa that is not subject to the jurisdiction of the administrator as a result of NSMIA.

This rule is intended to implement Iowa Code sections 502.401 to 502.405.

191—50.51(502) Consent to service.

50.51(1) Every consent appointing the administrator or successor to be an attorney to receive service of any lawful process as required by Iowa Code section 502.611 shall be properly notarized and shall contain, at a minimum, the following information:

- a. Name of the applicant;
- b. Address of the applicant;
- c. A statement that the consent is irrevocable;
- d. A statement that the consent is valid as to any non-criminal suit, action or proceeding against the applicant or the successor, executor or administrator of the applicant which arises out of the Act; and
- e. A statement that the applicant stipulates and agrees that service upon the administrator shall have the same validity as if served personally upon the applicant.

50.51(2) A form of consent to service of process provided by the administrator, a Form U-2, or a consent to service of process contained in any other form authorized or required to be filed by these rules shall satisfy subrule 50.51(1).

50.51(3) A broker-dealer, investment adviser, agent, investment adviser representative, federal covered investment adviser, or issuer may incorporate by reference any consent to service of process required to be filed pursuant to Iowa Code sections 502.302(1)“a,” 502.302(3), 502.303(2), 502.304(2), 502.406(1) and 502.611, or the administrative rules implementing these sections.

This rule is intended to implement Iowa Code section 502.611.

191—50.52(252J) Denial, suspension or revocation of agent or investment adviser representative registration for failure to pay child support.

50.52(1) Upon receipt of a certificate of noncompliance from the CSRU for default on debts owed to or collected by the CSRU, the administrator shall issue a notice to a securities agent or investment adviser representative applicant or registrant that any pending application for registration will be denied or any current registration will be suspended or revoked 30 days after the date of the notice. The notice shall be served by restricted certified mail, return receipt requested, or by personal service as provided by the Iowa Rules of Civil Procedure, unless the applicant or registrant accepts service personally or through authorized counsel.

50.52(2) The administrator shall provide the applicant or registrant with a copy of the certificate of noncompliance and shall provide a notice advising the applicant that:

- a. The administrator intends to deny an application or to suspend or revoke a registration due to receipt of a certificate of noncompliance from the CSRU;

- b. The applicant or registrant must contact the CSRU to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

- c. Unless the CSRU furnishes a withdrawal of a certificate of noncompliance to the administrator within 30 days of issuance of the notice, the application shall be denied or the registration shall be suspended or revoked;

- d. The applicant or registrant does not have a right to a hearing before the administrator, but may, pursuant to Iowa Code section 252J.9, request a court hearing within 30 days of provision of notice by the administrator; and

- e. The filing of an application for hearing with the district court will stay the proceedings of the division.

50.52(3) The filing of an application for hearing with the district court under Iowa Code section 252J.9 automatically stays action of the administrator until the administrator is notified of the resolution of the application.

50.52(4) If the administrator does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice that an application for district court hearing has been filed, the administrator shall deny, suspend or revoke the application or registration 30 days after the notice prescribed in subrule 50.52(2) is issued.

50.52(5) Upon receiving a withdrawal of the certificate of noncompliance from the CSRU, the administrator shall immediately halt action to deny an application or suspend or revoke a registration. The applicant or registrant shall be notified that action has been halted. If the application has already been denied or if a registration has already been suspended or revoked, the applicant or former registrant shall reapply for registration. The application shall be granted if the individual is otherwise in compliance with applicable laws, rules, regulations and orders.

50.52(6) All application fees must be paid by the applicant before a registration will be issued after the administrator has denied, suspended, or revoked a registration pursuant to Iowa Code chapter 252J.

50.52(7) Notwithstanding any statutory confidentiality provision, the administrator may share information with the CSRU for the sole purpose of identifying applicants or registrants subject to enforcement pursuant to Iowa Code chapter 252J.

This rule is intended to implement Iowa Code chapter 252J.

191—50.53(261) Denial, suspension or revocation of agent or investment adviser representative registration for failure to pay debts owed to or collected by the college student aid commission.

50.53(1) Upon receipt of a certificate of noncompliance from the college student aid commission for defaults on debts owed to or collected by the commission, the administrator shall issue a notice to a securities agent or investment adviser representative applicant or registrant that any pending application for registration or any current registration will be denied, suspended or revoked 30 days after the date of the notice. The notice shall be served by restricted certified mail, return receipt requested, or by personal service as provided by the Iowa Rules of Civil Procedure, unless the applicant or registrant accepts service personally or through authorized counsel.

50.53(2) The administrator shall provide the applicant or registrant with a copy of the certificate of noncompliance and shall provide a notice advising the applicant or registrant that:

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a. The administrator intends to deny an application or suspend or revoke a registration due to receipt of a certificate of noncompliance from the college student aid commission;

b. The applicant or registrant must contact the college student aid commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

c. Unless the college student aid commission furnishes a withdrawal of a certificate of noncompliance to the administrator within 30 days of issuance of the notice, the application shall be denied or the registration shall be suspended or revoked;

d. The applicant or registrant does not have a right to a hearing before the administrator but may, pursuant to Iowa Code section 261.126, request a district court hearing within 30 days of provision of notice by the administrator; and

e. The filing of an application for hearing with the district court will stay the proceedings of the division.

50.53(3) The filing of an application for hearing with the district court under Iowa Code section 261.127 automatically stays action of the administrator until the administrator is notified of the resolution of the application.

50.53(4) If the administrator does not receive a withdrawal of the certificate of noncompliance from the college student aid commission or a notice that an application for district court hearing has been filed, the administrator shall deny the application or suspend or revoke the registration 30 days after the notice prescribed in subrule 50.53(2) is issued.

50.53(5) If the administrator receives a withdrawal of the certificate of noncompliance from the college student aid commission, the administrator shall immediately halt action to deny, suspend or revoke an application or registration. The applicant or registrant shall be notified that action has been halted. If the application or registration has already been denied, suspended or revoked, the applicant or former registrant shall reapply for registration. The application shall be granted if the individual is otherwise in compliance with applicable laws, rules, regulations and orders.

50.53(6) All application fees must be paid by the applicant before a registration will be issued after the administrator has denied, suspended, or revoked a registration pursuant to Iowa Code section 261.126.

50.53(7) Notwithstanding any statutory confidentiality provision, the administrator may share information with the CSRU for the sole purpose of identifying applicants or registrants subject to enforcement pursuant to Iowa Code section 261.126.

This rule is intended to implement Iowa Code section 261.126.

191—50.54 to 50.59 Reserved.

DIVISION V

REGISTRATION OF SECURITIES

191—50.60(502) Notice filings for investment company securities offerings.

50.60(1) Except as provided in subrule 50.60(5), no investment company that is registered under the Investment Company Act of 1940 or that has a currently filed registration statement under the Securities Act of 1933 is required to file with the administrator, either prior to the initial offer or after the initial offer in Iowa of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, a copy of any document which is part of a federal registration statement filed with the SEC or is part of an amendment to such federal registration statement.

50.60(2) Prior to the initial offer of a federal covered security in Iowa, an investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file with the administrator:

a. A notice of filing on Form NF;

b. A filing fee; and

c. A consent to service of process.

50.60(3) A notice of filing may be renewed prior to expiration by filing the following with the administrator:

a. A notice of filing on Form NF; and

b. Payment of the applicable fee under Iowa Code section 502.302(1)“a.”

50.60(4) Amendments to notice filings are made on Form NF and are effective upon receipt by the administrator. Withdrawal or termination of a notice filing is made by filing Form NF or providing the administrator with notice of the withdrawal or termination in a similar format. An amendment, withdrawal, or termination is effective upon receipt by the administrator of the required notice and all fees required by Iowa Code section 502.302(1)“a.”

50.60(5) An investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file, upon written request of the administrator and within the time period set forth in the request, a copy of any document identified in the request that is part of the federal registration statement filed with the SEC or part of an amendment to such federal registration statement.

50.60(6) An investment company that makes a notice filing under subrule 50.60(2) and that pays an initial \$250 filing fee under Iowa Code section 502.302(1)“a” shall pay an additional \$1,250 filing fee within 90 days after the notice filing’s annual renewal date, or shall file on Form NF an annual or periodic report of the value of the federal covered securities offered or sold in Iowa, together with a filing fee of one-tenth of 1 percent of the amount of securities sold in excess of \$250,000.

This rule is intended to implement Iowa Code section 502.302(1).

191—50.61(502) Registration of small corporate offerings.

50.61(1) Form U-7 may be obtained by contacting the Iowa Securities and Regulated Industries Bureau, 340 East Maple Street, Des Moines, Iowa 50319-0066; via E-mail at iowa.sec.@iid.state.ia.us; or from the division Web site at <http://www.iid.state.ia.us/division/securities>. Form U-7 has been developed under the Small Business Investment Incentive Act of 1980 which prescribes state and federal cooperation in furthering the policies of the Act: diminishing the burden of raising investment capital and minimizing interference with the business of capital formation.

50.61(2) To be eligible to use Form U-7, the issuer shall comply with each of the following requirements:

a. The issuer shall:

(1) Be a corporation or limited liability company organized under the laws of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia and have its principal place of business in one of the foregoing;

(2) Not be subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934;

(3) Not be an investment company registered or required to be registered under the Investment Company Act of 1940;

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(4) Not be engaged in or propose to be engaged in petroleum exploration and production, mining, or other extractive industries;

(5) Not be a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person; and

(6) Not be disqualified under subrule 50.61(3).

b. The offering price for common stock or common ownership interests (hereinafter, collectively referred to as "common stock"), the exercise price for options, warrants, or rights to common stock, or the conversion price for securities convertible into common stock must be greater than or equal to U.S. \$1 per share or unit of interest. The issuer must agree with the administrator that the issuer will not split its common stock, or declare a stock dividend for two years after the effective date of the registration if such action has the effect of lowering the price below U.S. \$1.

c. Commissions, fees or other remuneration for soliciting any prospective purchaser in connection with the offering in the state are only paid to persons who, if required to be registered or licensed, the issuer believes, and has reason to believe, are appropriately registered or licensed in the state.

d. Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. If appropriate, a reconciliation note should be provided. If the company has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants, provided, however, that if each of the following four conditions are met, such financial statements in lieu of being audited may be reviewed by independent certified public accountants in accordance with the Accounting and Review Service Standards promulgated by the American Institute of Certified Public Accountants or the Canadian equivalent:

(1) The company shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, "cold call" telephone solicitation, or any other method directed toward the public;

(2) The company has not been previously required under federal, state, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities;

(3) The aggregate amount of all previous sales of securities by the company (exclusive of debt financing with banks and similar commercial lenders) shall not exceed U.S. \$1 million; and

(4) If the offering is a Rule 504 offering, the amount of the present offering does not exceed U.S. \$1 million.

e. The offering shall be made in compliance with Rule 504 of Regulation D, Regulation A, or Section 3(a)(11) of the Securities Act of 1933.

f. The issuer shall comply with the General Instructions to SCOR in Part I of the NASAA SCOR Issuer's Manual.

50.61(3) Disqualifications.

a. Unless the administrator determines that it is not necessary under the circumstances that the disqualification under this subrule be applied, application for registration referred to in subrule 50.61(2) shall be denied if the issuer, any of its officers, directors, stockholders who own 10 percent or greater of the issuer, promoters, or selling agents, or any officer, director or partner of any selling agent:

(1) Has filed a registration statement which is subject to a currently effective stop order entered pursuant to any state or provincial securities laws within five years prior to the filing of the registration statement;

(2) Has been convicted, within five years prior to the filing of the registration statement, of any felony or misdemeanor in connection with the offer, purchase, or sale of securities, or of any felony involving fraud or deceit including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) Is currently subject to any state or provincial administrative enforcement order or judgment entered by that state's or province's securities administrator within five years prior to the filing of the registration statement;

(4) Is subject to any state or provincial administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found, and the order or judgment was entered within five years prior to the filing of the current application for registration;

(5) Is subject to any state or provincial administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities;

(6) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction that temporarily, preliminarily, or permanently restrains or enjoins such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, or involving the making of any false filing with the state, entered within five years prior to the filing of the registration statement; or

(7) Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking or, within the past five years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent or investment adviser or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a foreign jurisdiction suspending or expelling such person from membership in such exchange or self-regulatory organization.

b. The prohibitions of subparagraphs (1) to (3) and (5) of paragraph 50.61(3)"a" shall not apply if the person subject to the disqualification is duly registered or licensed to conduct securities-related business in the state or province in which the administrative order or judgment was entered against such person, or if the broker-dealer employing such person is registered or licensed in the state and the Form BD filed in the state discloses the order, conviction, judgment or decree relating to such person.

c. No person disqualified shall act in any capacity other than the capacity for which the person is registered or licensed.

d. Disqualification is automatically waived if the jurisdiction which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that registration be denied.

This rule is intended to implement Iowa Code section 502.304.

191—50.62(502) Streamlined registration for certain equity securities.

50.62(1) An equity security meeting the conditions of this rule may be registered pursuant to Iowa Code section 502.303 if all of the following conditions are satisfied, unless

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waived by the administrator, and except as provided by subrule 50.62(2):

a. The issuer must be a corporation organized under the laws of one of the states or possessions of the United States;

b. The offering price for common stock, the exercise price if the securities are options, warrants, or rights for common stock, or the conversion price if the securities are convertible into common stock must be equal to or greater than \$5 per share;

c. The issuer of the security has (or will have upon completion of the offering) total assets exceeding \$10 million;

d. The security will be offered under a firm underwriting;

e. The security is the subject of a registration statement filed on Form S-1 or Form SB-2 with the SEC; and

f. The registration statement filed with the administrator contains audited financial statements for each of the two most recently concluded fiscal years of its operations, and the audit for the most recent fiscal year does not include an auditor's report expressing substantial doubt about the issuer's ability to continue as a going concern.

50.62(2) Registration pursuant to this rule is not available if:

a. The issuer is a blind pool or other offering for which the specific business or properties cannot now be described; or

b. The issuer, a principal officer or a principal shareholder thereof, or a broker-dealer offering or selling the securities:

(1) Is subject to statutory disqualification, as defined by subparagraphs (A), (B), (C), or (D) of Section 3(a)(39) of the Securities Exchange Act of 1934;

(2) Has been convicted of any felony under federal or state law regarding the offer, purchase, or sale of any security, or any felony under federal or state law involving fraud or deceit in the ten years prior to the date of the offering;

(3) Is currently named in and subject to any order, judgment, or decree of any court of competent jurisdiction acting under federal or state law temporarily or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, purchase, or sale of a security;

(4) Has filed a registration statement which is currently the subject of a stop order entered pursuant to any state's securities law within five years prior to the offering;

(5) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the offering, or is currently subject to any state's administrative enforcement order or judgment in which fraud or deceit was found within five years prior to the offering; or

(6) Is currently subject to any state's administrative order or judgment prohibiting, denying, or revoking the use of any exemption from registration regarding the offer, sale, or purchase of any security, or involving the making of a false filing with the state within five years of the offering.

50.62(3) The unavailability of streamlined registration pursuant to this rule as a result of the disqualification of a party pursuant to paragraph 50.62(2)"b" may be waived by the administrator if the order, conviction, judgment or decree relating to the party's disqualification was disclosed in writing to the administrator and the administrator determines, based upon good cause shown, that the public interest no longer requires the party to be disqualified.

50.62(4) The administrator shall review a filing made pursuant to this rule within ten business days of receipt. Registration shall be effective upon review, or earlier if the administrator permits a shorter time frame, or comments explaining noncompliance will be promptly sent to the applicant.

50.62(5) The administrator shall not deny the effectiveness of a registration made pursuant to this rule based on subrule 50.66(13) or 50.66(15), or based upon the financial condition of the issuer under Iowa Code section 502.306(1)"h."

50.62(6) The following securities shall be the subject of a lockup with the managing underwriter for no less than 180 days, or a longer period if requested by the managing underwriter of the offering:

a. A security issued to a promoter within three years immediately preceding the offering or to be issued to a promoter for consideration substantially less than the offering price; or

b. A security issued to a promoter for a consideration other than cash, unless the registrant demonstrates that the value of the noncash consideration received in exchange for the security is substantially equal to the offering price for the security. A copy of the lockup agreement shall be filed with the administrator.

50.62(7) For purposes of this rule, a "promoter" is:

a. A person who, acting alone or in concert with one or more other persons, founds or organizes the business or enterprise of the issuer;

b. An officer or director owning securities of the issuer, or a person who owns, beneficially or of record, 10 percent or more of a class of securities of the issuer if the officer, director, or person acquires any of those securities in a non-arm's-length transaction within the three years prior to the filing of the registration statement pursuant to this rule; or

c. A member of the immediate family of a person described in paragraph "a" or "b" of subrule 50.62(7) if the family member receives securities of the issuer from that person in a non-arm's-length transaction within the three years prior to the filing of the registration statement pursuant to this rule.

This rule is intended to implement Iowa Code section 502.303.

191—50.63(502) Registration of multijurisdictional offerings.

50.63(1) Pursuant to Iowa Code section 502.303(2), offerings filed on SEC Form F-7, Form F-8, Form F-9 or Form F-10 shall become effective the later of three days after filing, or the effective date with the SEC.

50.63(2) Pursuant to Iowa Code section 502.605(3), financial statements and financial information for offerings filed under subrule 50.63(1) shall comply with instructions provided with SEC Form F-7, Form F-8, Form F-9 or Form F-10.

50.63(3) In a Rights Offering, SEC Form F-7 will be accepted in lieu of any state form required to claim an exemption for any transaction pursuant to an offer to existing securities holders.

50.63(4) After the SEC has declared effective an issuer's Form F-8, Form F-9 or Form F-10 registration statement, a nonissuer transaction in any class of the issuer's securities is exempt from registration, whether or not the transaction is effected through a broker-dealer.

This rule is intended to implement Iowa Code sections 502.303(2) and 502.605(3).

191—50.64(502) Form of financial statements.

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50.64(1) Except as otherwise provided by this rule, the balance sheet, statement of cash flows, and statement of income required by Iowa Code section 502.304(2)“q” shall be certified by an independent certified public accountant who shall also issue an opinion on the financial statements. The audit and opinion requirements may be waived by the administrator upon written application and for good cause shown.

50.64(2) The balance sheet, statement of cash flows, and statement of income provided for compliance with the four-month requirement of Iowa Code section 502.304(2)“q” need not be certified in accordance with subrule 50.64(1) if such certification was submitted for the last fiscal year prior to the application and the date of the financial statements subject to certification is not more than 12 months prior to the registration date.

This rule is intended to implement Iowa Code section 502.304.

191—50.65(502) Reports contingent to registration by qualification. In the administrator’s discretion, a registration by qualification statement filed pursuant to Iowa Code section 502.304 may not become effective until one or both of the following are filed:

1. When the value, after its purchase, of certain property does or will constitute a material portion of the assets of the issuer or any other person whose financial condition is significant to the registration, the report of any appraiser or engineer; and

2. When the ownership of any such property is material to the registration, a signed opinion of legal counsel regarding ownership of any property.

This rule is intended to implement Iowa Code section 502.304(2A).

191—50.66(502) NASAA guidelines and statements of policy.

50.66(1) Overview of national models. In cooperation with the securities administrators of other states and with a view to effectuating a policy to achieve maximum uniformity of regulations regarding the registration of securities, registration and business practices of securities industry and investment advisory registrants, and enforcement of antifraud laws, and in the interest of streamlining the rules contained in Chapter 50, the administrator incorporates by reference the following guidelines and statements of policy promulgated by NASAA. This rule does not include any later amendments or editions of the incorporated matter.

The official reporter for NASAA statements of policy is the NASAA Reports volume printed by CCH. A copy of the CCH NASAA Reports is available to the public during regular business hours at the office of the administrator. Upon request, and for a reasonable fee not to exceed the cost of providing the service, the administrator will furnish to any person photostatic or other copies of the following NASAA guidelines and statements of policy. The office of the administrator is located at and requests may be mailed to the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066; via E-mail at iowa.sec@iid.state.ia.us; or from the division Web site at <http://www.iid.state.ia.us/division/securities>. NASAA statements of policy may also generally be found at www.nasaa.org.

50.66(2) Registration of oil and gas programs. All oil and gas programs filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Oil and Gas Programs, which were initially adopted by the NASAA membership on September 22, 1976, as amended on

October 12, 1977; October 31, 1979; April 23, 1983; July 1, 1984; September 3, 1987; September 14, 1989; and October 24, 1991; and published in CCH NASAA Reports at paragraph 2621.

50.66(3) Uniform disclosure guidelines—legend. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Cover Legends as adopted by the NASAA membership on October 2, 2004, and published in CCH NASAA Reports at paragraph 1351.

50.66(4) Omnibus guidelines. All registrations of limited or general partnerships, joint ventures, unincorporated associations, or similar organizations, other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from and interest in the assets to be acquired by such entity for which statements of policy have not been adopted by the NASAA membership, filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Omnibus Guidelines as adopted by the NASAA membership on March 29, 1992, and published in CCH NASAA Reports at paragraph 2321.

50.66(5) Registration of commodity pool programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Commodity Pool Programs as adopted by the NASAA membership on September 21, 1983, effective January 1, 1984, amended August 30, 1990, and published in CCH NASAA Reports at paragraph 1201.

50.66(6) Registration of equipment programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Equipment Programs as adopted by the NASAA membership on November 20, 1986, effective January 1, 1987, amended April 22, 1988, and October 24, 1991, and published in CCH NASAA Reports at paragraph 1601.

50.66(7) Registration of real estate programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Real Estate Programs as adopted by the NASAA membership on September 29, 1993, and published in CCH NASAA Reports at paragraph 3601.

50.66(8) Registration of mortgage programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Mortgage Programs as adopted by the NASAA membership on September 10, 1996, and published in CCH NASAA Reports, paragraph 701.

50.66(9) Real estate investment trusts. The registration of a real estate investment trust may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Real Estate Investment Trusts as revised and adopted by the NASAA membership on September 29, 1993, and published in CCH NASAA Reports at paragraph 3401.

50.66(10) Corporate securities definitions. For securities registration purposes, the administrator adopts the various definitions set out in the NASAA Statement of Policy Regarding Corporate Securities Definitions as adopted by the NASAA membership on April 27, 1997, and as amended

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September 28, 1999, and published in CCH NASAA Reports at paragraph 3812.

50.66(11) Impoundment of proceeds. When an impoundment of proceeds is necessary, it shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding the Impoundment of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 2151.

50.66(12) Loans and other material affiliated transactions. When there have been or will be loans or other material affiliated transactions, the transactions shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Loans and Other Material Affiliated Transactions as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA Reports at paragraph 374.

50.66(13) Options and warrants. The issuance of options and warrants may be allowed by the administrator if the issuance is in substantial compliance, as determined by the administrator, with the NASAA Statement of Policy Regarding Options and Warrants as amended by the NASAA membership on November 17, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 2801.

50.66(14) Preferred stock. A public offering of preferred stock may be allowed by the administrator if the offering substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Preferred Stock as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA Reports at paragraph 3001.

50.66(15) Promotional shares. The registration of a security may include promotional shares if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Promotional Shares as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 3201.

50.66(16) Risk disclosure. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Risk Disclosure as adopted by the NASAA membership on September 8, 2001, and published in CCH NASAA Reports at paragraph 1362.

50.66(17) Unsound financial condition. An issuer may be deemed to be in an unsound financial condition if it substantially meets, as determined by the administrator, the conditions provided within the NASAA Statement of Policy Regarding Unsound Financial Condition as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 3821.

50.66(18) Use of proceeds. The registration of a security may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Specificity in Use of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and published in CCH NASAA Reports at paragraph 3831.

50.66(19) Registration of asset-backed securities. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Asset-Backed Securities as adopted by the NASAA membership on October 25, 1995, and published in CCH NASAA Reports at paragraph 501.

This rule is intended to implement Iowa Code sections 502.305(6) and 502.306(1).

191—50.67(502) Amendments to registration by qualification. A registration statement registered by qualification pursuant to Iowa Code section 502.304 is presumed to be reasonably current for purposes of Iowa Code section 502.305(9) if:

1. The issuer notifies the administrator in writing of any change in a material fact contained in the registration statement no later than 7 days after the issuer learns of the change; and

2. The issuer notifies the administrator in writing of the results of an annual audit or semiannual report no later than 14 days after receiving such audit results or semiannual report unless the results constitute a change in material fact subject to the provisions of paragraph "1."

This rule is intended to implement Iowa Code section 502.305(9).

191—50.68(502) Delivery of prospectus. As a condition to registration by qualification pursuant to Iowa Code section 502.304, a prospectus containing the information required by Iowa Code section 502.304(2) shall be delivered to each person to which an offer is made, before or concurrently with the earliest of the following events:

1. The first offer made in a record to each person otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is made, or by any underwriter or broker-dealer offering part of an unsold allotment or subscription taken as a participant in the distribution;

2. The confirmation of any sale made by or for the account of the person;

3. The payment pursuant to any such sale; or

4. The delivery of the security pursuant to any such sale.

This rule is intended to implement Iowa Code section 502.304(5).

191—50.69(502) Advertisements.

50.69(1) The following advertising regarding the offer, sale or purchase of any security in Iowa is exempt from the filing requirements of Iowa Code section 502.504:

a. A prospectus published or circulated regarding an offering of a security registered pursuant to Iowa Code section 502.303 or 502.304 that is not yet effective, or an offering of a security for which a notice or application for exemption, including the prospectus, has been filed pursuant to Iowa Code section 502.201 or 502.202;

b. Advertising which provides information regarding only from whom a prospectus may be obtained, a description of the security offered for sale, the price of the security, or the names of broker-dealers having an interest in its sale;

c. Advertising published by a registered broker-dealer or investment adviser concerning the qualifications or business of the registrant, the general advisability of investing in securities or market quotations or other factual information relating to particular securities or issuers, provided the advertising contains no recommendation concerning the purchase or sale of a particular security;

d. Unless specifically requested by the administrator, advertising filed with the NASD or that satisfies the requirements of Securities Act of 1933 Rules 230.135a, 230.156, or 230.482; and

e. Any other advertising the administrator may specify by order.

50.69(2) All advertising required to be filed with the administrator by a registrant shall be filed prior to the date of

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use. All advertising required to be filed by a person other than a registrant shall be filed at least ten days prior to the date of use, or a shorter period if provided by the administrator. The advertising shall not be used in Iowa until the registrant receives approval from the administrator.

50.69(3) Sales literature of an investment company registered pursuant to the Investment Company Act of 1940 which is materially misleading within the meaning of rules or a statement of policy of the SEC constitutes false or misleading advertising as prohibited by Iowa Code section 502.504(2A).

50.69(4) False or misleading advertisements prohibited by Iowa Code section 502.504(2A) include, but are not limited to, the following:

a. Comparison charts or graphs showing a distorted, unfair, or unrealistic relationship between the issuer's past performance, progress, or success and that of another company, business, industry, or investment media;

b. Layout or format omitting information necessary to make the entire advertisement a fair and truthful representation;

c. Statements or representations without accreditation predicting future profit, success, appreciation, or performance, or otherwise addressing the merit or potential of the securities;

d. Generalizations, generalized conclusions, opinions, representations, and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation;

e. Sales kits or film clips, displays or exposures, which alone or by sequence and progressive compilation present a misleading impression of guaranteed or exaggerated potential, profit, safety, or return;

f. Distribution of any nonfactual or inaccurate data or material by words, pictures, charts, or graphs, or otherwise based upon conjectural, unfounded, extravagant, or flamboyant claims, assertions, or predictions, or upon excessive optimism; and

g. Any package or bonus deal, prize, gimmick, or similar inducement regarding the offer or sale of a security that is combined with or dependent upon the sale of some other product, contract, or service unless the combination has been fully disclosed and specifically described and identified in the advertisement.

50.69(5) Any business card or other advertisement containing the name of an agent shall:

a. Clearly designate the agent as a securities agent or registered representative of the broker-dealer, as applicable, and indicate clearly that the broker-dealer is a broker-dealer;

b. Contain no advertising other than agent name, office address, broker-dealer name, and broker-dealer logo or trademark on the business cards;

c. Provide the office address and telephone number of the location where the agent conducts securities business; and

d. Clearly state the business of that entity and the relationship of the agent to that entity if the name, logo or trademark of any business entity other than that of the broker-dealer appears on the business card or in an advertisement.

50.69(6) A firm employing a sales agent who is offering securities on its behalf is responsible for ensuring that the name of the broker-dealer is displayed on the agent's business cards as prominently as the individual's name.

50.69(7) For the purpose of this rule, "advertisement" means any written or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, or other electronic communication media, published regarding the offer, sale, or purchase of a security.

This rule is intended to implement Iowa Code section 502.504.

191—50.70 to 50.79 Reserved.

DIVISION VI
EXEMPTIONS

191—50.80(502) Uniform limited offering exemption.

50.80(1) This rule is the NASAA Uniform Limited Offering Exemption as adopted in September 1983, with amendments adopted through April 29, 1989, without any of the footnotes and may be cited as the "Uniform Limited Offering Exemption."

a. Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of Iowa Code chapter 502 and these rules.

b. In view of the objective of this rule and the purposes and policies underlying Iowa Code chapter 502, the exemption is not available to any issuer for any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

c. Nothing in this rule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, "know your customer" standards, or any other requirements of law otherwise applicable to such registered persons.

50.80(2) Under the authority delegated to the administrator to promulgate rules by Iowa Code sections 502.203 and 502.605(1), the following transaction is exempt from the registration provisions of the Act:

a. Any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D, Rule 230.505, including any offer or sale made exempt by Rule 508(a), as made effective in Release No. 33-6389 and as amended by Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, and which satisfies all of the following:

(1) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in Iowa unless the person is registered under Iowa Code section 502.406 or is exempt from registration as a broker-dealer by Iowa Code section 502.401(2).

(2) It is a defense to a violation of this subrule if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that the person receiving a commission, fee, or other remuneration was not appropriately registered in Iowa.

b. No exemption under this rule is available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262(a), (b), or (c):

(1) Has filed a registration statement subject to a currently effective registration stop order entered under any state's securities law within five years prior to filing the notice required under this exemption;

(2) Has been convicted, within five years prior to filing the notice required under this exemption, of any felony or misdemeanor regarding the offer, purchase or sale of any security or any felony involving fraud or deceit including, but

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not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to filing the notice required under this exemption, or is currently subject to any state's administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to filing the notice required under this exemption;

(4) Is currently subject to any state administrative enforcement order or judgment prohibiting, denying, or revoking the use of any exemption from registration regarding the offer, purchase or sale of securities; or

(5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or permanently restraining or enjoining the party from engaging in or continuing any conduct or practice regarding the purchase or sale of any security, or involving the making of any false filing with the state entered within five years prior to filing the notice required under this exemption.

(6) The disqualification of a person under paragraph 50.80(2)"b" may be waived by the administrator if the order, conviction, judgment or decree relating to the person's disqualification has been disclosed in writing to the administrator and the administrator has determined, for good cause shown, that the public interest no longer requires the person to be disqualified.

(7) It is a defense to a violation of this subrule if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that a disqualification under this subrule existed.

c. The issuer shall file with the administrator a notice on Form D (17 CFR 239.500) not later than 15 days following the date of the first sale in Iowa. This notice shall be accompanied by:

(1) A copy of any written information furnished to investors;

(2) A Form U-2 consent to service of process; and

(3) A \$100 filing fee.

d. Filing occurs on the earlier of:

(1) The date the notice is received by the administrator; or

(2) The date the documents are mailed with the United States Postal Service by registered or certified mail addressed to the administrator at the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066.

e. In all sales to nonaccredited investors in Iowa, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that one of the following conditions is satisfied:

(1) The investment is suitable for the purchaser based upon facts, if any, disclosed by the purchaser regarding the purchaser's other security holdings, financial situation and needs. For this condition only, it is presumed that if the investment does not exceed 10 percent of the investor's net worth, it is suitable.

(2) The purchaser, either alone or with a purchaser's representative, has such knowledge and experience in financial and business matters that the purchaser is, or they are, capable of evaluating the merits and risks of the prospective investment.

50.80(3) The failure to comply with a term, condition or requirement of subparagraph 50.80(2)"a"(1), paragraph 50.80(2)"c" or paragraph 50.80(2)"e" will not result in loss of the exemption from the requirements of Iowa Code section 502.301 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

a. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

b. The failure to comply was insignificant regarding the offering as a whole; and

c. A good-faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subparagraph 50.80(2)"a"(1), paragraph 50.80(2)"c" and paragraph 50.80(2)"e."

50.80(4) Where an exemption is established only through reliance upon subrule 50.80(3), the failure to comply is actionable under Iowa Code sections 502.603 and 502.604.

50.80(5) Transactions exempt under this rule may not be combined with offers and sales exempt under any other rule or provision of the Act. However, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

50.80(6) The administrator may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

This rule is intended to implement Iowa Code section 502.203.

191—50.81(502) Notice filings for Rule 506 offerings.

50.81(1) An issuer offering a security that is a covered security pursuant to Section 18(b)(4)(D) of the Securities Act of 1933 shall submit no later than 15 days after the first sale of such federal covered security in Iowa:

a. A notice on Form D, including the Appendix;

b. A consent to service of process on Form U-2; and

c. A \$100 filing fee, or a \$250 fee for any late filing.

50.81(2) "SEC Form D," for the purposes of this rule, means the document, as adopted by the SEC and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled "FORM D: Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

This rule is intended to implement Iowa Code section 502.302(3).

191—50.82(502) Notice filings for agricultural cooperative associations.

50.82(1) An agricultural cooperative association issuing notes or other evidence of indebtedness shall notify the administrator in writing 30 days before the security is initially sold. Notification shall include:

a. The name of the issuer, the date of organization of the issuer, and the name of a contact person.

b. A description of the class of persons to whom the offer of securities will be made. If the offering is being made to certain persons or within a specified area, a description of such offerees or area shall be included.

c. A description of the type of security to be offered which includes information regarding interest and interest payment schedules, default, redemption, reinvestment, and other facts regarding the rights of holders that the issuer deems material to the offering.

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d. Financial statements of the agricultural cooperative association including a balance sheet as of the end of its most recent fiscal year, prepared under generally accepted accounting principles and accompanied by an independent auditor's report and any other audited financial statements of the association that are available. However, if the filing by the agricultural cooperative association is made within 90 days of the end of its most recent fiscal year and current audited financial statements are not yet available, the filing may consist of an audited balance sheet and other available audited financial statements for the previous fiscal year, prepared under generally accepted accounting principles and accompanied by an independent auditor's report. The agricultural cooperative association shall file an audited balance sheet and any other available audited financial statements for the most recent fiscal year end as soon as they become available, but in no event later than 90 days after the end of its fiscal year.

50.82(2) If, after the anniversary date of its initial notice filing, an agricultural cooperative association continues to issue notes or other evidence of indebtedness under its initial notice filing in order to maintain the exemption, the agricultural cooperative association shall on an annual basis file with the administrator an audited balance sheet and any other audited financial statements within 30 days of the anniversary of its initial notice filing. An agricultural cooperative association making its initial filing based upon a previous year's audited financial statements because of the unavailability of current audited financial statements shall consider its anniversary date to be the date on which the cooperative filed the audited financial statements for the most recent fiscal year. An agricultural cooperative association not issuing notes or other evidence of indebtedness after an anniversary date of its initial filing is not required to make any further filing of financial information as a condition of qualifying for the exemption from registration.

50.82(3) Form 1CP may be used to make the filing required by subrule 50.82(1). Form 1CP may be obtained by contacting the administrator at the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066; or via E-mail at iowa.sec@iid.state.ia.us.

This rule is intended to implement Iowa Code section 502.201(8B)“b.”

191—50.83(502) Unsolicited order exemption.

50.83(1) Any unregistered broker-dealer effecting a transaction under an unsolicited order or offer to buy and claiming an exemption from registration based solely upon Iowa Code section 502.202(6) shall obtain acknowledgment from the customer on or before the settlement date of the transaction that the transaction is unsolicited.

50.83(2) The acknowledgment shall take one of the following forms:

a. A confirmation statement, as required pursuant to subrule 50.83(1), displaying in bold print on the face of the statement the words “Unsolicited Order, Notify Immediately if Otherwise”; or

b. A signed statement from the customer acknowledging that the order was unsolicited and containing the name of the customer, the name of the securities involved, the number of securities involved in the transaction, the purchase price of the securities, the transaction date, and the total dollar amount, including commissions paid, of the transaction.

50.83(3) The customer will be presumed to have acknowledged that the transaction was unsolicited if the customer does not indicate otherwise on or before the settlement date.

50.83(4) A broker-dealer shall notify the administrator in writing that it is executing unsolicited orders in a security when both of the following conditions are met:

a. More than six unsolicited orders or offers to buy such security are received during any three consecutive business days; and

b. The broker-dealer is relying solely upon the exemption provided by Iowa Code section 502.202(6).

This rule is intended to implement Iowa Code section 502.202(6).

191—50.84(502) Solicitation of interest exemption.

50.84(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from registration pursuant to Iowa Code section 502.301 if:

a. The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries, and is not a blind pool offering or other offering for which the specific business or properties cannot now be described.

b. The offerer intends to register the security in Iowa and conduct its offering pursuant to either Regulation A or Rule 504 of Regulation D, as promulgated by the SEC.

c. The offerer files with the administrator a SOIF along with any other materials to be used to conduct solicitations of interest including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published no less than ten business days prior to the initial solicitation of interest.

d. The issuer files with the administrator all amendments to any materials filed pursuant to paragraph “c” or additional materials it proposes to use in conducting solicitations of interest, except for materials provided to a particular investor solely pursuant to a request by that investor, no less than five business days prior to use.

e. The offerer does not use any SOIF, script, advertisement, or other material which the administrator has ordered or notified the offerer may not be used for the purpose of solicitations of interest.

f. Except for scripted broadcasts and except to the extent necessary to obtain information needed to provide a SOIF, the offerer does not orally communicate with any prospective investor about the contemplated offering unless the investor is provided with the most current SOIF at or before the time of the communication or within five days after the communication.

g. The offerer does not solicit or accept money or a commitment to purchase securities during the solicitation of interest period.

h. The offerer does not make a sale until at least seven days after delivery to the purchaser of a final prospectus or delivery of a preliminary prospectus as provided by Iowa Code section 502.202(17).

50.84(2) Unless the offerer does not know, and in the exercise of reasonable care could not know, the exemption under this rule is not available for securities of an offerer, if any of the issuer's officers, directors, promoters, or 10 percent shareholders:

a. Have filed a registration statement which is the subject of a current effective registration stop order entered under any federal or state securities law within five years prior to filing the SOIF.

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b. Have been convicted within five years prior to filing the SOIF of any felony or misdemeanor regarding the offer, purchase or sale of any security or any felony involving fraud or deceit including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

c. Are currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the SEC within five years prior to filing the SOIF in which fraud or deceit, including, but not limited to, the making of untrue statements of material facts and omitting to state material facts, was found.

d. Are subject to any federal or state administrative order or judgment prohibiting, denying, or revoking the use of any exemption from registration regarding the offer, purchase or sale of securities.

e. Are currently subject to any order, judgment, or decree of any court of competent jurisdiction entered within five years prior to filing the SOIF temporarily, preliminarily, or permanently restraining or enjoining the person or entity from engaging in or continuing any conduct or practice regarding the purchase or sale of any security or the making of any false filing with any state.

The disqualifications listed in this subrule shall not apply if the person or entity subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against the person or entity, or if the broker-dealer employing the person or entity is licensed or registered in Iowa and the Form BD filed with the administrator discloses the order, conviction, judgment, or decree. No person disqualified under this subrule may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this subrule is automatically waived if the agency creating the disqualification determines for good cause shown that the exemption should not be denied.

50.84(3) The failure to comply with a term, condition or requirement of this rule shall not result in the loss of the exemption from the requirements of Iowa Code section 502.301 for an offer to a particular individual or entity if the offerer establishes all of the following:

a. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

b. The failure to comply was insignificant regarding the offering as a whole; and

c. A good-faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of this rule.

Where an exemption is established only through reliance upon subrule 50.84(2), the failure to comply is still actionable as a violation of the Act by the administrator under Iowa Code section 502.603 or 502.604.

50.84(4) The offerer shall comply with the following requirements:

a. Any published notice or script for broadcast and any printed material delivered apart from the SOIF, unless a SOIF containing the disclosures described below was previously delivered to the person, shall contain, at a minimum, the identity of the chief executive officer of the issuer, a brief and general description of the issuer's business and products, and the following disclosure printed in capital letters and boldface type at least as large as that used in the body of the printed materials:

(1) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.

(2) NO SALES OF SECURITIES WILL BE MADE OR A COMMITMENT TO PURCHASE ACCEPTED UNTIL THE DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING.

(3) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.

(4) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION UNDER FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE U.S. SECURITIES AND EXCHANGE COMMISSION AND IS REGISTERED IN IOWA.

b. All communications with prospective investors made in reliance upon this rule shall cease after a registration statement is filed with the administrator, and no sale may be made until at least 20 calendar days after the last communication made in reliance upon this rule.

c. A preliminary prospectus may be used with an offering for which indications of interest have been solicited under this rule only if the offering is conducted by a registered broker-dealer.

Failure to comply with the requirements of this subrule shall not result in losing the exemption from the requirements of Iowa Code section 502.301, but is a violation of the Act, is actionable by the administrator under Iowa Code section 502.603 or 502.604, and constitutes grounds for denying or revoking the exemption for specific transactions.

50.84(5) Upon written application by the offerer and for good cause shown, the administrator may waive any condition of the solicitation of interest exemption. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the administrator regarding an offer of securities made under this rule, constitutes a waiver of any condition of the rule or a confirmation by the administrator of the availability of the rule.

50.84(6) Offers made in reliance upon this rule shall not be integrated with subsequent offers or sales of securities registered in Iowa. Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance upon Iowa Code section 502.202(14) or rule 191—50.80(502) until at least 12 months after the last communication with a prospective investor made pursuant to this rule.

50.84(7) Nothing in this rule limits the application of Iowa Code section 502.401, 502.402, 502.501 or 502.509 to offers made in reliance upon this rule.

50.84(8) The administrator may review the materials filed under this rule. Materials filed, if reviewed, will be judged under antifraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of the possible risks.

50.84(9) Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Iowa Code section 502.501 et seq. Any misrepresentation or omission may also give rise to civil liability under the Act. A subsequent registration of the security does not cure the previous unlawful offer. Only a rescission offer made in compliance with the Act can effect a cure.

This rule is intended to implement Iowa Code section 502.202(17).

191—50.85(502) Internet offers exemption. Offers of securities made by, or on behalf of, issuers on or through the Internet are exempt from registration pursuant to Iowa Code sections 502.301 and 502.504 if:

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1. The Internet offer states, directly or indirectly, that the securities are not being offered to state residents; and

2. The Internet offer is not specifically directed to any person in Iowa by, or on behalf of, the issuer of the securities; and

3. No sales of the issuer's securities are made in Iowa as a result of the Internet offering until such time as the securities being offered have been registered under Iowa Code sections 502.301 and 502.504, and a final prospectus or Form U-7 is delivered to Iowa investors prior to such sales, or the issuer qualifies for the exemption provided in Iowa Code section 502.202(13).

This rule is intended to implement Iowa Code section 502.203.

191—50.86(502) Denial, suspension, revocation, condition, or limitation of limited offering transaction exemption. The administrator shall view the following as reasons for entering an order under Iowa Code section 502.204 to deny or revoke an exemption provided under Iowa Code section 502.202(14):

1. A public advertisement is used to promote the sale of securities for which such exemption is claimed; or

2. The offering is part of a registered offering under the Securities Act of 1933.

This rule is intended to implement Iowa Code section 502.204.

191—50.87(502) Nonprofit securities exemption.

50.87(1) Church extension funds or similar organizations making continuous offerings shall be exempt pursuant to Iowa Code section 502.201(7)“b” provided the issuer:

a. Applies for the exemption;

b. Files an offering circular and otherwise substantially complies with the NASAA Statement of Policy Regarding Church Extension Funds as adopted by the NASAA membership on April 17, 1994, and amended by the NASAA membership on April 18, 2004, and published in CCH NASAA Reports at paragraph 1951;

c. Files all sales and advertising literature;

d. Files a consent to service of process;

e. After authorization, may sell securities for a period of 12 months; and

f. Upon the expiration of the 12-month period in paragraph “e,” files a renewal application that complies with the requirements of this subrule.

50.87(2) Church bonds and other one-time offerings for a single specific project shall be exempt pursuant to Iowa Code section 502.201(7)“a” provided the issuer:

a. Files a notice specifying the material terms of the offering that comply with the NASAA Statement of Policy Regarding Church Bonds as adopted by the NASAA membership on April 14, 2002, and published in CCH NASAA Reports at paragraph 1001; and

b. Files a consent to service of process.

This rule is intended to implement Iowa Code section 502.201(7).

191—50.88(502) Transactions with specified investors. The administrator grants the exemption for transactions with specified investors to the following persons:

50.88(1) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer.

50.88(2) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of the purchase exceeds \$1 million.

50.88(3) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

50.88(4) Any venture or seed capital company. For purposes of this subrule, a venture or seed capital company is a corporation, partnership or association that has been in existence for five years or whose net assets exceed \$250,000 and whose primary business is investing in developmental stage companies or “eligible small business companies” as that term is defined in the regulations of the Small Business Administration.

This rule is intended to implement Iowa Code section 502.202(13).

191—50.89 to 50.99 Reserved.

DIVISION VII

FRAUD AND OTHER PROHIBITED CONDUCT

191—50.100(502) Fraudulent practices.

50.100(1) An issuer of securities registered under the Act, or any person who is an officer, director or controlling person of such issuer, is presumed to employ a “device, scheme or artifice to defraud” the purchasers of such securities under Iowa Code section 502.501(1) if such person applies, authorizes or causes to be applied any material part of the proceeds from the sale of such securities in any material way contrary to the purposes specified in the prospectus used in offering such securities and not reasonably related to the business of the issuer as described in the prospectus.

50.100(2) A broker-dealer or agent employing one or more of the following practices engages in an “act, practice, or course of business which operates or would operate as a fraud” under Iowa Code section 502.501(3):

a. Entering into any security transaction with a customer at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

b. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

c. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent possesses material, nonpublic information impacting the value of the security.

d. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when the recommendation is not justified by the particular circumstances of each investor.

e. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (1) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees, or (2) parking or withholding securities.

f. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance including, but not limited to, the use of “boiler-room” tactics such as repeated or harassing unsolicited telephone calls or the use of fictitious or nominee accounts.

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50.100(3) Although nothing in this rule precludes applying the general antifraud provisions to any person who engages in practices similar to paragraphs “a” through “h” listed below, the listed practices apply only to soliciting a purchase or sale of OTC non-NASDAQ equity securities and excludes interests in direct participation programs and shares in open-end mutual funds:

a. Failing to disclose the entity’s present bid and ask price of a particular security at the time of solicitation.

b. Failing to advise the customer, both at the time of solicitation and on confirmation, of the total of all charges and fees related to a specific securities transaction.

c. In connection with a principal transaction, failing to disclose, both at the time of solicitation and upon confirmation, a short inventory position in the entity’s account of more than 5 percent of the issued and outstanding shares of that class of securities of the issuer, if the entity is a market maker at the time of solicitation.

d. Conducting sales contests in a particular security.

e. After a solicited purchase by a customer, failing or refusing, for a principal transaction, to promptly execute sell orders.

f. Refusing to sell existing securities held by the customer unless the customer executes a purchase transaction.

g. Soliciting a secondary market when there has not been a bona fide distribution in the primary market.

h. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

This list is not intended to be all-inclusive. Engaging in other conduct including, but not limited to, forgery, embezzlement, conversion, nondisclosure, incomplete disclosure or misstatement of material facts may also be deemed fraudulent.

This rule is intended to implement Iowa Code section 502.501.

191—50.101(502) Rescission offers.

50.101(1) Rescission offers made pursuant to Iowa Code section 502.510 shall be typed or printed and shall be captioned “RESCISSION OFFER” in boldface print or type. The rescission offer shall be delivered to each offeree personally or shall be sent by certified mail to the offeree’s last-known address and shall contain the following information:

a. The name of the security which is the subject of the offer.

b. A reasonably detailed statement indicating why liability under Iowa Code section 502.509 may have arisen and fairly and adequately advising the offeree of the offeree’s rights pursuant to the Act.

c. An offer to repurchase the security pursuant to Iowa Code section 502.510(1)“b” to “f,” as applicable.

d. A statement that the offeree’s right to bring an action under the Act may be lost unless the offeree accepts the offer within 30 days after receiving the offer, or any shorter period, of not less than three days, that the administrator, by order, specifies.

e. Sufficient information about the issuer and the security offered to permit the offeree to make an informed decision regarding acceptance of the rescission offer including, but not limited to, information about the issuer’s organization and management, its operations and plan of business, and its financial condition as shown by a current financial statement prepared under generally accepted accounting principles.

f. A form by which the offeree may accept the offer and a statement explaining that the offeree may accept the offer by returning the form to the offerer at the provided address by first-class mail, or any other type of mail.

g. If the basis for relief under Iowa Code section 502.510 alleges a violation of Iowa Code section 502.509 which employed a device, scheme, or artifice to defraud, made an untrue statement of material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading, or engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit on another person, in capital letters and boldface type at least as large as that used in the body of the printed materials, and placed immediately before the signature of the offerer, the following statement:

THIS IS A RESCISSION OFFER MADE PURSUANT TO IOWA CODE SECTION 502.510, A COPY OF WHICH IS ON FILE WITH THE IOWA SECURITIES AND REGULATED INDUSTRIES BUREAU. THE BUREAU MAKES NO RECOMMENDATION AS TO WHETHER THE OFFER SHOULD BE ACCEPTED OR REJECTED NOR HAS THE BUREAU PASSED UPON THE ADEQUACY OR ACCURACY OF THIS OFFER.

50.101(2) If the basis for relief under Iowa Code section 502.510 alleges a violation of Iowa Code section 502.509 which employed a device, scheme, or artifice to defraud, made an untrue statement of material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading, or engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit on another person, prior to making a rescission offer pursuant to Iowa Code section 502.510, the offerer shall file with the administrator:

a. A copy of the rescission offer;

b. The names and addresses of all holders or sellers who are to receive the rescission offer; and

c. Financial statements proving that the offerer’s assets are sufficient to meet its obligations should all offerees accept the rescission offer.

50.101(3) Rescission offers made pursuant to Iowa Code section 502.510 shall be tendered to all persons to whom liability exists or may exist pursuant to Iowa Code section 502.509.

50.101(4) A rescission offer may be accepted at any time during the period stated in the rescission offer even if an offeree previously rejected the offer.

50.101(5) Rescission offers are subject to the provisions of Iowa Code sections 502.501, 502.501A, 502.505, 502.506, and 502.506A.

50.101(6) The administrator may, in the administrator’s discretion, require proof by the offerer of compliance with this rule and the terms of the rescission offer.

50.101(7) A proposal or the making of a rescission offer shall not limit the administrator’s administrative or enforcement authority provided by the Act.

This rule is intended to implement Iowa Code sections 502.509 and 502.510.

191—50.102(502) Fraudulent, deceptive or manipulative act, practice, or course of business in providing investment advice.

50.102(1) It shall constitute a fraudulent, deceptive or manipulative act, practice, or course of business for an investment adviser or an investment adviser representative acting as principal for such person’s own account, knowingly to sell any security to or purchase any security from a client or, acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which the investment adviser is acting and obtaining the consent of the client to such transaction. The prohibitions of this sub-rule shall not apply to any transaction with a customer of a

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broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction.

50.102(2) It shall constitute a fraudulent, deceptive or manipulative act, practice, or course of business for an investment adviser or an investment adviser representative to fail to disclose to any client or prospective client all material facts regarding financial and disciplinary information as provided in 17 CFR Section 275.206(4)-4.

This rule is intended to implement Iowa Code section 502.502(2).

191—50.103(502) Investment advisory contracts.

50.103(1) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless the contract provides in writing all of the following:

a. That the investment adviser shall not be compensated on the basis of a share of capital gains or capital appreciation of the funds or any portion of the funds of the client.

b. That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract.

c. That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

50.103(2) The provisions of subrule 50.103(1) shall be construed consistent with Sections 205(b) through (d) of the Investment Advisers Act of 1940, the terms of which shall be defined by Investment Advisers Act of 1940 Rules 275.205-1 and 275.205-2.

50.103(3) The provisions of subrule 50.103(1) shall not prohibit compensation on the basis of a share of capital gains or capital appreciation of the funds or any portion of the funds of the client in compliance with the exemption in 17 CFR Section 275.205-3.

This rule is intended to implement Iowa Code section 502.502(3).

191—50.104 to 50.109 Reserved.

DIVISION VIII

VIATICAL SETTLEMENT INVESTMENT CONTRACTS

191—50.110(502) Application by viatical settlement investment contract issuers and registration of agents to sell viatical settlement investment contracts.

50.110(1) Under this rule, the term “viatical settlement investment contract issuer” includes, but is not limited to, any individual, company, corporation or other entity that offers or sells, directly or indirectly, viatical settlement investment contracts to investors.

50.110(2) A viatical settlement investment contract issuer employing agents in Iowa must make prior application to the administrator for this authority. The application shall be made by letter and shall include:

a. A statement of the issuer’s intent to employ agents for the sale of its viatical settlement investment contracts; and

b. The name, address, social security number and proof of satisfaction of subrule 50.110(3) for each agent.

50.110(3) An applicant for registration as an Iowa-registered agent of an issuer of viatical settlement investment contracts shall file with the administrator:

a. Proof of obtaining a passing grade on the NASD Series 7 examination;

b. Proof of obtaining a passing grade on the NASD Series 63 examination;

c. An accurate, complete and signed Form U-4; and

d. A \$30 filing fee.

This rule is intended to implement Iowa Code sections 502.102(2), 502.301 and 502.402.

191—50.111(502) Risk disclosure. Viatical settlement investment contract issuers and registered agents of issuers must provide specific, written disclosures of risk to Iowa investors at the time of the initial offer to sell a viatical settlement investment contract. These disclosures must be preceded by the following caption, which must be in bold, 16-point typeface:

IMPORTANT RISK DISCLOSURE INFORMATION—READ BEFORE SIGNING ANY VIATICAL SETTLEMENT INVESTMENT CONTRACT.

The disclosure must include, at a minimum, the following information:

1. That the actual annual rate of return on any viatical settlement investment contract is dependent upon an accurate projection of the viator’s life expectancy and the actual date of the viator’s death and that an annual “guaranteed” rate of return is not possible;

2. Whether, after purchasing the viatical settlement investment contract, the investor will be responsible for payment of premiums on the contract if the viator lives longer than projected and if the investor will be responsible for such premiums, the amount of the premium payment and any resulting negative effect on the investor’s return;

3. Whether any premium payments on the contract have been escrowed and, if so, the date upon which the escrowed funds will be depleted, who is responsible for payment of premiums after depletion of the funds, and, if applicable, the amount of the premiums;

4. Whether any premium payments on the contract have been waived, whether the investor will be responsible for payment of the premiums if the insurer who wrote the policy terminates the waiver after purchase, and, if applicable, the amount of the premiums;

5. Whether the investor is responsible for payment of premiums on the contract if the viator returns to health and, if applicable, the amount of the premiums;

6. Whether the investor is entitled to all or part of the investor’s investment under the contract if the viator’s underlying policy is later determined to be null and void;

7. Whether the insurance policy is a group policy and, if so, the special risks associated with group policies including, but not limited to, whether the investor is responsible for payment of additional premiums if the policies are sold or converted;

8. Whether the insurance policy is term insurance and, if so, the special risks associated with term insurance including, but not limited to, whether the investor is responsible for additional premium costs if the viator continues the term policy at the end of the current term;

9. Whether the investor will be the beneficiary or owner of the insurance policy and, if the investor is the beneficiary, the special risks associated with beneficiary status;

10. Whether the insurance policy is contestable and, if so, the special risks associated with contestability including, but not limited to, the risk that the investor will have no claim or only a partial claim to death benefits should the insurer cancel the policy within the contestability period;

11. Who is making the projection of the viator’s life expectancy, the information upon which the projection is based, and the relationship of the projection maker to the issuer;

12. Who is monitoring the viator’s condition, how often the monitoring is done, how the date of death is determined,

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and how and when this information will be transmitted to the investor;

13. Whether the insurer who wrote the viator's underlying policy has any additional rights which could negatively affect or extinguish the investor's rights under the viatical settlement investment contract, what these rights are, and under what conditions these rights are activated;

14. That a viatical settlement investment contract is not a liquid investment and that there is no established secondary market for resale of these products by the investor;

15. That the investor will receive no returns (i.e., dividends and interest) until the viator dies; and

16. That the investor may lose all benefits or receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.

This rule is intended to implement Iowa Code sections 502.102, 502.201(9E) and 502.301.

191—50.112(502) Advertising of viatical settlement investment contracts.

50.112(1) The issuer and agent shall file all viatical settlement investment contract advertisements with the administrator at least ten business days prior to the date of use or a shorter period as the administrator may permit. The administrator shall mark the advertisements with allowance for use or expressly disapprove them during this time frame. The advertisement shall not be used in Iowa until a copy thereof, marked with allowance for use, has been received from the administrator.

50.112(2) Viatical settlement investment contract advertisements shall contain no more than the following:

- a. The name of the issuer;
- b. The address and telephone number of the issuer;
- c. A brief description of the security, including minimum purchase requirements and liquidity aspects;
- d. If a rate of return is advertised, it must be stated as the annual average rate of return, with a disclaimer that this is an annual average rate of return, that individual investor rates of return will vary based upon the viator's projected and actual date of death, and that an annual rate of return on a viatical settlement investment contract cannot be guaranteed;
- e. The name, address and telephone number of the agent of the issuer authorized to sell the viatical settlement investment contracts;
- f. A statement that the advertisement is neither an offer to sell nor a solicitation of an offer to purchase and that any offer or solicitation may only be made by providing a disclosure document; and
- g. How a copy of the disclosure document may be obtained.

50.112(3) Notwithstanding the provisions of rule 191—50.69(502), certain viatical settlement investment contract advertisements may be deemed false and misleading on their face by the administrator and are prohibited pursuant to Iowa Code sections 502.501 and 502.504. False and misleading viatical settlement investment contract advertisements include, but are not limited to, the following representations:

- a. "Fully secured," "100% secured," "fully insured," "secure," "safe," "backed by rated insurance company(ies)," "backed by federal law," "backed by state law," or similar representations;
- b. "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;
- c. "Qualified or approved for IRA, Roth IRA, 401K, SEP, 403B, Keogh plans, TSA, other retirement account roll-overs," "tax deferred," or similar representations;

d. "Guaranteed fixed return," "guaranteed annual return," "guaranteed principal," "guaranteed earnings," "guaranteed profits," "guaranteed investment," or similar representations;

e. "No sales charges or fees" or similar representations;

f. "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;

g. "Perfect investment," "proven investment," or similar representations;

h. Purported favorable representations or testimonials about the benefits of viaticals as an investment, taken out of context from newspapers, trade papers, journals, radio or television programs, or any other form of print or electronic media.

50.112(4) For purposes of this rule, the term "advertisement" includes any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including filmstrips, motion pictures, and videos, published in connection with the offer or sale of a viatical settlement investment contract.

This rule is intended to implement Iowa Code sections 502.102, 502.301, and 502.504.

191—50.113(502) Duty to disclose. Issuers and agents equally share an affirmative duty to disclose all relevant and material information to prospective investors in viatical settlement investment contracts. The required disclosure is the registration statement required by Iowa Code section 502.304 which has been reviewed and made effective by the administrator.

This rule is intended to implement Iowa Code sections 502.102 and 502.201(9E).

[Filed 6/1/07, effective 7/25/07]

[Published 6/20/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/20/07.

ARC 5950B

**NATURAL RESOURCE
COMMISSION[571]**

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 51, "Game Management Areas," Iowa Administrative Code.

Chapter 51 establishes game management areas upon public lands or waters to provide for public hunting, fishing, or trapping in conformity with sound wildlife management practices. This amendment adds Hendrickson Marsh and Colo Bog in Story County to the list of wildlife areas where nontoxic shot is required and removes several wildlife management areas that were previously exempted from nontoxic shot use.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5802B**. A public hearing was held on April 19, 2007, and no comments were received. No comments were received by telephone or in writing. This amendment is identical to that published under Notice of Intended Action.

NATURAL RESOURCE COMMISSION[571](cont'd)

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39.

This amendment shall become effective July 25, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [51.10] is being omitted. This amendment is identical to that published under Notice as **ARC 5802B**, IAB 3/28/07.

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[For replacement pages for IAC, see IAC Supplement 6/20/07.]

ARC 5952B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 52, "Wildlife Refuges," Iowa Administrative Code.

Chapter 52 establishes wildlife refuges or sanctuaries for the purposes of preserving the biological balance; protecting public parks, public health, safety and welfare; and effecting sound wildlife management. This amendment adds Sedan Bottoms in Appanoose County and the Jemerson Slough Complex in Dickinson County to the list of wildlife refuges. The amendment also removes several areas from the subrule that are no longer posted as refuges or have not been functioning effectively as waterfowl refuges.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5801B**. A public hearing was held on April 19, 2007, and no comments were received. One written comment was received about the Sedan Bottoms. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39.

This amendment shall become effective July 25, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [52.1(2)] is being omitted. This amendment is identical to that published under Notice as **ARC 5801B**, IAB 3/28/07.

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[For replacement pages for IAC, see IAC Supplement 6/20/07.]

ARC 5951B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 95, "Game Harvest Reporting and Landowner-Tenant Registration," Iowa Administrative Code.

Chapter 95 establishes procedures and requirements for reporting deer and wild turkey harvested and procedures for landowners and tenants to register for free deer and wild turkey licenses. These amendments clarify the regulations for reporting the harvest of deer and wild turkey and procedures for landowners and tenants to verify their eligibility for free deer and wild turkey hunting licenses.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5799B**. A public hearing was held on April 19, 2007, and no comments were received at the hearing. One comment was received that landowners should not have to register. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These amendments shall become effective July 25, 2007.

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 [95.1(1), 95.2, 95.2(2), 95.2(4)] is being omitted. These amendments are identical to those published under Notice as **ARC 5799B**, IAB 3/28/07.

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[For replacement pages for IAC, see IAC Supplement 6/20/07.]

ARC 5953B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 98, "Wild Turkey Spring Hunting," Iowa Administrative Code.

Chapter 98 establishes the regulations for hunting wild turkeys during spring and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take, and transportation tag requirements. The amendments clarify that the state forests are no longer special zones for resident and non-resident spring turkey hunting. Additionally, the amendments allow nonresidents to hunt in all four seasons and adjust the nonresident license quotas to divide the licenses between all four seasons. Nonresidents had not been allowed to hunt during the second season when the number of licenses

NATURAL RESOURCE COMMISSION[571](cont'd)

for residents was limited. The total number of nonresident turkey licenses issued does not change.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5798B**. A public hearing was held on April 19, 2007, and three comments were received. One comment was received that supported the opening of the second season to nonresidents, and two were received that opposed the change. One comment was received in writing that opposed the opening of the second season to nonresidents. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 483A.38, 483A.39, 483A.48 and 483A.7.

These amendments shall become effective July 25, 2007.

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 [98.2(3), 98.9(2), 98.10, 98.11(1)] is being omitted. These amendments are identical to those published under Notice as **ARC 5798B**, IAB 3/28/07.

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[For replacement pages for IAC, see IAC Supplement 6/20/07.]

ARC 5954B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 99, "Wild Turkey Fall Hunting by Residents," Iowa Administrative Code.

Chapter 99 establishes the regulations for hunting wild turkeys during fall and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take, and transportation tag requirements. These amendments eliminate the state forest zones during the fall season, which makes the regulations for the fall season consistent with the spring season. The amendments also add 200 licenses to Zone 5 in western Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5797B**. A public hearing was held on April 19, 2007, and no comments were received at the hearing. Additionally, no comments were received by telephone or in writing. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These amendments shall become effective July 25, 2007. The following amendments are adopted.

ITEM 1. Amend rule 571—99.4(481A) as follows:

571—99.4(481A) Zones. Wild turkey may be taken with a combination shotgun-or-archery license only in the following zones:

99.4(1) Zone 1. Zone 1 is that portion of Stephens State Forest west of U.S. Highway 65 in Lucas and Clarke Counties.

99.4(2) Zone 2. Zone 2 is the Shimek State Forest in Lee and Van Buren Counties.

99.4(3) Zone 3. Zone 3 is that portion of the Yellow River State Forest in Allamakee County.

99.4(4) (1) Zone 4. Zone 4 is that portion of Iowa bounded on the north by Interstate Highway 80 and on the west by U.S. Highway 59.

99.4(5) (2) Zone 5. Zone 5 is that portion of Iowa bounded on the east by U.S. Highway 59 and on the north by U.S. Highway 20.

99.4(6) (3) Zone 6. Zone 6 is that portion of Iowa bounded on the south by Interstate Highway 80 and on the west by U.S. Highway 63.

99.4(7) (4) Zone 7. Zone 7 is that portion of Iowa bounded on the north by U.S. Highway 20, on the west by U.S. Highway 59, on the south by Interstate Highway 80, and on the east by U.S. Highway 63.

99.4(8) (5) Zone 8. Zone 8 is that portion of Iowa bounded on the south by U.S. Highway 20, on the east by U.S. Highway 63, and on the west by U.S. Highway 69.

99.4(9) (6) Zone 9. Zone 9 is that portion of Iowa bounded on the south by U.S. Highway 20 and on the east by U.S. Highway 69.

ITEM 2. Amend subrule 99.5(1) as follows:

99.5(1) Combination shotgun-or-archery licenses. A limited number of paid combination shotgun-or-archery licenses will be issued by zone as follows:

- a.—Zone 1. 50
- b.—Zone 2. 50
- c.—Zone 3. 50
- d a. Zone 4. 4,500
- e b. Zone 5. 500 700
- f c. Zone 6. 3,000
- g d. Zone 7. 400
- h e. Zone 8. 150
- i f. Zone 9. 200

[Filed 5/21/07, effective 7/25/07]
[Published 6/20/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/20/07.

ARC 5955B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 107, "Rabbit and Squirrel Hunting," Iowa Administrative Code.

Chapter 107 establishes the regulations for hunting rabbits and squirrels and includes season dates, bag limits, possession limits and shooting hours. These amendments change the beginning date for cottontail rabbit and squirrel hunting seasons to the Saturday before Labor Day.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5796B**. A public hearing was held on April 19, 2007, and one comment

NATURAL RESOURCE COMMISSION[571](cont'd)

was received in support of the changes. Additionally, one comment was received by telephone requesting that rabbit hunting hours be extended to one-half hour before sunrise and one-half hour after sunset. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 481A.39.

These amendments shall become effective July 25, 2007. The following amendments are adopted.

ITEM 1. Amend rule 571—107.1(481A) as follows:

571—107.1(481A) Cottontail rabbit season. Open season for hunting cottontail rabbits shall be from the ~~first day of September~~ *Saturday before Labor Day* through February 28 of the succeeding year. Bag limit shall be 10 per day; possession limit 20. Legal hunting hours shall be from sunrise to sunset. Entire state open.

ITEM 2. Amend rule 571—107.3(481A) as follows:

571—107.3(481A) Squirrel season. Open season for hunting squirrels (fox and gray) shall be from the ~~first day of September~~ *Saturday before Labor Day* through January 31 of the succeeding year. Bag limit shall be 6 squirrels per day; possession limit 12. Entire state open.

[Filed 5/21/07, effective 7/25/07]

[Published 6/20/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/20/07.

ARC 5972B**REAL ESTATE APPRAISER
EXAMINING BOARD[193F]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby amends Chapter 4, "Associate Real Property Appraiser," Chapter 5, "Certified Residential Real Property Appraiser," Chapter 6, "Certified General Real Property Appraiser," and Chapter 11, "Continuing Education," Iowa Administrative Code.

The amendment to Chapter 4 requires associate real estate appraisers and their supervisory certified appraisers to provide copies of monthly logs to the Board upon request. The amendments to Chapters 5 and 6 establish additional standards for the experience required for initial certification in accordance with 2007 Iowa Acts, Senate File 137. The amendment to Chapter 11 requires a seven-hour course in report writing as a condition for license renewal.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5783B**. No public comments were received. No changes have been made from the Notice of Intended Action.

These amendments were adopted by the Board on May 31, 2007.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

These amendments are intended to implement Iowa Code chapters 543D and 272C.

These amendments will become effective on July 25, 2007.

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 [4.1(7), 5.4, 6.4, 11.2(1)“d”] is being omitted. These amendments are identical to those published under Notice as **ARC 5783B**, IAB 3/28/07.

[Filed 6/1/07, effective 7/25/07]

[Published 6/20/07]

[For replacement pages for IAC, see IAC Supplement 6/20/07.]

ARC 5967B**REAL ESTATE COMMISSION[193E]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 543B.9, the Real Estate Commission amends Chapter 4, "Salesperson License," and Chapter 16, "Prelicense Education and Continuing Education," Iowa Administrative Code.

The amendments to Chapter 4 and Chapter 16 add new language to require that individuals complete the following coursework prior to initial licensure: 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices. The current rules allow a newly licensed salesperson to complete the courses by the end of the first renewal term. This requirement will apply to individuals applying for a salesperson license on and after January 1, 2009.

The amendment to subrule 16.5(3) reduces the amount of time a licensee has to respond to a continuing education audit request from 60 days to 30 days.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 25, 2007, as **ARC 5846B**. A public hearing was held on May 23, 2007. The person who attended supported the proposed changes. These amendments are identical to those published under Notice.

These amendments were adopted by the Board on May 30, 2007.

These amendments will become effective July 25, 2007.

These amendments are intended to implement Iowa Code chapters 272C and 543B.

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 [4.1, 16.2(3) to 16.2(6), 16.5(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 5846B**, IAB 4/25/07.

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