



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly 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: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

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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	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

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

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

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2009

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. 24 '08	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09
Jan. 9	Jan. 28	Feb. 17	Mar. 4	Mar. 6	Mar. 25	Apr. 29	July 27
Jan. 23	Feb. 11	Mar. 3	Mar. 18	Mar. 20	Apr. 8	May 13	Aug. 10
Feb. 6	Feb. 25	Mar. 17	Apr. 1	Apr. 3	Apr. 22	May 27	Aug. 24
Feb. 20	Mar. 11	Mar. 31	Apr. 15	Apr. 17	May 6	June 10	Sep. 7
Mar. 6	Mar. 25	Apr. 14	Apr. 29	May 1	May 20	June 24	Sep. 21
Mar. 20	Apr. 8	Apr. 28	May 13	***May 13***	June 3	July 8	Oct. 5
Apr. 3	Apr. 22	May 12	May 27	May 29	June 17	July 22	Oct. 19
Apr. 17	May 6	May 26	June 10	June 12	July 1	Aug. 5	Nov. 2
May 1	May 20	June 9	June 24	***June 24***	July 15	Aug. 19	Nov. 16
May 13	June 3	June 23	July 8	July 10	July 29	Sep. 2	Nov. 30
May 29	June 17	July 7	July 22	July 24	Aug. 12	Sep. 16	Dec. 14
June 12	July 1	July 21	Aug. 5	Aug. 7	Aug. 26	Sep. 30	Dec. 28
June 24	July 15	Aug. 4	Aug. 19	***Aug. 19***	Sep. 9	Oct. 14	Jan. 11 '10
July 10	July 29	Aug. 18	Sep. 2	Sep. 4	Sep. 23	Oct. 28	Jan. 25 '10
July 24	Aug. 12	Sep. 1	Sep. 16	Sep. 18	Oct. 7	Nov. 11	Feb. 8 '10
Aug. 7	Aug. 26	Sep. 15	Sep. 30	Oct. 2	Oct. 21	Nov. 25	Feb. 22 '10
Aug. 19	Sep. 9	Sep. 29	Oct. 14	Oct. 16	Nov. 4	Dec. 9	Mar. 8 '10
Sep. 4	Sep. 23	Oct. 13	Oct. 28	***Oct. 28***	Nov. 18	Dec. 23	Mar. 22 '10
Sep. 18	Oct. 7	Oct. 27	Nov. 11	***Nov. 12***	Dec. 2	Jan. 6 '10	Apr. 5 '10
Oct. 2	Oct. 21	Nov. 10	Nov. 25	***Nov. 25***	Dec. 16	Jan. 20 '10	Apr. 19 '10
Oct. 16	Nov. 4	Nov. 24	Dec. 9	***Dec. 9***	Dec. 30	Feb. 3 '10	May 3 '10
Oct. 28	Nov. 18	Dec. 8	Dec. 23	***Dec. 23***	Jan. 13 '10	Feb. 17 '10	May 17 '10
Nov. 12	Dec. 2	Dec. 22	Jan. 6 '10	Jan. 8 '10	Jan. 27 '10	Mar. 3 '10	May 31 '10
Nov. 25	Dec. 16	Jan. 5 '10	Jan. 20 '10	Jan. 22 '10	Feb. 10 '10	Mar. 17 '10	June 14 '10
Dec. 9	Dec. 30	Jan. 19 '10	Feb. 3 '10	Feb. 5 '10	Feb. 24 '10	Mar. 31 '10	June 28 '10
Dec. 23	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
17	Friday, January 23, 2009	February 11, 2009
18	Friday, February 6, 2009	February 25, 2009
19	Friday, February 20, 2009	March 11, 2009

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*****

AGENCY	HEARING LOCATION	DATE AND TIME
ACCOUNTANCY EXAMINING BOARD[193A]		
Practice of public accounting; practice privilege; transition to annual renewal for individual licensees, chs 1 to 21 IAB 1/14/09 ARC 7484B	Second Floor Conference Room 1918 S.E. Hulsizer Rd. Ankeny, Iowa	February 3, 2009 10 a.m.
EDUCATION DEPARTMENT[281]		
Physical activity and cardiopulmonary resuscitation course requirements, 12.2, 12.5(6), 12.5(19), 12.5(20) IAB 1/14/09 ARC 7504B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	February 3, 2009 2:30 to 4 p.m.
	Keystone AEA 1 1400 2nd St. N.W. Elkader, Iowa	February 3, 2009 2:30 to 4 p.m.
	Room 103, Northwest AEA 1382 4th Ave. N.E. Sioux Center, Iowa	February 3, 2009 2:30 to 4 p.m.
	Heartland AEA 11 6500 Corporate Dr. Johnston, Iowa	February 3, 2009 2:30 to 4 p.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	February 3, 2009 2:30 to 4 p.m.
	Great Prairie AEA 3601 West Ave. Burlington, Iowa	February 3, 2009 2:30 to 4 p.m.
	Room 2, Keystone AEA 1 2310 Chaney Rd. Dubuque, Iowa	February 3, 2009 2:30 to 4 p.m.
	Louisa Room, River Bend AEA 9 729 21st St. Bettendorf, Iowa	February 3, 2009 2:30 to 4 p.m.
	Room 106, Activity Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	February 3, 2009 2:30 to 4 p.m.
	Turner Room, Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	February 3, 2009 2:30 to 4 p.m.
	Room 206, Northwest AEA 1520 Morningside Ave. Sioux City, Iowa	February 3, 2009 2:30 to 4 p.m.
	Great Prairie AEA 2814 N. Court St. Ottumwa, Iowa	February 3, 2009 2:30 to 4 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
EDUCATION DEPARTMENT[281] (Cont'd)		
<p>Room 2102, Wolfe Education Ctr. Area Education Agency 267 3405 S. Center St. Marshalltown, Iowa</p> <p>Tentative site: The reader is advised to check with this location.</p>		February 3, 2009 2:30 to 4 p.m.
	Public Library 524 Parkade Cedar Falls, Iowa	February 3, 2009 2:30 to 4 p.m.
	Public Library 424 Central Ave. Fort Dodge, Iowa	February 3, 2009 2:30 to 4 p.m.
Tentative site: The reader is advised to check with this location.	Area Education Agency 8 500 N.E. 6th St. Pocahontas, Iowa (712)335-3588	February 3, 2009 2:30 to 4 p.m.
Tentative site: The reader is advised to check with this location.	Room 203B, Linn Hall Kirkwood Community College 6301 Kirkwood Blvd. S.W. Cedar Rapids, Iowa (319)398-5452	February 3, 2009 2:30 to 4 p.m.
School breakfast and lunch program—nutritional content standards, 58.1, 58.2, 58.9 to 58.11 IAB 1/14/09 ARC 7503B (ICN Network)	Second Floor, ICN Room Grimes State Office Bldg. Des Moines, Iowa	February 3, 2009 1 to 2:30 p.m.
	Keystone AEA 1 1400 2nd St. N.W. Elkader, Iowa	February 3, 2009 1 to 2:30 p.m.
	Room 103, Northwest AEA 1382 4th Ave. N.E. Sioux Center, Iowa	February 3, 2009 1 to 2:30 p.m.
	Heartland AEA 11 6500 Corporate Dr. Johnston, Iowa	February 3, 2009 1 to 2:30 p.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	February 3, 2009 1 to 2:30 p.m.
	Great Prairie AEA 3601 West Ave. Burlington, Iowa	February 3, 2009 1 to 2:30 p.m.
	Room 2, Keystone AEA 1 2310 Chaney Rd. Dubuque, Iowa	February 3, 2009 1 to 2:30 p.m.
	Louisa Room, River Bend AEA 9 729 21st St. Bettendorf, Iowa	February 3, 2009 1 to 2:30 p.m.
	Room 106, Activity Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	February 3, 2009 1 to 2:30 p.m.
	Turner Room, Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	February 3, 2009 1 to 2:30 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
EDUCATION DEPARTMENT[281] (Cont'd)		
	Room 206, Northwest AEA 1520 Morningside Ave. Sioux City, Iowa	February 3, 2009 1 to 2:30 p.m.
	Great Prairie AEA 2814 N. Court St. Ottumwa, Iowa	February 3, 2009 1 to 2:30 p.m.
	Room 2102, Wolfe Education Ctr. Area Education Agency 267 3405 S. Center St. Marshalltown, Iowa	February 3, 2009 1 to 2:30 p.m.
	Public Library 524 Parkade Cedar Falls, Iowa	February 3, 2009 1 to 2:30 p.m.
	Public Library 424 Central Ave. Fort Dodge, Iowa	February 3, 2009 1 to 2:30 p.m.
Tentative site: The reader is advised to check with this location.	Area Education Agency 8 500 N.E. 6th St. Pocahontas, Iowa (712)335-3588	February 3, 2009 1 to 2:30 p.m.
Tentative site: The reader is advised to check with this location.	Room 203B, Linn Hall Kirkwood Community College 6301 Kirkwood Blvd. S.W. Cedar Rapids, Iowa (319)398-5452	February 3, 2009 1 to 2:30 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Iowa antidegradation implementation procedure, 61.2(2), 61.3 IAB 11/19/08 ARC 7368B	Public Library 304 Franklin St. Manchester, Iowa	January 14, 2009 10 a.m.
	Room 115, Suite 102 Northeast Iowa Community College 1220 3rd Ave. Waukon, Iowa	January 14, 2009 6 p.m.
	Film Room, Public Library 321 Main St. Davenport, Iowa	January 15, 2009 1 p.m.
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]		
Contribution rates for special service members, 4.6 IAB 12/31/08 ARC 7453B	7401 Register Dr. Des Moines, Iowa	January 20, 2009 9 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
NATURAL RESOURCE COMMISSION[571]		
Ginseng harvesting and sale, ch 78 IAB 1/14/09 ARC 7498B (ICN Network)	Room 157, Heritage Classroom C State Historical Bldg. 600 E. Locust Des Moines, Iowa	February 4, 2009 6 p.m.
	Room 112 Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	February 4, 2009 6 p.m.
	Room 300 Eastern Iowa Comm. College District 326 W. 3rd St. Davenport, Iowa	February 4, 2009 6 p.m.
	Public Library 202 Winnebago St. Decorah, Iowa	February 4, 2009 6 p.m.
	Room 119 Central Comm. Jr-Sr High School 400 1st St. N.W. Elkader, Iowa	February 4, 2009 6 p.m.
	Rm. 101, St. Edmund High School 501 N. 22nd St. Fort Dodge, Iowa	February 4, 2009 6 p.m.
	Clayton Ridge Middle School 502 W. Watson Garnavillo, Iowa	February 4, 2009 6 p.m.
	Iowa City High School 1900 Morningside Dr. Iowa City, Iowa	February 4, 2009 6 p.m.
	Room 119 North Iowa Area Comm. College 500 College Dr. Mason City, Iowa	February 4, 2009 6 p.m.
	Tama Hall, Hawkeye Comm. College 1501 E. Orange Rd. Waterloo, Iowa	February 4, 2009 6 p.m.
	Trustee Hall Room 528 Southeastern Community College 1500 W. Agency West Burlington, Iowa	February 4, 2009 6 p.m.
Beach use and swimming at state parks and recreation areas, 61.7(2)	Wickiup Hills Outdoor Learning Center near Toddville, Iowa	February 3, 2009 2 to 4 p.m. and 6 to 8 p.m.
IAB 1/14/09 ARC 7499B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 4, 2009 10 a.m.
Nonresident deer hunting—license quotas, hunting from blinds, January antlerless season, 94.6(2), 94.7(6), 94.12	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 10, 2009 10 a.m.
IAB 1/14/09 ARC 7500B		

AGENCY	HEARING LOCATION	DATE AND TIME
NATURAL RESOURCES DEPARTMENT[561]		
Septic tank time-of-transfer requirements; exemption for electronic tower and wind turbine leases, 9.1(4)“a,” 9.2(1) IAB 12/31/08 ARC 7454B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 23, 2009 1 p.m.
REAL ESTATE COMMISSION[193E]		
Definition of “moral turpitude,” 2.1 IAB 1/14/09 ARC 7508B	Second Floor Conference Room 1920 S.E. Hulsizer Rd. Ankeny, Iowa	February 3, 2009 9 a.m.
TRANSPORTATION DEPARTMENT[761]		
Traffic safety improvement program application deadline, 164.9(1)“b” IAB 1/14/09 ARC 7482B	South Conference Room Administration Building 800 Lincoln Way Ames, Iowa	February 5, 2009 10 a.m. (If requested)
UTILITIES DIVISION[199]		
Electric load service limiters, 20.1(3), 20.4 IAB 12/17/08 ARC 7409B	350 Maple St. Des Moines, Iowa	February 5, 2009 10 a.m.

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

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

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

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

The following list will be updated as changes occur:

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 Real Estate Appraiser Examining Board[193F]
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ARC 7484B

ACCOUNTANCY EXAMINING BOARD[193A]

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 542.4, the Accountancy Examining Board hereby gives Notice of Intended Action to amend Chapters 1 to 4, 9 to 11, 13, and 15 to 17; rescind and adopt new Chapters 5 to 8, 12, 14, and 18; rescind Chapter 19; and adopt new Chapters 20 and 21, Iowa Administrative Code.

During the process of drafting these rules, the Board solicited participation from numerous constituent groups. A task force that included members of the Board as well as members from the Iowa Society of Certified Public Accountants and the Accountant's Association of Iowa reviewed several drafts of these amendments prior to this Notice.

Most of the proposed amendments implement changes required as a result of 2008 Iowa Acts, chapter 1106, which becomes effective July 1, 2009. This legislation allows out-of-state CPAs and CPA firms to practice in Iowa without licensure under some conditions. New Chapters 20 and 21 describe the practice privilege in some detail, and many of the chapters are amended to incorporate references to practice privilege where relevant. The legislation increases civil penalties for firms to \$10,000 and authorizes the Board to confidentially supply licensee social security numbers to the National Association of State Boards of Accountancy for use in a national data bank of licensee information. The legislation also allows licensees to voluntarily provide the Board with a final peer review report and, absent objection from the licensee, similarly allows the administering entity of a peer review program to provide a final peer review report to the Board.

Other proposed amendments:

- Update references to the 2001 Iowa Accountancy Act;
- Outline the Board's planned transition from biennial to annual renewal for individual licensees;
- Clarify provisions on who is authorized to perform attest or compilation services in Iowa, and under what conditions;
- Make a number of changes to the CPA and LPA firm application and renewal process;
- Add discipline provisions to the continuing education chapter and allow ethics continuing education to be earned in half-hour intervals under certain conditions;
- Reorganize fee information and change the fee to reinstate a lapsed license. The board has not yet established a fee schedule for annual renewals commencing with certificates and licenses that expire on and after June 30, 2010, and will amend the rules when the revised fee schedule is available;
- Add guidelines for licensees regarding how to address conflicts of interest; and
- Provide a detailed list of grounds for discipline.

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 February 3, 2009. Comments should be addressed to Glenda Loving, Accountancy Examining Board, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to glenda.loving@iowa.gov.

A public hearing will be held on February 3, 2009, at 10 a.m. in the Second Floor Conference Room of the Board's offices located at 1918 S.E. Hulsizer Road, Ankeny.

These amendments are intended to implement Iowa Code chapters 17A, 272C, 542 and 546 and 2008 Iowa Acts, chapter 1106.

The following amendments are proposed.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

ITEM 1. Amend rule **193A—1.1(542)**, definitions of “Act,” “Attest,” “Division,” “Licensed public accountant,” and “Office,” as follows:

“Act” means the Accountancy Act of 2001 as amended by 2008 Iowa Acts, chapter 1106.

“Attest” or “attest service” means providing any of the following services:

1. An audit or other engagement to be performed in accordance with the statements on auditing standards.

2. A review of a financial statement to be performed in accordance with the statements on standards for accounting and review services.

3. An examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements.

4. Any engagement to be performed in accordance with the auditing standards of the PCAOB.

~~For purposes of these rules, the statements on standards for attestation engagements means~~ The standards specified in the definition of “attest” are those standards adopted by the board, by rule, by reference to the standards developed for general application by the AICPA, the PCAOB, or other recognized national accountancy organization.

“~~Division Bureau~~” means the professional licensing and regulation ~~division~~ bureau of the division of banking of the department of commerce.

“Licensed public accountant” means a person licensed by the board pursuant to Iowa Code section 542.8 who does not hold a certificate as a certified public accountant under this chapter ~~and who offers.~~ A “licensed public accountant” is not authorized to perform attest services, but may offer to perform or performs perform for the public any of the following public accounting services:

1. to 7. No change.

“Office” means any Iowa workspace identified or advertised to the general public as ~~being connected with any firm of CPAs or LPAs where business is conducted~~ a location where public accounting services are performed.

ITEM 2. Adopt the following new definitions in rule **193A—1.1(542)**:

“Home office” means the location specified by the client as the address to which an attest or compilation service is directed, which may be a subunit or subsidiary of an entity or the principal office of an entity.

“Practice privilege” means an authorization to practice public accounting in Iowa or for clients with a home office in Iowa without licensure under this chapter, as provided in Iowa Code section 542.20.

“Principal place of business” means the primary location from which public accounting services are performed. A person or firm may only have one principal place of business at any one time. Persons who perform public accounting services at multiple or rotating locations, such as CPAs who perform attest services on assignment as needed in multiple jurisdictions, may designate as their principal place of business the location that most often serves as the person’s home base of operations.

ITEM 3. Amend rule 193A—2.1(79GA,ch55) as follows:

193A—2.1(79GA, ~~ch55~~ 542) Description.

2.1(1) The purpose of the accountancy examining board is to administer and enforce the provisions of ~~2001 Iowa Acts, chapter 55, (Accountancy Act of 2001)~~ Iowa Code chapter 542 with regard to the practice of accountancy in the state of Iowa including the examining of candidates; issuing of certificates and licenses; granting of permits to practice accountancy; investigating violations and infractions of the accountancy law; disciplining certificate holders, licensees or permit holders; regulating individuals or firms exercising a practice privilege; and imposing civil penalties against nonlicensees. To this end, the board has promulgated these rules to clarify the board’s intent and procedures.

2.1(2) The primary mission of the board is to protect the public interest. All board rules shall be construed as fostering the guiding policies and principles described in ~~2001 Iowa Acts, chapter 55, section 2~~ Iowa Code section 542.2. The board and its licensees shall strive at all times to protect the public interest by promoting the reliability of information that is used for guidance in financial transactions

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

or accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises.

2.1(3) All official communications, including submissions and requests, should be addressed to the board at ~~1918~~ 1920 S.E. Hulsizer, Ankeny, Iowa 52001.

ITEM 4. Amend rule 193A—2.2(79GA,ch55) as follows:

193A—2.2(79GA,~~ch55~~ 542) Administrative Advisory committees.

~~2.2(1)~~ The board chair may appoint administrative advisory committees of not less than two nor more than ~~five~~ four members ~~who shall be members of the board for the purpose of making recommendations on matters specified by~~ to the board concerning the board's responsibilities as to examinations, licensing, continuing education, professional conduct, discipline, and other board matters.

~~2.2(2)~~ An administrative committee may be appointed to make recommendations to the board concerning the board's responsibilities as to examinations, registrations and licensing, continuing education, professional conduct, discipline and other board matters.

ITEM 5. Amend rules **193A—2.3(79GA,ch55)** to **193A—2.5(79GA,ch55)**, parenthetical implementation, by striking “79GA,ch55” and inserting “542” in lieu thereof.

ITEM 6. Amend rules 193A—2.6(79GA,ch55) and 193A—2.7(17A,21,22,272C,79GA,ch55) as follows:

193A—2.6(79GA,~~ch55~~ 542) Disclosure of confidential information.

2.6(1) ~~2001 Iowa Acts, chapter 55, section 4, Iowa Code section 542.4(5)~~ prohibits members of the board from disclosing a final examination score to persons other than the one who took the examination. ~~For the purposes of this rule, “final score” includes information as to whether the candidate “passed,” “failed,” or “conditioned” the examination.~~ Persons who take the examination may consent to the publication of their names on a list of passing candidates.

2.6(2) ~~Other information~~ Information relating to the examination results, including the specific grades by subject matter, shall be given only to the person who took the examination, except that the board may:

a. No change.

b. Disclose the specific grades by subject matter to educational institutions, professional organizations, or others ~~who have a legitimate interest in the information~~, provided the names of the persons taking the examination are not provided in conjunction with the scores.

193A—2.7(17A,21,22,272C,79GA,~~ch55~~ 542) Uniform division bureau rules. Administrative and procedural rules which are common to all boards in the ~~division bureau~~ can be found in the rules of the professional licensing and regulation ~~division bureau~~.

2.7(1) Persons seeking waivers or variances from board rules should review the uniform ~~division~~ rules at 193—Chapter 5.

2.7(2) and **2.7(3)** No change.

2.7(4) Rules regarding denial of issuance or renewal of license or license suspension or revocation for nonpayment of child support, debts owing to the state, or student ~~loan~~ loans appear at 193—Chapter 8.

2.7(5) to **2.7(9)** No change.

ITEM 7. Amend **193A—Chapter 2**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 22, ~~and~~ 272C and ~~2001 Iowa Acts, chapter 55~~ 542.

ITEM 8. Amend subrule 3.1(2) as follows:

3.1(2) An application may be denied if the applicant:

a. Has been convicted of a crime described in Iowa Code section 542.5(2);

b. Has had a professional license of any kind revoked in this or any other jurisdiction, as provided in Iowa Code section 542.5(3);

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

c. Makes a false statement of material fact on an application for a certificate or is otherwise implicated in the submission of a false application as provided in Iowa Code section 542.5(4); ~~or~~

d. Has violated a provision of Iowa Code section 542.20 or has been assessed penalties pursuant to Iowa Code section 542.14 or 193A—Chapter 17;

e. Is the subject of a notice of noncompliance as provided in 193—Chapter 8;

~~*f.*~~ Demonstrates a lack of moral character in a manner which the board reasonably believes will impair the applicant's ability to practice public accountancy in full compliance with the public interest and state policies described in Iowa Code section 542.2. While it is not possible to itemize all actions or behaviors which may demonstrate a lack of moral character, the following nonexclusive list of factors will guide the board in making its determination:

(1) A pattern and practice of making false or deceptive representations, or of omitting material facts, while providing the public any of the services described in Iowa Code section 542.3(20);

(2) Fraud or dishonesty while advertising or selling goods or services to the public;

(3) Willful or repeated failure to timely file tax returns or other mandatory submittals due a governmental body;

(4) Fiscally irresponsible behavior in the absence of mitigating circumstances;

g. Is subject to discipline on any ground that would form the basis for discipline against a licensee;

or

h. Has had a practice privilege revoked in this or another jurisdiction.

ITEM 9. Amend subrule 3.15(1) as follows:

3.15(1) Only a person who holds a ~~valid~~ an active, unexpired certificate and who complies with the requirements of 193A—Chapters 5 and 10 or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

ITEM 10. Amend **193A—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 542 and Iowa Code section 546.10.

ITEM 11. Amend subrule 4.1(2) as follows:

4.1(2) An application may be denied if the applicant:

a. Has been convicted of a crime;

b. Has had a professional license of any kind revoked in this or any other jurisdiction;

c. Makes a false statement of material fact on an application for a license or is otherwise implicated in the submission of a false application; ~~or~~

d. Has been assessed penalties pursuant to Iowa Code section 542.14 or 193A—Chapter 17;

e. Is the subject of a notice of noncompliance as provided in 193—Chapter 8;

~~*f.*~~ Demonstrates a lack of moral character in a manner that the board reasonably believes will impair the applicant's ability to practice public accountancy in full compliance with the public interest and state policies described in Iowa Code section 542.2. While it is not possible to itemize all actions or behaviors which may demonstrate a lack of moral character, the following nonexclusive list of factors will guide the board in making its determination:

(1) A pattern and practice of making false or deceptive representations, or of omitting material facts, while providing any accounting services to the public ~~any of the services;~~

(2) Fraud or dishonesty while advertising or selling goods or services to the public;

(3) Willful or repeated failure to timely file tax returns or other mandatory submittals due a governmental body;

(4) Fiscally irresponsible behavior in the absence of mitigating circumstances; or

g. Is subject to discipline on any ground that would form the basis for discipline against a licensee.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

ITEM 12. Rescind **193A—Chapter 5 to Chapter 8** and adopt the following **new** chapters in lieu thereof:

CHAPTER 5
LICENSURE STATUS AND RENEWAL OF CERTIFICATES AND LICENSES

193A—5.1(542) Licensure status and practice privilege.

5.1(1) Licenses issued by the board pursuant to Iowa Code section 542.6, 542.8, or 542.19 may be in active, inactive, or lapsed status, as follows:

a. An initial license is issued in active status with an expiration date. Maintaining active status requires periodic renewal as provided in rules 193A—5.2(542) and 5.3(542). Renewal in active status requires satisfaction of continuing education as provided in 193A—Chapter 10.

b. A license may be renewed in inactive status as provided in rule 193A—5.9(272C,542) if the licensee does not satisfy the continuing education required for renewal in active status. A renewal license issued in inactive status shall lapse if not timely renewed pursuant to rule 193A—5.2(542) or 5.3(542). An inactive license may be reinstated to active status at any time pursuant to 193A—subrule 5.9(7).

c. An active or inactive license that is not timely renewed shall be in lapsed status. A lapsed license may be reinstated to active or inactive status at any time pursuant to 193A—subrule 5.6(3).

5.1(2) An individual holding an active license is authorized to use the title “CPA” or “LPA,” as applicable, in the individual’s practice of public accounting in Iowa or for a client with a home office in Iowa.

5.1(3) An individual holding an inactive or lapsed license is not authorized to practice public accounting in Iowa or for a client with a home office in Iowa using the title “CPA” or “LPA.”

5.1(4) Practicing public accounting in Iowa or for a client with a home office in Iowa while holding an inactive or lapsed license is a ground for discipline under Iowa Code section 542.10 and may also or alternatively provide grounds for the regulatory actions described in Iowa Code section 542.14.

5.1(5) Out-of-state individuals holding an inactive or lapsed Iowa CPA certificate and out-of-state individuals to whom an Iowa CPA certificate has never been issued under Iowa Code chapter 542 or prior law may exercise a practice privilege under Iowa Code section 542.20 if they hold an active CPA certificate in the jurisdiction in which they maintain their principal place of business and otherwise satisfy all of the conditions described in Iowa Code section 542.20 and 193A—Chapter 20.

5.1(6) Exercising a practice privilege in Iowa or for a client with a home office in Iowa while holding an inactive or lapsed Iowa CPA certificate places a special burden on the individual to ensure that the public is informed about the individual’s licensure status in Iowa and in the jurisdiction of active licensure, as provided in 193A—paragraphs 20.8(2) “*b*” and 20.8(3) “*b*.” As a practical matter, an individual’s failure to clarify licensure status in Iowa and in the jurisdiction of the individual’s principal place of business may confuse the public. There is no comprehensive national data bank that the public may consult to verify an individual’s licensure in another jurisdiction, and a client contacting the board or consulting the board’s Web site will be informed that the individual is not actively licensed in Iowa. The board will have no record of an individual’s exercise or purported exercise of a practice privilege.

193A—5.2(542) Renewal of license that expires on or before June 30, 2009.

5.2(1) To maintain the certified public accountant certificate granted by the board under Iowa Code section 542.6 or 542.19 or the license to practice as a licensed public accountant granted under Iowa Code section 542.8, certificates and licenses shall be renewed biennially.

5.2(2) Licensees whose last names begin with A through K will renew in even-numbered years. Licensees whose last names begin with L through Z will renew in odd-numbered years.

5.2(3) The renewal of certificates and licenses, as required by Iowa Code sections 542.6 and 542.8, shall be on the basis of a biennial expiration date of June 30, and shall be completed upon forms that may be obtained from the board office or on the board’s Web site, or through electronic on-line renewal. A biennial renewal fee will be charged.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

193A—5.3(542) Renewal of license that expires on or after June 30, 2010.

5.3(1) Licenses issued pursuant to Iowa Code section 542.6, 542.8, or 542.19 that expire on June 30, 2010, and thereafter shall be renewed on an annual basis, and shall expire on June 30 of each year. Licenses shall be renewed through electronic on-line renewal, except that licensees who are ineligible to renew on line because they must disclose a criminal conviction or disciplinary order, or for other cause, shall renew upon forms that may be obtained from the board office or on the board's Web site. An annual renewal fee will be charged.

5.3(2) Licensees whose last names begin with A through K shall first renew on an annual basis when their licenses are scheduled to expire on June 30, 2010.

5.3(3) Licensees whose last names begin with L through Z shall first renew on an annual basis when their licenses are scheduled to expire on June 30, 2011.

5.3(4) After all individual licenses have been transitioned to annual renewal cycles, the board plans to develop a renewal process in which a firm permit to practice and the individual licenses associated with the firm may be renewed together. The board shall adopt rules governing the combined renewal process when further details are known and the technological means to implement the process are in place.

193A—5.4(542) Notices.

5.4(1) The board typically mails a notice to licensees in the May preceding license expiration, but neither the failure of the board to mail nor a licensee's failure to receive a renewal notice shall excuse the requirement to timely renew a license.

5.4(2) A licensee shall notify the board within 30 days of any change of address or firm affiliation.

193A—5.5(542) Renewal procedures.

5.5(1) A licensee shall submit an electronic on-line renewal or file a timely and sufficient renewal application with the board by the June 30 deadline in the renewal year. An application shall be deemed filed on the date of electronic renewal or when received by the board or, if mailed, on the date postmarked, but not the date metered.

5.5(2) An applicant for renewal under this chapter shall disclose on the application all background and character information requested by the board including, but not limited to:

- a.* All states or foreign jurisdictions in which the applicant has applied for or holds a CPA certificate or license, an LPA license, or a substantially equivalent designation from a foreign country;
- b.* Any past denial, revocation, suspension, or refusal to renew a CPA certificate, license or permit to practice, or LPA license, or voluntary surrender of a CPA certificate, license or permit or LPA license to resolve or avoid disciplinary action, or similar actions concerning a substantially equivalent foreign designation;
- c.* Any other form of discipline or other penalty imposed against a CPA certificate, license or permit, LPA license, or a substantially equivalent foreign designation, or a practice privilege;
- d.* The conviction of any crime; and
- e.* The revocation of a professional license of any kind in this or any other jurisdiction.

5.5(3) A licensee who performs compilation services for the public other than through a certified public accounting or licensed public accounting firm shall submit a certification of completion of a peer review conducted in accordance with 193A—Chapter 11 no less often than once every three years.

5.5(4) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

- a.* Received by the board in person or electronic form or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;
- b.* Signed by the licensee if submitted in person or mailed, or certified as accurate if submitted electronically;
- c.* Fully completed, including continuing education, if applicable; and
- d.* Accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.

5.5(5) The administrative processing of an application to renew an existing license shall not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

5.5(6) If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant by restricted certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the licensee failed to satisfy the continuing education as required as a condition for licensure. If the basis for denial is pending disciplinary action or disciplinary investigation which is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.39(1).

5.5(7) When a licensee appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.39(546,272C), offer a licensee the opportunity to renew in inactive status or to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; establish deadlines for compliance; and may impose additional educational requirements on the licensee. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed license and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.39(1). A licensee who falsely reports continuing education to the board shall be subject to additional sanctions including, when appropriate, suspension or revocation.

5.5(8) A certificate or license holder who continues to practice public accounting as a CPA or an LPA in Iowa after the certificate or license has expired shall be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a licensee's application for reinstatement.

193A—5.6(542) Failure to renew.

5.6(1) A license or certificate holder who fails to renew the certificate or license by the expiration date, but does so within 30 days following its expiration date, shall be assessed a penalty as provided in rule 193A—12.1(542).

5.6(2) If the holder fails to renew the certificate or license within the 30-day grace period outlined in subrule 5.6(1), the certificate or license will lapse and the licensee shall be required to reinstate in accordance with subrule 5.6(3). The licensee is not authorized to practice during the period of time that the certificate or license is lapsed, including the 30-day grace period.

5.6(3) The board may reinstate a lapsed certificate or license upon the applicant's submission of an application to reinstate and completion of all of the following:

- a. Paying a penalty as provided in rule 193A—12.1(542); and
- b. Paying the current renewal fee; and
- c. Providing evidence of completed continuing education outlined in rule 193A—10.3(542), if the licensee wishes to reinstate to active status; and
- d. Providing a written statement outlining the professional activities of the applicant during the period in which the applicant's license was lapsed. The statement shall describe all services performed which constitute the practice of accounting including, but not limited to, those professional practice activities described in subrule 5.9(2). Such statement shall state whether the applicant exercised a practice privilege in the period during which the license was lapsed and, if so, the jurisdiction of the applicant's principal place of business and status of out-of-state licensure.

5.6(4) A licensee holding a lapsed CPA certificate is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title "CPA" in Iowa or for a client with a

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home office in Iowa. A licensee holding a lapsed LPA license is not authorized to perform compilation services or to otherwise practice public accounting in Iowa using the title “LPA.” A licensee holding a lapsed CPA certificate or LPA license shall not use the title “CPA” or “LPA” in any context unless the licensee discloses that the certificate or license has lapsed. Additionally, a person holding a lapsed Iowa CPA certificate and who is actively licensed as a CPA in another jurisdiction in which the person maintains the principal place of business may be eligible to exercise a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

5.6(5) Practicing public accounting on a lapsed license is a ground for discipline. The board may find probable cause to file charges if the individual continues to offer services defined as the practice of public accounting while using the title “CPA” or “LPA” during the period of lapsed licensure. In addition to the disciplinary sanctions described in rule 193A—16.3(272C,542), individuals found to have practiced public accounting on a lapsed license will be required to notify clients upon such terms as the board shall order.

193A—5.7(272C,542) Certificates and licenses—property of the board. Every certificate or license granted by the board shall, while it remains in the possession of the holder, be preserved by the holder but shall, nevertheless, always remain the property of the board. In the event that the certificate or license is revoked or suspended, or is not renewed in the manner prescribed by Iowa Code chapter 542 or 272C, it shall, on demand, be delivered by the holder to the board. However, a person shall be entitled to retain possession of a lapsed certificate or license which has not been revoked, suspended or voluntarily surrendered in a disciplinary action as long as the person complies with all provisions of Iowa Code sections 542.10 and 542.13. A lapsed certificate or license may be reinstated to active or inactive status at any time pursuant to 193A—subrule 5.6(3).

193A—5.8(542) Licensee’s continuing duty to report. An active or inactive licensee shall notify the board in writing of the licensee’s conviction of a crime within 30 days of the date of conviction. “Conviction” is defined in Iowa Code section 542.5(2). Licensees shall also notify the board in writing within 30 days of the date of any issuance, denial, revocation, or suspension of a certificate, license or permit by another state.

193A—5.9(272C,542) Inactive status.

5.9(1) General purpose. This rule establishes a procedure under which a person issued a certificate as a certified public accountant or a license as a licensed public accountant may apply to the board for licensure in inactive status. Inactive licensure under this rule is available to a certificate or license holder residing within or outside the state of Iowa who is not engaged in Iowa or for a client with a home office in Iowa in any practice for which an active certificate or license is required. A person eligible for inactive status may, as an alternative, allow the person’s certificate or license to lapse. The board will continue to maintain a database on licensees in inactive status, including information which may not routinely be maintained after a certificate or license has lapsed through failure to renew. An inactive licensee will accordingly receive board newsletters and other mass communications from the board.

5.9(2) Eligibility. A person holding a lapsed or active certificate or license which has not been revoked or suspended may apply on forms provided by the board to renew in inactive status if the person is not engaged in the state of Iowa or for clients with a home office in Iowa in any practice for which an active certificate or license is required, including:

- a. Supervising or performing any attest services, such as audits, reviews or agreed-upon procedures (which may only be performed by a CPA within a CPA firm that holds a permit to practice);
- b. Supervising or performing compilation services or otherwise issuing compilation reports (which may only be performed by a CPA or LPA); or
- c. Performing any accounting, tax, consulting, or financial or managerial advisory services for any client, business, employer, government body, or other entity while holding oneself out as a CPA or LPA, or otherwise using titles restricted in Iowa Code section 542.13.

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5.9(3) Affirmation. The application form shall contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa listed in subrule 5.9(2) without first complying with all rules governing reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to subrule 5.9(7).

5.9(4) Renewal. A person licensed in inactive status may renew the person's certificate or license on the schedule described in rule 193A—5.1(542). Such person is exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in rule 193A—12.1(542). An inactive certificate or license shall lapse if not timely renewed.

5.9(5) Permitted practices. A person may, while registered as inactive, perform for a client, business, employer, government body, or other entity those accounting, tax, consulting, or financial or managerial advisory services which may lawfully be performed by a person to whom a certificate or license has never been issued as long as the person does not in connection with such services use the title "CPA" or "LPA," or any other title restricted for use only by CPAs or LPAs in Iowa Code section 542.13 (with or without additional designations such as "inactive"). Restricted titles may only be used by active CPAs or LPAs who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education. Additionally, individuals who are actively licensed as CPAs in another jurisdiction in which they maintain their principal place of business may be eligible to exercise a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

5.9(6) Prohibited practices. A person who, while licensed in inactive status, engages in any of the practices described in subrule 5.9(2) or violates any provision of rule 193A—14.2(17A,272C,542) is subject to disciplinary action. A person in inactive status is not authorized to verify the experience of an applicant for a CPA certificate under Iowa Code section 542.5(12) or an applicant for an LPA license under Iowa Code section 542.8(8).

5.9(7) Reinstatement to active status. A person licensed in inactive status shall, prior to engaging in any of the practices in Iowa listed in subrule 5.9(2) or for a client with a home office in Iowa, apply to the board to reinstate to active status. Such person shall pay the applicable renewal fee for active status, but shall be given credit for renewal fees previously paid for inactive status if the person applies for reinstatement at a date other than the person's regular renewal date. Such person must demonstrate compliance with all applicable continuing education and peer review requirements. A person who has engaged in the practice of public accounting as an active licensee of another jurisdiction while licensed as inactive in Iowa will be deemed to have satisfied the continuing education required for reinstatement if the person demonstrates that the person has satisfied substantially equivalent continuing education in the other jurisdiction.

5.9(8) Retired status. A person holding an inactive license who does not reasonably expect to return to the workforce in any capacity for which an active certificate or license is required due to bona fide retirement or disability may use the title "CPA, retired" or "LPA, retired," as applicable, in the context of non-income-producing personal activities.

These rules are intended to implement Iowa Code chapters 272C and 542 and Iowa Code section 546.10.

CHAPTER 6

ATTEST AND COMPILATION SERVICES

193A—6.1(542) Who may perform attest services.

6.1(1) Only a CPA may perform audit, review, or other attest services, as defined in Iowa Code section 542.3(1).

6.1(2) CPAs who perform attest services in Iowa or for a client with a home office in Iowa must hold an active Iowa CPA certificate or exercise a practice privilege under Iowa Code section 542.20. CPAs are cautioned, however, that the auditor of state, the department of agriculture and land stewardship, another governmental official or body, or a client may require that an individual be licensed in Iowa as a condition of performing attest services in Iowa or for a client with a home office in Iowa, whether

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

or not the individual may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accountant is required, for example, to perform certain audit services described in Iowa Code chapter 11.

6.1(3) CPAs performing attest services, whether certified in Iowa or exercising a practice privilege, must do so in a CPA firm that holds a permit to practice pursuant to Iowa Code section 542.7.

6.1(4) CPAs who are responsible for supervising attest services for a CPA firm or who sign or authorize someone to sign the accountant's report on the financial statements on behalf of a CPA firm shall satisfy the experience or competency requirements established by nationally recognized professional standards that are applicable to the attest services performed and shall, at a minimum, satisfy the experience requirements of rule 193A—6.2(542).

193A—6.2(542) Attest experience required.

6.2(1) A CPA who is responsible for supervising attest services or who signs or authorizes someone to sign the accountant's report on financial statements on behalf of a firm shall have two years of full-time or part-time equivalent experience that extends over a period of no less than two years and includes no fewer than 4,000 hours, at least 2,000 of which shall be in providing attest services under the supervision of one or more CPAs responsible for supervising attest services on behalf of a CPA firm that holds a permit to practice in Iowa or an equivalent form of CPA firm licensure in another jurisdiction.

6.2(2) Experience shall include all of the following:

a. Experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records.

b. Experience in the preparation of audit working papers covering the examination of the accounts usually found in accounting records.

c. Experience in the planning of the program of audit work including the selection of the procedures to be followed.

d. Experience in the preparation of written explanations and comments on the findings of the examinations and on the content of the accounting records.

e. Experience in the preparation and analysis of financial statements together with explanations and notes thereon.

6.2(3) Verification of attest experience shall be provided by the applicant and by a CPA who supervised the applicant or, if a supervising CPA is unavailable, by a CPA or CPA firm with sufficient factual documentation to verify the applicant's attest qualification.

6.2(4) Any applicant or CPA who has been requested to submit to the board evidence of an applicant's attest experience and has refused to do so shall, upon request by the board, explain in writing or in person the basis for the refusal. The board may require any applicant or CPA who furnished the evidence of an applicant's experience to substantiate the information provided. An applicant may be required to appear before the board to supplement or verify evidence of experience. The board may inspect documentation relating to an applicant's claimed experience.

193A—6.3(542) Attest qualification.

6.3(1) Attest qualification is required before a CPA may perform attest services in Iowa or for a client with a home office in Iowa. "Attest qualification" or "attest qualified" means that the CPA has satisfied the experience requirements of rule 193A—6.2(542).

6.3(2) All CPAs who held an individual permit to practice in Iowa at any point prior to July 1, 2002, are deemed to be attest qualified. Under Iowa law prior to July 1, 2002, CPAs were only issued an individual permit to practice if they verified qualification to perform attest services. Individual permits to practice were discontinued under Iowa law effective July 1, 2002.

6.3(3) From July 1, 2002, through June 30, 2009, applicants and Iowa CPAs have attained attest qualification from the board by verifying the required experience when applying for an initial CPA certificate or reciprocal certification, or by separately applying for attest qualification.

6.3(4) Beginning July 1, 2009, when the practice privilege provisions of Iowa Code chapter 542 become effective, attest qualification may be attained or established as follows:

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

a. Applicants may apply for attest qualification when initially applying for a certificate as an Iowa CPA under Iowa Code section 542.6, or when applying for reciprocal Iowa certification under Iowa Code section 542.19.

b. Iowa CPA certificate holders may apply for attest qualification at any time at which they are qualified to do so.

c. Out-of-state CPAs performing attest services while exercising a practice privilege under Iowa Code section 542.20 are not required to individually apply to the board for attest qualification, but the Iowa CPA firm in which such attest services are performed shall affirm when applying for an initial or renewal firm permit to practice that the CPAs who supervise attest services for the firm or who sign or authorize someone to sign the accountant's report on the financial statements on behalf of the firm, as such attest services are or will in the following year be performed in Iowa or for a client with a home office in Iowa, have been qualified to perform attest services in Iowa or another jurisdiction.

193A—6.4(542) Compilation services.

6.4(1) Only a CPA licensed under Iowa Code section 542.6 or 542.19, an LPA licensed under Iowa Code section 542.8, or a person exercising a practice privilege under Iowa Code section 542.20 shall issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa.

6.4(2) An individual described in subrule 6.4(1) may perform compilation services through a CPA firm which holds a permit to practice under Iowa Code section 542.7, an LPA firm which holds a permit to practice under Iowa Code section 542.8, a CPA firm exercising a practice privilege under Iowa Code section 542.20, or, if both the individual and business comply with the requirements of Iowa Code section 542.13(13), through any other form of business.

6.4(3) All individuals described in subrule 6.4(1) who are responsible for supervising compilation services or who will sign or authorize someone to sign the accountant's compilation report on financial statements, as such compilation services will be performed in Iowa or for a client with a home office in Iowa, shall comply with the nationally recognized professional standards that are applicable to compilation services, including SSARS.

6.4(4) All individuals described in subrule 6.4(1) shall satisfy peer review requirements, individually or through the peer review of a CPA or LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.

These rules are intended to implement Iowa Code chapter 542.

CHAPTER 7
CERTIFIED PUBLIC ACCOUNTING FIRMS

193A—7.1(542) When licensure is required.

7.1(1) A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice as a firm of certified public accountants prior to:

a. Performing or offering to perform audit, review or other attest services in Iowa or for a client with a home office in Iowa; or

b. Establishing an office in Iowa at which the firm uses the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm."

7.1(2) A firm which is not subject to subrule 7.1(1) may practice public accounting in Iowa or for a client with a home office in Iowa without a permit issued by the board in conformance with Iowa Code section 542.20 and 193A—Chapter 21.

7.1(3) Unless individual Iowa licensure is required by the auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client, the public accounting services provided by a CPA firm holding an Iowa permit to practice may be performed in Iowa or for a client with a home office in Iowa by Iowa CPAs or wholly by persons exercising a practice privilege under Iowa Code section 542.20.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

7.1(4) If a CPA firm that is issued a permit to practice by the board has one or more offices in Iowa, the public accounting services performed at each such office must be supervised by an Iowa CPA with an unexpired certificate issued under Iowa Code section 542.6 or 542.19.

7.1(5) A CPA firm issued a permit to practice by the board is accountable to the board and subject to discipline by the board for the acts of its owners or other agents, pursuant to 193A—subrule 14.2(4), whether or not such persons are individually licensed by the board. In order to ensure public accountability, all CPA firms issued a permit to practice under Iowa Code section 542.7 shall:

a. Designate an Iowa CPA or a person with a practice privilege under Iowa Code section 542.20 who is responsible for the proper licensure of the firm and the firm's compliance with all applicable laws and rules of the state;

b. Designate an Iowa CPA or Iowa CPAs who are responsible for the proper registration of each Iowa office and each office's compliance with all applicable laws and rules of this state;

c. Designate an Iowa CPA or person with a practice privilege under Iowa Code section 542.20 who is responsible for supervising attest services or who will sign or authorize someone to sign the accountant's report on financial statements, as such attest services will be performed in Iowa or for a client with a home office in Iowa; and

d. Designate an Iowa CPA or LPA or person with a practice privilege under Iowa Code section 542.20 who is responsible for supervising compilation services or who will sign or authorize someone to sign the accountant's compilation report on financial statements, as such compilation services will be performed in Iowa or for a client with a home office in Iowa.

193A—7.2(542) Application process.

7.2(1) Application forms may be obtained from the board office or on the board's Web site. The board shall only process fully completed applications accompanied by the proper fee. A nonrefundable application fee shall be charged.

7.2(2) Fraud or deceit, by commission or omission, in obtaining a firm permit to practice is a ground for discipline, including permanent revocation of the firm's permit to practice, the individual certificate of an Iowa CPA, or an individual's practice privilege, as applicable to the entity or persons responsible.

7.2(3) An initial or renewal application for a firm permit to practice may be denied:

a. Upon any ground that would form a basis for discipline against the firm pursuant to Iowa Code section 542.10 or 193A—Chapter 14; or

b. Based on the firm's failure to comply with the requirements of Iowa Code section 542.7 including, but not limited to, a failure to make the designations described in subrule 7.1(5) or a failure to sustain the simple majority of ownership required by Iowa Code section 542.7(3).

193A—7.3(542) Application contents. Applicants for a firm permit to practice shall provide such information as the board may require, including:

7.3(1) The lawful name of the firm and any trade or assumed names, or aliases the firm will use in Iowa or when communicating with Iowans.

7.3(2) The legal form and jurisdiction of the firm's organization.

7.3(3) Contact information for the principal place of business of the firm and each Iowa office, including name, physical address, mailing address, telephone number, facsimile number, E-mail address, and Web-site address.

7.3(4) All jurisdictions in which the firm is licensed or has applied for licensure, all unexpired firm license numbers, and the expiration date of each license.

7.3(5) The names and contact information for all persons described in subrule 7.1(5), including name, title, physical address, mailing address, telephone number, facsimile number, E-mail address, jurisdiction of the person's principal place of business, and the certificate number and expiration date of the certificate held in the person's principal place of business.

7.3(6) The highest level of public accounting services offered by the firm, such as compilation or attest.

7.3(7) Evidence of satisfactory completion of the last firm peer review, when applicable.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

7.3(8) The identity of all owners (e.g., partners, shareholders, or members) of the firm who perform professional services in Iowa or for a client with a home office in Iowa, including sufficient information from which the board can determine that a simple majority of owners hold a CPA certificate under Iowa Code section 542.6 or 542.19 or hold a CPA certificate in another state and are eligible to exercise a practice privilege under Iowa Code section 542.20. The board may modify this requirement on the application form as warranted to secure only the information the board deems reasonably needed and may accept an affirmation, subject to audit. The board reserves the right to require at any time a full list, or a targeted sublist, such as a list of those persons who perform services from an Iowa office or those who perform attest or compilation services in Iowa or for a client with a home office in Iowa.

7.3(9) The affirmation described in 193A—paragraph 6.3(4)“c.”

7.3(10) Affirmation that all CPAs who are responsible for supervising attest services for the CPA firm or who sign or authorize someone to sign the accountant’s report on the financial statements on behalf of the CPA firm satisfy the experience or competency requirements established by nationally recognized professional standards that are applicable to the attest services performed in Iowa or for clients with a home office in Iowa.

7.3(11) Affirmation that all CPAs or LPAs who are responsible for supervising compilation services or who sign or authorize someone to sign the accountant’s compilation report on the financial statements on behalf of the firm comply with nationally recognized professional standards that are applicable to the compilation services performed in Iowa or for a client with a home office in Iowa.

7.3(12) Affirmation that all nonlicensee owners are active participants in the firm or affiliated entity.

7.3(13) Affirmation that the firm and its licensed or unlicensed owners will comply with all applicable Iowa laws and rules, including rules of professional conduct, when practicing in Iowa or for a client with a home office in Iowa.

7.3(14) Details of any past denial, cancellation, revocation, suspension, refusal to renew, or voluntary surrender of a professional license of any kind, authority to practice, or practice privilege by the board or another state agency in any jurisdiction, a federal agency, or the PCAOB, regarding the firm and the firm’s current owners (e.g., partners, shareholders, or members).

7.3(15) Details of any past felony conviction or the conviction of any crime, any element of which is dishonesty or fraud, as provided in Iowa Code section 542.5(2), under the laws of any state or the United States, regarding the firm and the firm’s current owners (e.g., partners, shareholders, or members).

193A—7.4(542) Annual renewal of permit. Permits to practice must be renewed annually and shall expire on June 30 of each year. Applications to renew a permit to practice may be obtained from the board office or on the board’s Web site or through electronic on-line renewal. While the board generally mails a renewal notice in the May preceding permit expiration, neither the board’s failure to mail a notice nor a permit holder’s failure to receive a notice shall excuse the requirement to timely renew and pay the renewal fee.

193A—7.5(542) Renewal procedures.

7.5(1) The permit holder shall submit an electronic on-line renewal or file a timely and sufficient renewal application with the board by the June 30 deadline each year. Applications shall be deemed filed on the date of electronic renewal or when received by the board or, if mailed, on the date postmarked, but not the date metered.

7.5(2) The permit holder shall list on the renewal application all states in which the applicant has applied for or holds a permit as a certified public accounting firm and list any past denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a permit to practice or practice privilege. Renewal applications may request such additional information as the board requires, including all of the information described in rule 193A—7.3(542).

7.5(3) Within the meaning of Iowa Code chapters 17A, 272C and 542, a timely and sufficient renewal application shall be:

a. Received by the board in person or electronic form or postmarked with a nonmetered United States Postal Service postmark on or before the date the permit is set to expire or lapse;

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

b. Signed by the licensee in charge of the firm's practice if submitted in person or mailed, or certified as accurate if submitted electronically;

c. Fully completed and accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.

193A—7.6(542) Failure to renew permit.

7.6(1) A firm that fails to renew the permit by the expiration date, but does so within 30 days following the expiration date, shall be assessed a penalty as provided in rule 193A—12.1(542).

7.6(2) If the firm fails to renew the permit within the 30-day grace period outlined in subrule 7.6(1), the permit will lapse and the firm shall be required to reinstate in accordance with subrule 7.6(3). The firm is not authorized to practice during the period of time that the permit is lapsed, including the 30-day grace period.

7.6(3) The board may reinstate the permit upon payment of the proper renewal fee and a penalty as provided in rule 193A—12.1(542). The board shall also require a written statement outlining the firm's professional activities during the period of lapsed licensure.

7.6(4) The board may find probable cause to file charges for unlicensed practice if the firm engaged in any activity that required licensure pursuant to 193A—subrule 7.1(1) during the period of lapsed licensure. In addition to the disciplinary sanctions described in rule 193A—16.3(272C,542), firms found to have practiced public accounting in violation of 193A—subrule 7.1(1) on a lapsed license will be required to notify clients upon such terms as the board shall order.

193A—7.7(542) Notices required. A holder of or applicant for a permit shall notify the board in writing within 30 days after an occurrence of any of the following:

7.7(1) A change in the identity of an owner (e.g., partner, shareholder, or member) who performs professional services in this state or for clients with a home office in this state. This is a statutory requirement the board will enforce consistent with the disclosures and affirmations required on initial and renewal application forms.

7.7(2) A change in the number or location of offices within this state.

7.7(3) A change in the identity of a person in charge of such offices.

7.7(4) The denial, revocation, suspension, refusal to renew, or voluntary surrender of a permit to practice, other professional license of any kind, authority to practice, or practice privilege by another state, a state agency in any jurisdiction, a federal agency, or the PCAOB, regarding the firm or any of the firm's owners (e.g., partners, shareholders, or members).

7.7(5) A change of physical or mailing address of the primary office of the firm or of any office located in Iowa, or of any person designated by the firm pursuant to 193A—subrule 7.1(5).

193A—7.8(542) Firms not in compliance with requirements. A firm that, after receiving or renewing a permit, is not in compliance with Iowa Code section 542.7 as a result of a change in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time, usually 90 days, for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board shall result in the suspension or revocation of the firm permit.

193A—7.9(542) Peer review required. As a condition of renewal of a permit to practice as a certified public accounting firm, the firm shall undergo, at least once every three years, a peer review conducted under the provisions outlined in 193A—Chapter 11.

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and Iowa Code section 546.10.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

CHAPTER 8
LICENSED PUBLIC ACCOUNTING FIRMS**193A—8.1(542) Initial permit to practice.**

8.1(1) A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice under Iowa Code section 542.8 and these rules as a firm of licensed public accountants in order to use the title “LPAs” or “LPA firm.” A nonrefundable application fee shall be charged.

8.1(2) The application may be obtained from the board office or on the board’s Web site and shall list the names of all licensed or unlicensed owners, a simple majority of whom shall hold licenses issued under Iowa Code section 542.8 or certificates issued under Iowa Code section 542.6 or 542.19, be eligible to practice under practice privilege pursuant to Iowa Code section 542.20, or otherwise hold a license or certificate to practice public accounting in another state. At least one owner must be licensed under Iowa Code section 542.8.

8.1(3) The application shall list the name, title, physical address, mailing address, telephone number, facsimile number, E-mail address, jurisdiction(s) of individual licensure or certification, principal place of business, each license or certificate number, and the expiration date of each license or certificate of any licensee or practice privilege practitioner who is responsible for supervising compilation services and who signs or authorizes someone to sign the accountant’s report on financial statements on behalf of the firm. The application shall affirm that any licensee listed meets the competency requirements set forth in SSARS and holds a valid license or certificate issued under Iowa Code section 542.6, 542.8, or 542.19 or is eligible to exercise a practice privilege under Iowa Code section 542.20.

8.1(4) The application shall list the physical location and contact information (telephone number, E-mail address, facsimile number, and Web-site address) for all offices within this state and the licensee in charge of each such office. For each such designated licensee, the jurisdiction(s) of licensure, license or certificate number, and expiration date of each license or certificate shall also be listed.

8.1(5) Persons in charge of an office located in Iowa shall be licensed in Iowa under Iowa Code section 542.6, 542.8, or 542.19.

8.1(6) The application shall designate an individual who holds a valid license or certificate issued under Iowa Code section 542.6, 542.8 or 542.19 or who is eligible to exercise a practice privilege under Iowa Code section 542.20 as the person responsible for ensuring that the firm has complied with all of the requirements for a permit to practice, and shall provide contact and licensure information for such individual.

8.1(7) The application shall affirm that all nonlicensee owners are active participants in the firm or an affiliated entity.

8.1(8) The application shall affirm that all nonlicensee owners shall comply with all applicable rules of professional conduct.

8.1(9) The application for initial issuance of a permit shall list all states in which the applicant or any of the individuals described in subrules 8.1(2) to 8.1(5) have applied for or hold a permit as a licensed public accounting firm, certified public accounting firm, or individual license or certificate, and list any past denial, revocation, surrender, or suspension of a permit, license or certificate by another state.

8.1(10) The application shall list the names of any licensed or unlicensed owner who has been convicted of a felony or other crime described in Iowa Code section 542.5(2) or has had a professional license of any kind revoked in this or any other jurisdiction.

8.1(11) Fraud or deceit, by commission or omission, in obtaining a firm permit to practice is a ground for discipline, including permanent revocation of the firm’s permit to practice, the individual certificate of an Iowa LPA or CPA, or an individual’s practice privilege, as applicable to the entity or persons responsible.

8.1(12) An initial or renewal application for a firm permit to practice may be denied:

a. Upon any ground that would form a basis for discipline against the firm pursuant to Iowa Code section 542.10 or rule 193A—14.3(17A,272C,542) including, but not limited to, the regulatory and disciplinary actions and criminal convictions described in subrules 8.1(9) and 8.1(10);

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

b. Based on the firm's failure to comply with the requirements of Iowa Code section 542.8 including, but not limited to, a failure to make the designations described in subrules 8.1(3), 8.1(4), and 8.1(6), or a failure to sustain the simple majority of ownership required by Iowa Code section 542.8(12) "a"; or

c. Based on a regulatory or disciplinary action or criminal conviction described in subrules 8.1(9) and 8.1(10) against any of the firm's owners (e.g., partners, shareholders, or members).

193A—8.2(542) Annual renewal of permit. A permit issued under the provisions of Iowa Code section 542.8 shall be renewed annually by June 30 upon forms provided by the board. Applications to renew a permit to practice may be obtained from the board office or on the board's Web site or through electronic on-line renewal. While the board generally mails a renewal notice in the May preceding permit expiration, neither the board's failure to mail a notice nor a permit holder's failure to receive a notice shall excuse the requirement to timely renew and pay the renewal fee.

193A—8.3(542) Renewal procedures.

8.3(1) The permit holder shall submit an electronic on-line renewal or file a timely and sufficient renewal application with the board by the June 30 deadline each year. Applications shall be deemed filed on the date of electronic renewal or when received by the board or, if mailed, the date postmarked, but not the date metered.

8.3(2) The permit holder shall list on the renewal application all states in which the applicant has applied for or holds a permit as a licensed public accounting firm and list any past denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a permit. Permit holders shall notify the board in writing within 30 days after the occurrence of any issuance, denial, revocation, suspension or refusal to renew or voluntary surrender to avoid disciplinary action of a permit to practice as a licensed public accounting firm by another state. Renewal applications may request such additional information as the board requires of initial applicants.

8.3(3) Within the meaning of Iowa Code chapters 17A, 272C, and 542, a timely and sufficient renewal application shall be:

a. Received by the board in person or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the permit is set to expire or lapse;

b. Signed by the licensee in charge of the firm's practice if submitted in person or mailed, or certified as accurate if submitted electronically;

c. Fully completed and accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.

193A—8.4(542) Failure to renew permit.

8.4(1) A firm that fails to renew the permit by the expiration date, but does so within 30 days following the expiration date, shall be assessed a penalty of 25 percent of the annual renewal fee.

8.4(2) If the firm fails to renew the permit within the 30-day grace period outlined in subrule 8.4(1), the permit will lapse and the firm shall be required to reinstate in accordance with subrule 8.4(3). The firm is not authorized to practice as an LPA firm during the period of time that the permit is lapsed, including the 30-day grace period.

8.4(3) The board may reinstate the permit upon payment of the proper renewal fee and a penalty as provided in rule 193A—12.1(542). The board shall also require a written statement outlining the firm's professional activities during the period of lapsed licensure.

8.4(4) The board may find probable cause to file charges for unlicensed practice if the firm continues to offer services defined as the practice of accounting while using the title "LPAs" or "LPA firm" during the period of lapsed licensure.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

193A—8.5(542) Notices required. A holder of or an applicant for a permit shall notify the board in writing within 30 days after an occurrence of any of the following:

8.5(1) A change in the identity of an owner (e.g., partner, shareholder, or member) who performs professional services in this state or for clients with a home office in this state. This is a statutory requirement the board will enforce consistent with the disclosures and affirmations required on initial and renewal application forms.

8.5(2) A change in the number or location of offices within this state.

8.5(3) A change in the identity of a person in charge of such offices.

8.5(4) The issuance, denial, revocation, suspension, refusal to renew, or voluntary surrender of a permit to practice, other professional license of any kind, authority to practice, or practice privilege by another state, or a state or federal agency in any jurisdiction, regarding the firm or any of the persons described in subrule 8.1(3), 8.1(4), or 8.1(6)

8.5(5) A change of physical or mailing address of the primary office of the firm or of any office located in Iowa or of any person designated by the firm pursuant to subrule 8.1(3), 8.1(4), or 8.1(6).

193A—8.6(542) Firms not in compliance with requirements. A firm which, after receiving or renewing a permit, is not in compliance with Iowa Code section 542.8 as a result of a change in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time, usually 90 days, for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board shall result in the suspension or revocation of the firm permit.

193A—8.7(542) Peer review required. As a condition for renewal of a permit to practice as a licensed public accounting firm, the firm shall undergo, at least once every three years, a peer review conducted under the provisions outlined in 193A—Chapter 11.

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and Iowa Code section 546.10.

ITEM 13. Amend **193A—Chapter 9**, title, as follows:

RECIPROCITY AND SUBSTANTIAL EQUIVALENCY

ITEM 14. Amend rules **193A—9.1(79GA,ch55)** to **193A—9.7(79GA,ch55)**, parenthetical implementation, by striking “79GA,ch55” and inserting “542” in lieu thereof.

ITEM 15. Amend rule 193A—9.1(542) as follows:

193A—9.1(542) Iowa CPA certificate required. ~~Except as provided in 2001 Iowa Acts, chapter 55, section 7(1) or 13(11), a A person who holds a certificate or license to practice as a CPA in another state or a substantially equivalent designation from a foreign jurisdiction who may apply to the board for an Iowa CPA certificate and must do so if the person plans to practice public accounting as a CPA in Iowa or for Iowa clients or who otherwise desires to establish the person’s principal place of business as a CPA in Iowa must first apply to the board for an Iowa CPA certificate.~~

ITEM 16. Amend paragraphs **9.3(1)“d”** and **“e”** as follows:

d. The conviction of any felony or any crime described in Iowa Code section 542.5(2); and

e. The revocation of a professional license of any kind in this or any other jurisdiction; and

ITEM 17. Adopt the following new paragraph **9.3(1)“f”**:

f. Such additional information as the board may require to determine if grounds exist to deny certification under 193A—subrule 3.1(2).

ITEM 18. Amend rule 193A—9.4(542) as follows:

193A—9.4(542) Verification of state licensure. An applicant holding a CPA certificate or license from another state or states shall submit verification that the applicant’s CPA certificate or license is valid and in good standing in the state in which the applicant’s principal place of business is located. An applicant

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applying for a CPA certificate under the substantial equivalency provisions of ~~2001 Iowa Acts, chapter 55, section 19(1)(a)~~, Iowa Code section 542.19(1)“a” and paragraph 9.5(1)“a” may attach a letter of good standing to the application. Such letter of good standing shall be prepared by the state in which the applicant’s principal place of business is located and shall be dated within six months of the date of the application. To expedite the application process, the board will accept verification from another state’s board by facsimile or E-mail. The board reserves the right to request an original verification document directly from another state board.

ITEM 19. Amend subrules 9.5(1) and 9.5(2) as follows:

9.5(1) A person who holds in good standing a valid CPA certificate or license from another state shall be deemed qualified for an Iowa CPA certificate if the person satisfies one of the following three conditions:

a. Substantially equivalent state. The licensing standards on education, examination and experience of the state which issued the applicant’s CPA certificate or license were, at the time of licensure, comparable or superior to the education, examination and experience requirements of ~~2001 Iowa Acts, chapter 55~~, Iowa Code chapter 542 in effect at the time the application is filed in Iowa. The board may accept the determination of substantial equivalency made by the National Association of State Boards of Accountancy or may make an independent determination of substantial equivalency.

b. Individual substantial equivalency. The applicant’s individual qualifications on education, examination and experience are comparable or superior to the education, examination and experience requirements of ~~2001 Iowa Acts, chapter 55~~, Iowa Code chapter 542 in effect at the time the application is filed in Iowa.

c. “Four-in-ten rule.” The applicant satisfies all of the following:

(1) The applicant passed the examination required for issuance of the applicant’s certificate or license with grades that would have been passing grades at the time in this state.

(2) The applicant has had at least four years of experience within the ten years immediately preceding the application which occurred after the applicant passed the examination upon which the CPA certificate or license was based and which in the board’s opinion is substantially equivalent to that required by ~~2001 Iowa Acts, chapter 55, section 5(12)~~ Iowa Code section 542.5(12).

(3) If the applicant’s CPA certificate or license was issued more than four years prior to the filing of the application in this state, the applicant has fulfilled the continuing professional education requirements described in ~~2001 Iowa Acts, chapter 55, section 6(3)~~, Iowa Code section 542.6(3) and 193A—Chapter 10.

9.5(2) A person who holds in good standing a certificate, license or designation from a foreign authority that is substantially equivalent to an Iowa CPA certificate shall be deemed qualified for an Iowa CPA certificate if the person satisfies all of the provisions of ~~2001 Iowa Acts, chapter 55, section 19(3)~~ Iowa Code section 542.19(3). The burden is on the applicant to demonstrate that such certificate, license or foreign designation is in full force and effect and that the requirements for that certificate, license or foreign designation are comparable or superior to those required for a CPA certificate in this state. Original verification from the foreign authority which issued the certificate, license or designation shall be required to demonstrate that such certificate, license or designation is valid and in good standing. If the applicant cannot establish comparable or superior qualifications, the board shall require that the applicant pass the uniform certified public accountant examination designed to test the applicant’s knowledge of practice in this state and country. If the applicant is a Canadian Chartered Accountant, Australian Chartered Accountant or Australian Certified Practicing Accountant, the applicant may be required to take the International Uniform CPA Qualification Examination (IQEX) in lieu of the uniform certified public accountant examination.

ITEM 20. Amend rule 193A—9.7(542) as follows:

193A—9.7(542) Expedited application processing. A person applying for a CPA certificate under the substantial equivalency provisions of ~~2001 Iowa Acts, chapter 55, section 19(1)(a)~~, and paragraph ~~9.5(1)“a”~~ Iowa Code section 542.19(1)“a” often desires expedited application processing to facilitate

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cross-border practice. Applications by such persons are especially suitable for rapid processing given the substantially equivalent standards previously enforced in another state. Unless such application reveals grounds to deny the application under subrule 9.3(2), the board is otherwise aware of such grounds, or the application is unaccompanied by the proper fee, the board's administrator shall approve an application which qualifies under ~~2001 Iowa Acts, chapter 55, section 19(1)(a), and paragraph 9.5(1) "a"~~ Iowa Code section 542.19(1) "a" as rapidly as feasible and shall deem the effective date of approval to practice in Iowa to be the date the board received the completed application with timely letter of good standing in a substantially equivalent state.

ITEM 21. Amend **193A—Chapter 9**, implementation sentence, as follows:

These rules are intended to implement ~~2001 Iowa Acts, chapter 55, section 19~~ Iowa Code section 542.19.

ITEM 22. Amend subrules 10.3(4) and 10.3(5) as follows:

10.3(4) An applicant who wishes to ~~restore~~ reinstate a lapsed or inactive certificate or license to active status must meet the basic requirement of 120 hours of continuing education earned in the preceding three-year period prior to the date of application to ~~restore active status~~ reinstate. The hours claimed to ~~restore~~ reinstate to active status cannot again be used at the next or subsequent renewal dates. At the first biennial renewal date of July 1 that is less than 12 months from the date of filing the application to ~~restore~~ reinstate the certificate or license to active status, the certificate or license holder shall not be required to report continuing education. At the biennial renewal date of July 1 which is more than 12 months, but less than 24 months, from the date of filing the application to ~~restore~~ reinstate the certificate or license to active status, the certificate or license holder shall report 40 hours of previously unreported continuing education earned in the one-year period ending December 31 prior to the July 1 renewal date. At the biennial renewal date of July 1 which is more than 24 months, but less than 36 months, from the date of filing the application to ~~restore~~ reinstate the certificate or license to active status, the certificate or license holder shall report 80 hours of continuing education earned in the two-year period ending December 31 prior to the July 1 renewal date.

10.3(5) A licensee shall be deemed to have complied with the requirements of rule 193A—10.3(542) if, for the period that the licensee is a resident of another state or district having a continuing education requirement, the licensee met the resident state's mandatory requirement. Additionally, if a licensee maintains the licensee's principal place of business outside Iowa, the licensee shall be deemed to have satisfied Iowa's continuing education requirements if the other jurisdiction maintains a mandatory requirement and the licensee satisfies the continuing education requirements of the jurisdiction of the licensee's principal place of business.

ITEM 23. Adopt the following new subrules 10.3(7) to 10.3(10):

10.3(7) The provisions of subrules 10.3(1) to 10.3(4) are applicable until individual licenses are transitioned to an annual renewal cycle as provided in rule 193A—5.3(542). Licensees whose last names begin with A through K shall first renew on an annual basis when their licenses are scheduled to expire on June 30, 2010. Licensees whose last names begin with L through Z shall first renew on an annual basis when their licenses are scheduled to expire on June 30, 2011.

10.3(8) For licensees whose initial application for a certificate or license is issued on an annual renewal basis, continuing education will be required on the following phased-in basis:

- a. No continuing education shall be required on the first annual renewal after initial licensure.
- b. 40 hours of continuing education shall be required in the one-year period ending December 1 prior to the second July 1 annual renewal date.
- c. 80 hours of continuing education shall be required in the two-year period ending December 1 prior to the third July 1 annual renewal date.
- d. 120 hours of continuing education shall be required in the three-year period ending December 1 prior to the fourth and subsequent July 1 annual renewal dates.

10.3(9) Licensees who apply to reinstate a lapsed or inactive certificate or license to active status pursuant to 193A—subrule 5.6(3) or 5.9(7) shall satisfy the basic requirement of 120 hours of continuing education earned in the preceding three-year period prior to the date of the application to reinstate on an

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annual renewal schedule, modified as needed to incorporate the phase-in schedule for initial licensees described in subrule 10.3(8). Once the certificate or license is reinstated, the following schedule shall apply:

a. No continuing education shall be required on the first annual renewal after reinstatement of a lapsed or inactive certificate or license to active status.

b. 40 hours of continuing education that has not previously been reported shall be required in the one-year period ending December 1 prior to the second July 1 annual renewal date following reinstatement to active status.

c. 80 hours of continuing education that has not previously been reported shall be required in the two-year period ending December 1 prior to the third July 1 annual renewal date following reinstatement to active status.

d. 120 hours of continuing education shall be required in the three-year period ending December 1 prior to the fourth and subsequent July 1 annual renewal dates following reinstatement to active status.

10.3(10) Licensees are cautioned that adhering to the phase-in schedules provided in this rule may or may not satisfy other standards applicable to the licensee's practice, such as "yellow book" standards applicable to the performance of attest services involving government audits. Each licensee is responsible for ensuring that all continuing education requirements that are applicable to the licensee's practice are satisfied.

ITEM 24. Amend rule 193A—10.5(542) as follows:

193A—10.5(542) Mandatory education required.

10.5(1) In each ~~biennial~~ renewal period in which compilation reports are issued, every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on the financial statements on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of seven hours of continuing education devoted to financial statement presentation, such as courses covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates. When required, the financial statement presentation continuing education shall be completed within the two-year period ending on the December 31 preceding the application for biennial or annual certificate or license renewal. For credit to be claimed for a course covering multiple topics, a minimum of one hour as outlined in subrule 10.4(1) shall be devoted to financial statement presentation and credit shall be claimed as one contact hour of credit for each hour of participation devoted to each particular topic. For example, if a seminar or presentation is conducted for a total of four hours and only one hour is devoted to financial statement presentation, then only one hour shall be claimed toward meeting the requirement of this subrule.

10.5(2) Every CPA certificate holder or LPA license holder shall complete a minimum of four hours of continuing education devoted to ethics and rules of professional conduct during the two-year period ending December 31, prior to the July 1 annual or biennial renewal date, as applicable. For a course to qualify to meet this requirement, the course description shall clearly outline the subject matter covered as professional or business ethics. If credit is to be claimed for a course covering multiple topics, a minimum of one-half hour as outlined in subrule 10.4(1) shall be devoted to business or professional ethics and credit shall be claimed as one contact hour, or after the first one hour, one-half hour of credit for each hour or one-half hour of participation devoted to each particular topic. For example, if a seminar or presentation is conducted for a total of four hours and only one hour is devoted to business or professional ethics, then only one hour shall be claimed toward meeting the requirement of this subrule. The first requirement shall be completed by December 31, 2007, for individuals whose renewal date is July 1, 2008, and December 31, 2008, for individuals whose renewal date is July 1, 2009.

ITEM 25. Adopt the following new rule 193A—10.8(542):

193A—10.8(542) Grounds for discipline. A licensee or an applicant is subject to discipline, including permanent revocation, if the licensee or applicant provides false information to the board in connection

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with an application to renew or reinstate a certificate or license. A licensee or an applicant is also subject to discipline if the licensee or applicant is unable to document the continuing education hours reported to the board in connection with an audit or other request for documentation. False information of this nature will subject the licensee or applicant to discipline whether the false information was supplied intentionally or with reckless disregard for the truth or accuracy of the number of hours claimed. Licensees and applicants are accordingly cautioned to supply the board with accurate continuing education information.

ITEM 26. Amend rules **193A—11.1(79GA,ch55)** to **193A—11.5(79GA,ch55)**, parenthetical implementation, by striking “79GA,ch55” and inserting “542” in lieu thereof.

ITEM 27. Amend rules 193A—11.2(542), 193A—11.3(542) and 193A—11.5(542) as follows:

193A—11.2(542) How often required. During the three-year period ending December 31 preceding the application for renewal of a certificate, license, or permit to practice, the individual licensee or firm shall have completed a peer review in accordance with this chapter. A peer review shall be completed no less often than once every three years.

193A—11.3(542) System of internal quality control. If the firm has not issued reports on financial statements prior to the application for renewal, the firm shall have in place a system of internal quality control prior to the commencement of a financial reporting engagement, and shall come into compliance with the peer review requirement within 18 months of completion of a financial reporting engagement.

193A—11.5(542) Waiver of peer review requirement. At the time of renewal a licensee or firm may request, in writing upon a form provided by the board, a waiver from the requirements of this chapter, as provided in ~~2001 Iowa Acts, chapter 55, sections 7(9) and 8(19)~~ Iowa Code sections 542.7(9) and 542.8(19).

ITEM 28. Adopt the following new rule 193A—11.6(542):

193A—11.6(542) Submission of peer review reports. Unless the subject of a peer review timely objects in writing to the administering entity of the peer review program, the administering entity shall make available to the board within 30 days of the issuance of the peer review acceptance letter the final peer review report or such peer review records as are designated by the peer review program in which the administering entity participates. The subject of a peer review may voluntarily submit the final peer review report directly to the board.

ITEM 29. Amend **193A—Chapter 11**, implementation sentence, as follows:

These rules are intended to implement ~~2001 Iowa Acts, chapter 55~~ Iowa Code chapter 542.

ITEM 30. Rescind 193A—Chapter 12 and adopt the following new chapter in lieu thereof:

CHAPTER 12

FEES

193A—12.1(542) Required fees. The following is a schedule of the fees for examinations, certificates, licenses, permits and renewals adopted by the board:

Initial CPA examination application:

Paid directly to CPA examination services	not to exceed \$1500
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Reexamination:

Paid directly to CPA examination services	not to exceed \$1500
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Original issuance of CPA certificate or LPA license by examination (fee includes wall certificate)	\$100
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Original issuance of CPA certificate by reciprocity or substantial equivalency	\$100
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CPA wall certificate or LPA license issued by reciprocity or substantial equivalency	\$50
Replacement of lost or destroyed wall CPA certificate or LPA license	\$50
Original issuance of attest qualification	\$100
Biennial renewal of CPA certificate or LPA license—active status	\$100
Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—active status	\$25
Biennial renewal of CPA certificate or LPA license—inactive status	\$50
Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—inactive status	\$10
Penalty for failure to comply with continuing education requirements	\$50 to \$250
Original issuance of firm permit to practice	\$50
Annual renewal of firm permit to practice	\$50

The board has not yet established a fee schedule for annual renewals commencing with certificates and licenses that expire on and after June 30, 2010, and will amend the rules when the revised fee schedule is available.

193A—12.2(542) Reinstatement.

12.2(1) *Reinstatement of a lapsed CPA certificate or LPA license.* The fee for reinstatement of a lapsed CPA certificate or LPA license is \$100 plus the renewal fee for applications to reinstate filed on or before June 30, 2009. The fee for the reinstatement of a lapsed CPA certificate or LPA license for applications filed on or after July 1, 2009, is the renewal fee plus \$25 per month of expired registration up to a maximum of \$1,000.

12.2(2) *Reinstatement of lapsed firm permit to practice.* The fee for reinstatement of a lapsed CPA or LPA firm permit to practice is \$100 plus the renewal fee for applications to reinstate filed on or before June 30, 2009. The fee for the reinstatement of a lapsed CPA or LPA firm permit to practice for applications filed on or after July 1, 2009, is the renewal fee plus \$25 per month of expired registration up to a maximum of \$1,000.

193A—12.3(542) Prorating of certain fees.

12.3(1) Fees for issuance of an original certificate or license for less than one year to the biennial renewal date as provided in rule 193A—5.1(542) may be prorated on an annual basis for the remainder of time covered by the certificate or license. For example, if a CPA certificate or LPA license holder applies for the original certificate or license and is required to renew the certificate or license in 12 months or less, the fee would be \$50. If the original certificate or license is not scheduled to be renewed for more than 12 months, the fee would be \$100.

12.3(2) Fees for the issuance of an original CPA certificate or LPA license, pursuant to rule 193A—5.3(542), or the issuance of an initial permit to practice to a CPA or LPA firm, pursuant to rule 193A—7.1(542), will not be prorated.

These rules are intended to implement Iowa Code chapter 542.

ITEM 31. Amend rule 193A—13.3(542), catchwords, as follows:

193A—13.3(542) Independence, integrity ~~and~~, objectivity and conflicts of interest.

ITEM 32. Amend subrule **13.3(1)**, introductory paragraph, as follows:

13.3(1) *Independence.* A CPA or LPA or firm of which a CPA or LPA is an owner (e.g., partner, ~~officer~~, shareholder, or member ~~or manager~~) shall not issue a report on financial statements of a client in such a manner as to imply that the CPA or LPA is acting as an independent public accountant with

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respect thereto unless the CPA or LPA is independent with respect to such client. Independence will be considered to be impaired if, for example:

ITEM 33. Amend subrule 13.3(2) as follows:

13.3(2) *Integrity ~~and~~, objectivity, and conflicts of interest.*

a. A CPA or LPA shall not, in the performance of professional services, knowingly misrepresent facts, subordinate judgment to others, or allow professional judgment and objectivity to be impaired by self-interest or by a conflict of interest between the licensee and a client or between clients. In tax practice, however, a CPA or LPA may resolve doubt in favor of the client as long as there is reasonable support for this position.

b. When faced with a conflict of interest that impairs or may impair professional judgment and objectivity, the licensee shall decline or cease the engagement, take steps to remove the conflict or, when reasonably feasible and appropriate under the circumstances and consistent with independence requirements, disclose the conflict or potential conflict and secure informed consent to proceed with the engagement from all clients. In no event, however, shall a licensee proceed with an engagement through informed consent when the nature of the conflict impairs the licensee's objectivity, whether or not the client or clients consent.

c. A conflict of interest may arise, for instance, when a licensee represents multiple clients whose interests are adverse to each other. Whether a licensee can provide competent, diligent, and objective representation to clients whose interests are or may be adverse to each other's interests or the interests of the licensee, with informed consent, will depend on the factual circumstances of the engagement. Licensees are cautioned that, when in doubt as to whether informed consent will effectively address an actual or potential conflict of interest, the most prudent course is to decline or cease the engagement and to advise one or more of multiple clients to seek alternative professional representation.

ITEM 34. Amend subrule 13.6(1) as follows:

13.6(1) *Acts discreditable.* A CPA or LPA shall not commit any act that reflects adversely on the CPA's or LPA's fitness to engage in the practice of public accountancy. The board may consider discipline by any other agency or jurisdiction when determining probable cause to take action against a CPA or LPA for acts discreditable. Conduct discreditable to the public accounting profession is further defined in 193A—subrule 14.3(12).

ITEM 35. Amend subparagraph **13.6(7)“d”(2)** as follows:

(2) ~~Any crime, including a misdemeanor~~ if an essential element of the offense is dishonesty, deceit or fraud, as further described in Iowa Code section 542.5(2).

ITEM 36. Amend subrule 13.6(8) as follows:

13.6(8) *Firm's duty to report.* The CPA or LPA designated by each firm ~~in accordance with Iowa Code section 542.7(3)“b”(1) or 542.8(12)“b”(1) and these rules as the licensee responsible for the proper registration of the firm~~ as responsible for the proper licensure of the firm or registration of an office of the firm shall report any matter reportable under this rule to which a nonlicensee owner with a principal place of business in this state is a party.

ITEM 37. Rescind 193A—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14

DISCIPLINARY AUTHORITY AND GROUNDS FOR DISCIPLINE

193A—14.1(17A,272C,542) Disciplinary authority. The board is empowered to administer Iowa Code chapters 17A, 272C and 542 and related administrative rules for the protection and well-being of those persons who may rely upon licensed individuals and firms for the performance of public accounting services within this state or for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of licensees, determine whether disciplinary proceedings are warranted, initiate and prosecute disciplinary proceedings,

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establish standards of professional conduct, and impose discipline, pursuant to Iowa Code sections 17A.13, 272C.3 to 272C.6, 272C.10, 542.4, and 542.10 to 542.16.

193A—14.2(17A,272C,542) Disciplinary policy.

14.2(1) In exercising its disciplinary authority and in construing the meaning of the phrase “conduct discreditable to the public accounting profession” as used in Iowa Code section 542.10, subsection 1, paragraph “i,” the board shall be guided by the legislative policies, goals and standards set forth in Iowa Code section 542.2.

14.2(2) The board’s disciplinary policy rests upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence inherent in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on persons and firms engaged in such practice certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence of thought and action; to strive continuously to improve one’s professional skills; to observe, where applicable, generally accepted accounting principles, generally accepted auditing standards, and similar principles and standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; and to maintain high standards of personal conduct in all matters affecting one’s fitness to practice public accountancy.

14.2(3) The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence or to offer such assurance; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of licensees be established; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

14.2(4) A CPA or LPA firm is subject to discipline for its own violations of Iowa Code chapter 542 and administrative rules and the violations of the firm’s CPAs, LPAs, nonlicensee owners, persons acting or purporting to act under a practice privilege, and others performing professional services on the firm’s behalf. Whether a CPA or LPA firm will be charged based on the acts of such individuals will depend on the circumstances. Among the factors the board will consider are whether the firm took reasonable steps to prevent the violation, whether the violation was or could have been discovered by the firm upon reasonable inquiry, what steps the firm took upon discovering the violation, whether the acts or omissions involved licensees of the board or were committed by persons who are not individually licensed by the board, the nature of the services at issue, and whether the violations are isolated matters or more systemic to the firm’s performance.

193A—14.3(17A,272C,542) Grounds for discipline. The board may initiate disciplinary action against a CPA or LPA, or a firm of CPAs or LPAs, which holds an active, inactive or lapsed certificate, license or permit to practice on any of the following grounds:

14.3(1) *Fraud or deceit in procuring a license.* Fraud or deceit in procuring or attempting to procure an initial, reciprocal, renewal, or reinstated certificate, license, or permit to practice includes any intentional perversion of the truth when submitting an application to the board, or when submitting information in support of another’s application to the board, including:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed.

b. Attempting to file or filing with the board any false or forged record or document, such as a college transcript, diploma or degree, examination report, verification of licensure, continuing education certificate, or verification of peer review.

c. Failing or refusing to provide complete information in response to a question on an application.

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d. Reporting information, such as satisfaction of continuing education, peer review, or attest qualification, in a false manner through overt deceit or with reckless disregard for the truth or accuracy of the information asserted.

e. Otherwise participating in any form of fraud or misrepresentation by act or omission.

14.3(2) Professional incompetence. Professional incompetence includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the practice of public accounting.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimum standards of acceptable and prevailing practice of public accounting in this state.

e. A willful, repeated, or material deviation from generally accepted engagement standards, generally accepted accounting standards, generally accepted auditing standards, or any other nationally recognized standard applicable to the public accounting services at issue, as provided in rule 193A—13.4(542).

f. Any other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest.

14.3(3) Deceptive practices. Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of public accounting.

b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

c. Acceptance of any fee by fraud or misrepresentation.

d. Falsification of business or client records.

e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule or 193A—Chapter 18.

f. Knowingly presenting as one's own a certificate, license, or permit to practice, or a certificate, license, or permit number, or the signature of another or of a fictitious licensee, or otherwise falsely impersonating a person holding a CPA certificate or LPA license, or a permit to practice as a firm of CPAs or LPAs.

g. Representing oneself as a CPA, LPA, CPA firm, or LPA firm when the certificate, license, or permit to practice has been suspended, revoked, surrendered, or placed on inactive status, or has lapsed, except as allowed under Iowa Code section 542.20.

h. Fraud in representations as to skill or ability.

14.3(4) Unethical, harmful or detrimental conduct. Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

a. Verbal or physical abuse, or improper sexual contact, if such behavior occurs within the practice of public accounting or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of public accounting would place the public at risk.

b. A violation of a rule of professional conduct relating to improper conflicts of interest, or lack of integrity, objectivity or independence, as provided in rule 193A—13.3(542).

c. A violation of a provision of Iowa Code section 542.13, or aiding or abetting any unlawful activity for which a civil penalty can be imposed under Iowa Code sections 542.13 and 542.14.

14.3(5) Lack of proper qualifications. Lack of proper qualifications includes, but is not limited to:

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- a. Continuing to practice as a CPA or LPA without satisfying the continuing education required for certificate or license renewal.
- b. Continuing to perform attest services or compilation services without timely completion of peer review.
- c. Performing attest services as an individual without proper certification or attest qualification, or without acting through a CPA firm holding a permit to practice pursuant to Iowa Code section 542.7.
- d. Performing attest services as a firm without holding a permit to practice pursuant to Iowa Code section 542.7, or without ensuring that the individuals responsible for supervising attest services or signing or authorizing someone to sign the accountant's report on financial statements are attest qualified, hold the required certification or are eligible to exercise a practice privilege, or otherwise performing attest services in a manner inconsistent with Iowa Code chapter 542 and 193A—Chapters 6 and 7.
- e. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the CPA's or LPA's ability to practice in a safe and competent manner.
- f. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b," or that impairs a practitioner's ability to safely and skillfully practice the profession.

14.3(6) *Negligence in the practice of public accounting.* Negligence in the practice of public accounting includes the following acts, practices, or omissions, whether or not injury results:

- a. Failure or refusal without good cause to exercise reasonable diligence in the practice of public accounting.
- b. A failure to exercise due care including negligent delegation of duties in the practice of public accounting.
- c. Neglect of contractual or other duties to a client.

14.3(7) *Professional misconduct.* Professional misconduct includes, but is not limited to, the following:

- a. Violation of a generally accepted engagement standard, generally accepted accounting standard, generally accepted auditing standard, or any other nationally recognized standard applicable to the public accounting services at issue, as provided in rule 193A—13.4(542), or any other violation of a provision of 193A—Chapter 13.
- b. Violation of a regulation or law of this state, another state, the United States, or the PCAOB in the practice of public accounting.
- c. Engaging in any conduct that subverts or attempts to subvert a board investigation of a licensed or unlicensed firm, individual, or other entity, or failure to fully cooperate with a disciplinary investigation of a licensee or with an investigation of firms, individuals or other entities that are not licensed by the board, including, without limitation, failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 calendar days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the board office.
- d. Revocation, suspension, or other disciplinary action taken against a licensee or person or firm exercising a practice privilege by a licensing authority of this state or another state, territory, or country. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated.
- e. Suspension or revocation of the right to practice before any state or federal agency, or the PCAOB.
- f. A violation of Iowa Code section 542.17 (confidential communication).
- g. A violation of Iowa Code section 542.18 (licensees' working papers—client records).
- h. Violating or aiding and abetting another's violation of Iowa Code section 542.13 or 542.20.
- i. Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.
- j. A violation of a practice privilege afforded to an Iowa licensee in another state.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

k. Engaging in the practice of public accounting on a lapsed or inactive certificate, license or permit when the acts or practices require active Iowa licensure and, in the case of a firm, allowing such acts or practices by firm CPAs or LPAs.

14.3(8) *Willful or repeated violations.* The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 542 or any administrative rule adopted by the board in the administration or enforcement of such chapters.

14.3(9) *Failure to report.*

- a.* Failure by a CPA firm to timely report as provided in rule 193A—7.7(542).
- b.* Failure of an LPA firm to timely report as provided in rule 193A—8.5(542).
- c.* Failure to timely report judgments and settlements and reportable violations by others as provided in 193A—Chapter 18.
- d.* Failure to report in writing to the board any issuance, denial, revocation, or suspension of a license by another state, or the voluntary surrender of a license to resolve a pending disciplinary investigation or action, within 30 calendar days of the licensing authority's final action.
- e.* Failure to report the conviction of any felony, or a crime described in Iowa Code section 542.5(2), within 30 calendar days of the conviction.
- f.* Failure to report to the board a change in the licensee's physical or mailing address within 30 calendar days of the change.
- g.* Failure to report as provided in 193A—subrules 13.6(7) and 13.6(8).

14.3(10) *Failure to comply with board order.* Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

14.3(11) *Conviction of a crime.* Conviction, in this state or any other jurisdiction, of any felony, or of any crime described in Iowa Code section 542.5(2). A copy of the record of conviction or plea of guilty shall be conclusive evidence. "Conviction" shall include any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred or suspended, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction shall be vacated.

14.3(12) *Conduct discreditable to the accounting profession.* Conduct discreditable to the accounting profession includes any act or practice that diminishes the public's confidence in the profession, impairs the credibility of the profession, or otherwise compromises the public's trust. While it is not possible to list all conduct that is discreditable to the accounting profession, the following list provides an illustrative range of acts or practices that are implicated:

- a.* Dishonesty in business or financial affairs, or a pattern of fiscal irresponsibility.
- b.* Placement on the sex offender registry.
- c.* Securities fraud or violation of the Iowa consumer fraud Act.
- d.* Willful or repeated failure to timely file tax returns or other tax documents.
- e.* False testimony in a court or administrative proceeding, or affidavit, or otherwise under oath.
- f.* Providing false or misleading information to a financial institution or governmental body or official.
- g.* Stating or implying an ability to improperly influence a government agency or official, or attempting to do so through deception, bribery or other unlawful means.
- h.* Violation of a breach of fiduciary duty when acting in the capacity of a trustee, conservator, or other fiduciary, or as the professional advisor to a fiduciary.
- i.* Any violation of Iowa Code chapter 542 or administrative rules that involves dishonesty, bad faith, or unethical behavior.

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and Iowa Code section 546.10.

ITEM 38. Amend subrule 15.7(1) as follows:

15.7(1) *General provisions.* All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code section 272C.6(4). Such information shall not be released to any person except as provided in that section and this rule.

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ITEM 39. Adopt the following **new** subrule 15.7(3):

15.7(3) Disclosure to the subject of the investigation.

a. *Legal authority.* Pursuant to Iowa Code section 546.10(9), the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information, as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. *General rule.* As a matter of general policy, the board shall not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. *Exceptions to general rule.* The board may exercise its discretion to release information to a licensee that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee and prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review or investigative report or expert opinions, as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including investigations initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may release information from a peer review or consultant's report when the soliciting of the licensee's position will aid in making the probable cause determination and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.

ITEM 40. Amend rules **193A—16.1(17A,272C,79GA,ch55)** to **193A—16.5(272C,79GA,ch55)**, parenthetical implementation, by striking "79GA,ch55" and inserting "542" in lieu thereof.

ITEM 41. Amend rule 193A—16.2(17A,272C,542) as follows:

193A—16.2(17A,272C,542) Disciplinary contested case procedures. Unless in conflict with a provision of ~~2001 Iowa Acts, chapter 55,~~ Iowa Code chapter 542 or board rules in this chapter, all of the procedures set forth in 193—Chapter 7 shall apply to disciplinary contested cases initiated by the board.

ITEM 42. Amend subparagraph **16.3(1)"d"(1)** as follows:

(1) The board may require the licensee to undergo a quality review or ~~peer desk~~ review under the board's supervision. The licensee shall select, subject to approval by the board, a CPA, LPA, or a firm of CPAs or LPAs, ~~or a review program which would qualify as a peer review program under 193A—Chapters 11 and 12.~~ The costs of the review shall be paid by the licensee. The board shall be furnished a copy of the report issued by the reviewing party and may require remedial actions or education as a result of the report findings.

ITEM 43. Amend paragraphs **16.3(1)"g"** and **"i"** as follows:

g. Impose civil penalties, the amount of which shall be at the discretion of the board, but which shall not exceed \$1,000 per violation, or after June 30, 2009, \$10,000 per violation for a firm. Civil penalties may be imposed for any of the disciplinary violations specified in rule 193A—14.2(17A,272C,542).

i. Order the licensee to alter a professional practice or refrain from engaging in a particular act or practice in the future, notify clients of unlicensed or unprofessional conduct, or take such other remedial measures that are appropriate under the public interest and circumstances of the infraction.

ITEM 44. Adopt the following **new** paragraph **16.3(1)"j"**:

j. Order such alternative discipline as is allowed by law.

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ITEM 45. Amend paragraph **16.3(5)“n”** as follows:

n. Whether the licensee improperly used a title restricted by ~~2001 Iowa Acts, chapter 55~~ Iowa law or rules, performed attest services or issued a compilation report when not properly licensed to do so, or with a lapsed, inactive, suspended, restricted or revoked license engaged in practices which require licensure.

ITEM 46. Amend subrule 16.4(3) as follows:

16.4(3) The board shall notify other state boards of accountancy that have issued a similar license to an Iowa licensee of disciplinary action taken against the Iowa licensee. The board shall also notify the National Association of State Boards of Accountancy of disciplinary action taken against an Iowa licensee, and may notify additional bodies, such as other state agencies, federal agencies, and the PCAOB.

ITEM 47. Amend subrule 16.5(2) as follows:

16.5(2) Any person whose license has been revoked, suspended or restricted by the board, or who has voluntarily surrendered a license to conclude a disciplinary investigation or proceeding, or whose application to renew a license has been denied may apply to the board to modify or terminate the suspension, issue or reissue the license, or modify or remove the restriction in accordance with ~~2001 Iowa Acts, chapter 55, section 12~~ Iowa Code section 542.12, rule 193—7.38(17A,272C), the provisions of this rule, and the terms of the order of revocation, suspension or restriction, denial of license renewal, or acceptance of voluntary surrender of a license.

ITEM 48. Amend **193A—Chapter 16**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A ~~and~~ 272C and ~~2001 Iowa Acts, chapter 55~~ 542.

ITEM 49. Amend rules **193A—17.1(79GA,ch55)** to **193A—17.7(79GA,ch55)**, parenthetical implementation, by striking “79GA,ch55” and inserting “542” in lieu thereof.

ITEM 50. Amend rules 193A—17.1(542) to 193A—17.4(17A,542) as follows:

193A—17.1(542) Civil penalties against nonlicensees. The board may order compliance with Iowa Code chapter 542 and board rules, revoke a practice privilege, and impose civil penalties by order against a person who firm, other entity, or individual that is not licensed by the board pursuant to ~~2001 Iowa Acts, chapter 55~~ Iowa Code chapter 542, based on the unlawful practices specified in ~~2001 Iowa Acts, chapter 55, section 13~~ Iowa Code sections 542.13 and 542.20. In addition to the procedures set forth in ~~2001 Iowa Acts, chapter 55, section 14~~ Iowa Code section 542.14, this chapter shall apply.

193A—17.2(17A,542) Investigations. The board is authorized by Iowa Code subsection 17A.13(1) and ~~2001 Iowa Acts, chapter 55, section 11,~~ Iowa Code section 542.11 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Such investigations shall conform to the procedures outlined in 193A—Chapter 15. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

193A—17.3(17A,542) Notice of intent to impose civil penalties. The notice of the board’s intent to issue an order to require compliance with ~~2001 Iowa Acts, chapter 55, section 13,~~ Iowa Code chapter 542 and board rules and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa R. Civ. P. 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice shall include the following:

1. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
2. Reference to the particular sections of the statutes and rules involved.
3. A short, plain statement of the alleged unlawful practices.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

4. The dollar amount of the proposed civil penalty ~~and~~, the nature of the intended order to require compliance with ~~2001 Iowa Acts, chapter 55, section 13~~ Iowa Code chapter 542 and board rules, and whether a practice privilege will be revoked.

5. Notice of the nonlicensee's right to a hearing and the time frame in which hearing must be requested.

6. The address to which written request for hearing must be made.

193A—17.4(17A,542) Request for hearing.

17.4(1) Nonlicensees must request a hearing within 30 days of the date the notice is mailed if served through restricted certified mail to the last-known address, or within 30 days of the date of service if service is accepted or made in accordance with Iowa R. Civ. P. 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

17.4(2) If a request for hearing is not timely made, the board chairperson or the chairperson's designee may issue an order imposing the civil penalty, revoking the practice privilege, and requiring compliance with ~~2001 Iowa Acts, chapter 55, section 13~~ Iowa Code chapter 542 and board rules, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

17.4(3) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

17.4(4) A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty, revoking the practice privilege, and requiring compliance with ~~2001 Iowa Acts, chapter 55, section 13~~, Iowa Code chapter 542 and board rules at any stage of the proceeding upon mutual consent of the board.

17.4(5) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in rule 193A—16.4(272C, ~~79GA, ch 55~~ 542). Hearings shall be open to the public.

ITEM 51. Amend rule 193A—17.5(542), introductory paragraph, as follows:

193A—17.5(542) Factors to consider. In addition to the factors set forth in ~~2001 Iowa Acts, chapter 55, section 14(3)~~ Iowa Code section 542.14(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

ITEM 52. Amend rules 193A—17.6(542) and 193A—17.7(542) as follows:

193A—17.6(542) “Safe harbor” language. Persons who do not hold a CPA certificate or LPA license ~~and~~, firms which do not hold a CPA or LPA firm permit to practice, or individuals or firms who are ineligible to exercise a practice privilege shall not use in any statement relating to the financial affairs of a person or entity language which is conventionally used by CPAs or LPAs in reports on financial statements. Pursuant to ~~the Iowa Accountancy Act of 2001, 2001 Iowa Acts, chapter 55, section 13(8)~~ Iowa Code section 542.13(8), such persons or firms may use the following “safe harbor” language:

“I (we) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited, reviewed or compiled the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.”

193A—17.7(542) Enforcement options. In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent order as provided in ~~2001 Iowa Acts, chapter 55, section 14~~ Iowa Code sections 542.14 and 542.15.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

ITEM 53. Amend **193A—Chapter 17**, implementation sentence, as follows:
These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A and ~~2001 Iowa Acts, chapter~~
~~55~~ 542.

ITEM 54. Rescind 193A—Chapter 18 and adopt the following **new** chapter in lieu thereof:

CHAPTER 18
LICENSEES' DUTY TO REPORT

193A—18.1(272C,542) Reporting acts or omissions committed by licensees.

18.1(1) Iowa Code section 272C.9(2) requires an individual or firm that is licensed by the board to report acts or omissions of others licensed by the board that demonstrate a lack of qualifications that are necessary to assure residents of this state a high standard of professional and occupational care. For the purposes of this rule, the failure to perform an engagement for a client in accordance with professional standards is a demonstration by a CPA or LPA or by a CPA or LPA firm that the CPA or LPA or the CPA or LPA firm may lack such qualifications. These professional standards are set forth in 193A—Chapter 13.

18.1(2) When a licensee observes a violation of any of the acts referenced in subrule 18.1(1), the licensee shall report the violation in writing to the board office, setting forth the name of the licensee alleged to have committed the violation and the rule(s) violated, together with a copy of all material that evidences the violation.

193A—18.2(272C,542) Reporting judgments and settlements alleging malpractice.

18.2(1) Iowa Code section 272C.9(3) requires a licensee to report to the board every adverse judgment in a professional malpractice action to which the licensee is a party and every settlement of a claim against the licensee. For the purposes of this rule, malpractice actions brought against a firm licensed by the board will be deemed to have been brought against both the firm and the firm's owners (e.g., partners, shareholders, or members) that performed the services that led to the malpractice action.

18.2(2) When a licensee is a party to an adverse judgment resulting from a professional malpractice action or is a party to a settlement of a claim resulting from an allegation of malpractice, the licensee shall file a report in writing forwarded to the board office, setting forth the name and address of the client, the date the claim was originally made, a brief description of the circumstances precipitating the claim and a copy of the judgment or settlement agreement resulting from the claim. It is the intent of this rule to require the reporting of all judgments or settlements resulting from claims that were initiated by court action and not claims of malpractice that are made against a licensee that are not filed in a court of law.

193A—18.3(272C,542) Timely reporting. The reports required by rules 193A—18.1(272C,542) and 193A—18.2(272C,542) shall be forwarded to the board within a reasonable period of time from the initial receipt of the information required to be reported. A period of less than 30 days will be considered to be a reasonable period of time.

193A—18.4(272C,542) Failure to make reports. Upon obtaining information that a licensee failed to file a report required by rules 193A—18.1(272C,542) and 193A—18.2(272C,542) within a reasonable period of time, the board shall initiate a disciplinary proceeding against the licensee who failed to make the required report.

193A—18.5(272C,542) Professional resolution encouraged. While a licensee may report any act to the board that provides a ground for discipline under 193A—Chapter 14, the board anticipates that licensees will attempt to informally resolve those matters that do not pose a risk to the public if promptly resolved through professional courtesy and in an educational fashion.

These rules are intended to implement Iowa Code chapters 272C and 542.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

ITEM 55. Rescind and reserve **193A—Chapter 19**.

ITEM 56. Adopt the following new 193A—Chapter 20 and Chapter 21:

CHAPTER 20

PRACTICE PRIVILEGE FOR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTANTS

193A—20.1(542) Overview and timing. Beginning July 1, 2009, out-of-state certified public accountants who maintain their principal place of business in a jurisdiction other than Iowa may practice public accounting in Iowa or for clients with a home office in Iowa without Iowa licensure if all of the conditions of Iowa Code section 542.20 and this chapter are satisfied.

193A—20.2(542) Out-of-state licensure status. The practice privilege described in Iowa Code section 542.20 applies to individuals who are licensed to practice as certified public accountants in the jurisdiction in which their principal place of business is located for those periods of time in which all of the following conditions are satisfied:

20.2(1) The out-of-state license is valid, in good standing, and active. The practice privilege shall cease if the out-of-state license expires in the jurisdiction of the individual's principal place of business.

20.2(2) The individual meets the criteria for substantial equivalency reciprocity, as provided in Iowa Code section 542.19, subsection 1, paragraph "a," "b," or "c," and 193A—9.5(542).

20.2(3) The license authorizes in the individual's principal place of business all of the public accounting services the individual performs or offers to perform in Iowa or for clients with a home office in Iowa.

193A—20.3(542) Iowa licensure may be required.

20.3(1) The auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client may require that an individual be licensed in Iowa as a condition of performing public accounting services in Iowa or for a client with a home office in Iowa, whether or not the individual may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accountant is required, for example, to perform certain audit services described in Iowa Code chapter 11.

20.3(2) Iowa licensure is required if an individual has an office in Iowa at which the individual uses the title "CPA," unless the individual satisfies the conditions for a practice privilege and one of the following is true:

a. The Iowa office is the office of an Iowa CPA or LPA firm that holds a permit to practice under Iowa Code section 542.7 or 542.8 and the individual provides public accounting services through that firm.

b. The Iowa office is the office of a business entity that is not required to hold a firm permit to practice under Iowa Code section 542.7 or 542.8 and the individual provides public accounting services through that business entity.

20.3(3) Iowa licensure is required if an individual moves the individual's principal place of business to Iowa and is otherwise required to be licensed under Iowa Code chapter 542. The board's streamlined application process for reciprocal licensure is described in Iowa Code section 542.19 and 193A—Chapter 9.

193A—20.4(542) Individuals ineligible for a practice privilege.

20.4(1) The practice privilege described in Iowa Code section 542.20 shall not be applicable if:

a. The individual has been convicted of a felony under the laws of any jurisdiction.

b. The individual has been convicted of any crime under the laws of any jurisdiction if an element of the crime involves dishonesty or fraud, such as forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or similar offense, as more fully described in Iowa Code section 542.5(2).

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

c. The individual's license to practice public accounting has been suspended, revoked, or otherwise disciplined by a licensing authority in this or another state, territory, or country, for any cause other than failure to pay appropriate fees. "Disciplined" shall include the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding in Iowa or another jurisdiction.

d. The individual's right to practice public accounting before any state or federal agency, or the PCAOB, has been suspended or revoked.

e. The individual has applied for licensure as a certified public accountant in Iowa or another jurisdiction and the application has been denied.

f. Civil penalties have been imposed against the individual pursuant to Iowa Code section 542.14.

g. The individual's authority to exercise a practice privilege has been revoked in Iowa or another jurisdiction.

20.4(2) Individuals precluded from exercising a practice privilege under this rule may apply for licensure in Iowa if otherwise qualified. The board will determine when an application is submitted whether the criminal or disciplinary history or other regulatory action provides a ground to deny licensure.

193A—20.5(542) Attest and compilation services.

20.5(1) Individuals providing audit, review or other attest services in Iowa or for a client with a home office in Iowa must practice through a CPA firm that holds an active permit to practice pursuant to Iowa Code section 542.7.

20.5(2) Individuals providing compilation services in Iowa or for a client with a home office in Iowa must comply with the peer review provisions of Iowa Code section 542.6(6), or provide such services through a CPA or LPA firm, or a substantially equivalent firm that holds a valid license in the firm's principal place of business and that complies with the peer review and ownership provisions of Iowa Code section 542.7 or 542.8.

193A—20.6(542) Rights and duties.

20.6(1) Individuals who satisfy the conditions for a practice privilege may practice public accounting in Iowa or for a client with a home office in Iowa in person, or by telephone, mail, or electronic means without licensure under Iowa Code chapter 542 or notice to the board.

20.6(2) Individuals lawfully practicing public accounting under a practice privilege may use the title "CPA" as long as they do not have an office in Iowa, except as provided in subrule 20.3(2).

20.6(3) Individuals practicing public accounting in Iowa or for a client with a home office in Iowa while exercising a practice privilege are subject to all of the following provisions:

a. Practice privilege practitioners shall not make any representation tending to falsely indicate that the individuals are licensed under Iowa Code chapter 542. Such individuals may truthfully identify themselves as licensed in any jurisdiction in which they hold a valid, active, unexpired license to practice as a certified public accountant. For example, a practice privilege practitioner could not use the title "Iowa CPA" or otherwise state or imply licensure in Iowa, but, if true, the individual could use a title such as "CPA, licensed in Texas" or "Florida CPA." Such individuals could also truthfully state that they are CPAs practicing under a practice privilege.

b. Practice privilege practitioners shall provide, upon a client's or prospective client's request, accurate information on the state or states of licensure, principal place of business, contact information, and manner in which licensure status can be verified.

c. Practice privilege practitioners shall comply with all professional standards, laws, and rules that apply to licensees performing the same professional services.

20.6(4) As a condition of exercising the practice privilege provided in Iowa Code section 542.20, the individual:

a. Consents to the personal and subject matter jurisdiction and regulatory authority of the board including, but not limited to, the board's jurisdiction to revoke the practice privilege or otherwise take action under Iowa Code section 542.14 for any violation of Iowa Code chapter 542 or board rules;

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

b. Appoints the regulatory body of the state that issued the license in the individual's principal place of business as the agent upon whom process may be served in any action or proceeding by the board against the individual;

c. Agrees to supply the board, upon the board's request and without subpoena, such information or records licensees are similarly required to provide the board under Iowa Code chapter 542, including but not limited to the information described in Iowa Code section 542.20, subsection 7, paragraph "c"; and

d. Agrees to promptly cease offering or providing public accounting services in Iowa or for a client with a home office in Iowa if the license in the individual's principal place of business expires or is otherwise no longer in good standing, or if any of the conditions for exercising the practice privilege are no longer satisfied, or if the board revokes the practice privilege.

193A—20.7(542) Penalties.

20.7(1) Individuals purporting to practice public accounting under a practice privilege who are ineligible to exercise a practice privilege or who fail to satisfy the conditions for exercising a practice privilege are subject to all of the penalties that apply to unlicensed persons, including the criminal, administrative, and civil penalties described in Iowa Code sections 542.14 and 542.15.

20.7(2) If an individual acting or purporting to act under a practice privilege engages in any act or practice that does or may in the future violate Iowa Code chapter 542 or board rules, the board may take any or all of the following actions, as applicable:

a. Apply to the district court for an injunction, restraining order, or other order, pursuant to Iowa Code section 542.14(1);

b. Issue an order to require compliance with Iowa Code chapter 542 or board rules, impose a civil penalty up to \$1,000 per offense, which may be imposed per day for a continuing violation, and revoke the practice privilege, pursuant to the procedures outlined in Iowa Code section 542.14, subsections 2 to 5, and 193A—Chapter 17;

c. Deny the subsequent license application of the violator or the violator's firm, pursuant to Iowa Code section 542.20, subsection 4, paragraphs "a" and "b";

d. Refer the complaint or other relevant information to the jurisdiction that issued a license to the alleged violator; and

e. Take disciplinary action against the individual pursuant to Iowa Code section 542.10 if the individual holds an inactive or lapsed Iowa license.

20.7(3) Complaints filed with the board alleging violations by individuals who are not licensed by the board, including those acting or purporting to act under a practice privilege, are not confidential under Iowa Code section 272C.6(4) and shall not be treated as confidential unless otherwise provided in Iowa Code chapter 22 or other applicable law.

20.7(4) Persons filing complaints with the board against individuals acting or purporting to act under a practice privilege should provide as much information as possible to assist the board in locating the individual and in determining whether the individual is licensed in any jurisdiction.

193A—20.8(542) Relationship between Iowa licensure and the exercise of a practice privilege.

20.8(1) *Active Iowa licensees.* An Iowa licensee holding an active CPA certificate shall be treated for all purposes as an Iowa licensee and shall not be subject to the provisions of Iowa Code section 542.20.

20.8(2) *Inactive Iowa licensees.* An Iowa licensee holding an inactive CPA certificate is precluded by Iowa Code section 542.6(3) and rule 193A—5.9(272C,542) from performing attest or compilation services or using the title "CPA" while performing public accounting services in Iowa or for a client with a home office in Iowa. The practice of an inactive CPA is restricted because the continuing education required to renew in active status does not apply to those renewing in inactive status. Some individuals holding an inactive Iowa CPA certificate may, however, hold an active CPA certificate in another jurisdiction in which they maintain their principal place of business and satisfy continuing education requirements. Such individuals may have maintained an inactive Iowa CPA certificate solely to facilitate reinstatement to active status when active Iowa licensure is required in their practice.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

The following provisions shall apply to inactive Iowa licensees who may wish to exercise a practice privilege:

a. In a disciplinary investigation or proceeding in which an inactive Iowa licensee is alleged to have improperly used the title “CPA” or otherwise practiced public accounting on an inactive license, the board shall take into consideration whether the inactive licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The individual shall take care to avoid public confusion about licensure status as provided in 193A—subrule 5.1(6).

c. Violations of Iowa laws or rules by an individual holding an inactive Iowa CPA certificate shall be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10, and, when appropriate under the factual circumstances, may also or alternatively be enforced under the provisions of Iowa Code sections 542.14 and 542.15.

20.8(3) *Lapsed Iowa licensees.* An Iowa licensee holding a lapsed Iowa CPA certificate is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title “CPA” in Iowa or for a client with a home office in Iowa. A lapsed licensee is subject to discipline for practicing on a lapsed license and may not represent oneself as a “CPA” in any context unless the licensee truthfully discloses that the certificate has lapsed. Some individuals holding lapsed Iowa CPA certificates may, however, hold active CPA certificates in another jurisdiction in which the individuals maintain their principal place of business. Such individuals may have intentionally allowed their Iowa CPA certificates to lapse because the individuals no longer need an active Iowa license in their practice. The following provisions shall apply to lapsed Iowa licensees who may wish to exercise a practice privilege:

a. In a disciplinary investigation or proceeding in which a lapsed Iowa licensee is alleged to have improperly used the title “CPA” or otherwise practiced public accounting on a lapsed license, the board shall take into consideration whether the lapsed licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The individual shall take care to avoid public confusion about licensure status as provided in 193A—subrule 5.1(6).

c. Violations of Iowa laws or rules by an individual holding a lapsed Iowa CPA certificate shall be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10, and, when appropriate under the factual circumstances, may also or alternatively be prosecuted under the provisions of Iowa Code sections 542.14 and 542.15.

20.8(4) *Former Iowa licensees.* An individual who held an Iowa CPA certificate at one time whose Iowa CPA certificate has been revoked or surrendered in connection with a disciplinary investigation or proceeding is prohibited from performing attest or compilation services or using the title “CPA” whether or not such individual may otherwise qualify for a practice privilege.

a. The former Iowa licensees described in this subrule are ineligible to exercise the practice privilege described in Iowa Code section 542.20.

b. Violations of Iowa Code chapter 542 or board rules by former Iowa licensees are subject to the criminal, civil and administrative remedies described in Iowa Code sections 542.14 and 542.15, and may also be prosecuted as disciplinary proceedings under Iowa Code section 542.10 if the license remains subject to reinstatement under Iowa Code section 542.12.

These rules are intended to implement Iowa Code section 542.20.

CHAPTER 21

PRACTICE PRIVILEGE FOR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTING FIRMS

193A—21.1(542) Overview and timing. Beginning July 1, 2009, out-of-state certified public accounting firms that maintain their principal place of business in a jurisdiction other than Iowa may practice public accounting in Iowa or for clients with a home office in Iowa without Iowa licensure if all of the conditions of Iowa Code section 542.20 and this chapter are satisfied.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

193A—21.2(542) Out-of-state licensure status. The practice privilege described in Iowa Code section 542.20 applies to certified public accounting firms that are licensed to practice as certified public accounting firms in the jurisdiction in which their principal place of business is located for those periods of time in which all of the following conditions are satisfied:

21.2(1) The out-of-state license is valid, in good standing, and active. The practice privilege shall cease if the out-of-state license expires in the jurisdiction of the firm's principal place of business.

21.2(2) The out-of-state license is substantially equivalent to a permit to practice issued under Iowa Code section 542.7.

21.2(3) The license authorizes in the firm's principal place of business all of the public accounting services the firm performs or offers to perform in Iowa or for clients with a home office in Iowa.

21.2(4) The public accounting services offered in Iowa or for clients with a home office in Iowa that are required under Iowa law to be performed by a CPA are performed by a person holding a certificate issued under Iowa Code section 542.6 or 542.19, or by a person exercising a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

193A—21.3(542) When Iowa licensure may be required.

21.3(1) The auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client may require that a firm be licensed in Iowa as a condition of performing public accounting services in Iowa or for a client with a home office in Iowa, whether or not the firm may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accounting firm is required, for example, to perform certain audit services described in Iowa Code chapter 11.

21.3(2) Iowa licensure is required if:

a. The firm performs or offers to perform audit, review or other attest services in Iowa or for a client with a home office in Iowa; or

b. The firm has one or more offices in Iowa at which the firm uses the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm."

193A—21.4(542) CPA firms ineligible for a practice privilege.

21.4(1) The practice privilege described in Iowa Code section 542.20 shall not be applicable if:

a. The firm or any of the firm's owners (e.g., partners, shareholders, or members) has been convicted of a felony under the laws of any jurisdiction.

b. The firm or any of the firm's owners (e.g., partners, shareholders, or members) has been convicted of any crime under the laws of any jurisdiction if an element of the crime involves dishonesty or fraud, such as forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or similar offense, as more fully described in Iowa Code section 542.5(2).

c. The license to practice public accounting of the firm or any of the firm's owners (e.g., partners, shareholders, or members) has been suspended, revoked, or otherwise disciplined by a licensing authority in this or another state, territory, or country, for any cause other than failure to pay appropriate fees. "Disciplined" shall include the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding in Iowa or any other jurisdiction.

d. The right of the firm or any of the firm's owners (e.g., partners, shareholders, or members) to practice public accounting before any state or federal agency or the PCAOB has been suspended or revoked.

e. The firm or any of the firm's owners (e.g., partners, shareholders, or members) has applied for licensure as a certified public accounting firm or a certified public accountant in Iowa or any other jurisdiction and the application has been denied.

f. Civil penalties have been imposed against the firm or any of the firm's owners (e.g., partners, shareholders, or members) pursuant to Iowa Code section 542.14.

g. The authority of the firm or any of the firm's owners (e.g., partners, shareholders, or members) to exercise a practice privilege has been revoked in Iowa or any other jurisdiction.

21.4(2) Firms precluded from exercising a practice privilege under this rule may apply for licensure in Iowa if otherwise qualified. The board will determine when an application is submitted whether the

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

criminal or disciplinary history or other regulatory action against the firm or against any of the firm's owners (e.g., partners, shareholders, or members) provides a ground to deny licensure.

193A—21.5(542) Attest and compilation services.

21.5(1) Audit, review or other attest services must be performed in Iowa or for a client with a home office in Iowa by a CPA firm that holds an active permit to practice under Iowa Code section 542.7.

21.5(2) CPA firms providing compilation services in Iowa or for a client with a home office in Iowa must comply with the peer review and ownership provisions of Iowa Code section 542.7 but, unless required under rule 193A—21.3(542), compilation services may be performed by a CPA firm exercising a practice privilege under Iowa Code section 542.20.

193A—21.6(542) Rights and duties.

21.6(1) CPA firms that satisfy the conditions for a practice privilege may practice public accounting in Iowa or for a client with a home office in Iowa in person, or by telephone, mail, or electronic means without licensure under Iowa Code chapter 542 or notice to the board.

21.6(2) CPA firms lawfully practicing public accounting under a practice privilege may use the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm."

21.6(3) CPA firms practicing public accounting in Iowa or for a client with a home office in Iowa while exercising a practice privilege are subject to all of the following provisions:

a. Practice privilege firms shall not make any representation tending to falsely indicate that the firm is licensed under Iowa Code chapter 542. Such firms may truthfully identify themselves as licensed in any jurisdiction in which the firm holds a valid, active, unexpired license to practice as a certified public accounting firm. For example, a practice privilege firm could not use the title "Iowa CPAs" or "Iowa CPA firm" or otherwise state or imply licensure in Iowa, but, if true, the firm could use a title such as "CPA firm, licensed in Texas" or "Florida CPAs." Such firm could also truthfully state that the firm is practicing in Iowa under a practice privilege.

b. Practice privilege firms shall provide, upon a client's or prospective client's request, accurate information on the state or states of licensure, principal place of business, contact information, and manner in which licensure status can be verified.

c. Practice privilege firms shall comply with all professional standards, laws, and rules that apply to licensed firms performing the same professional services.

21.6(4) As a condition of exercising the practice privilege provided in Iowa Code section 542.20, the firm:

a. Consents to the personal and subject matter jurisdiction and regulatory authority of the board including, but not limited to, the board's jurisdiction to revoke the practice privilege or otherwise take action under Iowa Code section 542.14 for any violation of Iowa Code chapter 542 or board rules;

b. Appoints the regulatory body of the state that issued the license in the firm's principal place of business as the agent upon whom process may be served in any action or proceeding by the board against the firm;

c. Agrees to supply the board, upon the board's request and without subpoena, such information or records that licensed firms are similarly required to provide the board under Iowa Code chapter 542, including but not limited to the information described in Iowa Code section 542.20, subsection 7, paragraph "c," and rule 193A—7.3(542); and

d. Agrees to promptly cease offering or providing public accounting services in Iowa or for a client with a home office in Iowa if the license in the firm's principal place of business expires or is otherwise no longer in good standing, or if any of the conditions for exercising the practice privilege are no longer satisfied, or if the board revokes the practice privilege.

193A—21.7(542) Penalties.

21.7(1) Firms purporting to practice public accounting under a practice privilege which are ineligible to exercise a practice privilege or who fail to satisfy the conditions for exercising a practice privilege are

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

subject to all of the penalties that apply to unlicensed firms, including the criminal, administrative, and civil penalties described in Iowa Code sections 542.14 and 542.15.

21.7(2) If a firm acting or purporting to act under a practice privilege engages in any act or practice that does or may in the future violate Iowa Code chapter 542 or board rules, the board may take any or all of the following actions, as applicable:

a. Apply to the district court for an injunction, restraining order, or other order, pursuant to Iowa Code section 542.14(1);

b. Issue an order to require compliance with Iowa Code chapter 542 or board rules, impose a civil penalty up to \$10,000 per offense, which may be imposed at a rate up to \$1,000 per day for a continuing violation, and revoke the practice privilege, pursuant to the procedures outlined in Iowa Code section 542.14, subsections 2 to 5, and 193A—Chapter 17;

c. Deny the subsequent license application of the violator or, to the extent responsible for the violation, any of the firm's owners (e.g., partners, shareholders, or members), pursuant to Iowa Code section 542.20, subsection 4, paragraphs "a" and "b";

d. Refer the complaint or other relevant information to a jurisdiction that issued a license to the alleged violator; and

e. Take disciplinary action against the firm or, to the extent responsible for the violation, any of the firm's owners (e.g., partners, shareholders, or members), pursuant to Iowa Code section 542.10 if the firm or individual holds an inactive or lapsed Iowa license.

21.7(3) Complaints filed with the board alleging violations by firms that are not licensed by the board, including those acting or purporting to act under a practice privilege, are not confidential under Iowa Code section 272C.6(4) and shall not be treated as confidential unless otherwise provided in Iowa Code chapter 22 or other applicable law.

21.7(4) Persons filing complaints with the board against firms acting or purporting to act under a practice privilege should provide as much information as possible to assist the board in locating the firm and the individuals allegedly responsible for the acts or omissions causing the complaint, and in determining whether the firm or any responsible individual is licensed in any jurisdiction.

193A—21.8(542) Relationship between Iowa licensure and the exercise of a practice privilege.

21.8(1) *Active Iowa licensees.* An Iowa CPA firm holding an active permit to practice under Iowa Code section 542.7 shall be treated for all purposes as an Iowa licensee and shall not be subject to the provisions of Iowa Code section 542.20.

21.8(2) *Lapsed Iowa licensees.* An Iowa CPA firm holding a lapsed permit to practice under Iowa Code section 542.7 is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm" unless the firm is eligible to exercise a practice privilege under Iowa Code section 542.20. The following provisions shall apply to firms holding a lapsed Iowa permit to practice when exercising a practice privilege:

a. In a disciplinary investigation or proceeding alleging unlicensed practice or improper use of title, the board shall take into consideration whether the lapsed licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The firm shall take reasonable steps to avoid public confusion over licensure status.

c. Violations of Iowa laws or rules by a firm holding a lapsed permit to practice shall be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10, and, when appropriate under the factual circumstances, may also or alternatively be prosecuted under the provisions of Iowa Code sections 542.14 and 542.15.

21.8(3) *Former Iowa licensees.* A CPA firm that held an Iowa permit to practice at one time which has been revoked or surrendered in connection with a disciplinary investigation or proceeding is prohibited from performing any act or practice for which Iowa firm licensure is required and is further ineligible to exercise the practice privilege described in Iowa Code section 542.20. Violations of Iowa Code chapter 542 or board rules by such a firm are subject to the criminal, civil and administrative

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

remedies described in Iowa Code sections 542.14 and 542.15, and may also be prosecuted as disciplinary proceedings under Iowa Code section 542.10 if the license remains subject to reinstatement under 193A—subrule 7.6(3).

These rules are intended to implement Iowa Code section 542.20.

ARC 7501B**ADMINISTRATIVE SERVICES DEPARTMENT[11]****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 8A.104, the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 66, "Conduct of Employees," Iowa Administrative Code.

This amendment is proposed pursuant to 2008 Iowa Acts, chapter 1191, section 38 (new Iowa Code section 68B.2A(4)), which shifts to the Iowa Ethics and Campaign Disclosure Board jurisdiction for rule making regarding executive branch state employees' involvement in outside employment or activities that may constitute conflict of interest.

Any interested party may make written comments on the proposed amendment on or before February 3, 2009. Written comments should be directed to Patricia Lantz, Hoover State Office Building, 1305 E. Walnut, Level 3, Des Moines, Iowa 50319, or may be sent by fax to (515)281-6401 or by E-mail to Patricia.Lantz@iowa.gov.

This amendment is intended to implement Iowa Code section 8A.104.

The following amendment is proposed.

Rescind and reserve rule **11—66.3(68B)**.

ARC 7486B**ARCHITECTURAL EXAMINING BOARD[193B]****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 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 2, "Registration," Iowa Administrative Code.

The amendment to Chapter 2 reflects a statutory change which came about through enactment of 2008 Iowa Acts, Senate File 2179, effective July 1, 2008. The amendment allows that a person seeking an architectural commission in this state may be admitted to this state for the purpose of offering to provide architectural services, and for that purpose only, without first being registered if the person seeking the commission provides certain information to the Board.

The amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before February 3, 2009. Comments should be addressed to Glenda Loving, Architectural

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

Examining Board, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to glenda.loving@iowa.gov.

This amendment is intended to implement Iowa Code chapter 544A.

The following amendment is proposed.

Rescind rule 193B—2.2(544A,17A) and adopt the following **new** rule in lieu thereof:

193B—2.2(544A,17A) Application by reciprocity. Applicants for registration are required to make application to the National Council of Architectural Registration Boards (NCARB) for a council certificate. A completed state application form (available on the board's Web site) and a completed council certificate shall be filed in the board office before an application will be considered by the board.

2.2(1) Registration requirements. The board or its executive officer may waive examination requirements for an applicant who, at the time of application, is registered as an architect in a different jurisdiction, where the applicant's qualifications for registration are substantially equivalent to those required of applicants for initial registration in this state. All such applicants who hold an active NCARB certificate shall be deemed to possess qualifications that are substantially equivalent to those required of applicants for initial registration in this state.

2.2(2) Board refusal to issue registration. The board may refuse to issue registration to any person otherwise qualified upon any of the grounds for which a registration may be revoked or suspended or a registrant may otherwise be disciplined, or based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another jurisdiction. For purposes of this subrule, "disciplinary action" includes the voluntary surrender of a registration to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

ARC 7504B

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 amend Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

2008 Iowa Acts, Senate File 2425, division XI, created the "Healthy Kids Act." Specifically, these proposed rules implement section 142 of the legislation and its mandate of minimum time periods of physical activity for elementary and secondary pupils, as well as its mandate that every pupil who is physically able to do so complete a certification course for cardiopulmonary resuscitation by the end of grade 12. The Department intends that these amendments become effective July 1, 2009.

The proposed amendment in Item 1 adds a definition of "physical activity," clarifying that the concept includes more than components of the physical education model.

The proposed amendment in Item 2 includes the statutory exemption for both the physical activity requirement and the cardiopulmonary resuscitation course completion requirement.

The proposed new subrules in Item 3 describe the physical activity requirement and the cardiopulmonary resuscitation course completion requirement.

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

Interested individuals may make written comments on the proposed amendments on or before 4:30 p.m. on February 3, 2009. Comments on the proposed amendments should be directed to Kevin Fangman, Division Administrator, Iowa Department of Education, Third Floor, Grimes State Office

EDUCATION DEPARTMENT[281](cont'd)

Building, Des Moines, Iowa 50319-0146; telephone (515)281-3333; E-mail kevin.fangman@iowa.gov; or fax (515)281-7700.

A public hearing will be held on February 3, 2009, from 2:30 to 4 p.m., originating in the ICN Room, Second Floor, 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 specific needs by calling (515)281-5295. The remote ICN sites are as follows:

Keystone Area Education Agency 1 1400 2nd Street NW Elkader	North Iowa Area Community College Room 106, Activity Center 500 College Drive Mason City
Northwest Area Education Agency Room 103 1382 4th Avenue NE Sioux Center	Green Valley Area Education Agency 14 Turner Room 1405 N Lincoln Creston
Heartland Area Education Agency 11 6500 Corporate Drive Johnston	Northwest Area Education Agency Room 206 1520 Morningside Avenue Sioux City
Loess Hills Area Education Agency 13 24997 Hwy 92 Council Bluffs	Great Prairie Area Education Agency 2814 N Court Street Ottumwa
Great Prairie Area Education Agency 3601 West Avenue Burlington	Area Education Agency 267 Room 2102, Wolfe Education Ctr. 3405 S Center Street Marshalltown
Keystone Area Education Agency 1 Room 2 2310 Chaney Rd. Dubuque	Cedar Falls Public Library 524 Parkade Cedar Falls
River Bend Area Education Agency 9 Louisa Room 729 21st Street Bettendorf	Fort Dodge Public Library 424 Central Avenue Fort Dodge

Two ICN sites are tentative only; the reader is advised to check with these locations:

Area Education Agency 8 500 NE 6th Street Pocahontas (712)335-3588	Kirkwood Community College Room 203B, Linn Hall 6301 Kirkwood Blvd. SW Cedar Rapids (319)398-5452
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These amendments are intended to implement 2008 Iowa Acts, Senate File 2425, sections 142 and 145.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition in rule **281—12.2(256)**:

“*Physical activity*” means any movement, manipulation, or exertion of the body that can lead to improved levels of physical fitness and quality of life.

ITEM 2. Amend subrule 12.5(6) as follows:

12.5(6) ~~*Physical education and health courses exemption*~~ *Exemption from physical education course, health course, physical activity requirement, or cardiopulmonary resuscitation course completion.* A pupil shall not be required to enroll in ~~either a physical education or health courses course~~ if the pupil’s parent or guardian files a written statement with the school principal that the course

EDUCATION DEPARTMENT[281](cont'd)

conflicts with the pupil's religious beliefs. A pupil shall not be required to enroll in a health course if the pupil's parent or guardian files a written statement with the school principal that the course conflicts with the pupil's religious beliefs. A pupil shall not be required to meet the requirements of subrule 12.5(19) regarding physical activity if the pupil's parent or guardian files a written statement with the school principal that the requirement conflicts with the pupil's religious beliefs. A pupil shall not be required to meet the requirements of subrule 12.5(20) regarding completion of a cardiopulmonary resuscitation course if the pupil's parent or guardian files a written statement with the school principal that the completion of such a course conflicts with the pupil's religious beliefs.

ITEM 3. Adopt the following **new** subrules 12.5(19) and 12.5(20):

12.5(19) Physical activity requirement. Subject to the provisions of subrule 12.5(6), physically able pupils in kindergarten through grade five shall engage in physical activity for a minimum of 30 minutes each school day. Subject to the provisions of subrule 12.5(6), physically able pupils in grades six through twelve shall engage in physical activity for a minimum of 120 minutes per week in which there are at least five days of school.

a. This requirement may be met by pupils in grades six through twelve by participation in the following activities including, but not limited to:

- (1) Interscholastic athletics sponsored by the Iowa High School Athletic Association or Iowa Girls High School Athletic Union;
- (2) School-sponsored marching band, show choir, dance, drill, cheer, or spirit activities;
- (3) Non-school gymnastics, dance, team sports, individual sports; or
- (4) Similar endeavors that involve movement, manipulation, or exertion of the body.

b. When the requirement is to be met in full or in part by a pupil using one or more non-school activities, the school or school district shall enter into a written agreement with the pupil. The agreement shall state the nature of the activity and the starting and ending dates of the activity and shall provide sufficient information about the duration of time of the activity each week. The agreement shall also be signed by the building principal or principal's designee and by at least one parent or guardian of the pupil if the pupil is a minor. The pupil shall sign the agreement, regardless of the age of the pupil. The agreement shall be effective no longer than one semester or the equivalent thereof. There is no limit to the number of agreements that a school or school district may have with any one pupil during the enrollment of the pupil.

c. In no event may a school or school district reduce the regular instructional time, as defined by "unit" in subrule 12.5(14), for any pupil to enable the pupil to meet the physical activity requirement. However, this requirement may be met by physical education classes, activities at recess or during class time, and before- or after-school activities.

d. Schools and school districts must provide documentation that pupils are being provided with the support to complete the physical activity requirement. This documentation may be provided through printed schedules, district policies, student handbooks, and similar means.

12.5(20) Cardiopulmonary resuscitation course completion requirement. Subject to the provisions of subrule 12.5(6), at any time prior to the end of twelfth grade, every pupil physically able to do so shall have completed a psychomotor course that leads to certification in cardiopulmonary resuscitation. A school or school district administrator may waive this requirement for any pupil who is not physically able to complete the course. A course that leads to certification in CPR may be taught during the school day by either a school or school district employee or by a volunteer, as long as the person is certified to teach a course that leads to certification in CPR. In addition, a school or school district shall accept certification from any nationally recognized course in cardiopulmonary resuscitation as evidence that this requirement has been met by a pupil. A school or school district shall not accept auditing of a CPR course, nor a course in infant CPR only. This subrule is effective for the graduating class of 2011-2012.

ARC 7503B**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 amend Chapter 58, "School Breakfast and Lunch Program," Iowa Administrative Code.

2008 Iowa Acts, Senate File 2425, division XI, created the "Healthy Kids Act." Specifically, these proposed rules implement sections 140 and 141 of the legislation and their mandate of nutritional content standards for foods and beverages sold or provided on school grounds during the school day.

The first four items are amendments necessary to accommodate a new division of rules within Chapter 58. Item 5 creates the rules that establish the nutritional content standards for affected foods and beverages, and establishes the scope of these rules.

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

Interested individuals may make written comments on the proposed amendments on or before 4:30 p.m. on February 3, 2009. Comments on the proposed amendments should be directed to Julia Thorius, Chief, Bureau of Nutrition, Health, and Transportation Services, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4757; E-mail julia.thorius@iowa.gov; or fax (515)281-6548.

A public hearing will be held on February 3, 2009, from 1 to 2:30 p.m., originating in the ICN Room, Second Floor, 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 specific needs by calling (515)281-5295. The remote ICN sites are as follows:

Keystone Area Education Agency 1
1400 2nd Street
Elkader

North Iowa Area Community College
Room 106, Activity Center
500 College Drive
Mason City

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

Green Valley Area Education Agency 14
Turner Room
1405 N Lincoln
Creston

Heartland Area Education Agency 11
6500 Corporate Drive
Johnston

Northwest Area Education Agency
Room 206
1520 Morningside Avenue
Sioux City

Loess Hills Area Education Agency 13
24997 Hwy 92
Council Bluffs

Great Prairie Area Education Agency
2814 N Court Street
Ottumwa

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Great Prairie Area Education Agency 3601 West Avenue Burlington	Area Education Agency 267 Room 2102, Wolfe Education Ctr. 3405 S Center Street Marshalltown
Keystone Area Education Agency 1 Room 2 2310 Chaney Rd. Dubuque	Cedar Falls Public Library 524 Parkade Cedar Falls
River Bend Area Education Agency 9 Louisa Room 729 21st Street Bettendorf	Fort Dodge Public Library 424 Central Avenue Fort Dodge

Two ICN sites are tentative only; the reader is advised to check with these locations:

Area Education Agency 8 500 NE 6th Street Pocahontas (712)335-3588	Kirkwood Community College Room 203B, Linn Hall 6301 Kirkwood Blvd. SW Cedar Rapids (319)398-5452
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These amendments are intended to implement 2008 Iowa Acts, Senate File 2425, sections 140 and 141.

The following amendments are proposed.

ITEM 1. Amend **281—Chapter 58**, title, as follows:
SCHOOL BREAKFAST AND LUNCH PROGRAM; NUTRITIONAL CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

ITEM 2. Amend rule 281—58.1(283A) as follows:

281—58.1(283A,256) Authority of state department. Iowa Code chapter 283A authorizes the department of education to administer the school breakfast and lunch programs in the public and nonpublic schools of the state. 2008 Iowa Acts, Senate File 2425, sections 140 and 141, authorize the state board of education to establish nutritional content standards for foods and beverages sold or provided on school grounds during the school day.

ITEM 3. Amend **281—Chapter 58** by adding the following **new** division title to precede rule 281—58.2(283A):

DIVISION I
SCHOOL BREAKFAST AND LUNCH PROGRAM

ITEM 4. Amend rule **281—58.2(283A)**, introductory paragraph, as follows:

281—58.2(283A) Definitions. For the purposes of this ~~chapter~~ division, the following definitions apply:

ITEM 5. Amend **281—Chapter 58** by adopting **new** division II, title, as follows:

DIVISION II
NUTRITIONAL CONTENT STANDARDS, OTHER FOODS AND BEVERAGES

ITEM 6. Adopt the following **new** rules 281—58.9(256) to 281—58.11(256) in division II:

281—58.9(256) Definitions. For the purposes of this division, the following definitions apply:

“*A la carte food sales*” means food offered for sale by the school as part of the school’s food service program during the time the reimbursable school breakfast or lunch is served and that is not part of the reimbursable breakfast or lunch.

EDUCATION DEPARTMENT[281](cont'd)

“*School*” means a school district or accredited nonpublic school.

“*School breakfast program or school lunch program*” means a program under which breakfasts and lunches or lunches are served by any school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.

281—58.10(256) Scope. The rules in this division regulate the nutritional content of food and beverages sold or provided on the school grounds of any school during the school day, including food and beverages sold via vending machines, food and beverages sold in a “school store” or sold or provided otherwise on school grounds on a regular basis, and food and beverages sold as a la carte items. These rules do not regulate the nutritional content of food or beverages provided through a school breakfast program or school lunch program, sold for fundraising purposes, sold at concession stands, provided by parents, other volunteers, or students for class events, or provided by staff for the consumption by staff or students. The board of directors of a public school district or the authorities in charge of an accredited nonpublic school may, but are not required to, prescribe reasonable rules for their staff, volunteers, students, and parents, guardians, or custodians of students to adhere to regarding food and beverages provided on school grounds by staff, volunteers, students, and parents, guardians, or custodians of students.

281—58.11(256) Nutritional content standards.

Nutrient	A la Carte Entrees and Sides	Vending/School Store Items	Beverages
Calories	≤ NSLP entree items ¹ OR ≤400 calories NSLP sides ≤ 200 calories ¹	≤ 200 calories	Water Not to have nonnutritive sweeteners
Total fat	≤ 35% calories (excluding nuts, seeds, peanut butter and reduced fat cheese)	≤ 35% calories (excluding nuts, seeds, peanut butter and reduced fat cheese)	Milk – – 8 oz² Low/nonfat regular (now) Low/nonfat flavored no nonnutritive sweeteners (now) In addition: ≤ 27 gm sugar/8 oz (2014) ≤ 24 gm sugar/8 oz (2017) ≤ 22 gm sugar/8 oz (2020)
Saturated fat	≤ 10% calories (excluding reduced fat cheese)	≤ 10% calories (excluding reduced fat cheese)	100% Fruit/Vegetable Juice No added sweeteners 4 oz elementary 10 oz MS/HS (now) 8 oz MS/HS (by 2014)
Trans fat	≤ 0.5 gm/serving	≤ 0.5 gm/serving	Sports Drinks, Flavored Waters 12 oz limit for elementary students No size limit for middle and high school students
Sugar	≤ 35% calories (excluding fruits and yogurt < 30 gm/8 oz)	≤ 35% calories (excluding fruits and yogurt < 30 gm/8 oz)	Sodas (Carbonated Beverages) None are to be made available during the school day via vending machines, school stores, or as a la carte items

EDUCATION DEPARTMENT[281](cont'd)

Sodium	≤ 600 mg/serving entrees (present) ≤ 480 mg/serving entrees (2014) ≤ 400 mg/serving sides (present) ≤ 200 mg/serving sides (2014)	≤ 400 mg/serving (present) ≤ 200 mg/serving (2014)	Caffeinated Beverages None are to be made available during the school day via vending machines, school stores, or as a la carte items, with the exception of beverages that contain trace amounts of naturally occurring caffeine-related substances (e.g., chocolate milk)
Dietary fiber/whole grain	50% of grains offered provide 2 gm dietary fiber/serving	50% if grains offered are whole grain OR provide 2 gm fiber/serving	
	At least two fruits and/or non-fried vegetables offered with no more than one being a juice option	At least two fruits and/or non-fried vegetables offered with no more than one being a juice option	

¹NSLP (National School Lunch Program) menu items offered in the same portion size and frequency per week as they appear on the NSLP menu.

² Milk portion size - 8 oz elementary and middle school; - 8 oz portion must be available at high school and up to 16 oz may also be available.

ITEM 7. Amend **281—Chapter 58**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 283A and 2008 Iowa Acts, Senate File 2425, sections 140 and 141.

ARC 7489B

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 amend Chapter 83, "Teacher Quality Program," Iowa Administrative Code.

2008 Iowa Acts, chapter 1181, section 76, amended the definition of "teacher." Item 1 parallels the statutory change.

Item 2 addresses a concern raised to the Department earlier regarding a beginning teacher who possesses an evaluator license and who was evaluating other teachers. While Iowa Code section 284.10 states that preference in enrollment in evaluator training offerings shall be given to administrators, it is possible for teachers to enroll in evaluator training and obtain certification from the Board of Educational Examiners enabling them to evaluate other teachers. The amendment in Item 2 gives more guidance to districts that face this situation.

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

Interested individuals may make written comments on the proposed amendments on or before February 3, 2009, at 4:30 p.m. Comments on the proposed amendments should be directed to Carol Greta, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

These amendments are intended to implement 2008 Iowa Acts, chapter 1181, section 76, and Iowa Code chapter 284.

The following amendments are proposed.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 1. Amend rule **281—83.2(284,284A)**, definition of “Teacher,” as follows:

“*Teacher*” means an individual holding a practitioner’s license or a statement of professional recognition issued under Iowa Code chapter 272, who is employed in a nonadministrative position by a school district or area education agency pursuant to a contract issued by a board of directors under Iowa Code section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position. ~~“Teacher” includes a licensed individual employed on a less than full-time basis by a school district through a contract between the school district and an institution of higher education with a practitioner preparation program in which the licensed teacher is enrolled.~~

ITEM 2. Amend rule 281—83.5(284), introductory paragraph, as follows:

281—83.5(284) Evaluator approval training. The department shall approve eligible providers and their programs to conduct evaluator training. Only individuals certified through programs approved by the department shall qualify for evaluator certification by the board of educational examiners. A beginning teacher who has evaluator certification from the board of educational examiners shall not evaluate other teachers until the beginning teacher is no longer a probationary employee. Approved evaluator training programs shall be designed to align with the Iowa teaching standards and criteria, provide evaluators with the skills to conduct comprehensive evaluations and performance reviews as required by Iowa Code chapter 284, and provide for the evaluation of the progress made on individual professional development plans. This training for evaluators shall incorporate components of theory, demonstration, practice, and application of evaluation knowledge and skills.

ARC 7512B

IOWA FINANCE AUTHORITY[265]

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 17A.3(1)“b,” Iowa Code Supplement section 16.5(1)“r,” the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9, the Iowa Finance Authority proposes to adopt new Chapter 30, “Qualified Midwestern Disaster Area Bond Allocation,” Iowa Administrative Code.

The purpose of these rules is to implement a process for allocating the authority to issue and sell Midwestern Disaster Area bonds, as permitted by the Heartland Disaster Tax Relief Act of 2008.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on February 3, 2009. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov.

The Authority anticipates that it may make changes to the proposed rules based on comments received from the public.

On December 17, 2008, the Authority adopted these rules emergency, pursuant to Iowa Code section 17A.5(2), to be effective immediately upon filing with the Administrative Rules Coordinator. That

IOWA FINANCE AUTHORITY[265](cont'd)

Adopted and Filed Emergency rule making is published herein as **ARC 7511B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code Supplement section 16.5(1)“r,” the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9.

ARC 7514B

IOWA FINANCE AUTHORITY[265]

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 17A.3(1)“b,” Iowa Code Supplement section 16.5(1)“r,” and 2008 Iowa Acts, Senate File 2161, the Iowa Finance Authority proposes to adopt new Chapter 31, “Council on Homelessness,” Iowa Administrative Code.

The purpose of these rules is to organize and establish procedures for the Council on Homelessness created by 2008 Iowa Acts, Senate File 2161.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

The Authority will receive written comments on the proposed rules until 4:30 p.m. on February 3, 2009. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov.

The Authority anticipates that it may make changes to the proposed rules based on comments received from the public.

On December 17, 2008, the Authority adopted these rules emergency, pursuant to Iowa Code section 17A.5(2), to be effective immediately upon filing with the Administrative Rules Coordinator. That Adopted and Filed Emergency rule making is published herein as **ARC 7513B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code Supplement section 16.5(1)“r” and 2008 Iowa Acts, Senate File 2161.

ARC 7499B

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 section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, “State Parks and Recreation Areas,” Iowa Administrative Code.

The amendment rescinds subrule 61.7(2), which pertains to beach use and swimming, and adopts a new subrule in order to restructure the content to include a new subparagraph. The new subparagraph contains a provision to allow persons to register at a park to swim outside the designated swim area from sunrise to sunset. The new subparagraph also provides conditions the swimmer must follow for visibility

NATURAL RESOURCE COMMISSION[571](cont'd)

purposes. Those conditions include that the swimmer must be accompanied by a person in a vessel at all times and that the swimmer must stay within 20 feet of the vessel at all times. In addition, the vessel must display a 12-inch-square, bright orange flag which can be seen all around the horizon. These changes are a result of a petition for rule making received from a triathlete who requested a change to allow triathletes the opportunity to train in state park and state recreation area lakes outside the designated swim area.

Any interested person may make written suggestions or comments on the proposed amendment on or before February 3, 2009. Such written materials should be directed to the State Parks Bureau, Department of Natural Resources, 502 East Ninth Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)242-6233 or at the State Parks Bureau offices on the fourth floor of the Wallace State Office Building.

There will be public hearings on February 3, 2009, from 2 to 4 p.m. and from 6 to 8 p.m. at the Wickiup Hills Outdoor Learning Center near Toddville, and on February 4, 2009, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, Des Moines, at which time 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 amendment.

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

This amendment is intended to implement Iowa Code sections 461A.35 and 461A.44.

The following amendment is proposed.

Rescind subrule 61.7(2) and adopt the following **new** subrule in lieu thereof:

61.7(2) Beach use/swimming.

a. Except as provided in paragraphs “*b*” and “*c*” of this subrule, all swimming and scuba diving shall take place in the beach area within the boundaries marked by ropes, buoys, or signs within state parks and recreation areas. Inner tubes, air mattresses and other beach-type items shall be used only in designated beach areas.

b. Persons may scuba dive in areas other than the designated beach area provided they display the diver’s flag as specified in rule 571—41.10(462A).

c. Swimming outside beach area.

(1) Persons may swim outside the beach area under the following conditions:

1. Swimming must take place between sunrise and sunset;

2. The swimmer must be accompanied by a person operating a vessel and must stay within 20 feet of the vessel at all times during the swim;

3. The vessel accompanying the swimmer must display a flag, which is at least 12-inches square, is bright orange, and is visible all around the horizon; and

4. The person swimming pursuant to this subparagraph must register with the park staff in charge of the area and sign a registration immediately prior to the swim.

(2) Unless swimming is otherwise posted as prohibited or limited to the designated beach area, a person may also swim outside the beach area provided that the person swims within ten feet of a vessel which is anchored not less than 100 yards from the shoreline or the marked boundary of a designated beach. Any vessel, except one being uprighted, must be attended at all times by at least one person remaining on board.

(3) A passenger on a sailboat or other vessel may enter the water to upright or repair the vessel and must remain within ten feet of that vessel.

d. The provisions of paragraph “*a*” of this subrule shall not be construed as prohibiting wading in areas other than the beach by persons actively engaged in shoreline fishing.

ARC 7498B**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 rescind Chapter 78, "Ginseng Harvesting and Sale," Iowa Administrative Code, and to adopt a new Chapter 78 with the same title.

The proposed new chapter better defines wild and cultivated ginseng, green and dry ginseng, and those persons permitted to harvest and sell ginseng, and prohibits the harvesting or planting of ginseng on state-owned and state-managed lands. The new chapter also clarifies the fees charged for permits issued under these rules, the restrictions and prohibitions for harvesting wild ginseng, and the record-keeping and reporting requirements related to ginseng transactions.

Any interested person may make written suggestions or comments on the proposed amendment on or before February 3, 2009. Such written materials should be directed to Mimi Habhab, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Mimi.Habhab@dnr.iowa.gov. Persons who wish to convey their views orally should contact Mimi Habhab at (515)281-5034 or at Ms. Habhab's office on the fourth floor of the Wallace State Office Building.

Also, the Department will hold a public hearing utilizing the Iowa Communications Network (ICN) on February 4, 2009, at 6 p.m. The ICN locations at which the public may participate are as follows:

State Historical Building
Room #157 - Heritage Classroom C
600 East Locust
Des Moines

Iowa Western Community College
Room #1122
700 College Road
Council Bluffs

Eastern Iowa Community College District
Room #300
326 West 3rd Street
Davenport

Decorah Public Library
202 Winnebago Street
Decorah

Central Community Jr-Sr High School
Room Number: 119
400 First Street NW
Elkader

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St. Edmund High School
501 N 22nd St., Room 101
Fort Dodge

Clayton Ridge Middle School
502 W. Watson
Garnavillo

Iowa City High School
1900 Morningside Drive
Iowa City

North Iowa Area Community College
Room #119
500 College Drive
Mason City

Hawkeye Community College
Tama Hall
1501 E. Orange Road
Waterloo

Southeastern Community College
Trustee Hall, Room #528
1500 West Agency
West Burlington

At the public hearing, persons may present their views either orally or in writing. 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 intends to attend the 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.

This amendment is intended to implement Iowa Code section 456A.24(11).

The following amendment is proposed.

Rescind 571—Chapter 78 and adopt the following **new** chapter in lieu thereof:

CHAPTER 78
GINSENG HARVESTING AND SALE

571—78.1(456A) Purpose. The purposes of these rules are to establish a program for the harvesting and sale of American Ginseng subject to the Convention on International Trade in Endangered Species (CITES) of wild fauna and flora; to provide for the time and conditions for harvesting the plant; and to provide requirements for the registration of growers, dealers and exporters, the records kept by dealers and exporters, and the certification of a legal taking of a threatened or endangered species. The goal of the department's program is to ensure that American Ginseng, a slow-growing plant with increased demand due to its medicinal and commercial value, remains a sustainable resource in the state of Iowa.

571—78.2(456A) Scope. These rules shall apply to all persons harvesting, cultivating and dealing in American Ginseng in Iowa. However, these rules are not intended to apply to the trade or trafficking of

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American Ginseng that has been lawfully obtained and been processed, prepared, packaged or labeled in a manner intended for its final consumptive use.

571—78.3(456A) Definitions. All words and phrases used in these rules shall have their ordinary and customary meaning, except that the following words and phrases shall be defined as follows:

“*Controlled conditions*” means a nonnatural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed and pest control, irrigation, or nursery operations, such as potting, bedding, or protection from weather and artificial or natural shade or light.

“*Cultivated ginseng*” means ginseng that is nurtured, artificially propagated or maintained under controlled conditions from a seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule that has been derived from cultivated parental stock.

“*Cultivated parental stock*” means the ensemble of plants grown under controlled conditions that are used for reproduction and must be maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild.

“*Cutting*” or “*division*” means a plant grown from the root, stem, or leaf of another plant and is considered to be artificially propagated only if the traded specimen does not contain any material collected from the wild.

“*Dealer*” means any person who deals in ginseng, which includes without limitation buying, selling, purchasing, holding, brokering, billing for, bartering, trading or otherwise receiving payment for wild or cultivated ginseng in Iowa, for the purpose of selling or otherwise transacting wild or cultivated ginseng. The term “dealer” includes any person, including without limitation a harvester, who sells ginseng to any person other than a dealer licensed pursuant to these rules or lawfully licensed in another state.

“*Dealer’s permit*” means a permit issued to a dealer by the department under these rules.

“*Department*” means the Iowa department of natural resources.

“*Director*” means the director of the Iowa department of natural resources or a designee.

“*Ginseng*” means all parts of the American Ginseng (*Panax quinquefolius*) plant, including without limitation roots, leaves and seeds, which may be cultivated or wild. “Ginseng,” however, for purposes of these rules, does not mean those parts of the American Ginseng plant that have been processed.

“*Green ginseng*” means a root of wild ginseng from which the moisture has not been removed by drying. For the purposes of these rules, the amount of dried ginseng root which can be derived from green ginseng root shall be calculated using a ratio of three and three-tenths to one (3.3:1) by weight.

“*Grower*” means a person who grows cultivated ginseng for the purpose of selling the ginseng.

“*Grower’s permit*” means a permit issued under these rules to a grower.

“*Harvester*” means any person who harvests, possesses, transports, cuts, gathers, destroys, digs or uproots wild ginseng for the purpose of selling the ginseng or for personal use.

“*Harvester’s permit*” means a permit issued under these rules to a harvester.

“*Nonresident*” means a person other than a resident as defined by Iowa Code section 483A.1A.

“*Permits*” means dealer’s permits, grower’s permits and harvester’s permits issued under these rules.

“*Resident*” means a resident as defined by Iowa Code section 483A.1A.

“*Wild ginseng*” means an unprocessed plant, dry root or live root, seed or other part of ginseng, which is growing in or has been collected from its native habitat, including ginseng plants which have arisen from a cultivated seed that is planted in the wild, or which have been transplanted from a cultivated setting into the native habitat.

571—78.4(456A) Season for legal harvest. The season for legally harvesting ginseng is September 1 to October 31.

571—78.5(456A) General prohibitions.

78.5(1) Harvest. From November 1 through the following August 31, no person shall harvest, dig, cut, uproot, gather, intentionally disturb, or destroy ginseng, whether the ginseng is wild or cultivated ginseng.

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78.5(2) Sale. A person shall not sell ginseng from April 1 through August 31.

78.5(3) Sale and possession of green ginseng. A person shall not possess or transact business in green ginseng from November 21 through August 31, unless otherwise provided for by these rules.

78.5(4) State-owned and state-managed lands. In an effort to conserve and protect native stands of wild ginseng, the introduction of nonnative ginseng stock on state-owned or state-managed lands under the jurisdiction of the commission is prohibited, except in narrow circumstances. As such, a person shall not, at any time, possess, harvest, dig, cut, uproot, gather, plant, propagate, intentionally disturb or destroy ginseng or ginseng seed on state-owned or state-managed lands under the jurisdiction of the commission. Nothing in this chapter shall prohibit the department from taking measures on state-owned or state-managed lands under the jurisdiction of the commission to conserve and protect native wild ginseng, which may include without limitation planting and possessing seeds.

78.5(5) Certificate of origin. No ginseng dug, harvested or purchased outside the borders of Iowa which is not accompanied by a valid certificate of origin pursuant to rule 571—78.9(456A) shall be transported into or be in the state of Iowa lawfully.

571—78.6(456A) Ginseng permits. The department shall issue a grower's permit or dealer's permit upon receipt of a signed and complete application. An application shall be submitted on the form provided by the department, and payment of the appropriate fee, if applicable, shall be included with the application. Harvester's permits are available for sale through the department's electronic licensing system for Iowa, which may be accessed through license agents throughout the state or on the department's Web site. The department shall not issue a permit if the department determines that the permit will be detrimental to the survival of ginseng or will otherwise be in contravention of the laws of this state or applicable federal laws. A person shall not carry, possess or use any other person's permit issued pursuant to these rules, except as specifically provided by these rules.

78.6(1) Grower's permits.

a. A person must obtain a permit from the department to legally grow cultivated ginseng. There is no fee for the permit, except for the charge associated with the electronic licensing system used to issue the permit.

b. An application for a grower's permit shall be made on the form provided by the department, shall be complete to be considered, and shall be executed by the person seeking the grower's permit.

c. A grower's permit shall be valid for five years from the date of issuance.

d. An application for permit renewal must be filed with the department within 60 days of expiration of the existing permit.

78.6(2) Dealer's permits.

a. A dealer in Iowa must have a valid dealer's permit issued by the department. A dealer's paid employees and family members who work at a dealer's primary place of business as identified on the dealer's permit may operate legally under the dealer's permit of the dealer. For purposes of this subrule, family members include a dealer's spouse, domestic partner, parents, siblings, and children.

b. An application for a dealer's permit shall be made on the form provided by the department, shall be complete to be considered, shall be executed by the person seeking the dealer's permit, and shall be accompanied by a \$250 permit fee for residents and a \$500 permit fee for nonresidents. In addition, there shall be an additional charge associated with the electronic licensing system used to issue the permit, if applicable. The department's issuance of the permit may take in excess of 60 days to complete.

c. A dealer's permit shall be valid from September 1 until August 31 of the following year.

d. A dealer's permit must be shown to the department when the department is certifying ginseng and must be shown to harvesters or other dealers when the dealer is buying ginseng.

78.6(3) Harvester's permits.

a. Any person who harvests wild ginseng must have a valid harvester's permit issued by the department and shall produce such permit upon the request of the department while the person is engaged in harvesting activities, including the selling of the harvested ginseng.

b. An application for a harvester's permit shall be made on the form provided by the department, unless the harvester's permit is purchased through the department's electronic licensing system for Iowa,

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and shall accompanied by a fee of \$35 for residents and \$65 for nonresidents. In addition, there shall be an additional charge associated with the electronic licensing system used to issue the permit. The application and subsequent harvester's permit shall be signed by the applicant.

c. A harvester's permit shall be valid from September 1 through March 15 of the following year.

d. A harvester who has a harvester's permit may sell wild ginseng from September 1 through March 15 of the following year.

e. A harvester with a valid harvester's permit may retain no more than four ounces of dry wild ginseng, or equivalent amount of green ginseng or combination thereof, for personal consumption for one year beyond the expiration date of the permit. All wild ginseng possessed pursuant to this paragraph shall be for the harvester's personal use only and may not be lawfully sold.

f. No person may sell, barter or otherwise offer for sale any ginseng that has been unlawfully collected, obtained or possessed in violation of this chapter, the Code of Iowa, or the Code of Federal Regulations.

78.6(4) Duplicate permits. A duplicate grower's permit, harvester's permit or dealer's permit may be issued upon application to the department and the payment of \$5, plus any charges assessed to use the electronic licensing system to issue the duplicate permit, if applicable.

571—78.7(456A) Dealers—record keeping.

78.7(1) Contents of records. Each permitted ginseng dealer shall keep individual, accurate, legible and complete records of each ginseng transaction. The records shall be on forms prescribed by the department, which shall provide a reasonable number of these forms at no cost to the dealer. The dealer's record of each ginseng transaction shall include:

a. The date of transaction; and

b. The name and address of the buyer or seller, whichever is applicable for the transaction; and

c. The harvester's permit number or dealer's permit number, if a dealer is buying ginseng in the transaction; and

d. A description of the ginseng transacted, including the weight of the ginseng transacted, as determined as though the ginseng is dried, and whether the ginseng is dried or green; and

e. The name of the county or counties where the ginseng was harvested if the ginseng is purchased from a harvester; and

f. A copy of the ginseng's certificate of origin, signed by the seller, if applicable; and

g. The date of harvest for the ginseng bought or sold; and

h. Any additional information as requested by the department and included on the department's form.

78.7(2) Monthly reporting. Each dealer shall submit to the department copies of all records required by subrule 78.7(1) on a monthly basis, no later than the fifteenth day of each month.

78.7(3) Annual reporting. Each dealer shall file an annual report with the department by April 15. The annual report shall be filed on forms provided by the department and shall include the following information:

a. A summary of all transactions that have occurred in Iowa from September 1 through March 31 of the following year; and

b. An inventory of any roots remaining in the dealer's possession in Iowa as of April 1, including each root's certified weight and designation as either wild ginseng or cultivated ginseng, or a statement that the dealer has no roots remaining in the dealer's possession in Iowa as of that date.

Any certification regarding a root's weight as required by this subrule shall be completed through the department or its agents at locations designated by the department, upon appointment.

78.7(4) Records retention. All records required by this rule shall be kept by the dealer for a period of three years after the expiration of the dealer's permit.

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571—78.8(456A) Dealer locations.

78.8(1) Generally. Ginseng dealers shall transact business only at the location specified on the dealer's permit or at the place of business specified on the permit of any other dealer who holds a dealer's permit in Iowa and is involved in the transaction.

78.8(2) Location permits. A dealer who wishes to transact business at a location other than the locations provided for in subrule 78.8(1) may obtain a location permit from the department. Each location permit shall be valid only for the location specified on the location permit and shall entitle the dealer to operate at that location in addition to the location specified on the corresponding dealer's permit. The department shall, upon application and the payment of the applicable location permit fee, furnish a location permit to the dealer. The location permit fee shall be \$5 for residents and \$50 for nonresidents, plus any charge assessed for use of the electronic licensing system to issue the permit, if applicable.

78.8(3) Duplicate location permits. A duplicate location permit may be issued upon application to the department and the payment of \$5, plus any charge assessed for use of the electronic licensing system to issue the duplicate permit, if applicable.

571—78.9(456A) Certificates of origin.

78.9(1) Shipments. Every shipment of ginseng to a location outside the state of Iowa by a grower, harvester or dealer shall be accompanied by a certificate of origin, or shipping certificate, which certifies that the ginseng was taken lawfully.

a. The department will issue a certificate of origin for cultivated ginseng to a grower or dealers upon application by the permit holder and based upon the completeness and sufficiency of the permit holder's application, which shall be on a form provided by the department, and the permit holder's compliance with the requirements of this chapter.

b. The department will issue a certificate of origin for wild ginseng to a harvester upon application by the permit holder and based upon the completeness and sufficiency of the permit holder's application, which shall be on a form provided by the department, and the permit holder's compliance with the requirements of this chapter.

c. The certificate of origin for wild ginseng will be issued by the department and its agents after the root has been weighed and certified by the department or its agents at one of the locations designated by the department, upon appointment.

d. A grower, harvester, or dealer seeking a certificate of origin must have a valid grower's permit, harvester's permit, or dealer's permit, respectively, and must present the permit to receive a certificate of origin.

78.9(2) Fees. The department shall issue a certificate of origin free to any grower or dealer who lawfully possesses a valid grower's permit or dealer's permit, respectively, and for a fee of \$5 for each certificate to any harvester who lawfully possesses a valid harvester's permit.

78.9(3) Compliance. Certificates of origin shall be issued only to permit holders who have complied with the requirements of this chapter, including without limitation requirements regarding plant size for wild ginseng.

78.9(4) Wild ginseng originating in another state.

a. No person may ship out of this state to a foreign country wild ginseng that originates in another state or foreign country unless the wild ginseng is accompanied by a valid certificate of origin issued by that other state or foreign country. No person may ship out of this state wild ginseng that originates in another state under a certificate of origin issued under this chapter.

b. No resident may import for purposes of dealing wild ginseng that originates in another state unless the wild ginseng is accompanied by a valid certificate of origin from the other state. Original certificates of origin shall remain with the wild ginseng at all times.

c. If a resident dealer receives wild ginseng that originated in another state and if a certificate of origin issued by that state does not accompany the wild ginseng, the dealer shall return the wild ginseng to the sender within 30 days after its receipt.

d. A dealer shall maintain a copy of the certificate of origin with the record of transaction.

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e. It shall be lawful for any person to have in possession any wild ginseng lawfully harvested or purchased outside the state and lawfully brought into the state so long as the person possesses a valid certificate of origin for the wild ginseng.

571—78.10(456A) Inspection.

78.10(1) At any time upon request, any permit issued under this chapter shall be made available to the department, director, officer appointed by the department, peace officer, or, in the case of a harvesting permit, the owner in person in lawful control of the land upon which the licensee may be harvesting wild ginseng. Failure of a person to carry or refusal to show or exhibit a valid permit while engaged in or presumed to be engaged in the harvesting, growing or dealing of ginseng in Iowa shall be a violation of this chapter. However, a person charged with violating these rules shall not be convicted if the person produces to the department or to a court officer, within a reasonable time, a permit issued to that person and valid when the person was charged with a violation of these rules. Failure to make such permit available is a violation of these rules.

78.10(2) Any records required by this chapter to be maintained or submitted shall be produced for inspection upon request of the department, director, officer appointed by the department, or peace officer. Failure to maintain records or to submit reports as required by these rules is a violation of these rules.

78.10(3) Any person or dealer who has in possession any ginseng or part thereof shall upon request of the department, director, any officer appointed by the department, or peace officer show it to the department, director or officer; a refusal to do so is a violation of this chapter.

571—78.11(456A) Restrictions and prohibitions for harvesting wild ginseng.

78.11(1) Every person shall have in possession a valid, department-issued permit to harvest wild ginseng for the current harvest season when harvesting, cutting, uprooting, gathering, destroying, possessing or transporting wild ginseng.

78.11(2) No person shall harvest a plant unless the plant possesses three or more true leaves or prongs and a flowering or fruiting stalk with red berries. For purposes of this rule, “true leaves or prongs” means compound leaves that include five leaflets consisting of three large leaflets and two small leaflets. If, after a person removes a plant with the requisite leaves or prongs as described above, it is determined the root has less than five internodes, or root sections containing a stem scar, on the plant’s rhizome, the person shall return the plant to the soil and make best efforts to return the plant and the surrounding area to their condition prior to harvest of the plant. In no event shall a person harvest or possess a wild ginseng root unless the root has at least five internodes, or root sections containing a stem scar, on the plant’s rhizome.

78.11(3) When a person harvests wild ginseng, the entire plant, except the fruit and seeds, shall be retained with the plant until the plant is taken to the harvester’s residence or place of business, as identified in the harvester’s permit.

571—78.12(456A) Additional restrictions and prohibitions for wild ginseng.**78.12(1) Seeds.**

a. All persons harvesting wild ginseng shall plant all seeds collected from such plants within 100 feet of the parent plant.

b. A person shall use no other tool than the person’s finger to plant seeds from wild ginseng and shall push each seed to a depth of no more than two inches into the soil.

c. A person shall not possess or transport seeds of wild ginseng more than 100 feet from the site of the parent plant.

78.12(2) Dealing.

a. A person shall not purchase or sell wild ginseng if the person knows or should have known that the ginseng was harvested illegally.

b. A dealer shall not purchase wild ginseng without inspecting the permit of the harvester. A dealer shall not purchase wild ginseng if the dealer knows or should have known that the harvester has violated this chapter.

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c. A person shall not buy, deal, purchase or otherwise transact business involving seeds from wild ginseng.

571—78.13(456A) Compliance with laws. A person shall not violate any state, federal or local laws in harvesting, dealing or shipping ginseng.

571—78.14(456A) Violations of this chapter.

78.14(1) A person violating this chapter shall be subject to a schedule fine pursuant to Iowa Code section 805.8B, subsection 4, and permit suspension, modification and revocation pursuant to 571—78.17(456A).

78.14(2) Separate offense. Each ginseng plant or part thereof, including wild ginseng, unlawfully harvested, dealt, or shipped shall be a separate offense. More than one person per plant may be guilty of violating this chapter.

78.14(3) Materials determined by the department's law enforcement personnel to be contraband or to have been taken in violation of this chapter may be seized and disposed of in conformance with Iowa Code chapter 809.

571—78.15(456A) Possession. When a person is in possession of wild ginseng, including the shipping or transporting of wild ginseng, and a container includes one or more parts of wild ginseng that are unlawful, the entire contents of the container shall be deemed unlawful.

571—78.16(456A) Valuation. The value of ginseng seized in violation of these rules shall be based on the current market value, as determined by the department.

571—78.17(456A) Suspension, modification or revocation of permits. Any permit issued pursuant to this chapter may be modified, suspended, or revoked, in whole or in part, by written notice, if the director determines that the permit holder has violated any provision of this chapter or determines that continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permit holder may file a notice of appeal, requesting a contested case pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be reinstated.

571—78.18(456A) Reciprocity. Nonresident harvesters, growers and dealers from states that prohibit Iowa harvesters, growers and dealers to lawfully operate in their states are not eligible for permits issued by the department.

These rules are intended to implement Iowa Code section 456A.24(11).

ARC 7500B**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 94, "Nonresident Deer Hunting," Iowa Administrative Code.

Chapter 94 sets the regulations for nonresident deer hunting and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation and reporting requirements.

The proposed amendment to subrule 94.6(2) adds 1,000 licenses to the quota for optional antlerless-only licenses. This change should allow more does to be taken in counties where the doe harvest needs to be increased to meet the Department's goals. It should also allow more former residents to return and hunt with their families and traditional groups.

The proposed amendment to subrule 94.7(6) revises the paragraph that requires hunters to use hunter orange on blinds during the shotgun seasons. This change makes the requirements the same for both residents and nonresidents during the regular gun season.

The proposed amendment to rule 571—94.12(481A) allows nonresidents to obtain antlerless licenses for the January antlerless season. These licenses will come from the resident quota in those counties where the resident quota has not been filled and will go on sale to nonresidents on January 3. All regulations that apply to resident hunters during the January season will apply to nonresident hunters as well. This change will allow more does to be taken in those counties where the doe harvest needs to be increased to meet the Department's goals.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 13, 2009. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-5918 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on February 10, 2009, at 10 a.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should inform the Department of Natural Resources of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1 and 483A.8.

The following amendments are proposed.

ITEM 1. Amend subrule 94.6(2) as follows:

94.6(2) Quota applicability. The license quota issued for each zone will be the quota for all bow, regular gun and muzzleloader season licenses combined. No more than 6,000 any-deer licenses and 6,000 mandatory antlerless-only licenses will be issued for all methods of take combined, for the entire state. Of the 6,000 any-deer and 6,000 mandatory antlerless-only licenses, no more than 35 percent in any zone can be bow licenses. A maximum of ~~3,500~~ 4,500 optional antlerless-only licenses will be issued on a county-by-county basis. The licenses will be divided between the counties in the same proportion as

NATURAL RESOURCE COMMISSION[571](cont'd)

resident antlerless-only licenses. Hunters must designate a zone or county and season when purchasing the license and hunt only in that zone or county and season.

ITEM 2. Rescind subrule 94.7(6) and adopt the following **new** subrule in lieu thereof:

94.7(6) *Hunting from blinds.* No person shall use a blind for hunting deer during the regular gun deer seasons as defined in 94.2(2), unless such blind exhibits a solid blaze orange marking visible in all directions with a minimum height of 12 inches and a minimum width of 12 inches. Such blaze orange shall be affixed directly on or directly on top of the blind. For the purposes of this subrule, the term "blind" is defined as a place of concealment constructed, either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122.

ITEM 3. Adopt the following **new** rule 571—94.12(481A):

571—94.12(481A) January antlerless season. Beginning on January 3, nonresident hunters may obtain antlerless-only licenses for the January antlerless season specified in 571—subrule 106.2(5). Licenses will be available only in those counties specified in 571—subrule 106.6(4) until the quota provided in 571—subrule 106.6(6) is filled. All regulations specified in 571—Chapter 106 for the January antlerless season for resident hunters including limits, shooting hours, method of take, tagging and reporting requirements will also apply to nonresident hunters during this season.

ARC 7485B

NURSING BOARD[655]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

This amendment defines appeal and hearing processes for an applicant denied licensure.

Any interested person may make written comments or suggestions on the proposed amendment on or before February 3, 2009. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at 400 S.W. 8th Street by appointment.

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

The following amendment is proposed.

Adopt the following **new** rule 655—3.9(17A,272C):

655—3.9(17A,272C) License denial.

3.9(1) An applicant who has been denied licensure by the board may appeal the decision and request a hearing on related issues. A notice of appeal and request for hearing must be served upon the board within 30 days following the date the notification of licensure denial was mailed to the applicant. The request for hearing shall specifically delineate the facts to be contested at hearing.

3.9(2) All hearings held pursuant to this rule shall be held in accordance with the process outlined in 655—Chapter 4.

ARC 7487B**NURSING BOARD[655]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 16, "Nurse Licensure Compact," Iowa Administrative Code.

These amendments identify additional documents to be used to support declaration of residency. In addition, the amendments provide for issuance of a multistate license for a nurse working on a visa and provide for license limitations for a disciplined licensee.

Any interested person may make written comments or suggestions on the proposed amendments on or before February 3, 2009. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at 400 S.W. 8th Street by appointment.

These amendments are intended to implement Iowa Code chapter 152E.

The following amendments are proposed.

ITEM 1. Amend paragraph **16.2(2)"d"** as follows:

d. Military Form ~~DD~~ No. 2058, State of Legal Residence Certificate, or ~~military Form DFAS 702, Defense Finance and Accounting Service Military Leave and Earnings Statement.~~

ITEM 2. Adopt the following **new** paragraph **16.2(2)"e"**:

e. A W-2 from the U.S. government or any bureau, division or agency thereof indicating the declared state of residence.

ITEM 3. Renumber subrules **16.2(3)** to **16.2(6)** as **16.2(6)** to **16.2(9)**.

ITEM 4. Adopt the following **new** subrules 16.2(3) to 16.2(5):

16.2(3) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single-state license will be issued by the party state.

16.2(4) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state that issued the license.

16.2(5) When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e., a single-state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

ITEM 5. Amend rule 655—16.3(152E) as follows:

655—16.3(152E) Limitations on multistate licensure privilege—discipline.

16.3(1) All home state board disciplinary orders, agreed or otherwise, which limit the scope of the licensee's practice or require monitoring of the licensee as a condition of the order shall include the requirement that the licensee will limit the licensee's practice to the home state during the pendency of the order. This requirement may allow the licensee to practice in other party states with prior written authorization from both the home state and party state boards.

16.3(2) An individual who held a license that was surrendered, revoked, or suspended or an application that was denied for cause in a prior state of primary residence may be issued a single-state license in a new primary state of residence until such time as the individual would be eligible for an

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unrestricted license by the prior state(s) of adverse action. Once an individual is eligible for licensure in the prior state(s), a multistate license may be issued.

ITEM 6. Amend **655—Chapter 16**, implementation sentence, as follows:

These rules are intended to implement ~~2000 Iowa Acts, House File 2105~~ Iowa Code chapter 152E.

ARC 7488B

NURSING BOARD[655]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to rescind Chapter 17, "Child Support Noncompliance," and Chapter 18, "Student Loan Default or Noncompliance," and to adopt a new Chapter 17, "Nonpayment of Child Support, Student Loan, or State Debt," Iowa Administrative Code.

These proposed amendments combine regulations requiring license denial, suspension or revocation for noncompliance with or nonpayment of child support, student loan or state debt. Any interested person may make written comments or suggestions on the proposed amendments on or before February 3, 2009. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at 400 S.W. 8th Street by appointment.

These amendments are intended to implement Iowa Code chapters 252J, 261, and 272D.

The following amendments are proposed.

ITEM 1. Rescind 655—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17

NONPAYMENT OF CHILD SUPPORT, STUDENT LOAN, OR STATE DEBT

655—17.1(252J) Definitions. The following definitions shall apply to rules 17.2(252J) and 17.3(252J) of this chapter.

"Certificate" means a document known as a certificate of noncompliance which is provided by the child support unit certifying that the named licensee is not in compliance with a support order or with a written agreement for payment of support entered into by the child support unit and the licensee.

"Child support unit" means the child support recovery unit of the Iowa department of human services.

"Denial notice" means a board notification denying an application for the issuance or renewal of a license as required by Iowa Code chapter 252J.

"Revocation or suspension notice" means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by Iowa Code chapter 252J.

"Withdrawal certificate" means a document known as a withdrawal of a certificate of noncompliance provided by the child support unit certifying that the certificate is withdrawn and that the board may proceed with the issuance, reinstatement, or renewal of a license.

655—17.2(252J) Denial of issuance or renewal of a license—child support. The board shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the child support

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recovery unit of the department of human services according to the procedures set forth in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

17.2(1) The notice required by Iowa Code section 252J.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

17.2(2) The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee or applicant.

17.2(3) The board's executive director is authorized to prepare and serve the notice required by Iowa Code section 252J.8.

17.2(4) Licensees and applicants shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

17.2(5) All board fees for applications, license renewal, or license reinstatement must be paid by licensees or applicants, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 252J.

17.2(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

17.2(7) The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board's receipt of a withdrawal of a certificate of noncompliance.

655—17.3(252J) Suspension or revocation of a license—child support. The board shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures set forth in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

17.3(1) The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

17.3(2) The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee.

17.3(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 252J.8 and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event the license is on suspension, the executive officer shall notify the licensee of the board's intent to revoke the license.

17.3(4) Licensees shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

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17.3(5) All board fees for license renewal or reinstatement must be paid by licensees, and all continuing education requirements must be satisfied before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 252J.

17.3(6) In the event a licensee files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

17.3(7) The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board's receipt of a withdrawal of a certificate of noncompliance.

655—17.4(261) Definitions. The following definitions shall apply to rules 17.5(261) and 17.6(261) of this chapter.

“Certificate” means a document known as a certificate of noncompliance which is provided by the college student aid commission certifying that the named licensee is not in compliance with the terms of an agreement for payment of a student loan obligation.

“Commission” means the college student aid commission.

“Denial notice” means a board notification denying an application for the issuance or renewal of a license as required by Iowa Code chapter 261.

“Revocation or suspension notice” means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by Iowa Code chapter 261.

“Withdrawal certificate” means a document known as a withdrawal of a certificate of noncompliance provided by the commission certifying that the certificate is withdrawn and that the board may proceed with the issuance, reinstatement, or renewal of a license.

655—17.5(261) Denial of issuance or renewal of a license—student loan. The board shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the college student aid commission according to the procedures in Iowa Code chapter 261. In addition to the procedures set forth in chapter 261, this rule shall apply.

17.5(1) The notice required by Iowa Code section 261.126 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

17.5(2) The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee or applicant.

17.5(3) The board's executive director is authorized to prepare and serve the notice required by Iowa Code section 261.126.

17.5(4) Licensees and applicants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

17.5(5) All board fees for applications, license renewal, or license reinstatement must be paid by licensees or applicants, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 261.

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17.5(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

17.5(7) The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board's receipt of a withdrawal of a certificate of noncompliance.

655—17.6(261) Suspension or revocation of a license—student loan. The board shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261. In addition to the procedures set forth in chapter 261, this rule shall apply.

17.6(1) The notice required by Iowa Code section 261.126 shall be served upon the licensee by restricted mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

17.6(2) The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee.

17.6(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 261.126 and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event the license is on suspension, the executive officer shall notify the licensee of the board's intent to revoke the license.

17.6(4) Licensees shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

17.6(5) All board fees for license renewal or reinstatement must be paid by licensees, and all continuing education requirements must be satisfied before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

17.6(6) In the event a licensee files a timely district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

17.6(7) The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board's receipt of a withdrawal of a certificate of noncompliance.

655—17.7(272D) Definitions. The following definitions shall apply to rules 17.8(272D) and 17.9(272D) of this chapter.

“*Centralized collection unit*” means the centralized collection unit of the department of revenue.

“*Certificate*” means a document known as a certificate of noncompliance which is provided by the centralized collection unit of the department of revenue certifying that the named licensee has an outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

NURSING BOARD[655](cont'd)

“*Denial notice*” means a board notification denying an application for the issuance or renewal of a license as required by Iowa Code chapter 272D.

“*Revocation or suspension notice*” means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by Iowa Code chapter 272D.

“*Withdrawal certificate*” means a document known as a withdrawal of a certificate of noncompliance provided by the centralized collection unit certifying that the certificate is withdrawn and that the board may proceed with the issuance, reinstatement, or renewal of a license.

655—17.8(272D) Denial of issuance or renewal of a license—state debt. The board shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D. In addition to the procedures set forth in chapter 272D, this rule shall apply.

17.8(1) The notice required by Iowa Code section 272D.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

17.8(2) The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the licensee or applicant.

17.8(3) The board’s executive director is authorized to prepare and serve the notice required by Iowa Code section 272D.8.

17.8(4) Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

17.8(5) All board fees for applications, license renewal, or license reinstatement must be paid by licensees or applicants, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 272D.

17.8(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

17.8(7) The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board’s receipt of a withdrawal of a certificate of noncompliance.

655—17.9(272D) Suspension or revocation of a license—state debt. The board shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D. In addition to the procedures set forth in chapter 272D, this rule shall apply.

17.9(1) The notice required by Iowa Code section 272D.8 shall be served upon the licensee by restricted mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

17.9(2) The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the licensee.

NURSING BOARD[655](cont'd)

17.9(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 272D.8 and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event the license is on suspension, the executive officer shall notify the licensee of the board's intent to revoke the license.

17.9(4) Licensees shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

17.9(5) All board fees for license renewal or reinstatement must be paid by licensees, and all continuing education requirements must be satisfied before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 272D.

17.9(6) In the event a licensee files a timely district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

17.9(7) The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board's receipt of a withdrawal of a certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 252J, 261, and 272D.

ITEM 2. Rescind and reserve **655—Chapter 18.**

PUBLIC SAFETY DEPARTMENT

Public Notice

Pursuant to the authority of Iowa Code sections 123.46 and 321J.5, and in accordance with 661 Iowa Administrative Code 157.5(1), the following devices are approved for use in the state of Iowa in conducting chemical tests for the purpose of establishing whether a person is publicly intoxicated and in preliminary screening tests conducted pursuant to Iowa Code chapter 321J.

Device	Company	Company Location
Alco Sensor	Intoximeters, Inc.	St. Louis, Missouri
Alco Sensor II	Intoximeters, Inc.	St. Louis, Missouri
Alco Sensor III	Intoximeters, Inc.	St. Louis, Missouri
Alco Sensor IV	Intoximeters, Inc.	St. Louis, Missouri
Alco-Sensor FST	Intoximeters, Inc.	St. Louis, Missouri
Alcohol Analyzer S-D2	National Patent Analytical Systems	Mansfield, Ohio
Intoxilyzer 300	CMI, Inc.	Owensboro, Kentucky
Intoxilyzer 400	CMI, Inc.	Owensboro, Kentucky
Intoxilyzer S-D5	CMI, Inc.	Owensboro, Kentucky
Intoxilyzer S-D2	CMI, Inc.	Owensboro, Kentucky
Lifeloc FC10/FC10 Plus	Lifeloc Technologies, Inc.	Denver, Colorado
Lifeloc FC20/FC20 Plus	Lifeloc Technologies, Inc.	Denver, Colorado

PUBLIC SAFETY DEPARTMENT(cont'd)

The listed devices are approved for use in Iowa effective January 1, 2009. This list supersedes any previous list of approved devices.

This list represents devices that have been approved by the Commissioner of Public Safety as of the effective date of this notice. This list is published for the convenience of the public. The Commissioner may approve other devices in the future. This list will be updated periodically to show any additional devices that have been approved. You may contact the Iowa Division of Criminal Investigation Criminalistics Laboratory to inquire whether the Commissioner has approved any additional devices.

Any manufacturer of a preliminary breath testing device may apply to have the device approved for use in the State of Iowa. Contact the Iowa Division of Criminal Investigation Criminalistics Laboratory at the following address for instructions:

Iowa Department of Public Safety
DCI Criminalistics Laboratory
2240 South Ankeny Blvd
Ankeny, IA 50023

ARC 7505B**REAL ESTATE COMMISSION[193E]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 543B.9, 543B.18, and 543B.15, the Real Estate Commission hereby terminates the rule making to amend Chapter 2, which was initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 7001B** on July 30, 2008.

This rule making is being terminated due to substantive changes, and a new Notice of Intended Action is published herein as **ARC 7508B**.

ARC 7508B**REAL ESTATE COMMISSION[193E]****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 543B.9, 543B.18, and 543B.15, the Real Estate Commission hereby gives Notice of Intended Action to amend Chapter 2, "Definitions," Iowa Administrative Code.

The proposed amendment to rule 2.1(543B) adds a definition for "moral turpitude."

A public hearing will be held on February 3, 2009, at 9 a.m. in the Professional Licensing Conference Room, Second Floor, 1920 S.E. Hulsizer Road, Ankeny, Iowa, at which time persons may present their views on the proposed amendment either orally or in writing. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

Consideration will be given to all written suggestions or comments received before the end of the business day on February 3, 2009. Comments should be addressed to David Batts, Executive Officer, Iowa Real Estate Commission, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021; or faxed to (515)281-7411. E-mail may be sent to David.Batts@iowa.gov.

This amendment is intended to implement Iowa Code sections 543B.9, 543B.15 and 543B.18.

The following amendment is proposed.

REAL ESTATE COMMISSION[193E](cont'd)

Adopt the following **new** definition in rule **193E—2.1(543B)**:

“Moral turpitude” means an act of baseness, vileness, or depravity, in the private and social duties which a person owes to another person or to society in general, contrary to the accepted and customary rule of right and duty between person and person. It is conduct that is contrary to justice, honesty and good morals. Various factors may cause an offense which is generally not regarded as constituting moral turpitude to be regarded as such. Moral turpitude as specified in Iowa Code section 543B.15(3) shall include without limitation forcible felonies as delineated in Iowa Code section 702.11.

ARC 7482B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 164, “Traffic Safety Improvement Program,” Iowa Administrative Code.

The DOT is proposing a change to the application deadline. The users of the traffic safety improvement program have requested that the application deadline be moved up to June 15 so approvals can be made in December, which will allow time to develop projects for the following construction season.

This rule does not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than February 3, 2009.

A meeting to hear requested oral presentations is scheduled for Thursday, February 5, 2009, at 10 a.m. at the Administration Building, South Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa. The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code chapter 312.

Proposed rule-making action:

Amend paragraph **164.9(1)“b”** as follows:

b. All complete applications received before ~~August 15~~ June 15 of each year shall be evaluated for funding.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

January 1, 2008 — January 31, 2008	6.25%
February 1, 2008 — February 29, 2008	6.00%
March 1, 2008 — March 31, 2008	5.75%
April 1, 2008 — April 30, 2008	5.75%
May 1, 2008 — May 31, 2008	5.50%
June 1, 2008 — June 30, 2008	5.75%
July 1, 2008 — July 31, 2008	6.00%
August 1, 2008 — August 31, 2008	6.00%
September 1, 2008 — September 30, 2008	6.00%
October 1, 2008 — October 31, 2008	6.00%
November 1, 2008 — November 30, 2008	5.75%
December 1, 2008 — December 31, 2008	5.75%
January 1, 2009 — January 31, 2009	5.50%

ARC 7480B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 239B.4(6), the Department of Human Services amends Chapter 7, "Appeals and Hearings," Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," and Chapter 46, "Overpayment Recovery," Iowa Administrative Code.

These amendments eliminate quarterly reporting for families receiving benefits under the Family Investment Program (FIP) who have earned income. Under these amendments, all families receiving FIP will be subject to semiannual reporting. They will complete a report form every six months and have an annual interview.

Moving from quarterly reporting to semiannual reporting for FIP will benefit families in several ways:

- Reducing the number of times that clients must report also reduces "procedural" cancellations caused by failure to return reports, returning reports late, or client errors in completing report forms when clients otherwise continue to meet eligibility requirements. Participants with physical or mental health issues, disabilities, literacy issues, or family crises are likely to have the most difficulty completing reports timely and accurately. Although the family's benefits can be reinstated when these errors are corrected, the cancellation may result in a break in assistance for the family.

- Reducing procedural cancellations also helps maintain consistent participation in work and training activities. Procedural cancellations resulting in a break in FIP assistance also cause a break in PROMISE JOBS services. Even short breaks disrupt efforts to engage the family in work and training activities and may force families to drop out of activities intended to lead to long-term self-sufficiency.

- Changing to a semiannual review stabilizes family income. When income is projected for six months, minor fluctuations do not affect eligibility and benefits. Major changes in income and other household circumstances must still be reported and acted upon.

- These changes align FIP reporting frequency with the reporting required for Food Assistance and Medicaid. Currently FIP requires more frequent reports than Food Assistance or Medicaid. Most FIP families also receive Food Assistance and Medicaid. These changes will ensure that income is treated more consistently between programs.

- Alignment of reporting procedures across programs also reduces the number of different forms a family may be required to complete. The proposed amendments remove requirements for completing the Public Assistance Eligibility Report and the Combined PAER/FAIR in favor of using a single report form, the Review/Recertification Eligibility Document. These changes will reduce client confusion about reporting requirements.

Other changes included in these amendments are as follows:

- Item 9 clarifies that when a FIP participant is approved for foster care or subsidized adoption assistance while staying in the same home, FIP is canceled effective the first of the next month following the date when approval of the foster care or subsidized adoption assistance is entered into the Department's computer system. When a nonparental caretaker relative who is receiving FIP for a child is approved for foster care or subsidized adoption assistance for that child, occasionally it is necessary to make retroactive payment for past months due to legal and system requirements. The amendment clarifies that FIP payments for the month for which the foster care or subsidized adoption assistance is approved or any past months for which foster care or subsidized adoption payments are made retroactively are not subject to recoupment.

- Item 10 corrects an implementation sentence to reflect the rescission of school attendance as an eligibility requirement.

These amendments do not provide for waivers in specified situations because they benefit clients or clarify current procedures. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 8, 2008, as **ARC 7267B**. The Department received no comments on the Notice of Intended

HUMAN SERVICES DEPARTMENT[441](cont'd)

Action. These amendments are identical to those published under Notice of Intended Action, except that some of the technical changes shown in the Notice have since been adopted in amendments published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7295B**; therefore, those amendments are no longer included.

The Council on Human Services adopted these amendments on December 10, 2008.

The Department finds that these amendments confer a benefit on FIP applicants and participants as outlined above. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 239B.4.

These amendments shall become effective on February 1, 2009.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 7, 40, 41, 46] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7267B**, IAB 10/8/08.

[Filed Emergency After Notice 12/11/08, effective 2/1/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7524B

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 505.8 and 514D.9, Iowa Code chapter 514G and 2008 Iowa Acts, House File 2694, section 12, the Insurance Division hereby amends Chapter 39, “Long-Term Care Insurance,” Iowa Administrative Code.

The chapter and the Act, among other things, establish standards for long-term care insurance, including a mechanism for the independent review of insurance companies’ determinations regarding whether an insured has met the necessary conditions to have benefits paid. The Iowa Insurance Commissioner has the authority to adopt rules for administering the independent review process of insurers’ benefit trigger determinations. (See 2008 Iowa Acts, House File 2694, section 12.) The proposed amendment will provide further guidance and clarification as to how the independent review process will operate. The subrule became effective January 1, 2009.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are unnecessary because the amendment adopted herein is a clarification of a rule that was Adopted and Filed to be effective January 1, 2009.

The Division also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendment, 35 days after publication, should be waived and this amendment should be made effective on January 1, 2009, so as to provide clarification and guidance to insurance companies that must comply with the rule.

The Insurance Division adopted this amendment on December 24, 2008.

This amendment became effective on January 1, 2009.

This amendment is intended to implement Iowa Code chapters 514D and 514G and 2008 Iowa Acts, House File 2694.

The following amendment is adopted.

Amend subrule 39.51(1) as follows:

39.51(1) No later than January 1, 2009, each insurer delivering or issuing for delivery long-term care insurance policies in this state on or after July 1, 2008, and each insurer that has active long-term care policies or riders under which claims for benefits may be made on or after July 1, 2008, shall provide the commissioner the name or title, telephone and fax numbers and E-mail address of an individual who

INSURANCE DIVISION[191](cont'd)

shall be the insurer's contact person for independent review procedures and matters. Any changes in personnel or communication numbers shall be immediately communicated to the commissioner.

[Filed Emergency 12/24/08, effective 1/1/09]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7511B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 17A.3(1)"b," Iowa Code Supplement section 16.5(1)"r," the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9, the Iowa Finance Authority hereby adopts new Chapter 30, "Qualified Midwestern Disaster Area Bond Allocation," Iowa Administrative Code.

The purpose of these rules is to implement a process for allocating the authority to issue and sell Midwestern Disaster Area bonds, as permitted by the Heartland Disaster Tax Relief Act of 2008.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority finds, pursuant to Iowa Code section 17A.4(2), that notice and public participation are impracticable and contrary to the public interest in that assistance to victims of the natural disasters is needed as soon as possible, and the normal notice and public participation process would delay implementation of the program. The Authority is also concurrently herein publishing a Notice of Intended Action as **ARC 7512B** to solicit public comment on these rules.

The Authority finds that these rules confer a benefit on those persons affected, persons and businesses adversely affected by the natural disasters of 2008, in that the rules provide a form of financial assistance and ease and speed the administration of an important federal remedy benefiting those persons, and that these rules should be implemented as soon as feasible in order to facilitate the recovery of the affected areas. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these rules is waived.

The Authority adopted these rules on December 17, 2008.

These rules became effective on December 22, 2008.

These rules are intended to implement Iowa Code Supplement section 16.5(1)"r," the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9.

The following amendment is adopted.

Adopt the following new 265—Chapter 30:

CHAPTER 30

QUALIFIED MIDWESTERN DISASTER AREA BOND ALLOCATION

265—30.1(16) General. The governor has appointed the executive director of the Iowa finance authority as the governor's designee responsible for administration of the law which establishes procedures for allocating the authority to issue up to a specified amount of qualified midwestern disaster area ("MDA") bonds as defined in Section 1400N of the Internal Revenue Code, as amended by the Heartland Disaster Tax Relief Act ("Act") of 2008. The Act was passed in response to the disasters attributable to the severe storms, tornadoes, and flooding that gave rise to any of the presidential declarations of a major disaster on or after May 20, 2008, and before August 1, 2008, under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and that were determined by the President to warrant individual or individual and public assistance from the federal government under such Act with respect to damages attributable to such severe storms, tornadoes, or flooding (collectively, "disasters"). The Act limits the aggregate face amount of bonds that may be designated as MDA bonds.

IOWA FINANCE AUTHORITY[265](cont'd)

The role of the governor's designee is to allocate on behalf of particular projects authorization to issue specified allotments of MDA bonds from the total aggregate face amount permitted under the Act. The authority to issue up to a specified face amount of MDA bonds, as allocated to a particular project pursuant to this chapter, may be referred to herein as an "allotment." Procedures set out in the Act and in these rules shall be followed in allocating allotments for the various purposes authorized by the Act. The allotments shall be allocated among all eligible applicants for those various purposes in accordance with the Act, Executive Order Number 9, and these rules.

265—30.2(16) Forms. Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. The telephone number of the authority is (515)725-4900. Information and forms are also available at www.iowafinanceauthority.gov.

265—30.3(16) Eligibility for allocation.

30.3(1) In the case of a project involving a private business use (as defined in Section 141(b)(6) of the Internal Revenue Code), to be eligible for an allotment, the applicant must certify that the entity using the property either:

- a.* Suffered a loss in a trade or business attributable to the disasters; or
- b.* Is a person designated for purposes of Section 1400N(a) of the Internal Revenue Code by the governor as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such a loss.

30.3(2) In the case of a project relating to public utility property, to be eligible for an allotment, the applicant must certify that the project involves repair or reconstruction of public utility property damaged by the disasters.

30.3(3) For a project to be eligible for an allotment as a qualified mortgage issue, the applicant must certify that 95 percent or more of the net proceeds (as defined in Section 150(a)(3) of the Internal Revenue Code) of the issue are to be used to provide financing for mortgagors who suffered damages to their principal residences attributable to the disasters.

265—30.4(16) Formula for allocation.**30.4(1)** Pro rata allocation.

a. Through December 31, 2009, allotments shall be allocated by the governor's designee on a pro rata basis among projects located in Iowa counties affected by the disasters. Projects in each county so affected shall be eligible, collectively, to receive in the aggregate a pro rata percentage (based on the percentage of housing assistance received by each county from the Federal Emergency Management Agency), as set forth on Schedule A at the end of this chapter, of \$2 billion of allotments. During such period, all remaining portions of the total aggregate face amount of MDA bonds permitted under the Act, beyond the \$2 billion referenced above, shall be available to all eligible projects, without regard to proration.

b. Following December 31, 2009, all remaining allotments shall be available to all eligible projects, without regard to proration.

30.4(2) Subject to subrule 30.4(1) above, allotments shall be allocated among eligible applications on the basis of the chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the governor's designee.

30.4(3) All applications that are received by the governor's designee on or prior to December 22, 2008, pursuant to the provisions of rule 265—30.5(16) shall be considered simultaneously received at the opening of business on December 22, 2008, and the same date, hour and minute shall be stamped on each application so received. If the total amount of allotments requested in all of the applications received for projects located in a particular county exceeds the total amount that may be allocated for such county, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in subrule 30.4(4).

IOWA FINANCE AUTHORITY[265](cont'd)

30.4(4) In order to determine the order of allocation of the allotments to two or more applications that are simultaneously received pursuant to subrule 30.4(3) and for which there is insufficient capacity to allocate to each the full allotment requested, each such application shall be assigned a preference number determined by a random drawing to be conducted at the Iowa finance authority offices within one week following the receipt of the applications. The authority shall notify the affected applicants in writing and shall post a notice at its offices of the time and place of the drawing not less than three days prior to the scheduled drawing. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application that corresponds to the identification code that is drawn first shall be placed first on the list of applicants to receive an allotment. The application that corresponds to the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

30.4(5) The governor's designee shall maintain a list of applications for MDA bonds. Any applications that are deemed to be simultaneously received shall be listed in the order of preferences established pursuant to subrule 30.4(4). Applications received after December 22, 2008, shall be added to the appropriate list depending upon the subject of the application in the chronological order received.

265—30.5(16) Application for allocation.

30.5(1) An applicant must produce to the governor's designee an inducement resolution adopted by a governmental entity authorized to issue bonds.

30.5(2) An applicant or beneficiary, or the duly authorized agent of an applicant or beneficiary, must make an application by filing the form entitled "Application for Midwestern Disaster Area Bonds" available from the governor's designee for the allocation of an allotment.

30.5(3) Applications may be submitted to the Iowa finance authority offices at any time. All applications received on or prior to December 22, 2008, will be deemed received simultaneously as of the date, hour and minute of the opening of business of the Iowa finance authority on the first business day immediately following December 22, 2008.

265—30.6(16) Certification of allocation. Upon receipt of a completed application, the governor's designee shall promptly certify to the applicant the amount of the allotment allocated to the project for which the application was submitted. The governor's designee shall continue to allocate allotments for eligible projects until the allotments allocated equal the maximum aggregate face amount that may be designated as MDA bonds under the Act or until there are no more applications, whichever occurs first. If the remaining allotment capacity is not sufficient to fully fund an application which is next in order for allocation, the governor's designee shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the governor's designee of its decision to take the available allocation within five calendar days of receiving notice of that option, an allotment shall be offered under the same conditions to the applicant whose application is next on the list. If the partial allocation is accepted, the applicant shall submit a new application for an additional allotment and that application will be added to the bottom of the list in the chronological order of its receipt. If the bonds are issued and delivered prior to the expiration date of the allocation, then the applicant or the applicant's attorney shall within ten days following the issuance and delivery of the bonds notify the governor's designee by filing the form captioned "Notice of Issuance and Delivery of Bonds."

265—30.7(16) Expiration of allocations. An allocation of an allotment pursuant to this chapter shall remain valid for 150 days from the date of allocation. If the sale of bonds for which an allocation was made has not closed within such time, the allocation shall expire and the allotment shall revert to the

IOWA FINANCE AUTHORITY[265](cont'd)

governor's designee to be reallocated, if possible; provided, however, that if the 150th day following the date of allocation is a Saturday, Sunday, or any day on which the offices of the state banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date shall be extended to the first day thereafter which is not a Saturday, Sunday or previously described day. All MDA bonds must be issued prior to January 1, 2013.

265—30.8(16) Resubmission of expired allocations. If an allocation expires, the applicant may resubmit its application for the same project or purpose. However, the resubmitted application shall be treated as a new application, and preference, priority or prejudice shall not be given to the application or the applicant as a result of the prior application.

265—30.9(16) Application and allocation fees. The Iowa finance authority may set and charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the qualified MDA bond allotments in accordance with these rules.

These rules are intended to implement Iowa Code Supplement section 16.5(1)“r,” the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9.

SCHEDULE A

County	Percentage	Prorated Allocation by County	County	Percentage	Prorated Allocation by County
Adair	0.05%	\$1,074,026	Jasper	0.23%	\$4,631,735
Adams	0.23%	\$4,674,743	Johnson	3.98%	\$79,590,776
Allamakee	0.21%	\$4,156,780	Jones	0.48%	\$9,527,158
Appanoose	0.04%	\$747,338	Keokuk	0.07%	\$1,404,759
Audubon	0.06%	\$1,133,213	Kossuth	0.15%	\$3,000,532
Benton	1.64%	\$32,740,358	Lee	0.16%	\$3,257,562
Black Hawk	9.70%	\$194,054,143	Linn	44.60%	\$892,040,740
Boone	0.54%	\$10,777,646	Louisa	4.63%	\$92,624,989
Bremer	3.19%	\$63,744,156	Lucas	0.04%	\$889,986
Buchanan	0.46%	\$9,222,892	Madison	0.26%	\$5,295,901
Butler	3.34%	\$66,760,309	Mahaska	0.43%	\$8,699,165
Cass	0.11%	\$2,114,597	Marion	0.17%	\$3,386,283
Cedar	0.96%	\$19,192,565	Marshall	0.55%	\$10,943,327
Cerro Gordo	2.07%	\$41,305,912	Mills	0.22%	\$4,393,101
Chickasaw	0.16%	\$3,282,728	Mitchell	0.11%	\$2,124,981
Clarke	0.10%	\$2,021,648	Monona	0.01%	\$247,739
Clayton	0.39%	\$7,857,848	Monroe	0.03%	\$674,240
Clinton	0.06%	\$1,216,146	Montgomery	0.42%	\$8,327,805
Crawford	0.20%	\$4,028,327	Muscatine	2.75%	\$54,984,728
Dallas	0.16%	\$3,218,488	Page	0.49%	\$9,836,391
Davis	0.13%	\$2,513,664	Polk	3.85%	\$76,915,389
Decatur	0.21%	\$4,254,072	Pottawattamie	0.36%	\$7,280,971
Delaware	0.34%	\$6,739,264	Poweshiek	0.02%	\$480,377
Des Moines	0.74%	\$14,707,356	Ringgold	0.12%	\$2,329,089
Dubuque	0.33%	\$6,680,045	Scott	0.82%	\$16,453,959

IOWA FINANCE AUTHORITY[265](cont'd)

Fayette	0.21%	\$4,203,440	Story	0.19%	\$3,708,021
Floyd	1.04%	\$20,891,361	Tama	0.51%	\$10,234,877
Franklin	0.18%	\$3,695,485	Union	0.66%	\$13,170,557
Fremont	0.16%	\$3,220,685	Van Buren	0.10%	\$1,974,627
Greene	0.33%	\$6,594,291	Wapello	1.67%	\$33,302,069
Grundy	0.06%	\$1,199,398	Warren	0.50%	\$10,059,673
Guthrie	0.14%	\$2,799,423	Washington	0.07%	\$1,499,955
Hamilton	0.30%	\$5,949,382	Webster	0.38%	\$7,698,165
Hancock	0.72%	\$14,429,005	Winnebago	0.02%	\$302,939
Hardin	0.45%	\$8,906,363	Winneshiek	0.81%	\$16,171,583
Harrison	0.05%	\$913,768	Worth	0.25%	\$5,098,893
Henry	0.07%	\$1,442,759	Wright	0.31%	\$6,229,906
Howard	0.16%	\$3,228,067			
Humboldt	0.08%	\$1,535,763			
Iowa	0.19%	\$3,795,095			
Jackson	0.01%	\$184,501	Totals:	100.00%	\$2,000,000,000

[Filed Emergency 12/22/08, effective 12/22/08]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7513B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” Iowa Code Supplement section 16.5(1)“r,” and 2008 Iowa Acts, Senate File 2161, the Iowa Finance Authority hereby adopts new Chapter 31, “Council on Homelessness,” Iowa Administrative Code.

The purpose of these rules is to organize and establish procedures for the Council on Homelessness established by 2008 Iowa Acts, Senate File 2161.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

The Authority finds, pursuant to Iowa Code section 17A.4(2), that notice and public participation are impracticable and contrary to the public interest in that the Council on Homelessness is intended to continue the work of its predecessor, the Iowa Council on Homelessness created by Governor Vilsack pursuant to Executive Order Number 33, to avoid a lengthy disruption of the work the Council on Homelessness does for Iowa’s homeless. The Authority is also concurrently herein publishing a Notice of Intended Action as **ARC 7514B** to solicit public comment on these rules.

The Authority finds that these rules confer a benefit on the persons affected, Iowa’s homeless, in that the rules facilitate the work of the Council, which is to provide advice to state government on issues related to homelessness and to otherwise work to reduce and prevent homelessness, and that these rules should be implemented as soon as feasible in order to facilitate that work. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these rules is waived.

The Authority adopted these rules on December 17, 2008.

These rules became effective on December 22, 2008.

These rules are intended to implement Iowa Code Supplement section 16.5(1)“r” and 2008 Iowa Acts, Senate File 2161.

The following amendment is adopted.

IOWA FINANCE AUTHORITY[265](cont'd)

Adopt the following **new** 265—Chapter 31:

CHAPTER 31
COUNCIL ON HOMELESSNESS

265—31.1(16) Organization.

31.1(1) Location. The main office of the council is located at 2015 Grand Ave., Des Moines, Iowa 50312, the Iowa Finance Authority. Office hours for the council shall be 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Written requests may be submitted to the council at this address. Information about the council is available at this Web site address: <http://www.iowafinanceauthority.gov>. The council's telephone numbers are: (515)725-4900 (general); 1-800-432-7230 (toll-free); 1-800-618-4718 (TTY); and (515)725-4901 (facsimile).

31.1(2) Council members and staff. The powers of the council are vested in and exercised by 38 voting members appointed by the governor in accordance with 2008 Iowa Acts, Senate File 2161. The 26 voting members selected from the general public shall each serve a two-year term. Terms shall be staggered so half of the voting members are appointed in one year and half are appointed in the year thereafter. Initially, the council shall, as soon as all members have been appointed, promptly elect a chairperson and a vice chairperson, both to a term not to exceed two years and ending in May. The chairperson and vice chairperson shall not both be either general public members or agency director members. Thereafter, the chairperson and vice chairperson positions shall rotate between agency director members and general public members so that the chairperson and vice chairperson shall not both be either general public members or agency director members at the same time. Staff assistance and administrative support shall be provided by the Iowa finance authority as approved by the executive director.

31.1(3) Council action. A majority of the members of the council shall constitute a quorum. Any action taken by the council must be adopted by an affirmative vote of a majority of its membership.

31.1(4) Meetings. Regular meetings of the council shall be held on the third Friday of the following months: January, March, May, July, September, and November, unless another time of meeting is designated by the council. Meetings may also be held at the call of the chairperson or whenever a majority of the members so request. The council shall comply with requirements of Iowa Code chapters 21 and 22. Interested parties are encouraged to attend and participate in council meetings where feasible.

31.1(5) Committees. The council shall form an executive committee consisting of the council's chairperson, vice chairperson, and seven members, one of whom shall be the immediate past chairperson if a current member of the council. The chairperson shall appoint the remaining members of the executive committee. The executive committee shall be responsible for reviewing and making recommendations for amendments or changes to the internal rules of procedure. The executive committee shall carry out the business of the council between regularly scheduled council meetings. A majority of the members of the executive committee shall constitute a quorum. Any action taken by the executive committee must be adopted by an affirmative vote of a majority of its members.

a. Nominating committee. The nominating committee shall initially consist of all 12 agency director members. Following the initial appointment of the general public members to the council, the council shall annually at its March meeting elect six members, three of whom shall be agency director members and three of whom shall be general public members. The chairperson of the council shall also be a voting member. The nominating committee shall nominate persons to the governor to fill the general public member positions when they become open. A majority of the members of the nominating committee shall constitute a quorum. Any action taken by the nominating committee must be adopted by an affirmative vote of a majority of its members.

b. Other committees. Other committees may be assembled by the executive committee to carry out various responsibilities of the council. A majority of the members of such a committee shall constitute a quorum. Any action taken by a committee must be adopted by an affirmative vote of a majority of its members.

c. Informal working groups. Informal working groups may be assembled from time to time by the chairperson for various tasks.

IOWA FINANCE AUTHORITY[265](cont'd)

265—31.2(16) Duties of the council. The duties of the council shall be to:

1. Develop a process for evaluating state policies, programs, statutes, and rules to determine whether any state policies, programs, statutes, or rules should be revised to help prevent and alleviate homelessness.
2. Evaluate whether state agency resources could be more efficiently coordinated with other state agencies to prevent and alleviate homelessness.
3. Work to develop a coordinated and seamless service delivery system to prevent and alleviate homelessness.
4. Use existing resources to identify and prioritize efforts to prevent persons from becoming homeless and to eliminate factors that keep people homeless.
5. Identify and use federal and other funding opportunities to address and reduce homelessness within the state.
6. Work to identify causes and effects of homelessness and increase awareness among policymakers and the general public.
7. Advise the governor's office, the Iowa finance authority, state agencies, and private organizations on strategies to prevent and eliminate homelessness.
8. Make annual recommendations to the governor regarding matters which impact homelessness on or before September 15.
9. Prepare and file with the governor and the general assembly on or before the first day of December in each odd-numbered year a report on homelessness in Iowa.
10. Assist in the completion of the state's continuum of care application to the U.S. Department of Housing and Urban Development.

These rules are intended to implement Iowa Code Supplement section 16.5(1) "r" and 2008 Iowa Acts, Senate File 2161.

[Filed Emergency 12/22/08, effective 12/22/08]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7523B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care amends Chapter 5, "Fees," Iowa Administrative Code.

These amendments are consistent with the amendments to 645—Chapter 261 associated with the costs for implementation of background checks that were Adopted and Filed as **ARC 7352B** in the November 19, 2008, Iowa Administrative Bulletin.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on November 19, 2008, as **ARC 7354B**. A public hearing was held on December 9, 2008. No comments were received on the Notice of Intended Action, and the adopted amendments are identical to those published under Notice.

The amendments will benefit applicants because the amendments to 645—Chapter 5 will be consistent with the amendments to 645—Chapter 261 associated with the costs for implementation of background checks and will have the same effective date of January 1, 2009. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2) and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code chapters 21, 147, 152B, and 272C.

These amendments became effective January 1, 2009.

The following amendments are adopted.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Amend subrule 5.17(1) as follows:

5.17(1) Initial or endorsement license fee to practice respiratory care is \$120, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

ITEM 2. Amend subrule 5.17(4) as follows:

5.17(4) Reactivation fee is \$120, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) if the license has been on inactive status for two or more years.

[Filed Emergency After Notice 12/24/08, effective 1/1/09]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7516B**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 105.4 (2007 Iowa Acts, chapter 198, section 4), the Department of Public Health hereby adopts new Chapter 28, "Plumbing and Mechanical Systems Licensure Fees," Iowa Administrative Code.

These rules describe the fees applicable to the various licenses issued by the Plumbing and Mechanical Systems Examining Board.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7328B**. Public hearings were scheduled in six locations across the state; one was canceled due to weather issues. Comments received addressed the amount of the fees. As a result of the comments, a new rule was added which states that the Board shall review the fee schedule every two years. Iowa Code section 105.9 directs the Department to collect licensing fees in an amount that will cover the cost of the licensing program.

These rules were adopted by the Plumbing and Mechanical Systems Examining Board on December 16, 2008.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of these rules should be waived and these rules should be made effective on January 1, 2009, as the guidance in these rules benefits those persons who must comply with the licensure of plumbers and mechanical systems professionals that became effective January 1, 2009.

These rules became effective on January 1, 2009.

These rules are intended to implement Iowa Code chapter 105.

The following amendment is adopted.

Adopt the following **new** 641—Chapter 28:

CHAPTER 28

PLUMBING AND MECHANICAL SYSTEMS LICENSURE FEES

641—28.1(105) Fees. All fees are nonrefundable.

28.1(1) License fee for:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is \$100.
- c. A master license as defined in 641—subrule 29.2(3) is \$250.
- d. A combined license is the sum total of each of the separate license fees.
- e. A medical gas pipe certificate as defined in 641—29.3(105) is \$50.
- f. An inactive license as defined in 641—subrule 29.2(4) is \$50.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

28.1(2) Reciprocal license fee for:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is \$100.
- c. A master license as defined in 641—subrule 29.2(3) is \$250.
- d. A combined license is the sum total of each of the separate license fees.
- e. A medical gas pipe certificate as defined in 641—29.3(105) is \$50.

28.1(3) Renewal license fee for:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is \$100.
- c. A master license as defined in 641—subrule 29.2(3) is \$250.
- d. A combined license is the sum total of each of the separate license fees.
- e. A medical gas pipe certificate as defined in 641—29.3(105) is \$50.
- f. An inactive license as defined in 641—subrule 29.2(4) is \$50.

28.1(4) The examination application fee is \$35.**28.1(5)** A late fee for failure to renew before expiration is determined as follows:

- a. A licensee who allows a license to lapse for one month or less may reinstate and renew the license without examination upon payment of a \$60 late fee and appropriate renewal of license fee.
- b. A licensee who allows a license to lapse for more than one month but less than two months may reinstate and renew the license without examination upon payment of a late fee equivalent to the appropriate license fee and appropriate renewal of license fee.
- c. A licensee who allows a license to lapse for more than two months is required to retake and pass the applicable licensing examination and pay the appropriate renewal of license fee in order to obtain reinstatement. A licensee whose license has lapsed continues to hold the privilege of licensure in Iowa, but may not work as a plumbing or mechanical professional in Iowa until the license is renewed. A licensee who works as a plumbing or mechanical professional in the state of Iowa with a lapsed license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

28.1(6) The duplicate or reissued license certificate or wallet card fee is \$20.**28.1(7)** The fee for written verification of licensee status is \$20.**28.1(8)** The returned check fee is \$25.**28.1(9)** The disciplinary hearing fee is a maximum of \$75.**28.1(10)** The paper application fee is \$25 plus the appropriate license fee.

641—28.2(105) Biennial review of fee schedule. Commencing July 2010 and every biennium thereafter, the plumbing and mechanical systems examining board shall review its revenue, including amounts generated from licensure fees set forth in this chapter, and its expenses for purposes of revisiting and reevaluating the fee structures.

These rules are intended to implement Iowa Code chapters 105 and 272C.

[Filed Emergency After Notice 12/23/08, effective 1/1/09]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7517B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 105.4 (2007 Iowa Acts, chapter 198, section 4), the Department of Public Health adopts new Chapter 29, "Plumbing and Mechanical Systems Professionals—Application, Licensure, and Examination," Iowa Administrative Code.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These rules describe the types of licenses and the requirements for licensure for plumbing and mechanical systems professionals. The rules provide guidelines for application for the initial license, for renewal, and for examination. The rules also outline procedures to follow when a license is denied.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7330B**. Public hearings were scheduled in six locations across the state; one was canceled due to weather issues. There were 50 comments received during the comment period that addressed Chapter 29. The Board reviewed each comment and seriously considered whether to enact specific changes. As a result of the comments received, the definition of “routine maintenance” was amended for clarification and now reads as follows:

“‘Routine maintenance,’ as the term applies in Iowa Code section 105.11(9), is the regular upkeep of plumbing, HVAC, refrigeration, and hydronic systems and equipment, including recurring, preventive and ongoing maintenance necessary to delay or prevent failure, for which no changes in original design or construction are made. Examples of routine maintenance include replacing wax seals, gaskets, washers, air filters, or belts; oiling a blower motor; cleaning a condensing coil; and repairing damaged ductwork. ‘Routine maintenance’ shall not be interpreted to allow the repair or replacement of furnaces, condensing units, blower motors, boilers, chillers, ductwork systems, water heaters, water pipe systems, waste and vent systems or similar work.”

These rules were adopted by the Plumbing and Mechanical Systems Examining Board on December 16, 2008.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department finds that the normal effective date of these rules should be waived and these rules should be made effective on January 1, 2009, as the guidance in these rules benefits those persons who must comply with the licensure of plumbers and mechanical systems professionals that became effective January 1, 2009.

These rules became effective January 1, 2009.

These rules are intended to implement Iowa Code chapter 105.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 29] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 7330B**, IAB 11/5/08.

[Filed Emergency After Notice 12/23/08, effective 1/1/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7492B**ADMINISTRATIVE SERVICES DEPARTMENT[11]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 8A.206, the Department of Administrative Services hereby amends Chapter 25, "Information Technology Operational Standards," Iowa Administrative Code.

This amendment reflects address changes to the Department of Administrative Services for the review of operational standards by the public and for the submission of public comments.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of this amendment are impracticable because these changes are noncontroversial.

This amendment shall become effective February 18, 2009.

This amendment is intended to implement Iowa Code section 8A.206.

The following amendment is adopted.

Amend rule 11—25.7(8A) as follows:

11—25.7(8A) Review of operational standards by the public and period of public comment.

25.7(1) Interested members of the public may participate in the process of establishing standards by providing written comments to the Enterprise IT Standards Coordinator, Department of Administrative Services, ~~Legal, Rules and Planning, Information Technology Enterprise~~, Hoover State Office Building, Level A, B, Des Moines, Iowa 50319. Comments will be accepted for a period of ten days after the initial posting of the standard by the department on the department's Web site at <http://das.ite.iowa.gov/standards/index.html>.

25.7(2) Interested members of the public may inquire about standards currently being considered for recommendation by ~~the director by telephoning writing to the enterprise IT standards coordinator at (515)281-6904; in writing to Enterprise IT Standards Coordinator~~, Department of Administrative Services, ~~Legal, Rules and Planning, Information Technology Enterprise~~, Hoover State Office Building, Level A, B, Des Moines, Iowa 50319; or by accessing the department's Web site at <http://das.ite.iowa.gov/standards/index.html>.

[Filed Without Notice 12/17/08, effective 2/18/09]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7515B**ADMINISTRATIVE SERVICES DEPARTMENT[11]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code sections 8A.104(5) and 8A.438, the Department of Administrative Services hereby amends Chapter 64, "Benefits," Iowa Administrative Code.

This amendment reflects a change to the tax-sheltered annuity plan required by 2008 Iowa Acts, chapter 1171, which broadens the coverage of the plan to include employees of public school districts, area education agencies, and community colleges.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of this amendment are impracticable because these changes are noncontroversial.

This amendment shall become effective February 18, 2009.

The following amendment is intended to implement Iowa Code section 8A.438 as amended by 2008 Iowa Acts, chapter 1171, section 57.

The following amendment is adopted.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Amend rule 11—64.12(8A) as follows:

11—64.12(8A) Tax-sheltered annuities (TSAs).

64.12(1) No change.

64.12(2) Definitions. The following definitions shall apply when used in this rule:

“*Company*” means any life insurance company or mutual fund provider that issues a policy under the tax-sheltered annuity plan authorized under 2003 Iowa Code Supplement section 8A.438.

“*Employee*” means ~~a full-time or part-time nontemporary~~ an employee of the state of Iowa, including employees of the board of regents administrative staff on the centralized payroll system, or an employee of a participating employer.

“*Employer*” means the state of Iowa, a public school district in the state of Iowa, an area education agency in the state of Iowa, or a community college in the state of Iowa.

“*Participating employee*” means an employee participating in the plan.

“*Participating employer*” means an employer that has elected to join the state’s tax-sheltered annuity plan.

“*Plan*” means the tax-sheltered annuity plan authorized in ~~2003 Iowa Code Supplement~~ section 8A.438.

“*Plan administrator*” means the designee of the director who is authorized to administer the tax-sheltered annuity plan.

“*Plan year*” means a calendar year.

“*Policy*” means any retirement annuity, variable annuity, family of mutual funds or combination thereof provided by IRC Section 403(b) and ~~2003 Iowa Code Supplement~~ section 8A.438.

“*Salary reduction ~~agreement form~~*” means the tax-sheltered annuity ~~agreement form~~ signed by the participating employee to begin or change payroll deductions.

64.12(3) Eligibility.

a. Initial eligibility. Any ~~full-time or part-time nontemporary~~ employee who ~~is regularly scheduled to work for 20 or more hours per week and who~~ works for the department of education, or the board of regents administrative office, or a participating employer is eligible to ~~defer compensation under this rule.~~ participate in this plan. Participating employers may establish different eligibility requirements, as long as the requirements conform to IRC Section 403(b) and the applicable federal regulations. Final determination on eligibility shall rest with the plan administrator.

b. Eligibility after terminating ~~deferral~~ reduction of compensation. Any employee who terminates the ~~deferral reduction~~ of compensation may choose to reenroll in the plan in accordance with paragraphs 64.12(4) “a” and “b” and 64.12(6) ~~“b.”~~ “a.”

64.12(4) Enrollment and termination.

a. Enrollment. ~~Employees~~ State employees may enroll in the ~~tax-sheltered annuity~~ plan at any time. ~~Employees are responsible for selection and monitoring of their investments.~~ Participating employers may establish different enrollment periods, as long as the periods conform to IRC Section 403(b) and the applicable federal regulations. ~~The request for a salary reduction agreement form must be submitted to the employing agency’s personnel assistant or payroll office for approval in accordance with subrule 64.12(11). A satisfactorily completed enrollment form must be received by the personnel assistant no later than the fifteenth day of a calendar month in order for deductions to begin with the first paycheck of the following month.~~

b. Forms submission. ~~The State personnel assistant~~ assistants shall provide the plan administrator with the ~~applicable enrollment~~ salary reduction form in a timely manner.

c. Termination of ~~participation in the plan~~ salary reductions. A participating employee may terminate ~~participation in the plan~~ salary reductions by providing to the employing agency’s personnel assistant or payroll office written notification on a form required by the plan administrator.

d. Availability of forms. It is the responsibility of each employee interested in participating in the plan to obtain the necessary forms from the ~~agency of employment~~ investment provider. ~~It is the responsibility of each agency to inform its employees where and how they may obtain these forms. The plan administrator shall prescribe the forms and advise agencies as to their availability.~~

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64.12(5) Tax status.

a. *FICA and IPERS.* The amount of compensation ~~deferred~~ reduced under the salary reduction ~~agreement form~~ shall be included in the gross wages subject to FICA and IPERS until the maximum taxable wages established by law have been reached.

b. *Federal and state income taxes.* The amount of earned compensation ~~deferred~~ reduced under the ~~agreement form~~ is exempt from federal and state income taxes until such time as the funds are paid or made available as provided in IRC Section 403(b).

64.12(6) ~~Deductions~~ Reductions from earnings.

a. ~~When deducted.~~ Each participating employee shall have the option as to whether the entire monthly amount of deferred compensation shall be deducted from the first paycheck of the month, the second paycheck of the month, or be equally divided between the first and second paychecks received during the month. ~~If the monthly deferral cannot be divided into two equal payments, the third option is not available. Deferrals will not be deducted from the third paycheck of a month.~~

b. a. Deferral Salary reduction amount changes. Participating employees may increase or decrease their ~~monthly deferral salary reduction~~ amount by providing to the ~~employing agency's~~ their personnel assistant or payroll office written notice on a form required by the plan administrator. ~~Contributions can~~ Salary reduction amounts may be changed to permit a one-time lump sum ~~deferral contribution~~ from the last paycheck due to termination of employment.

~~c. b. Maximum deferral salary reduction limits.~~ Employees' ~~deferrals~~ salary reductions may not exceed the maximum limit set forth in federal law.

~~d. c. Minimum salary reduction amount deferred.~~ ~~The minimum amount of deferred compensation to be deducted from the earnings of a participating employee during any month shall be \$25. Participating employers may establish a minimum amount as long as the minimum conforms to IRC Section 403(b) and the applicable federal regulations.~~

64.12(7) Companies.

a. ~~Identification number.~~ Each participating company shall be assigned an identification number ~~by the plan administrator.~~

b. a. Time of payment. ~~The plan administrator~~ Participating employers shall transmit payments to ~~the companies~~ amounts within 15 business days after the ~~last workday of each~~ end of the calendar month.

b. Cooperation with third-party administrator. Companies are required to cooperate with the plan's third-party administrator, including the provision of daily account information as well as any other data or information required for administration of the plan.

c. *Annual status report.* Each company shall provide to the participating employee at the employee's home address an annual status report stating the value of each participant's policy. This practice shall be continued even after the participating employee terminates or ~~cancel participation~~ stops contributions to the plan. These annual reports are required as long as a value exists in the contract or any activity occurs during the year.

d. *Crediting of accounts.* Companies must minimize crediting errors and provide timely and reasonable credit resolution.

e. *Solicitation.* There shall be no solicitation of employees by companies at the employees' workplace during employees' work hours, except as authorized by the plan administrator or participating employer.

f. *Dividends.* The only dividend options available on cash value policies are those where the dividend remains with the company to increase the value of the policy.

g. *Removal from participation.* Failure to comply with the provisions of these rules will result in permanent removal as a participating company and may require that the monthly ongoing deferrals to existing contracts be discontinued, as determined by the director.

64.12(8) Disposition of funds.

a. ~~Termination of employment~~ Distribution eligibility. An employee who has terminated state employment (including retirement) ~~must make arrangements directly with the company to defer distributions or withdraw funds under any option available in the policy.~~ is eligible for a distribution of funds based upon any of the following circumstances: severance of employment; reaching age 59½;

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becoming disabled; qualifying for a financial hardship; or becoming eligible for a reservist distribution. Distribution will be made in accordance with applicable IRS regulations.

~~b. *Financial hardship.* A participating employee may request that the company allow the withdrawal of to withdraw some or all of the salary reduction contributions to the policy, but not the income earned thereon, based on a financial hardship and in accordance with 401(k) regulations. New deferrals to a TSA contributions to the plan will not be allowed after the receipt of a distribution based on financial hardship until such time as allowed by law.~~

~~e. — *Method of payment.* The employee must notify the company of the intent to withdraw funds.~~

~~d. c. *Federal and state withholding taxes.* It shall be the is the company's responsibility of the company or mutual fund provider, when making payments to the former an employee, to withhold the required federal and state income tax based on W-4P, to timely remit the tax to the proper government agency, and to file all necessary reports as required by federal and state regulations, including IRS Form 1099-R.~~

~~e. d. *Federal penalties.* Under IRC Section 72(t), an additional tax of 10 percent of the amount includable in gross income applies to early withdrawal for qualified plans as defined in IRC Section 4974(c). An IRC Section 403(b) contract is a qualified plan for these purposes.~~

~~64.12(9) *Group plans.*~~

~~a. — *Availability.* 2003 Iowa Code Supplement section 8A.311 provides that the director may arrange for the purchase of group contracts for employees.~~

~~b. — *Size of groups.* One or more employees shall constitute a group under this plan.~~

~~64.12(10) 64.12(9) *General.*~~

~~a. *Orientation and information meetings.* Agencies Employers may hold orientation and information meetings for the benefit of their employees using materials developed or approved by the plan administrator, but there shall be no solicitation of employees by companies allowed at such meetings without employer approval. ~~The presence of a representative of a company will be interpreted as solicitation.~~~~

~~b. — *Location of policies.* The company shall send the original policy to the employee.~~

~~e. — *Number of companies.* Employees shall be limited to deferring contributions to only one company at a time. Only life insurance companies or mutual fund providers authorized to do business in the state of Iowa may sell policies under the plan, and then only if they agree to perform the specified administrative functions under the plan.~~

~~d. b. *Company changes.*~~

~~(1) If a participating employee wishes to ~~change deferrals~~ redirect contributions to another company, the employee shall submit ~~forms~~ a form to the ~~plan administrator~~ personnel assistant or payroll office in accordance with paragraph 64.12(6) "~~b.~~" "a."~~

~~(2) The funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy, if allowed under the participating employer's plan elections, in accordance with the plan's policies and applicable IRC Section 403(b) provisions. ~~It is the responsibility of the employee and the company's agent to coordinate this change with the affected companies.~~~~

~~(3) An employee may change companies at any time during the calendar year.~~

~~e. c. *Deferred compensation or tax-sheltered annuity participation—maximum contribution.* Employees State employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax-sheltered annuities shall be allowed to contribute to one plan or the other, but not to both at the same time.~~

~~f. — *Employee termination from a tax sheltered annuity eligible agency.* When an employee leaves an agency that is eligible for tax sheltered annuity participation under IRC Section 403(b), no further tax sheltered annuity deductions will be allowed.~~

~~g. d. *Direct transfer/rollover.*~~

~~(1) Effective January 1, 2002, a former employee may request a direct transfer/rollover to an eligible retirement plan as defined in IRC Section 402(c)(8)(B). Eligible rollover amounts that are received by a former employee are subject to mandatory federal and state withholding as required by law.~~

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(2) An employee may request a trustee-to-trustee transfer of funds to a defined benefit governmental plan for the purchase of permissive service credit.

~~64.12(11) *Forms.* The administration of the TSA plan shall be accomplished through the forms described in this subrule. Except as otherwise provided, all forms shall be developed by the plan administrator and distributed by the agency of employment.~~

~~a. — *Salary reduction agreement.* This form shall authorize the plan administrator to make a stated dollar deduction from the participating employee's compensation as part of an IRC Section 403(b) contract.~~

~~b. — *Application for policy.* The company to which the participating employee elects to defer compensation shall supply a policy application form. The participating employee shall complete the application. The completed application forms shall show the owner and beneficiary of the policy to be the participating employee.~~

~~64.12(12) 64.12(10) *Forfeiture.* IRC Section 403(b)(1)(C) provides that an employee's interest in an IRC Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.~~

~~64.12(13) 64.12(11) *Nontransferability.* The employee's interest in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.~~

[Filed Without Notice 12/23/08, effective 2/18/09]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7509B**ADMINISTRATIVE SERVICES DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 8A.311(21)"a," the Department of Administrative Services hereby adopts new Chapter 108, "Contractual Limitation of Vendor Liability Provisions," Iowa Administrative Code.

These rules allow the Director to authorize the procurement of certain goods and services when a contractual limitation of vendor liability is provided for and set forth in the documents initiating the procurement. The Iowa Department of Management[541] was also consulted, as required by the statute.

These rules implement provisions of 2007 Iowa Acts, House File 849, section 6 (Iowa Code section 8A.311(21)), which sets out instances where limitation of vendor liability may be acceptable, including the criteria for determining whether to permit a contractual limitation of vendor liability. The legislation also requires that factors such as whether authorizing the limitation is necessary to prevent harm to the state from a failure to obtain the goods or services sought or from obtaining the goods or services at a higher price if the state refuses to allow a contractual limitation of vendor liability be considered.

The rules were published under Notice of Intended Action in the Iowa Administrative Bulletin on June 4, 2008, as **ARC 6809B**. A public hearing was held on June 24, 2008, in the Hoover State Office Building from 9 to 10 a.m. No one appeared at the hearing to comment on the rules. Written comments were received during the public comment period and were posted on the DAS Web site.

These rules have been changed since the Notice of Intended Action. Revisions include:

- In paragraph 108.4(1)"a," adding provisions that allow the Department to negotiate a limitation of liability if not doing so could result in procurement of a lower quality good or service;
- In subrule 108.5(1), changing the multiplier from two times to one times the amount of the contract;
- In paragraph 108.5(1)"a," deleting "bad faith" and "unlawful acts" from the list of exceptions and adding "gross negligence" to the list;
- In paragraph 108.5(1)"b," changing the term "personal injury" to "bodily injury";

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- In paragraph 108.5(1)“c,” deleting the terms “insurance,” “bonds” and “express representations and warranties” from the list pertaining to contractual obligations;
- In subrule 108.5(2), deleting paragraph “a” and combining the text of paragraph “b” with the introductory language of the subrule; and
- In subrule 108.5(3), revising the definition of “contract value” to include language regarding payments via a contract for a specific project.

These rules are intended to implement Iowa Code section 8A.311.

These rules will become effective February 18, 2009.

The following amendment is adopted.

Adopt the following **new** 11—Chapter 108:

CHAPTER 108
CONTRACTUAL LIMITATION OF VENDOR LIABILITY PROVISIONS

PREAMBLE

These rules define the process for the department to follow when contracting for information technology goods and services. The rules allow the department to enter into contractual agreements that, in certain instances, will limit the liability of the vendor.

11—108.1(8A) Authority and scope. Pursuant to Iowa Code section 8A.311(21), these rules provide for authorizing information technology procurements containing a contractual limitation of vendor liability as provided for and set forth in the documents initiating the procurement. The department of administrative services adopted these rules in cooperation with the department of management.

11—108.2(8A) Definitions.

“*Agency*” or “*state agency*” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, “agency” or “state agency” does not include any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

“*Agency head*” means the director, commissioner, or other official in charge of a state agency.

“*Competitive selection*” means a formal or informal process engaged in by a state agency to compare provider qualifications, terms, conditions, and prices of equal or similar goods or services in order to meet the objective of purchasing goods or services based on quality, performance, price, or any combination thereof.

“*Competitive selection documents*” means documents prepared for a competitive selection by the department or an agency to purchase goods and services. Competitive selection documents may include requests for proposal, invitations to bid, or any other type of document the department or an agency is authorized to use that is designed to procure a good or service for state government. A competitive selection document may be an electronic document.

“*Department*” means the department of administrative services.

“*Director*” means the director of the department of administrative services.

“*Information technology device*” means equipment or associated software, including programs, languages, procedures, or associated documentation designed for the utilization or processing of information stored in an electronic format. “Information technology device” includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

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“Information technology procurement” means a procurement for goods or services in which the predominant factor, thrust, and purpose of the procurement as reasonably stated is for the purchase of information technology devices or information technology services. Information technology procurements do not include procurements for goods or services in which the purchase of information technology devices or information technology services is an incidental, minor or limited part of the contract.

“Information technology services” means services designed to do any of the following:

1. Provide functions, maintenance, and support of information technology devices.
2. Provide services for any of the following:
 - Computer systems application development and maintenance.
 - Systems integration and interoperability.
 - Operating systems maintenance and design.
 - Computer systems programming.
 - Computer systems software support.
 - Planning and security related to information technology devices.
 - Data management consultation.
 - Information technology education and consulting.
 - Information technology planning and standards.
 - Establishment of local area network and workstation management standards.

11—108.3(8A) Applicability. This chapter applies to information technology procurements conducted by the department, including information technology procurements the department conducts on behalf of another state agency. When the department is conducting an information technology procurement on behalf of another state agency and the procurement exposes the state to risks for which the contractual limitation of vendor liability outlined in rule 108.5(8A) is not appropriate, the agency head of the other state agency shall make the decisions regarding contractual limitation of vendor liability outlined in subrule 108.4(2). This chapter does not apply to procurements conducted by another state agency on its own behalf.

11—108.4(8A) Authorization of limitation of vendor liability and criteria.

108.4(1) General approach. The director, in consultation with the department of management, may authorize the procurement of information technology devices and services in which a contractual limitation of vendor liability is provided for. Criteria for determining whether to permit a contractual limitation of vendor liability include all of the following:

a. Whether authorizing a contractual limitation of vendor liability is necessary to prevent harm to the state from a failure to obtain the goods or services sought, from obtaining the goods or services at a higher price if the state refuses to allow a contractual limitation of vendor liability, or when the result could be a lower quality good or service.

b. Whether the contractual limitation of vendor liability is commercially reasonable when taking into account any risk to the state created by the goods or services to be procured and the purpose for which they will be used.

108.4(2) Special circumstances. Certain information technology procurements of information technology devices and services expose the state to risks for which the contractual limitation of vendor liability outlined in rule 108.5(8A) is not appropriate. The department or applicable agency for which the department is conducting the procurement shall review the risks presented by the particular information technology procurement before initiating the procurement. When either the department or the applicable agency believes a particular information technology procurement may expose the state to risks for which the contractual limitation of vendor liability outlined in rule 108.5(8A) is not appropriate, the department or applicable agency shall identify the risks and identify the steps the department or applicable agency believes may help to mitigate the risks. The director or the applicable agency head shall consult with the department of management to determine whether a higher limit of the vendor’s contractual liability is appropriate. This determination shall occur before the department

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issues the competitive selection documents, and the competitive selection documents issued in the procurement shall include the higher limitation on the vendor's contractual liability that the director or the applicable agency head and the department of management have determined to be appropriate for the procurement under consideration.

108.4(3) *Applicability.* These rules do not apply to procurements for devices or services procured under a federal tariff or using federal funds, if the federal agency providing the funds imposes any requirements regarding limitation of liability provisions in the resulting contract.

11—108.5(8A) Prohibited limitation of vendor liability provisions.

108.5(1) For information technology procurements, the director authorizes the competitive selection documents and the resulting contract to include a contractual limitation of vendor liability clause that limits the vendor's liability to one times the contract value, as defined in subrule 108.5(3), provided that the foregoing limitation shall not apply to:

a. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence.

b. Claims related to death, bodily injury, or damage to real or personal property.

c. Any contractual obligations of the vendor pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, or confidential information.

d. Claims arising under provisions of the contract calling for indemnification of the state for third-party claims against the state for bodily injury to persons or for damage to real or tangible personal property caused by the vendor's negligence or willful conduct.

108.5(2) For information technology procurements, the director authorizes the competitive selection documents and the resulting contract to include a contractual limitation of vendor liability clause that limits the vendor's liability for consequential, incidental, indirect, special, or punitive damages to the extent the vendor's liability for such damages arises out of the items identified in paragraphs 108.5(1) "a" to "d."

108.5(3) For the purpose of this rule, "contract value" means the aggregate total compensation pertaining to a specific project paid by the state to the vendor under the entire term of the contract, including all renewals and extensions.

11—108.6(8A) Negotiation of limitation of vendor liability provisions.

108.6(1) *After completion of competitive selection process.* In a competitive selection process, the department or the state agency upon whose behalf the department conducts the information technology procurement may either award the contract to the apparent successful vendor without further negotiation or negotiate contract terms, including limitation of vendor liability provisions, if the department or state agency, in its sole discretion, determines that the best interest of the state would be served by entering into negotiations. Any negotiations of vendor limitation of liability contractual provisions shall be done in accordance with the provisions of rules 108.4(8A) and 108.5(8A).

108.6(2) *Sole source or emergency procurement.* In a justifiable sole source or emergency procurement, the department or state agency may negotiate a contractual limitation of vendor liability provision in accordance with the provisions of rules 108.4(8A) and 108.5(8A).

11—108.7(8A) Additional requirement. Any contract containing a provision limiting the vendor's liability shall also contain provisions limiting the state's liability and preserving the state's sovereign immunity.

These rules are intended to implement Iowa Code section 8A.311(21).

[Filed 12/22/08, effective 2/18/09]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7490B**CULTURAL AFFAIRS DEPARTMENT[221]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 303.1A, the Department of Cultural Affairs hereby amends Chapter 6, "Iowa Community Cultural Grants (ICCG) Program," Iowa Administrative Code.

The amendments clarify the restriction against funding religious organizations in this grant program and remove some restrictions related to matching funds and innovative projects.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7311B**.

The Department of Cultural Affairs sought input about the amendments by holding a public hearing on November 25, 2008. No members of the public provided comments. These amendments are identical to those published under Notice.

The Department Director approved and adopted these amendments on December 12, 2008.

These amendments are intended to implement Iowa Code chapter 303.

These amendments will become effective on February 18, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [6.3, 6.5, 6.6] is being omitted. These amendments are identical to those published under Notice as **ARC 7311B**, IAB 11/5/08.

[Filed 12/15/08, effective 2/18/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7506B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 311, "Renewable Fuel Infrastructure Board—Organization," Chapter 312, "Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites," Chapter 313, "Renewable Fuel Infrastructure Program for Biodiesel Terminal Grants," and Chapter 314, "Renewable Fuel Infrastructure Program Administration," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7074B** on August 13, 2008.

The amendments implement recent legislative changes as authorized in 2008 Iowa Acts, House File 2689. The amendments include updating Iowa Code citations; adding definitions for "biofuel," "biodiesel blended fuel," "person," "renewable fuel" and "tank vehicle"; incorporating the option of a three-year or five-year grant period; including the option of using an independent certified testing laboratory or Underwriter Laboratories (UL) as compatible with ethanol blended gasoline classified as E-9 or higher; and listing requirements for award amounts for retail sites, terminal facilities for biodiesel B2 through B98 and B99/B100 for year-round distribution and tank vehicles.

A public hearing was held on Wednesday, September 3, 2008. The Department received the following comments:

- Some commenters said that it was their opinion that a "person" can be awarded one tank vehicle to store and dispense E-85 and one tank vehicle to store and dispense biodiesel, according to House File 2689, section 27, which would allow a maximum of two awards per "person" for tank vehicles. (Source: Letter from Senators Amanda Ragan and David Johnson.)

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

- Four organizations supported allowing a person who received a tank vehicle award prior to May 12, 2008, to receive an additional tank vehicle to store and dispense E-85 and one tank vehicle to store and dispense biodiesel. (Source: Public Hearing held September 3, 2008.)

- One organization contended that House File 2689, section 27, was retrospective, dating back to July 1, 2006.

To help resolve this conflicting interpretation of the statutory amendments, IDED requested an informal opinion from the Iowa Attorney General's office. The question was whether there is an overall maximum cap of no more than two grants for tank vehicles per applicant or if the "no more than two" limitation only applied to applications after the effective date of the statutory changes; thus allowing more than two tank vehicle grants.

The Attorney General's office informally advised that House File 2689 does not expressly state that there is a "limit of two, one of each" tank vehicle, and it does not contain language indicating that the Legislature intended for the limitation to be applied retrospectively. Therefore, the Renewable Fuel Infrastructure Board should allow applicants who already have tank vehicle grants to apply for additional tank vehicle grants.

As a result of these comments, subparagraph 314.2(3)"c"(3) was amended to clarify that a person who has received an award for a tank vehicle(s) prior to May 12, 2008, is eligible to apply for an additional tank vehicle. Subparagraph 314.2(3)"c"(3) now reads as follows:

"(3) Limitation on number of grants. A person may receive one grant for one tank vehicle used to store and dispense E-85 gasoline and one grant for one tank vehicle used to store and dispense biodiesel or biodiesel blend. If a person received an award for a tank vehicle(s) prior to May 12, 2008, that person is eligible to apply for an additional tank vehicle."

The Iowa Economic Development Board adopted these amendments on December 18, 2008.

These amendments are intended to implement Iowa Code sections 15G.201, 15G.202 and 15G.205, Iowa Code Supplement sections 15G.203 and 15G.204, and 2008 Iowa Acts, House File 2689, and House File 2450, section 6(9)"f."

These amendments will become effective on February 18, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 311 to 314] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 7074B**, IAB 8/13/08.

[Filed 12/19/08, effective 2/18/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7520B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby rescinds Chapters 14 to 22 and adopts new chapters 12 to 24, Iowa Administrative Code.

These amendments reorganize several chapters of rules in order to make them clearer. New Chapters 12 to 24 are reorganized as follows: Chapter 12 contains fee information; Chapter 13 contains information regarding teachers and teacher endorsements; Chapter 14 describes special education licenses and endorsements; Chapter 15 contains information regarding special education support personnel; Chapter 16 pertains to statements of professional recognition; Chapter 17 contains information regarding career and technical licenses; Chapter 18 contains information for administrator licenses; Chapter 19 describes the evaluator license; Chapter 20 describes how to renew any license; Chapter 21 contains information regarding conversion of a license; Chapter 22 describes the different

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authorizations offered by the Board; Chapter 23 describes the behind-the-wheel authorization; and Chapter 24 describes the paraeducator certificate.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 22, 2008, as **ARC 7284B**. A public hearing on the amendments was held on November 12, 2008. No one attended the public hearing, and one written comment was received.

These amendments have been changed since the Notice of Intended Action. Subrule 13.10(7) has been rescinded and subrule 13.10(8) has been renumbered as 13.10(7) in order to incorporate into this rule making rule 282—41.115(272), which has been rescinded in the chapter reorganization. Rule 282—41.115(272) was published under Notice as **ARC 7252B** on October 8, 2008, and Adopted and Filed herein as **ARC 7518B**.

Subparagraphs 13.28(24)“b”(1) and (2) have also been expanded to include several numbered paragraphs. Subparagraphs (1) and (2) now read as follows:

“(1) Psychology of the gifted.

“1. Social needs.

“2. Emotional needs.

“(2) Programming for the gifted.

“1. Prekindergarten-12 identification.

“2. Differentiation strategies.

“3. Collaborative teaching skills.

“4. Program goals and performance measures.

“5. Program evaluation.”

In addition, the introductory paragraph of subrule 18.4(2) has been updated by changing the words “two years” to “one year” with regard to the specific requirements for an initial administrator license and other technical changes have been made.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective February 18, 2009.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind Chs 14 to 22; adopt Chs 12 to 24] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7284B**, IAB 10/22/08.

[Filed 12/24/08, effective 2/18/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7518B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, “Issuance of Practitioner’s Licenses and Endorsements,” Iowa Administrative Code.

Currently, nonlicensed out-of-state applicants may be issued a nonrenewable Class A license valid for one year until they are able to pass the testing requirements in the state where the teacher preparation program was completed. An applicant may then attempt to use the Class A Iowa license to obtain a license in the applicant’s state without having to take the test. This amendment attempts to close a loophole that some have used to avoid taking a test in their home states.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 8, 2008, as **ARC 7252B**. A public hearing on the amendment was held on November 5, 2008. No one attended the public hearing, and one written comment was received. This amendment has been changed since the Notice of Intended Action and the reorganization of Chapters 12 to 24 (published under Notice of

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Intended Action as **ARC 7284B**). The proposed change to rule 282—14.115(272) has been incorporated into rule 282—13.10(272), adopted herein as **ARC 7520B**.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective February 18, 2009.

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 [13.10] is being omitted. With the exception of the change noted above, this amendment is identical to that published under Notice as **ARC 7252B**, IAB 10/8/08.

[Filed 12/23/08, effective 2/18/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7502B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 31, "Competent Private Instruction and Dual Enrollment," Iowa Administrative Code.

This chapter has not been reviewed since 1996. Accordingly, the Department undertook a thorough review of these rules, a part of which involved use of comments originally submitted three years ago from members of the Network of Iowa Christian Home Educators (NICHE).

Notice of Intended Action was published in the October 8, 2008, Iowa Administrative Bulletin as **ARC 7211B**. A public hearing was held on October 28, 2008, and public comments were allowed until close of business on that same date. Thirty-one persons attended the public hearing; two-thirds of those were school district employees associated with home school assistance programs. Nearly all present at the public hearing spoke. In addition, 15 written comments were received. Thirteen of these came from school district employees concerned about the subrules concerning home school assistance programs.

The majority of those commenting raised concerns about the prohibition against allowing a school district to purchase texts and supplemental instructional materials with public funds for students enrolled in the district's home school assistance program. Other concerns were regarding reporting and licensure of teachers employed by a school district to instruct or supervise instruction of students in a home school assistance program.

As a result of public comment, further changes were made to the following rules or subrules:

- Subrule 31.3(2) permits a parent, guardian, or custodian who privately retains a teacher to supervise the provision of competent private instruction (CPI) to the child of the parent, guardian, or custodian to hire a person with a substitute authorization. However, a school district that provides instruction or supervision of instruction through a home school assistance program may not employ a person as a teacher for such program if the person holds only a substitute authorization. Senate Study Bill 3011, section 3, would have prohibited districts from employing persons with either a substitute teacher's license or a substitute authorization. These rules allow a school district to employ a person with a valid Iowa substitute teacher's license as a home school assistance program teacher. Because a person with just a substitute authorization has not had teacher preparation training, the Department believes that it is not an appropriate expenditure of public moneys for a district to hire a person with just a substitute authorization as the sole "teacher" of a student receiving CPI.

- The duties, listed in subrule 31.4(3), paragraph "b," of a teacher employed by a school district for a home school assistance program no longer consist of specific, mandated duties. Rather, the teacher is to exercise professional judgment regarding the topics the teacher discusses with the family of the students assigned to the teacher.

- Paragraphs "a" and "c" of subrule 31.5(2) have been restructured to clarify what entities are acceptable as testing entities for CPI students.

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- Subrule 31.5(4) has been changed to allow districts to continue to purchase texts and supplementary materials as the districts deem necessary for use by students of the home school assistance program, as long as such texts and supplementary materials are appropriate for use by regularly enrolled students of the district.

- Subrule 31.5(5) no longer requires school districts that provide a home school assistance program to file with the Department a list of all children enrolled in such program. The Department now has the capability to cull such a list from other reports submitted from the districts. Also, while the mandatory report of CPI is to be completed and filed by all parents, guardians, and custodians of children of compulsory attendance age who receive CPI, subrule 31.5(5) clarifies what items of the report are to be completed by families whose children are enrolled in a home school assistance program.

- Paragraph “a” of subrule 31.8(3) expands the list of eligible teachers who may evaluate the portfolio contents of a child who receives CPI to include persons with a current substitute teacher’s license who produce evidence of a previously held Iowa license with classroom or content endorsements. This is consistent with the rules throughout this chapter that allow persons with substitute teacher’s licenses to provide or supervise CPI, with the exception of those who provide direct instruction to a student for which the student receives credit on a transcript provided by the district for the course.

- Rule 281—31.10(299A), third unnumbered paragraph, clarifies that parents who do not consent to evaluation or reevaluation of their children for purposes of receiving special education services are not required to obtain permission before providing CPI to those children.

No further edits were made.

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

These amendments will become effective February 18, 2009.

These amendments are intended to implement Iowa Code chapters 299 and 299A and 2008 Iowa Acts, chapter 1191, sections 108 to 111.

The following amendments are adopted.

ITEM 1. Strike “parent, guardian, or legal custodian” wherever it appears in **281—Chapter 31** and insert “parent, guardian, or legal or actual custodian” in lieu thereof.

ITEM 2. Amend rule 281—31.1(299) as follows:

281—31.1(299,299A) Purpose. It is the purpose of this chapter to give guidance to ~~parents, guardians, and custodians, school boards, and teachers providing or assisting and supervising~~ concerning the provision, assistance, and supervision of competent private instruction to children of compulsory attendance age outside the traditional school setting. This chapter also ~~proposes to establish~~ establishes responsibilities related to dual enrollment.

ITEM 3. Amend rule 281—31.2(299) as follows:

281—31.2(299) Reports as to competent private instruction.

31.2(1) Reporting. The parent, guardian, or legal or actual custodian of a child of compulsory attendance age who does not enroll the child in a public school or Iowa accredited nonpublic school shall complete a report in duplicate on forms created by the department of education and provided by the resident public school district, indicating the parent, guardian, or legal or actual custodian’s intent to provide or arrange for competent private instruction for the child for each school year. The report shall be filed with the school board secretary by ~~the first day of school in the resident district~~ August 26, except as otherwise provided by these rules.

a. The report shall include the following information:

(1) to (6) No change.

(7) Evidence of immunization of the child or evidence of exemption, as required by law, if the child is being placed under competent private instruction for the first time.

b. No change.

31.2(2) Late reporting. If a parent, guardian, or legal or actual custodian decides, after enrolling a child of compulsory attendance age in a public or accredited nonpublic school and after the deadline for

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filing a report under subrule 31.2(1), ~~that the parent wishes~~ to provide competent private instruction to the child, the parent, guardian, or legal or actual custodian shall file the ~~report~~ report completed as fully as possible no later than 14 calendar days and a fully completed report within 30 calendar days after removing the child from the public or accredited nonpublic school. Days of the child's attendance in the public or nonpublic school up to the time of removal shall be applied to the 148-day minimum compulsory attendance requirement for the school year affected.

ITEM 4. Amend rule 281—31.3(299) as follows:

281—31.3(299,299A) Duties of privately retained licensed practitioners.

31.3(1) Scope of rule. This rule addresses the duties of a person who is directly retained by the parent, guardian, or legal or actual custodian of a child receiving competent private instruction to provide instruction or instructional supervision for the child. The duties of a person who provides instruction or instructional supervision on behalf of a public school in the form of a home school assistance program are addressed in rule 281—31.4(299,299A).

~~31.3(1)~~ **31.3(2) Licensing requirements.** A person who provides instruction to or instructional supervision of a student receiving competent private instruction shall be either the student's parent, guardian, or legal or actual custodian or a person who possesses a valid Iowa teaching certificate or practitioner license, including a substitute teacher's license or a substitute authorization, which is appropriate to the ~~age and~~ grade level of the student ~~under competent private instruction~~.

~~31.3(2)~~ **31.3(3) Duties.** The duties of a ~~certificated or licensed teacher practitioner~~ who instructs or provides instructional supervision of a student shall include the following:

a. Contact with the student and the student's parent, guardian, or legal or actual custodian at least twice per 45 days of instruction, during which time the teacher practitioner fulfills the duties described below. One of every two contacts shall be face-to-face with the student ~~under competent private instruction~~.

~~However, if the instruction or instructional supervision is provided by a public or accredited nonpublic school in the form of a home school assistance program, the teacher practitioner shall have contact with the child and the child's parent, guardian, or legal custodian at least four times per quarter during the period of instruction. One of every two contacts shall be face to face with the student under competent private instruction.~~

b. Consulting with and advising the student's parent, guardian, or legal or actual custodian ~~with respect to the following during the course of the year's visits:~~ as requested by the student's parent, guardian, or legal or actual custodian or as deemed necessary in the professional judgment of the practitioner.

- (1) ~~Lesson plans;~~
- (2) ~~Textbook and supplementary materials;~~
- (3) ~~Setting educational goals and objectives;~~
- (4) ~~Teaching and learning techniques;~~
- (5) ~~Forms of assessment and evaluation of student learning;~~
- (6) ~~Diagnosing student strengths and weaknesses;~~
- (7) ~~Interpretation of test results;~~
- (8) ~~Planning;~~
- (9) ~~Record keeping; and~~
- (10) ~~Other duties as requested or agreed upon.~~

c. Providing formal and informal assessments of the student's progress to the student and the student's parent, guardian, or legal or actual custodian.

d. and e. No change.

~~31.3(3)~~ **31.3(4) Limitations.** A licensed Iowa practitioner who is employed ~~or agrees to provide instruction or instructional supervision of programs of competent private instruction under this rule~~ shall not serve in that capacity on behalf of more than 25 families, or more than 50 children of compulsory attendance age, in an academic year unless the service is provided pursuant to the teacher's employment with a nonaccredited nonpublic school entity.

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~~A licensed Iowa practitioner who is employed by a public or accredited nonpublic school to provide instruction or instructional supervision through a home school assistance program, as defined in subrule 31.4(5), shall not serve in that capacity on behalf of more than 20 families, or more than 40 children of compulsory attendance age, in an academic year.~~

~~A licensed practitioner or authorities in charge of a public or accredited private school may seek exemption from the above limitation by submitting a written request to the director of the department of education. Exemptions shall be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision, and that the best interests of all children being served by the practitioner or school will continue to be met.~~

ITEM 5. Renumber rules **281—31.4(299A)** to **281—31.9(299A)** as **281—31.5(299A)** to **281—31.10(299A)**.

ITEM 6. Adopt the following **new** rule 281—31.4(299,299A):

281—31.4(299,299A) Duties of licensed practitioners, home school assistance program.

31.4(1) Scope of rule. This rule addresses the duties of a person who provides competent private instruction or instructional supervision for one or more children who receive competent private instruction on behalf of a school district in the form of a home school assistance program as defined in subrule 31.5(5).

31.4(2) Licensing requirements. A person who provides direct instruction to a student receiving competent private instruction for which the student receives credit on a transcript provided by the district for the course shall possess a valid Iowa teaching certificate or practitioner license appropriate to the content area taught and to the grade level of the student. A person who provides instructional supervision only of a student receiving competent private instruction shall possess a valid Iowa teaching certificate or practitioner license appropriate to the grade level of the student. A practitioner who possesses only a valid Iowa substitute authorization may neither provide direct instruction nor instructional supervision under this rule.

31.4(3) Duties. The duties of a licensed teacher who instructs or provides instructional supervision of a student shall include the following:

a. Contact with the student and the student's parent, guardian, or legal or actual custodian at least four times per 45 days of instruction. One of every two contacts shall be face-to-face with the student.

b. Consulting with and advising the student's parent, guardian, or legal or actual custodian with respect to any of the following as requested by the student's parent, guardian, or legal or actual custodian or as deemed necessary in the professional judgment of the practitioner:

- (1) Lesson plans;
- (2) Textbook and supplementary materials;
- (3) Educational goals and objectives;
- (4) Teaching and learning techniques;
- (5) Forms of assessment and evaluation of student learning;
- (6) The student's strengths and weaknesses;
- (7) Interpretation of test results;
- (8) Planning; and
- (9) Record keeping.

c. Providing formal and informal assessments of the student's progress to the student and the student's parent, guardian, or legal or actual custodian.

d. Annually maintaining a diary, record, or log of visitations and assistance provided.

e. For purposes of assisting the district to meet its "child find" obligation under the Individuals with Disabilities Education Act, referring to the child's district of residence for evaluation any child who the practitioner has reason to believe may be in need of special education.

31.4(4) Limitations. A licensed Iowa practitioner who is employed by a public or accredited nonpublic school to provide instruction or instructional supervision through a home school assistance program shall not serve in that capacity on behalf of more than 20 families, or more than 40 children of

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compulsory attendance age, in an academic year. The authorities in charge of a public school may seek exemption from the above limitation by submitting a written request to the director of the department of education. Exemptions shall be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision and that the best interests of all children being served by the home school assistance program will continue to be met.

ITEM 7. Amend renumbered rule 281—31.5(299A) as follows:

281—31.5(299A) School district duties related to competent private instruction.

31.5(1) Reports.

a. to c. No change.

d. ~~The district shall annually report to the department of education by April 1 the names of all resident children who are subject to an annual assessment and what form of assessment has been chosen by the child's parent, guardian, or legal custodian. The district shall cooperate with the department in gathering standardized test reports or portfolio evaluation reports for each child subject to annual assessment. June 30 the names of all resident children who are subject to an annual assessment and who either failed to make adequate progress or whose parent, guardian, or legal or actual custodian failed to comply with the assessment requirements of the compulsory attendance law.~~

e. and f. No change.

31.5(2) Testing assistance.

a. ~~If a child is under dual enrollment, the district shall administer standardized tests, when and the standardized test option has been selected by the child's parent, guardian, or legal or actual custodian, the district shall administer the standardized test to the child, or may delegate the test administration to the appropriate area education agency, or allow the child's parent, guardian, or legal or actual custodian to procure standardized testing through a correspondence or other school accredited by an accrediting agency approved by the federal Department of Education, or through any testing service authorized by the publisher of any test approved by the state department of education for assessment purposes. If the child is under dual enrollment, no fee is charged to the parent, guardian, or legal or actual custodian.~~

b. No change.

c. ~~If a student has been administered an approved standardized test by a nonpublic school correspondence or other school accredited by an accrediting agency approved by the federal Department of Education, or by any testing service authorized by the publisher of any test approved by the state department of education for assessment purposes during the academic school year for which testing is required, and the administration of the test has met the terms or protocol of the test publisher, the results a copy of the test result report, from which test results not required under law may be redacted, may be submitted to the resident district and the department of education in original form by either the test administrator or the parent, guardian, or legal or actual custodian of the child being tested, in satisfaction of the annual assessment option. The submitted test results shall be accompanied by a certification statement signed by the test administrator to the effect that the publisher's protocol or terms required for test administration have been met.~~

d. ~~The district shall maintain as any other confidential education record the standardized testing results for each resident child for whom the district or area education agency administers the test.~~

31.5(3) No change.

31.5(4) Provision of instructional materials.

a. ~~A public school district may shall not make monetary payments, including cash and cash equivalents, or give publicly funded resources, directly or indirectly to the parent, guardian, or legal or actual custodian or to a child receiving competent private instruction. A school district shall not purchase texts or supplementary materials for or on behalf of a child receiving competent private instruction if such texts or supplementary materials are not appropriate for use by regularly enrolled students of the school district.~~

b. A district may provide to children receiving competent private instruction available texts or supplementary materials on the same basis as they are provided to enrolled students, and shall provide

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available texts or supplemental instructional materials on the same basis as they are provided to enrolled students when a child is under dual enrollment or in a home school assistance program. If a fee, such as a textbook or towel rental fee, is charged to regularly enrolled students for participation in a class or extracurricular activity, that fee may also be charged to dual-enrolled students on the same basis as it is charged to enrolled students, but only for the specific class or extracurricular activity ~~taken~~.

c. No change.

31.5(5) Home school assistance programs. A school district or accredited nonpublic school may offer an assistance program for parents, guardians, or legal or actual custodians providing private instruction to a child of compulsory attendance age. ~~A parent, guardian, or legal custodian of a child of compulsory attendance age may enroll the child in a home school or private instruction assistance program in a school district or accredited nonpublic school.~~ A district or accredited nonpublic school may impose additional requirements upon children enrolled in its home school assistance program.

A parent, guardian, or legal or actual custodian seeking to enroll a child in a home school assistance program in a school district or accredited nonpublic school must file the report of competent private instruction, items 1, 3, and 5 thereof.

An assistance program offered by a school district or accredited nonpublic school shall, at a minimum, meet state licensure standards for accredited school personnel in designating a practitioner to provide instruction or instructional supervision ~~of~~ for a competent private instruction program, including special education instruction, and shall meet the applicable provisions of rule ~~31.3(299)~~ 281—31.4(299,299A). All district personnel who provide or supervise instruction to children enrolled in the district's home school assistance program shall be appropriately licensed to the grade levels of the children instructed. A district shall not employ as a home school assistance program instructor a person who currently holds only a substitute authorization issued pursuant to rule 282—22.2(272). ~~The district may impose additional requirements upon children enrolled in its home school assistance program.~~

A home school assistance program is not dual enrollment, but the parent, guardian, or legal or actual custodian of a child enrolled in a home school assistance program may request dual enrollment in addition to enrollment in a home school assistance program.

ITEM 8. Amend renumbered rule 281—31.6(299A) as follows:

281—31.6(299A) Dual enrollment.

31.6(1) The parent, guardian, or legal or actual custodian of a child ~~of compulsory attendance age~~ who is receiving competent private instruction may enroll the child in the ~~public~~ school district of residence of the child under dual enrollment. The parent, guardian, or legal or actual custodian desiring dual enrollment shall notify the district of residence of the child not later than September 15 of the school year for which dual enrollment is sought.

31.6(2) A child under dual enrollment may participate in academic or instructional programs of the district on the same basis as any regularly enrolled student. A child under dual enrollment also is eligible to enroll in courses that offer secondary and postsecondary credit on the same basis as any regularly enrolled student. A child under dual enrollment must receive at least one-quarter of the child's instruction by way of competent private instruction and no more than three-quarters by way of the district's academic programs.

31.6(3) A child under dual enrollment may participate in any extracurricular activity offered by the district on the same basis as regularly enrolled students. If a child under dual enrollment was under competent private instruction the previous semester, the provisions of 281—subrule 36.15(2), paragraph “c,” shall not apply. However, other rules and policies of the state and district related to eligibility for extracurricular activities shall apply to the child. If a student seeking dual enrollment is enrolled in a nonaccredited nonpublic ~~school~~ school entity that is an “associate member” of the Iowa Girls High School Athletic Union or Iowa High School Athletic Association, ~~the student is eligible and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing program as outlined in rule 281—36.20(280).~~

31.6(4) and **31.6(5)** No change.

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ITEM 9. Amend renumbered rule 281—31.7(299) as follows:

281—31.7(299) Open enrollment.

31.7(1) The parent, guardian, or legal or actual custodian of a child receiving competent private instruction may request open enrollment to another public school district by following the procedures of the open enrollment law, Iowa Code section 282.18.

31.7(2) No change.

31.7(3) In the event that the parent, guardian, or legal or actual custodian of a ~~nonresident~~ an open enrollment student ~~under private instruction~~ fails to comply with state law and these rules ~~related to competent private instruction~~, the receiving district shall notify the secretary of the school district ~~of residence of the child's parent~~ regarding the noncompliance.

ITEM 10. Amend renumbered rule 281—31.8(299A), catchwords, as follows:

281—31.8(299A) Baseline testing evaluation and annual assessment.

ITEM 11. Amend renumbered subrule 31.8(1) as follows:

31.8(1) *When required.* When a parent, guardian, or legal or actual custodian of a child ~~of compulsory attendance age~~ who is at least seven years old by September 15 provides private instruction to a child without the assistance or supervision of a validly licensed Iowa practitioner as required by law and these rules, and the parent, guardian, or legal or actual custodian does not hold a valid Iowa practitioner license ~~appropriate to the ages and grade levels of the child under competent private instruction~~, the child is subject to initial baseline testing evaluation and an annual evaluation assessment every year thereafter.

~~For the 1992-93 school year and thereafter, a~~ A child who is at least seven years old by September 15, ~~and~~ who begins a program of competent private instruction and is subject to the annual assessment requirement, shall be administered a baseline test evaluation for the purposes of obtaining educational data. The baseline test evaluation and annual assessment shall be taken by ~~June 30, 1993, for programs of competent private instruction begun in school years 1991-92 and 1992-93, and shall be taken by~~ May 1 ~~in ensuing school years. Any test listed in subrule 31.7(2) may be used to fulfill the baseline test requirement, provided that the copyright date of the test publisher's published national norms that are used for the test results being reported is within eight years of the school year in which the test is administered.~~

The parent, guardian, or legal or actual custodian may select ~~either~~ standardized testing, or portfolio assessment, or submittal of a report card from an accredited correspondence school for purposes of fulfilling the baseline evaluation and annual evaluation requirement ~~assessment requirements~~ of the law.

ITEM 12. Rescind renumbered subrules 31.8(2) to 31.8(4) and adopt the following **new** subrules in lieu thereof:

31.8(2) Standardized testing.

a. A child's parent, guardian, or legal or actual custodian who chooses standardized testing for the purpose of fulfilling the assessment requirements of the law shall select an instrument approved by the department. The department shall publish an approved list of standardized testing instruments each year. In the event that the parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement wishes to have the child take a standardized test not included on the department's published list, the parent, guardian, or legal or actual custodian shall request permission of the director of the department of education to use a different test. The decision of the director shall be final. Braille or large print editions of any approved test shall be made available for vision-impaired children. Testing norms are available for vision- and hearing-impaired children.

b. A child subject to the annual assessment requirement who takes a standardized test shall take a grade level form of the test that corresponds most closely to the child's chronological age unless permission is granted by the test administrator to take another grade level form of the test. When a parent, guardian, or legal or actual custodian requests another form of the test, the test administrator shall make a decision based upon the following:

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- (1) A review of the instructional materials used by the child in the education program;
 - (2) The results of curriculum-based measurement techniques including the administering of probes;
- and
- (3) A review of current samples of the child's work product.

The decision of the test administrator as to the appropriate grade level form of the standardized test to be taken shall be final.

A child whose educational program and instructional materials are designed for students in grades 1 through 5 shall, at a minimum, be tested in the areas of reading, language, and mathematics. A child whose educational program and instructional materials are designed for students in grades 6 through 12 shall, at a minimum, be tested in the areas of reading or literary materials, language or written expression, mathematics or quantitative thinking, science, and social studies.

If retesting is desired, a different form of the same test or a different test shall be administered to the child sufficiently in advance to allow for processing of the test results prior to the first day of classes of the succeeding school year of the resident school district.

c. Testing times and sites.

- (1) Standardized test results are normed against a population taking the same test at approximately the same time of year. Norms for the tests exist for fall, winter, and spring. Because the annual assessment is used, in part, to determine whether the child has made at least six months' progress since the previous test, standardized tests used for determining whether adequate progress has been achieved shall be taken annually at approximately the same time each year.

- (2) The school district of residence of the child shall annually, by October 1, send notification of the following to the parent, guardian, or legal or actual custodian who has selected standardized testing:

1. The times and dates when standardized tests will be administered by the school district and the area education agency over the school year, including all testing times, and that a school district or area education agency will administer standardized tests at the child's home when so requested;

2. A data sheet showing the costs associated with the tests offered by the school district and area education agency; and

3. A reply form which the parent, guardian, or legal or actual custodian shall complete to indicate the date, location, and test selected, including the grade level form of the test; whether the parent, guardian, or legal or actual custodian wishes to be present for testing; and any special requests such as Braille or large print forms of the test.

d. Unless the child is under dual enrollment, the parent, guardian, or legal or actual custodian who has selected the standardized testing option shall timely reimburse the school district for the cost of testing the child.

31.8(3) *Portfolio assessment or evaluation.* A parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement may arrange to have an appropriately licensed Iowa practitioner review a portfolio of evidence of the child's progress annually by May 1, subject to the following requirements:

- a. **Portfolio evaluator.** A single evaluator shall be designated by the parent, guardian, or legal or actual custodian who has selected the portfolio evaluation option for annual assessment. The evaluator so identified shall be approved by the superintendent of the local school district or the superintendent's designee and shall hold a valid Iowa practitioner license or teacher certificate appropriate to the ages and grade levels of the children whose portfolios are being assessed.

A portfolio evaluator who holds an elementary classroom endorsement may assess children in grades 1 through 6. A portfolio evaluator who holds an elementary content endorsement may assess children in grades 1 through 8. A portfolio evaluator who holds a secondary content endorsement may assess children in grades 5 through 12. A person with a current substitute teacher's license who produces evidence of a previously held Iowa license with classroom or content endorsements may assess children within the same grade level restrictions as that of a person with a current Iowa license with classroom or content endorsements.

A portfolio evaluator shall not evaluate the portfolios of more than 25 students per year without permission of the director of the department of education.

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b. Contents of portfolio. The child's portfolio shall contain evidence of academic progress in the minimum curriculum areas of reading, language arts, and mathematics if the child is in grades 1 through 5. For children in grades 6 through 12, the portfolio shall contain evidence in the minimum curriculum areas of reading, language arts, mathematics, science, and social studies.

For each curriculum area, the portfolio shall include a book of lesson plans, a diary, or other written record indicating the subject matter taught and activities in which the child has been engaged, and an outline of the curriculum used by the child. The portfolio may also include a list of, a reference to, or material from the textbooks and resource materials used by the child in each subject area.

The portfolio shall also include copies of any tests or other formal and informal assessment instruments used to measure student progress over the current academic year, a copy of the baseline evaluation, and the most recent assessment report of the student's annual progress.

For each subject area to be evaluated, the portfolio shall include examples of the student's work and may include self-assessments by the student.

c. The parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement who has a physical or mental disability so significant that the results of a standardized test would be meaningless for assessment purposes may request the department's approval of an alternative evaluation.

31.8(4) Report card from accredited correspondence school. For a child subject to annual assessment who is enrolled as a student of a correspondence school that is a member of an accrediting association recognized by the federal Department of Education and accredited for elementary and secondary education, the district of residence and the department shall accept the annual report of progress (report card) sent by the correspondence school to the child's parent, guardian, or legal or actual custodian if the annual report of progress includes a listing of subjects taken and grades received. A passing grade in all content areas for which annual assessment is required shall be deemed evidence of adequate progress for the purpose of annual assessment.

ITEM 13. Amend renumbered rule 281—31.9(299A) as follows:

281—31.9(299A) Reporting assessment results.

31.9(1) Baseline ~~tests~~ evaluations. The baseline ~~test~~ evaluation results of each child subject to the baseline ~~test~~ evaluation requirement of Iowa Code section ~~299B.4~~ 299A.4 and subrule ~~31.7(1)~~ 31.8(1) shall be reported by the ~~test administrator~~ child's parent, guardian, or legal or actual custodian to the school district of residence of the child ~~and to the department of education~~ by June 30 of the year in which the ~~test~~ evaluation was taken.

The baseline ~~test~~ evaluation shall serve only as data from which subsequent progress shall be measured; the baseline ~~test~~ evaluation alone is not an indication of educational progress or a lack of progress.

31.9(2) Standardized tests. The results of a standardized test taken by a child subject to the annual assessment requirements shall be reported by the ~~test administrator~~ child's parent, guardian, or legal or actual custodian to the district of residence of the child ~~and to the department of education~~ by June 30 of the year in which the test was taken. ~~The results shall be submitted in original form as received from the agency responsible for scoring the test. The results shall be submitted either in original form or as a true and correct photocopy of the original form as received from the agency responsible for scoring the test, from which any test results not required under law may be redacted.~~

31.9(3) Portfolio assessments. The ~~assessment~~ results of an assessment of a child's educational portfolio made by a qualified Iowa licensed practitioner ~~or practitioners~~ shall be submitted by the portfolio ~~evaluator(s)~~ evaluator to the child's parent, guardian, or legal or actual custodian, who shall send a copy to the district of residence of the child, ~~and the department of education~~ by June 30 of the year in which the assessment was done.

The report ~~shall~~ may be in narrative form and shall include assessments of the child's achievement and progress in the curriculum areas including reading, language arts, and mathematics for children whose grade level of study is fifth grade and below, and those subjects plus the additional areas of science and social studies for students whose grade level of study is sixth grade and above. The report shall

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include a statement as to whether the child has demonstrated adequate progress in each of the areas of study ~~for which the portfolio evaluator is qualified to provide an assessment~~. The report shall be signed by ~~each~~ the evaluator.

31.9(4) Report card from accredited correspondence school. Report cards from an accredited correspondence school shall be submitted by the child's parent, guardian, or legal or actual custodian to the child's district of residence by June 30 of the year in which the report cards were issued by the accredited correspondence school.

31.9(5) Confidentiality of annual assessments. The district shall maintain as any other confidential education record the standardized testing, portfolio evaluation, and report cards from an accredited correspondence school for each resident child subject to annual assessment.

ITEM 14. Amend renumbered rule 281—31.10(299A) as follows:

281—31.10(299A) Special education students. When a child has been identified as currently requiring special education, the child is eligible to receive competent private instruction with the written approval of the director of special education of the area education agency of the child's district of residence.

The director of special education of each area education agency shall issue a written decision, approving provision of competent private instruction, conditioning approval on modification of the proposed program, or denying approval, based upon the appropriateness of the proposed competent private instruction program for the child requiring special education, considering the child's individual disability. Pursuant to 34 CFR Section 300.300, the parent, guardian, or legal or actual custodian of a child with a disability is not required to seek approval from the area education agency to provide competent private instruction for the child if the parent, guardian, or legal or actual custodian does not consent to initial evaluation or to reevaluation of the child for receipt of special education services or programs.

The request for approval for placement under competent private instruction by the parent ~~or~~ guardian, or legal or actual custodian may be presented to the special education director at any time during the calendar year. If the special education director denies approval or if no written decision has been rendered within 30 calendar days, that decision or the absence thereof is subject to review by an impartial administrative law judge under provisions of 20 U.S.C. Section 1401 et seq., federal regulations adopted thereunder, and Iowa Code section 256B.6 and rules adopted thereunder found at ~~281—41.112(17A,256B,290) et seq~~ 281—41.500(256B,34CFR300) et seq.

If a parent, guardian, or legal or actual custodian of a child requiring special education provides private instruction without the approval of the director of special education, the director may either request an impartial hearing before an administrative law judge under the rules of special education, ~~281—41.112(17A,256B,290)~~ 281—41.500(256B,34CFR300) et seq., or notify the secretary of the child's district of residence for referral of the matter to the county attorney pursuant to Iowa Code section 256B.6, incorporating chapter 299, unless the parent, guardian, or legal or actual custodian does not consent to initial evaluation or to reevaluation of the child for receipt of special education services or programs.

A program of competent private instruction provided to a student requiring special education is not a program of special education for purposes of federal and state law.

The director of special education shall advise the parent, guardian, or legal or actual custodian of a child requiring special education of the probable consequences of placing the child under private instruction and withdrawing the child from specialized instruction and services to which the child is entitled. The director of special education may require the parent, guardian, or legal or actual custodian of a child requiring special education to accept full responsibility for the parent's, guardian's, ~~or legal or actual~~ or actual custodian's decision to reject special education programs and services, forgoing a later request for compensatory education for the period of time when the child was under private instruction.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 15. Amend **281—Chapter 31**, implementation sentence, as follows:
These rules are intended to implement Iowa Code chapters 299 and 299A and 2008 Iowa Acts, chapter 1191, sections 108 to 111.

[Filed 12/19/08, effective 2/18/09]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7491B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 239B.4, the Department of Human Services amends Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," Chapter 47, "Diversion Initiatives," and Chapter 58, "Emergency Assistance," and rescinds Chapter 93, "PROMISE JOBS Program," Iowa Administrative Code, and adopts a new chapter with the same title.

These amendments combine two Notices of Intended Action. One Notice of Intended Action was published in the Iowa Administrative Bulletin on September 10, 2008, as **ARC 7126B** to solicit comment on an amendment Adopted and Filed Emergency that was published on the same date as **ARC 7125B**. That amendment increased the PROMISE JOBS mileage reimbursement rate from \$0.30 per mile to \$0.34 per mile. The purpose of the amendment was to align the reimbursement rate more closely with the actual cost of transportation. Increased fuel prices were recognized as a potential barrier to FIP participants' ability to comply with the requirements of their Family Investment Agreement, to avoid FIP sanctions, and to progress on their plans to achieve self-sufficiency.

The Department received no comments on that Notice of Intended Action. Similar language was included in the Notice of Intended Action published in the Iowa Administrative Bulletin on October 22, 2008, as **ARC 7287B**. Due to the rescission of Chapter 93 and the adoption of a new Chapter 93, the reimbursement rate is located in subparagraph 93.11(3)"b"(2), instead of paragraph 93.110(6)"b," as indicated in **ARC 7126B**.

The other amendments included in the Notice of Intended Action published as **ARC 7287B** update requirements for participants in the PROMISE JOBS work and training program based on changes to federal regulations for the Temporary Assistance for Needy Families (TANF) program. Public Law 109-171, the Deficit Reduction Act of 2005, reauthorized TANF block grants and required each state to submit a Work Verification Plan that outlines how the state will meet all of the Act's requirements. The Department submitted an update to its plan in August 2008.

In order to move families quickly into work activities, Iowa instituted rules in November 2004 to require clients to sign a Family Investment Agreement (FIA) before being approved for benefits under the Family Investment Program (FIP). These amendments require FIA reviews at least once every six months in order to ensure use of appropriate FIA activities and accurate reporting.

Federal regulations require that not more than 30 percent of the clients counted toward meeting the state's work participation rate may use vocational educational training or high school and GED activities (for those under age 20) to meet the work participation rate. Iowa has typically been close to the 30 percent limit. If the limit is exceeded, the excess participation hours do not count toward the state's performance. In order to avoid the necessity of waiting lists, Iowa has chosen to clarify who should be approved for education or training so that those participants using education or training as part of their FIA are those most likely to be able to use the education or training to reach self-sufficiency. These amendments:

- Require a participant to complete an educational evaluation before adding education or training to the FIA.
- Require documentation of the information used to determine likelihood of success and the reasons for approving or denying the use of education or training in a participant's FIA.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Remove the requirement to deny education or training if the participant has already received education or training funded by PROMISE JOBS. The decision to approve additional education or training will take into account any education and training the participant already has had along with the participant's need for additional skills to obtain self-sufficiency.

- Expand on and clarify the use of academic probation to give participants a second chance, while still focusing education and training supports on those participants most likely to succeed.

- Require Child Care Assistance received while participating in education or training and not a PROMISE JOBS participant to count toward the 24-month PROMISE JOBS limit that applies to child care received while in education or training.

- Establish a separate 24-month limit for other education or training expenses, such as transportation, rather than combining the two allowances and counting a month of assistance toward the limit when child care may not have been used.

Other changes related to countable PROMISE JOBS activities are:

- Self-employment hours are counted as a work activity using the same method used for eligibility and benefit determination.

- Clients participating in unpaid community service and work experience cannot be required to participate for additional hours above an amount equal to their FIP grant divided by the minimum wage. For single parents with a child under the age of six, the Food Assistance benefit amount is added to the FIP grant amount, then divided by the minimum wage to determine maximum hours of participation.

- Substance abuse treatment, mental health treatment, and other rehabilitative activities are approvable FIA job-readiness activities. Need for the activity must be documented and participation verified.

- Work hours that a participant misses for specific holidays and approved absences can be counted toward participation requirements. Additional acceptable reasons for missing FIA activities are allowed.

PROMISE JOBS participants who do not carry out the responsibilities of the FIA are considered to have chosen a limited benefit plan, meaning that FIP benefits to the participant or to the entire household are suspended until the person whose actions caused the limited benefit plan resumes FIA responsibilities. When a household member subsequently chooses another limited benefit plan, FIP benefits cease for six months, and ineligibility continues after the six-month period until the person whose actions caused the limited benefit plan resumes FIA responsibilities. Legislation in 2008 Iowa Acts, Senate File 2269, gives the Department flexibility in the circumstances under which the six-month period of ineligibility applies for a subsequent limited benefit plan. These rules apply this flexibility as follows:

- Allow PROMISE JOBS to void a limited benefit plan when the limited benefit plan was imposed for failure to verify hours of participation and the client provides the verification by the tenth day following the effective date of the limited benefit plan, even if the client has chosen a limited benefit plan before.

- Allow a limited benefit plan to be considered imposed in error if the client reveals (and verifies, if applicable) a problem or barrier that contributed to the failure that resulted in the limited benefit plan.

- Eliminate the requirement to send a written reminder before imposing a limited benefit plan for failure to verify hours of participation in FIA activities since the client can provide the information after the limited benefit plan is imposed.

The amendments make the following changes to verification requirements:

- Require clients to verify actual hours spent on job search contacts instead of using a standard one hour per contact.

- Require workers to verify actual hours of employment at least once every six months and project hours for the next six months.

- Count one hour of reported unsupervised homework time, require clients to verify all other homework time, and count hours only up to the amount the educational institution estimates is needed for the course of study.

- Allow distance learning hours (via the Internet or video conference) as an approvable educational activity only to the extent time and attendance can be verified.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Chapter 93 is reorganized to remove discrepancies and redundancies, match current practices, and improve the clarity and structure of the chapter. Internal and external cross references are updated to reflect the reorganization. The following changes reflect current practice:

- The descriptions of job club and workplace essentials activities have changed to reflect current curriculum and method of delivery.
- Requirements for structured job search specify that participants must report daily to the job club site.
- In order to encourage job applications, support services are provided for unplanned job opportunities even if job search is not included in the participant's FIA.
- In order to ensure full participation, the job search plan must include the number of hours committed to the activity each week and the due date for providing documentation.
- The definitions of full-time and part-time employment are changed to match federal requirements for reporting activities.

Although the Department received no formal comments on either Notice of Intended Action, the Department has made numerous changes to these amendments in response to issues raised while planning for implementation, including the following:

- Added the following phrase to the last sentence of subparagraph 41.24(8)“e”(1): “except when the participant has failed to provide verification of hours of employment or participation as described in paragraph ‘h.’”
- Changed the references to “attendance” in paragraph 41.24(8)“h” to read “employment or participation” for clarity.
- Added the following phrase to the definition of “participant” in rule 441—93.1(239B): “a parent or relative living in the home of a child approved to receive FIP benefits, or a person reconsidering a subsequent limited benefit plan.”
- Removed the introductory paragraph of rule 441—93.3(239B).
- Added new subparagraph (7) to paragraph 93.3(4)“a” as follows: “(7) The availability of family planning counseling services in the area and the financial implications of newly born children on the participant’s family.”
- Deleted the second sentence in the introductory paragraph of rule 441—93.4(239B) and added the following phrase to the first sentence: “and is an eligibility requirement for the family investment program as specified in rule 441—41.24(239B).”
- Replaced the reference “blind or disabled” in paragraphs 93.4(2)“a” and “b” with the phrase “receiving Supplemental Security Income (SSI).”
- Changed subparagraph 93.4(3)“b”(2) to read as follows: “The self-sufficiency plan may be included in the participant’s FIA if the self-sufficiency plan meets the requirements of this chapter and is deemed by the PROMISE JOBS worker to be appropriate to the family circumstances.”
- Clarified in subparagraph 93.4(5)“c”(2) that a participant who claims a disability that is expected to last more than 12 months is required to apply for Social Security and SSI benefits as a condition of FIP eligibility.
- Deleted proposed paragraph 93.4(6)“c,” as paragraph “a” covers all applicant situations.
- Added a new subparagraph (1) to paragraph 93.4(8)“a” to cover participants who have participated satisfactorily but are not self-sufficient by the end date of the FIA, added a cross reference to barriers in renumbered subparagraph (2), and changed language in both renumbered subparagraphs for consistency.
- Deleted the word “physical” from the phrase “any physical condition” in paragraph 93.5(2)“b.”
- Changed the word “assessment” to “evaluation” in the catchwords of subrule 93.5(3).
- Deleted the language in paragraphs 93.7(1)“d” and “e” except for the cross reference to subrule 93.10(2), and relettered paragraphs “f” and “g” accordingly.
- Deleted the phrase “and reasons for approval” from paragraph 93.8(5)“b.”
- Clarified the wording of subrule 93.8(6), introductory paragraph, and subparagraphs 93.8(6)“a”(1) and (2), and added a new subparagraph (4) to limit payment to the nearest facility unless training at a more distant facility will allow the participant to reach self-sufficiency sooner.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Removed proposed subparagraph 93.8(6)“d”(4) and renumbered the remaining subparagraphs accordingly.
- Added a requirement to submit documentation of grades and academic progress to paragraph 93.8(7)“b.”
- Changed the wording of paragraph 93.9(3)“a” to allow information about family planning counseling to be delivered by the Department worker during PROMISE JOBS orientation as an alternative to the PROMISE JOBS worker’s providing the information during the assessment, and to allow use of forms other than the Self-Assessment for this purpose if approved by the Department.
- Revised the wording of subrule 93.10(1) to clarify that PROMISE JOBS is responsible for issuing written notification and that the requirements also apply to verification of hours of participation, but do not apply to offset of expense payments.
- Rewrote portions of subrule 93.10(2) to include verification of progress, to clarify when the participant is responsible for submitting the required documentation, to allow high school or GED students to verify hours of participation without a signature from the training provider, and to remove the paragraph on verifying homework hours.
- Added language to subrule 93.13(1) and paragraph 93.13(2)“m” to clarify that a written reminder is not required when a participant fails to verify hours of employment or participation.

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).

The Council on Human Services adopted these amendments on December 10, 2008.

These amendments are intended to implement Iowa Code Supplement section 239B.17 as amended by 2008 Iowa Acts, Senate File 2269, and Iowa Code sections 239B.18 to 239B.22.

These amendments shall become effective on March 1, 2009.

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 [amend Chs 40, 41, 47, 58; adopt Ch 93] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7126B**, IAB 9/10/08, and as **ARC 7287B**, IAB 10/22/08.

[Filed 12/15/08, effective 3/1/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7481B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

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

These amendments create a new Medicaid provider type for occupational therapists in independent practice. Occupational therapy services are provided to persons with disabilities to maximize their skills and abilities. Services typically include customized intervention programs to improve a person’s ability to perform daily activities, comprehensive job and home site evaluations and recommendations, performance skills assessment and treatment, adaptive equipment recommendations and usage training, and guidance to family members and caregivers.

Access to occupational therapy services has been identified as a problem in some areas of the state. Iowa currently covers occupational therapy services only when provided through hospital outpatient departments, nursing homes, home health agencies, rehabilitation agencies, school-based programs, and physicians who employ an occupational therapist. Medicare allows for participation of occupational

HUMAN SERVICES DEPARTMENT[441](cont'd)

therapists practicing independently from a hospital, physician, nursing home, or home health agency. Medicaid programs in neighboring states allow for enrollment of occupational therapists in independent practice.

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).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 22, 2008, as **ARC 7272B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 10, 2008.

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

These amendments shall become effective on March 1, 2009.

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 [77.31, 78.35, 79.1(2)] is being omitted. These amendments are identical to those published under Notice as **ARC 7272B**, IAB 10/22/08.

[Filed 12/11/08, effective 3/1/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7483B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment increases the Medicaid reimbursement rate for nonemergency medical transportation by car from \$0.30 per mile to \$0.34 per mile. Medicaid members are entitled to request reimbursement for travel expenses when they must travel outside their local community to obtain medical care. Due to the rise in gasoline costs from 2001 to 2005, the Department increased the mileage allowance from \$0.21 per mile to \$0.30 per mile effective November 1, 2005. In July 2005, the average gasoline price per gallon in Iowa was \$2.13. As of July 2008, the average price reached \$3.93 per gallon. This amendment aligns the reimbursement rate more closely with the actual cost of transportation.

This amendment does 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).

This amendment was also Adopted and Filed Emergency and was published in the Iowa Administrative Code on September 10, 2008, as **ARC 7122B**. Notice of Intended Action to solicit comment on that amendment was published as **ARC 7123B** on the same date. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on December 10, 2008.

This amendment is intended to implement Iowa Code section 249A.4.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment shall become effective on February 18, 2009, at which time the Adopted and Filed Emergency amendment is rescinded.

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 [78.13(5)] is being omitted. This amendment is identical to that published under Notice as **ARC 7123B** and Adopted and Filed Emergency as **ARC 7122B**, IAB 9/10/08.

[Filed 12/11/08, effective 2/18/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7479B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology hereby adopts an amendment to Chapter 5, "Fees," Iowa Administrative Code.

This amendment establishes a reactivation fee for certification as a health service provider to be consistent with the requirements for reactivation of the psychology license. The reactivation fee for certification as a health service provider shall be the same as the renewal fee for the certification as a health service provider and shall apply to psychologists wishing to reactivate the psychology license and health service provider certification.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 8, 2008, as **ARC 7268B**. A public hearing was held on November 3, 2008, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

This amendment is intended to implement Iowa Code chapters 17A, 147, 154B and 272C.

This amendment will become effective February 18, 2009.

The following amendment is adopted.

Adopt the following **new** subrule 5.16(12):

5.16(12) Reactivation fee for certification as a certified health service provider in psychology is \$60.

[Filed 12/11/08, effective 2/18/09]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7476B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science hereby rescinds Chapter 30, "Administrative and Regulatory Authority for the Board of Behavioral Science Examiners," amends Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," Chapter 32, "Continuing Education for Marital and Family Therapists and Mental Health Counselors," and Chapter 33, "Discipline for Marital and Family Therapists and Mental Health Counselors," and rescinds Chapter 34, "Fees," Iowa Administrative Code.

These amendments update licensure and disciplinary requirements and remove language that has been added to the common chapters for the Bureau of Professional Licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 22, 2008, as **ARC 7286B**. A public hearing was held on November 12, 2008, from 9:30 to 10 a.m. in the Fifth

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Floor Board Conference Room, Lucas State Office Building. Public comments were received in writing from five individuals.

Since publication of the Notice, the following changes have been made as a result of comments received.

In Item 4, the last sentence in the new definition of "Temporary license" has been deleted.

In Item 5, subrules 31.4(1) and 31.4(2), the phrase "or the Council on Postsecondary Accreditation" has been stricken. The following sentence also has been added to subrules 31.4(1) and 31.4(2): "Applicants who entered a program of study prior to July 1, 2008, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent."

In Item 6, the following changes have been made:

The phrase "or the equivalent" has been added to paragraph 31.5(1)"a."

The following sentence has been added to paragraph 31.5(1)"c": "Applicants who entered a program of study prior to July 1, 2008, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of marital and family therapy conducted in person with couples, families and individuals."

The following sentence has been added to paragraph 31.5(1)"d": "Applicants who entered a program of study prior to July 1, 2008, shall include at least 100 of the 200 hours of clinical supervision as individual supervision."

The following sentence has been added to paragraph 31.5(1)"e": "Applicants who entered a program of study prior to July 1, 2008, shall have 100 hours of the clinical supervision conducted in person."

In subparagraph 31.5(2)"a"(1), the phrase "one hour per week, face to face and individually" has been stricken in its entirety, and the phrase "four hours per month" has been added.

Subparagraphs 31.5(2)"a"(2) and 31.5(2)"a"(4) have been stricken, with subsequent subparagraphs renumbered accordingly.

In renumbered subparagraph 31.5(2)"a"(2), the phrase "in the name of the supervising marital and family therapist" has been stricken, and the phrase "of supervised hours signed by the supervisor" has been added.

In subparagraph 31.5(2)"b"(1), the word "marriage" has been stricken and the word "marital" has been added, and the phrase "at least five years" has been replaced with "a minimum of three years."

In subparagraph 31.5(2)"b"(3), existing language has been stricken and replaced with the following language: "Be licensed under Iowa Code chapter 147 and have a minimum of three years of full-time professional work experience, including experience in marital and family therapy, as approved by the board."

In subparagraph 31.5(2)"b"(4), the phrase "one hour per week face to face and individually" has been stricken in its entirety, and the phrase "four hours per month" has been added.

In Item 7, the following changes have been made:

In new subrules 31.6(1) and 31.6(2), the phrase "or the Council on Postsecondary Accreditation" has been deleted. The following sentence also has been added to new subrules 31.6(1) and 31.6(2): "Applicants who entered a program of study prior to July 1, 2008, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent."

In paragraph 31.6(2)"i," the word "assessment" has been deleted from the catchphrase.

In Item 8, the following changes have been made:

In paragraph 31.7(1)"a," the phrase "or the equivalent" has been added.

The following sentence has been added to paragraph 31.7(1)"c": "Applicants who entered a program of study prior to July 1, 2008, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of mental health counseling conducted in person with couples, families and individuals."

The following sentence has been added to paragraph 31.7(1)"d": "Applicants who entered a program of study prior to July 1, 2008, shall include at least 100 of the 200 hours of clinical supervision as individual supervision."

The following sentence has been added to paragraph 31.7(1)"e": "Applicants who entered a program of study prior to July 1, 2008, shall have 100 hours of the clinical supervision conducted in person."

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

In subparagraph 31.7(2)“a”(1), the phrase “one hour per week, face to face and individually” has been stricken in its entirety, and the phrase “four hours per month” has been added.

Subparagraphs 31.7(2)“a”(2) and 31.7(2)“a”(4) have been stricken, with subsequent subparagraphs renumbered accordingly.

In renumbered subparagraph 31.7(2)“a”(2), the phrase “in the name of the supervising mental health counselor” has been stricken, and the phrase “of supervised hours signed by the supervisor” has been added.

In subparagraphs 31.7(2)“b”(1) and 31.7(2)“b”(3), the word “five” has been replaced with “three,” indicating years of postlicensure experience required.

In subparagraph 31.7(2)“b”(4), the phrase “one hour per week, face to face and individually” has been stricken in its entirety, and the phrase “four hours per month” has been added.

In Item 9, the following changes have been made:

In rule 31.8(154D), numbered paragraph “4,” the phrase “degree was completed prior to June 30, 2008, or verifying completion of a master’s degree of 60 hours or equivalent after July 1, 2008, or the appropriate doctoral degree” has been replaced with “the applicant entered a program of study prior to July 1, 2008, or verifying completion of a master’s degree of 60 hours or equivalent if the applicant entered a program of study on or after July 1, 2008, or the appropriate doctoral degree.”

Additionally, a new Item 10 has been added, rescinding rules 645—32.5(154D,272C), 645—32.6(154D,272C), and 645—32.9(154D,272C). These rules have been moved to 645—Chapter 4, Board Administrative Processes. Subsequent item statements have been renumbered accordingly.

These amendments were adopted by the Iowa Board of Behavioral Science on December 11, 2008.

These amendments will become effective February 18, 2009.

These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

The following amendments are adopted.

ITEM 1. Rescind and reserve **645—Chapter 30**.

ITEM 2. Rescind and reserve rules **645—31.9(147)**, **645—31.13(147)**, **645—31.14(147)** and **645—31.15(17A,147,272C)**.

ITEM 3. Strike “board of behavioral science examiners” wherever it appears in **645—Chapter 31** and insert “board of behavioral science” in lieu thereof.

ITEM 4. Adopt the following **new** definitions in rule **645—31.1(154D)**:

“CCE” means the Center for Credentialing and Education, Inc.

“*Temporary license*” means a license to practice marital and family therapy or mental health counseling under direct supervision of a qualified supervisor as determined by the board by rule to fulfill the postgraduate supervised clinical experience requirement in accordance with this chapter.

ITEM 5. Amend rule 645—31.4(154D) as follows:

645—31.4(154D) Educational qualifications for marital and family therapists. The applicant must present proof of meeting the following educational requirements for licensure as a marital and family therapist:

31.4(1) Accredited program. Applicants must present with the application an official transcript verifying completion of a master’s degree of ~~45~~ 60 semester hours (or ~~60~~ 80 quarter hours or equivalent) or a doctoral degree in marital and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) from a college or university accredited by an agency recognized by the United States Department of Education, ~~or the Council on Postsecondary Accreditation; or Applicants who entered a program of study prior to July 1, 2008,~~ must present with the application an official transcript verifying completion of a master’s degree of 45 semester hours or the equivalent; or

31.4(2) Content-equivalent program. Applicants must present ~~with the application~~ an official transcript verifying completion of a master’s degree of ~~45~~ 60 semester hours (or ~~60~~ 80 quarter hours or equivalent) or a doctoral degree in a mental health, behavioral science, or a counseling-related field

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

from a college or university accredited by an agency recognized by the United States Department of Education or the Council on Postsecondary Accreditation, which is content-equivalent to a graduate degree in marital and family therapy. Applicants who entered a program of study prior to July 1, 2008, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. After March 31, 2009, graduates from non-COAMFTE-accredited marital and family therapy programs shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation. In order to qualify as a "content-equivalent" degree, a graduate transcript must document:

- a. At least ~~three courses~~ 9 semester hours or the equivalent in each of the three areas listed below:
 - (1) to (3) No change.
- b. At least ~~one course~~ 3 semester hours or the equivalent in each of the two areas listed below:
 - (1) Ethics and professional studies. Any course which deals primarily in areas such as professional socialization and the role of the professional organization; legal responsibilities and liabilities; independent practice and interprofessional cooperation; ~~ethics~~ ethical issues in marital and family counseling; and family law.
 - (2) Research. Any course which deals primarily in areas such as research design, methods, statistics; research in marital and family studies and therapy.

If the applicant has taught a graduate-level course as outlined above at a college or university accredited by an agency recognized by the United States Department of Education or the Council on Professional Accreditation, that course will be credited toward the course requirements.

c. A ~~practicum/internship~~ graduate-level clinical practicum in marital and family therapy of at least 300 clock hours is required for all applicants. ~~The internship hours may be used to count toward the supervision requirement.~~

~~31.4(3) All courses must be at least three graduate semester credit hours. One semester hour shall equal 15 clock hours of course time. A course may not be used more than once to fulfill more than one content area.~~

ITEM 6. Amend rule 645—31.5(154D) as follows:

645—31.5(154D) Clinical experience requirements for marital and family therapists.

31.5(1) The supervised clinical experience shall:

- a. Be a minimum of two years or the equivalent of full-time supervised clinical work experience in marital and family therapy;
- b. Be completed following the practicum and all graduate coursework, with the exception of the thesis;
- c. Include successful completion of at least ~~200~~ 300 hours of clinical supervision concurrent with ~~1,000~~ 2,000 hours of marital and family therapy conducted in ~~face-to-face contact~~ person with couples, families, and individuals. Applicants who entered a program of study prior to July 1, 2008, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of marital and family therapy conducted in person with couples, families, and individuals;
- ~~d. —Have only supervised clinical contact credited for this requirement; and~~
- ~~e. d. Include at least 100 150 of the 200 300 hours of clinical supervision as individual supervision. Applicants who entered a program of study prior to July 1, 2008, shall include at least 100 of the 200 hours of clinical supervision as individual supervision;~~
- ~~e. Have 50 percent (150 hours) of the clinical supervision conducted in person. Applicants who entered a program of study prior to July 1, 2008, shall have 100 hours of the clinical supervision conducted in person; and~~
- ~~f. Have only supervised clinical contact credited for this requirement.~~

31.5(2) To meet the requirements of the supervised clinical experience:

- a. The supervisee must:

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(1) Meet with the supervisor for a minimum of ~~one hour per week, face to face and individually~~ four hours per month;

~~(2) Have training that is appropriate to the functions to be performed;~~

~~(3) (2) Offer documentation in the name of the supervising marital and family therapist of supervised hours signed by the supervisor;~~

~~(4) Begin the experience after all academic requirements are met for the master's degree or higher;~~

~~(5) (3) Compute part-time employment on a prorated basis for the supervised professional experience;~~

~~(6) (4) Have the background, training, and experience that is appropriate to the functions performed;~~

~~(7) (5) Have supervision that is clearly distinguishable from personal psychotherapy and is contracted in order to serve professional/vocational goals;~~

~~(8) (6) Have individual supervision that shall be face to face in person with no more than one supervisor to two supervisees;~~

~~(9) (7) Have group supervision that may be completed with up to ~~six~~ ten supervisees and a supervisor; and~~

~~(10) (8) Not participate in the following activities which are deemed unacceptable for clinical supervision:~~

1. Peer supervision, i.e., supervision by a person of equivalent, but not superior, qualifications, status, and experience.

2. Supervision, by current or former family members, or any other person, in which the nature of the personal relationship prevents, or makes difficult, the establishment of a professional relationship.

3. Administrative supervision, e.g., clinical practice performed under administrative rather than clinical supervision of an institutional director or executive.

4. A primarily didactic process wherein techniques or procedures are taught in a group setting, classroom, workshop, or seminar.

5. Consultation, staff development, or orientation to a field or program, or role-playing of family interrelationships as a substitute for current clinical practice in an appropriate clinical situation.

b. The supervisor shall:

(1) Be an Iowa-licensed ~~marriage marital~~ and family therapist with a minimum of three years of clinical experience following licensure; or

(2) Be a supervisor or ~~supervisor-in-training~~ supervisor candidate approved by the American Association for Marriage and Family Therapy Commission on Supervision; or

(3) ~~Be an alternate supervisor who possesses qualifications equivalent to a licensed marital and family therapist or satisfies the criteria for clinical membership of the American Association of Marriage and Family Therapy (AAMFT);~~ Be licensed under Iowa Code chapter 147 and have a minimum of three years of full-time professional work experience, including experience in marital and family therapy, as approved by the board; and

(4) Meet a minimum of ~~one hour per week, face to face and individually~~ four hours per month with the supervisee; and

(5) Provide training that is appropriate to the functions to be performed; and

(6) Ensure that therapeutic work is completed under the professional supervision of a supervisor; and

(7) Not supervise any marital and family therapy or permit the supervisee to engage in any therapy which the supervisor cannot perform competently.

31.5(3) No change.

ITEM 7. Rescind rule 645—31.6(154D) and adopt the following new rule in lieu thereof:

645—31.6(154D) Educational qualifications for mental health counselors. The applicant must present proof of meeting the following educational requirements for a mental health counselor:

31.6(1) Accredited program. Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or equivalent quarter hours) or

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a doctoral degree in counseling with emphasis in mental health counseling from a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2008, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

31.6(2) Content-equivalent program. Applicants must present an official transcript verifying completion of a master's degree or a doctoral degree from a college or university accredited by an agency recognized by the United States Department of Education which is content-equivalent to a master's degree in counseling with emphasis in mental health counseling. Applicants who entered a program of study prior to July 1, 2008, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. After March 31, 2009, graduates from non-CACREP-accredited mental health counseling programs shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation. The degree will be considered as "content-equivalent" if it includes 60 semester hours (or equivalent quarter hours) and successful completion of graduate-level coursework in each of the following areas:

a. Professional identity. Studies that provide an understanding of all of the following aspects of professional functioning:

- (1) History and philosophy of the counseling profession, including significant factors and events;
- (2) Professional roles, functions, and relationships with other providers of human services;
- (3) Technological competence and computer literacy;
- (4) Professional organizations, primarily ACA, its divisions, branches, and affiliates, including membership benefits, activities, services to members, and current emphases;
- (5) Professional credentialing, including certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues;
- (6) Public and private policy processes, including the role of the professional counselor in advocating on behalf of the profession;
- (7) Advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients; and
- (8) Ethical standards of ACA and related entities, and applications of ethical and legal considerations in professional counseling.

b. Social and cultural diversity. Studies that provide an understanding of the cultural context of relationships, issues, and trends in a multicultural and diverse society related to such factors as culture, ethnicity, nationality, age, gender, sexual orientation, mental and physical characteristics, education, family values, religious and spiritual values, socioeconomic status and unique characteristics of individuals, couples, families, ethnic groups, and communities including all of the following:

- (1) Multicultural and pluralistic trends, including characteristics and concerns between and within diverse groups nationally and internationally;
- (2) Attitudes, beliefs, understandings, and acculturative experiences, including specific experiential learning activities;
- (3) Individual, couple, family, group, and community strategies for working with diverse populations and ethnic groups;
- (4) Counselors' roles in social justice, advocacy and conflict resolution, cultural self-awareness, the nature of biases, prejudices, processes of intentional and unintentional oppression and discrimination, and other culturally supported behaviors that are detrimental to the growth of the human spirit, mind or body;
- (5) Theories of multicultural counseling, theories of identity development, and multicultural competencies; and
- (6) Ethical and legal considerations.

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c. Human growth and development. Studies that provide an understanding of the nature and needs of individuals at all developmental levels, including all of the following:

- (1) Theories of individual and family development and transitions across the life span;
- (2) Theories of learning and personality development;
- (3) Human behavior including an understanding of developmental crises, disability, exceptional behavior, addictive behavior, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior;
- (4) Strategies for facilitating optimum development over the life span; and
- (5) Ethical and legal considerations.

d. Career development. Studies that provide an understanding of career development and related life factors, including all of the following:

- (1) Career development theories and decision-making models;
- (2) Career, avocational, educational, occupational and labor market information resources, visual and print media, computer-based career information systems, and other electronic career information systems;
- (3) Career development program planning, organization, implementation, administration, and evaluation;
- (4) Interrelationships among and between work, family, and other life roles and factors including the role of diversity and gender in career development;
- (5) Career and educational planning, placement, follow-up, and evaluation;
- (6) Assessment instruments and techniques that are relevant to career planning and decision making;
- (7) Technology-based career development applications and strategies, including computer-assisted career guidance and information systems and appropriate worldwide Web sites;
- (8) Career counseling processes, techniques, and resources, including those applicable to specific populations; and
- (9) Ethical and legal considerations.

e. Helping relationships. Studies that provide an understanding of counseling and consultation processes, including all of the following:

- (1) Counselor and consultant characteristics and behaviors that influence helping processes including age, gender, and ethnic differences, verbal and nonverbal behaviors and personal characteristics, orientations, and skills;
- (2) An understanding of essential interviewing and counseling skills so that the student is able to develop a therapeutic relationship, establish appropriate counseling goals, design intervention strategies, evaluate client outcome, and successfully terminate the counselor-client relationship. Studies will also facilitate student self-awareness so that the counselor-client relationship is therapeutic and the counselor maintains appropriate professional boundaries;
- (3) Counseling theories that provide the student with a consistent model(s) to conceptualize client presentation and select appropriate counseling interventions. Student experiences should include an examination of the historical development of counseling theories, an exploration of affective, behavioral, and cognitive theories, and an opportunity to apply the theoretical material to case studies. Students will also be exposed to models of counseling that are consistent with current professional research and practice in the field so that they can begin to develop a personal model of counseling;
- (4) A systems perspective that provides an understanding of family and other systems theories and major models of family and related interventions. Students will be exposed to a rationale for selecting family and other systems theories as appropriate modalities for family assessment and counseling;
- (5) A general framework for understanding and practicing. Student experiences should include an examination of the historical development of consultation, an exploration of the stages of consultation and the major models of consultation, and an opportunity to apply the theoretical material to case presentations. Students will begin to develop a personal model of consultation;
- (6) Integration of technological strategies and applications within counseling and consultation processes; and

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(7) Ethical and legal considerations.

f. Group work. Studies that provide both theoretical and experiential understanding of group purpose, development, dynamics, counseling theories, group counseling methods and skills, and other group approaches, including all of the following:

(1) Principles of group dynamics, including group process components, developmental stage theories, group members' roles and behaviors, and therapeutic factors of group work;

(2) Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(3) Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;

(4) Group counseling methods, including group counselor orientations and behaviors, appropriate selection criteria and methods, and methods of evaluation of effectiveness;

(5) Approaches used for other types of group work, including task groups, psychoeducational groups, and therapy groups;

(6) Professional preparation standards for group leaders; and

(7) Ethical and legal considerations.

g. Assessment. Studies that provide an understanding of individual and group approaches to assessment and evaluation, including the following:

(1) Historical perspectives concerning the nature and meaning of assessment;

(2) Basic concepts of standardized and nonstandardized testing and other assessment techniques including norm-referenced and criterion-referenced assessment, environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;

(3) Statistical concepts, including scales of measurement, measures of central tendency, indices of variability, shapes and types of distributions, and correlations;

(4) Reliability (i.e., theory of measurement error, models of reliability, and the use of reliability information);

(5) Validity (i.e., evidence of validity, types of validity, and the relationship between reliability and validity);

(6) Age, gender, sexual orientation, ethnicity, language, disability, culture, spirituality, and other factors related to the assessment and evaluation of individuals, groups, and specific populations;

(7) Strategies for selecting, administering, and interpreting assessment and evaluation instruments and techniques in counseling;

(8) An understanding of general principles and methods of case conceptualization, assessment, or diagnoses of mental and emotional status; and

(9) Ethical and legal considerations.

h. Research and program evaluation. Studies that provide an understanding of research methods, statistical analysis, needs assessment, and program evaluation, including all of the following:

(1) The importance of research and opportunities and difficulties in conducting research in the counseling profession;

(2) Research methods such as qualitative, quantitative, single-case designs, action research, and outcome-based research;

(3) Use of technology and statistical methods in conducting research and program evaluation, assuming basic computer literacy;

(4) Principles, models, and applications of needs assessment, program evaluation, and use of findings to effect program modifications;

(5) Use of research to improve counseling effectiveness; and

(6) Ethical and legal considerations.

i. Diagnosis and treatment planning. Studies that provide an understanding of individual and group approaches to assessment and evaluation. Studies in this area include, but are not limited to, the following:

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- (1) The principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual;
- (2) The established diagnostic criteria for mental or emotional disorders that describe treatment modalities and placement criteria within the continuum of care;
- (3) The impact of co-occurring substance use disorders on medical and psychological disorders;
- (4) The relevance and potential biases of commonly used diagnostic tools as related to multicultural populations;
- (5) The appropriate use of diagnostic tools, including the current edition of the Diagnostic and Statistical Manual, to describe the symptoms and clinical presentation of clients with mental or emotional impairments; and
- (6) The ability to conceptualize accurate multi-axial diagnoses of disorders presented by clients and how to communicate the differential diagnosis to clients' managed care and insurance companies or other third-party payers.

j. Psychopathology. Studies that provide an understanding of emotional and mental disorders experienced by persons of all ages, characteristics of disorders, and common nosologies of emotional and mental disorders utilized within the U.S. health care system for diagnosis and treatment planning. Studies in this area include, but are not limited to, the following:

- (1) Study of cognitive, behavioral, physiological and interpersonal mechanisms for adapting to change and to stressors;
- (2) Role of genetic, physiological, cognitive, environmental and interpersonal factors, and their interactions, on development of the form, severity, course and persistence of the various types of disorders and dysfunction;
- (3) Research methods and findings pertinent to the description, classification, diagnosis, origin, and course of disorders and dysfunction;
- (4) Theoretical perspectives relevant to the origin, development, and course and outcome for the forms of behavior disorders and dysfunction; and
- (5) Methods of intervention or prevention used to minimize and modify maladaptive behaviors, disruptive and distressful cognition, or compromised interpersonal functioning associated with various forms of maladaptation.

k. Practicum. A graduate-level clinical supervised counseling practicum in which students must complete supervised practicum experiences that total a minimum of 100 clock hours prior to receiving the master's degree. The practicum provides for the development of counseling skills under supervision. The student's practicum includes all of the following:

- (1) Forty hours of direct service with clients, including experience in individual counseling and group work;
- (2) Weekly interaction with an average of one hour per week of individual and triadic supervision which occurs regularly over a minimum of one academic term by a program faculty member or a supervisor working under the supervision of a program faculty member;
- (3) An average of one and one-half hours per week of group supervision that is provided on a regular schedule over the course of the student's practicum by a program faculty member or a supervisor under the supervision of a program faculty member; and
- (4) Evaluation of the student's performance throughout the practicum including a formal evaluation after the student completes the practicum.

l. Internship. A graduate-level clinical supervised counseling internship that requires students to complete a supervised internship of 600 clock hours that is begun after successful completion of the student's practicum and prior to receiving the master's degree. The internship provides an opportunity for the student to perform, under supervision, a variety of counseling activities that a professional counselor is expected to perform. The student's internship includes all of the following:

- (1) A minimum of 240 hours of direct service with clientele appropriate to the program of study;
- (2) A minimum of one hour per week of individual supervision and triadic supervision, throughout the internship, usually performed by the on-site supervisor;

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(3) A minimum of one and one-half hours per week of group supervision, throughout the internship, usually performed by a program faculty member supervisor;

(4) The opportunity for the student to become familiar with a variety of professional activities in addition to direct service (e.g., record keeping, supervision, information and referral, in-service and staff meetings);

(5) The opportunity for the student to develop program-appropriate audiotapes or videotapes, or a combination of both, of the student's interactions with clients for use in supervision;

(6) The opportunity for the student to gain supervised experience in the use of a variety of professional resources such as assessment instruments, technologies, print and nonprint media, professional literature, and research; and

(7) A formal evaluation of the student's performance during the internship by a program faculty member in consultation with the site supervisor.

If the applicant has taught a graduate-level course as outlined above at a college or university accredited by an agency recognized by the United States Department of Education or the Council on Professional Accreditation, that course may be credited toward the course requirement.

31.6(3) *Foreign-trained marital and family therapists or mental health counselors.* Foreign-trained marital and family therapists or mental health counselors shall:

a. Provide an equivalency evaluation of their educational credentials by the following: International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone (310)258-9451; Web site www.ierf.org or E-mail at info@ierf.org. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a mental health counselor program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

ITEM 8. Amend subrules 31.7(1) and 31.7(2) as follows:

31.7(1) The supervised clinical experience shall:

a. Be a minimum of two years or the equivalent of full-time supervised professional work experience in mental health counseling;

b. Be completed following completion of the practicum and all graduate coursework, with exception of the thesis;

c. Include successful completion of at least ~~200~~ 300 hours of clinical supervision concurrent with ~~1,000~~ 2,000 hours of mental health counseling conducted in ~~face-to-face contact~~ person with individuals, couples or families. Applicants who entered a program of study prior to July 1, 2008, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of mental health counseling conducted in person with couples, families and individuals;

~~d. — Have only supervised clinical contact credited for this requirement; and~~

~~e. d.~~ Include at least ~~100~~ 150 of the ~~200~~ 300 hours of supervision as individual supervision. Applicants who entered a program of study prior to July 1, 2008, shall include at least 100 of the 200 hours of clinical supervision as individual supervision;

e. Include 50 percent (150 hours) of all clinical supervision in person. Applicants who entered a program of study prior to July 1, 2008, shall have 100 hours of the clinical supervision conducted in person; and

f. Have only supervised clinical contact credited for this requirement.

31.7(2) To meet the requirements of the supervised clinical experience:

a. The supervisee must:

(1) Meet with the supervisor a minimum of ~~one hour per week, face to face and individually~~ four hours per month;

~~(2) — Have training that is appropriate to the functions to be performed;~~

~~(3)~~ (2) Offer documentation in the name of the supervising mental health counselor of supervised hours signed by the supervisor;

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- ~~(4)~~ ~~Begin the experience after all academic requirements are met for the master's degree or higher;~~
~~(5)~~ (3) Compute part-time employment on a prorated basis for the supervised professional experience;
- ~~(6)~~ (4) Have the background, training, and experience that are appropriate to the functions performed;
- ~~(7)~~ (5) Have supervision that is clearly distinguishable from personal counseling and is contracted in order to serve professional/vocational goals;
- ~~(8)~~ (6) Have individual supervision that shall be ~~face to face~~ in person with no more than one supervisor to two supervisees;
- ~~(9)~~ (7) Have group supervision that may be completed with up to ~~six~~ ten supervisees and a supervisor; and
- ~~(10)~~ (8) Not participate in the following activities which are deemed unacceptable for clinical supervision:
1. Peer supervision, i.e., supervision by a person of equivalent, but not superior, qualifications, status, and experience.
 2. Supervision, by current or former family members, or any other person, in which the nature of the personal relationship prevents, or makes difficult, the establishment of a professional relationship.
 3. Administrative supervision, e.g., clinical practice performed under administrative rather than clinical supervision of an institutional director or executive.
 4. A primarily didactic process wherein techniques or procedures are taught in a group setting, classroom, workshop, or seminar.
 5. Consultation, staff development, or orientation to a field or program, or role-playing of family interrelationships as a substitute for current clinical practice in an appropriate clinical situation.
- b. The supervisor:
- (1) May be a licensed mental health counselor in Iowa with at least three years of postlicensure clinical experience; or
 - (2) Shall be approved by the National Board for Certified Counselors (NBCC) as a supervisor; or
 - (3) May be an alternate supervisor who possesses qualifications equivalent to a licensed mental health counselor with at least three years of postlicensure clinical experience, including mental health professionals licensed pursuant to Iowa Code chapter 147; and
 - (4) Shall meet a minimum of ~~one hour per week, face to face and individually~~ four hours per month with the supervisee; and
 - (5) Shall provide training that is appropriate to the functions to be performed; and
 - (6) Shall ensure that therapeutic work is done under the professional supervision of a supervisor; and
 - (7) Shall not supervise any mental health counselor or permit the supervisee to engage in any therapy which the supervisor cannot perform competently.

ITEM 9. Amend rule 645—31.8(154D) as follows:

645—31.8(154D) Licensure by endorsement. An applicant who has been a licensed marriage and family therapist or mental health counselor under the laws of another jurisdiction may file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. to 3. No change.
4. Provides official copies of the academic transcripts sent directly from the school to the board verifying completion of a master's degree of 45 hours or equivalent if the applicant entered a program of study prior to July 1, 2008, or verifying completion of a master's degree of 60 hours or equivalent if the applicant entered a program of study on or after July 1, 2008, or the appropriate doctoral degree. After March 31, 2009, graduates from a non-CACREP-accredited mental health counselor program or a non-COAMFTE-accredited marital and family therapy program shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE),

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Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation;

5. to 7. No change.

ITEM 10. Rescind and reserve rules **645—32.5(154D,272C)**, **645—32.6(154D,272C)** and **645—32.9(154D,272C)**.

ITEM 11. Strike “board of behavioral science examiners” wherever it appears in **645—Chapter 32** and insert “board of behavioral science” in lieu thereof.

ITEM 12. Strike “board of behavioral science examiners” wherever it appears in **645—Chapter 33** and insert “board of behavioral science” in lieu thereof.

ITEM 13. Amend paragraph **33.2(1)“b”** as follows:

b. Mental health counselors. Failure to comply with the current Code of Ethics of the American ~~Mental Health Counselors Association (AMHCA)~~ Counseling Association (ACA), which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the ~~AMHCA~~ ACA Web site.

ITEM 14. Renumber subrules **33.2(30)** and **33.2(31)** as **33.2(32)** and **33.2(33)**.

ITEM 15. Adopt the following new subrules 33.2(30) and 33.2(31):

33.2(30) Sexual relationships.

a. Current clients. A licensee shall not engage in sexual activities or sexual contact with a client, regardless of whether such contact is consensual or nonconsensual.

b. Former clients. A licensee shall not engage in sexual activities or sexual contact with a former client within the five years following termination of the client relationship. A licensee shall not engage in sexual activities or sexual contact with a former client, regardless of the length of time elapsed since termination of the client relationship, if the client has a history of physical, emotional, or sexual abuse or if the client has ever been diagnosed with any form of psychosis or personality disorder or if the client is likely to remain in need of therapy due to the intensity or chronicity of a problem.

c. A licensee shall not engage in sexual activities or sexual contact with a client’s or former client’s spouse or significant other.

d. A licensee shall not engage in sexual activities or sexual contact with a client’s or former client’s relative within the second degree of consanguinity (client’s parent, grandparent, child, grandchild, or sibling) when there is a risk of exploitation or potential harm to a client or former client.

e. A licensee shall not provide clinical services to an individual with whom the licensee has had prior sexual contact.

33.2(31) Physical contact. A licensee shall not engage in physical contact with a client when there is a possibility of psychological harm to the client as a result of the contact. A licensee who engages in appropriate physical contact with a client is responsible for setting clear, appropriate, and culturally and age-sensitive boundaries which govern such contact.

ITEM 16. Rescind and reserve rule **645—33.5(154D)**.

ITEM 17. Rescind and reserve **645—Chapter 34**.

[Filed 12/11/08, effective 2/18/09]

[Published 1/14/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7477B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetics hereby rescinds Chapter 80, “Administrative and Regulatory Authority for the Board of Dietetic Examiners,” amends

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Chapter 81, “Licensure of Dietitians,” Chapter 82, “Continuing Education for Dietitians,” and Chapter 83, “Discipline for Dietitians,” and rescinds Chapter 84, “Fees,” Iowa Administrative Code.

These amendments rescind chapters and rules that duplicate existing rules in 645—Chapters 4 and 5; eliminate outdated or duplicative language in the requirements for licensure, continuing education, and discipline; revise grounds for discipline to be consistent with changes in Iowa Code chapter 147; and provide for Web-based reporting of name and address changes by licensees.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 7045B**. A public hearing was held on August 20, 2008, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

These amendments are identical to those published under Notice.

These amendments will become effective February 18, 2009.

These amendments are intended to implement Iowa Code chapters 21, 147, 152A and 272C.

The following amendments are adopted.

ITEM 1. Rescind and reserve **645—Chapter 80**.

ITEM 2. Strike the words “board of dietetic examiners” wherever they appear in **645—Chapter 81** to **Chapter 83** and insert the words “board of dietetics” in lieu thereof.

ITEM 3. Rescind and reserve rules **645—81.8(152A)**, **645—81.11(147)**, **645—81.12(147)** and **645—81.14(17A,147,272C)**.

ITEM 4. Rescind and reserve rules **645—82.4(152A,272C)**, **645—82.5(152A,272C)**, **645—82.6(152A,272C)** and **645—82.9(152A,272C)**.

ITEM 5. Amend subrule 83.2(2), introductory paragraph, as follows:

83.2(2) Professional ~~incompetency~~ incompetence. Professional ~~incompetency~~ incompetence includes, but is not limited to:

ITEM 6. Amend subrule 83.2(11) as follows:

83.2(11) Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee’s ability to practice dietetics. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

ITEM 7. Amend subrule 83.2(25) as follows:

83.2(25) Failure to report a change of name or address within 30 days after it occurs. Name and address changes may be reported on the form provided by the board at: www.idph.state.ia.us/licensure.

ITEM 8. Rescind and reserve rule **645—83.5(152A)**.

ITEM 9. Rescind and reserve **645—Chapter 84**.

[Filed 12/11/08, effective 2/18/09]

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PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Hearing Aid Dispensers hereby rescinds Chapter 120, “Administrative and Regulatory Authority for the Board of Examiners for the Licensing and Regulation of Hearing Aid Dispensers,” amends Chapter 121, “Licensure of Hearing Aid Dispensers,” Chapter 122, “Continuing Education for Hearing Aid Dispensers,” and Chapter 124, “Discipline for Hearing Aid Dispensers,” and rescinds Chapter 125, “Fees,” Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These amendments rescind chapters and rules that duplicate existing rules in 645—Chapters 4 and 5; eliminate outdated or duplicative language in the requirements for licensure, continuing education, and discipline; and revise grounds for discipline to be consistent with changes in Iowa Code chapter 147.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7156B**. A public hearing was held on October 14, 2008, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

These amendments are identical to those published under Notice.

These amendments will become effective February 18, 2009.

These amendments are intended to implement Iowa Code chapters 21, 147, 154A and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind Chs 120, 125; amend Chs 121, 122, 124] is being omitted. These amendments are identical to those published under Notice as **ARC 7156B**, IAB 9/24/08.

[Filed 12/11/08, effective 2/18/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7507B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology hereby rescinds Chapter 299, "Administrative and Regulatory Authority for the Board of Speech Pathology and Audiology Examiners," amends Chapter 300, "Licensure of Speech Pathologists and Audiologists," Chapter 303, "Continuing Education for Speech Pathologists and Audiologists," and Chapter 304, "Discipline for Speech Pathologists and Audiologists," and rescinds Chapter 305, "Fees," Iowa Administrative Code.

These amendments update requirements for applicants applying for temporary licensure as speech pathologists and audiologists; add clarity regarding supervisory requirements for temporary audiology licensure; stipulate that a supervisor for an audiologist with a temporary license must be on site and define "on site"; rescind rule 645—304.5(147), which pertains to orders for a mental, physical or clinical competency examination or alcohol or drug screening, because that subject is now addressed in the Division's common chapter on discipline; and rescind two chapters that have been included in the common chapters for the Division. Additionally, the amendments update references to the name of the Board in response to 2007 Iowa Acts, Senate File 74, which renames health-related examining boards as licensing boards.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 22, 2008, as **ARC 7280B**. A public hearing was held on November 12, 2008, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

These amendments were adopted by the Iowa Board of Speech Pathology and Audiology on December 12, 2008.

These amendments will become effective on February 18, 2009.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These amendments are intended to implement Iowa Code chapters 21, 147, and 272C and 2008 Iowa Acts, Senate File 2338, sections 71 to 76.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind Chs 299, 305; amend Chs 300, 303, 304] is being omitted. These amendments are identical to those published under Notice as **ARC 7280B**, IAB 10/22/08.

[Filed 12/22/08, effective 2/18/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7510B**REAL ESTATE COMMISSION[193E]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 543B.18, the Real Estate Commission hereby amends Chapter 16, "Prelicense Education and Continuing Education," and Chapter 17, "Approval of Schools, Courses, and Instructors," Iowa Administrative Code.

These amendments are intended to clarify the original intent of the attendance policy.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7087B** on August 27, 2008.

No public comment was received on these amendments. These amendments are identical to those published under Notice.

These amendments were adopted by the Commission on December 11, 2009.

These amendments are intended to implement Iowa Code chapter 543B.

These amendments shall become effective February 18, 2009.

The following amendments are adopted.

ITEM 1. Amend rule 193E—16.7(543B) as follows:

193E—16.7(543B) Full-time attendance. Successful completion of continuing education requires full-time attendance throughout the program, course or activity. A student who arrives late, leaves during class or leaves early ~~may~~ shall not receive a certificate.

ITEM 2. Amend subrule 17.2(4) as follows:

17.2(4) An attendance certificate shall not be issued to a licensee who is absent from a continuing education program, course, or activity. The program, course, or activity must be completed in its entirety. A student who arrives late, leaves during class or leaves early ~~may~~ shall not receive an attendance certificate.

[Filed 12/22/08, effective 2/18/09]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7493B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby amends Chapter 11, "Administration," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 10, p. 1195-1197, on November 5, 2008, as **ARC 7331B**.

REVENUE DEPARTMENT[701](cont'd)

This amendment to rule 701—11.10(422) is intended to implement Iowa Code section 423.35. The amendment serves several purposes, primarily to explain and enhance in several ways the Department's current bonding requirement for delinquent sales tax permit holders. The amendment changes the bonding requirement to an optional action. The amendment clarifies that the term "delinquencies" applies to both timely payment of the sales tax and timely filing of the sales tax return. The amendment describes the Department's current practice of applying the bond toward any outstanding tax liability of the permit holder. The amendment allows sales tax permit holders who have maintained a good filing record for a period of two years to request a return of the bond; in addition, the amendment allows the Department to return the bond to the sales tax permit holder without a formal request. Finally, the amendment serves the secondary purpose of changing outdated references from Iowa Code chapter 422 to Iowa Code chapter 423.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective February 18, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code section 423.35.

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 [11.10] is being omitted. This amendment is identical to that published under Notice as **ARC 7331B**, IAB 11/5/08.

[Filed 12/17/08, effective 2/18/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7495B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby adopts amendments to Chapter 32, "Receipts Exempt From Use Tax," and Chapter 33, "Receipts Subject to Use Tax Depending on Method of Transaction," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 10, p. 1197-1201, on November 5, 2008, as **ARC 7327B**.

These amendments are adopted as the result of 2008 Iowa Acts, House File 2700. The amendments to rules 701—32.3(423), 701—33.9(423) and 701—33.10(423) reflect the change in the exemption amount from 40 percent to 80 percent pursuant to 2008 Iowa Acts, House File 2700, section 64.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective February 18, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code section 423.6(14) as amended by 2008 Iowa Acts, House File 2700, section 64.

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 [32.3, 33.9, 33.10] is being omitted. These amendments are identical to those published under Notice as **ARC 7327B**, IAB 11/5/08.

[Filed 12/17/08, effective 2/18/09]

[Published 1/14/09]

[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7497B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby adopts amendments to Chapter 86, "Inheritance Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 10, p. 1201, on November 5, 2008, as **ARC 7326B**.

The amendments create new subrule 86.5(14) in order to implement 2008 Iowa Acts, House File 2673, section 2, and revise the implementation sentence of rule 701—86.5(450). Subrule 86.5(14) explains the exemption from inheritance tax for the value of any interest in a qualified school tuition plan as defined in Section 529 of the Internal Revenue Code.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective February 18, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code Supplement section 450.4 as amended by 2008 Iowa Acts, House File 2673.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 86.5(14):

86.5(14) Qualified tuition plans exempt. Effective for estates of decedents dying on or after July 1, 2008, in the event that the decedent was the sole plan participant in a qualified school tuition plan, as defined in Section 529 of the Internal Revenue Code; or in the event that a named co-plan participant does not have a lineal relationship to the named beneficiary of the qualified tuition plan, the value of the decedent's interest in the qualified tuition plan is not subject to Iowa inheritance tax and therefore is not includable in the decedent's gross estate for tax purposes. This provision applies only to qualified tuition plans in existence on or after July 1, 1998.

ITEM 2. Amend rule **701—86.5(450)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 422.7(4), 450.2, 450.3 ~~as amended by 2003 Iowa Acts, chapter 95, section 3~~, 450.4(5), 450.8, 450.12, 450.37, 450.91, 633.699, and 633.703A and Iowa Code Supplement section 450.4 as amended by 2008 Iowa Acts, House File 2673, section 2.

[Filed 12/17/08, effective 2/18/09]

[Published 1/14/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/14/09.

ARC 7496B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby adopts amendments to Chapter 86, "Inheritance Tax," and Chapter 87, "Estate Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 10, p. 1202, on November 5, 2008, as **ARC 7333B**.

The amendments are as follows:

- Item 1 amends Chapter 86 to create new rule 701—86.15(450).
- Item 2 renumbers subrules 87.1(1) and 87.1(2) as 87.1(2) and 87.1(3).
- Item 3 creates new subrule 87.1(1).
- Item 4 amends rule 701—87.6(451) to revise applicability dates.

These amendments are identical to those published under Notice of Intended Action.

REVENUE DEPARTMENT[701](cont'd)

These amendments will become effective February 18, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2350, section 37, which repeals Iowa Code chapter 451, "Iowa Estate Tax."

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 [86.15, 87.1, 87.6] is being omitted. These amendments are identical to those published under Notice as **ARC 7333B**, IAB 11/5/08.

[Filed 12/17/08, effective 2/18/09]

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[For replacement pages for IAC, see IAC Supplement 1/14/09.]

ARC 7494B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby adopts new Chapter 153, "License Sanctions for Collection of Debts Owed the State of Iowa or a State Agency," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 10, p. 1203-1208, on November 5, 2008, as **ARC 7335B**.

This amendment is adopted as a result of 2008 Iowa Acts, Senate File 2428, sections 7 through 15.

The amendment adopts new Chapter 153 to describe the Department of Revenue's Centralized Collections Unit's role in processing professional license sanctions for collection of debt owed to the state of Iowa or to a state agency.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective February 18, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement 2008 Iowa Acts, Senate File 2428, sections 7 to 15.

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 [Ch 153] is being omitted. This amendment is identical to that published under Notice as **ARC 7335B**, IAB 11/5/08.

[Filed 12/17/08, effective 2/18/09]

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AGENCY	RULE	DELAY
Iowa Finance Authority[265]	9.7(2), definition of “Title plant” [IAB 12/3/08, ARC 7403B]	Effective date of January 7, 2009, delayed 70 days by the Administrative Rules Review Committee at its meeting held December 9, 2008. [Pursuant to §17A.4(6)]