



# IOWA ADMINISTRATIVE BULLETIN

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Pages 1435 to 1512

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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"]; and agricultural credit corporation maximum loan rates [535.12].

**PLEASE NOTE:** Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

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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 2B.5A, 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 2013

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
21	Friday, March 29, 2013	April 17, 2013
22	Friday, April 12, 2013	May 1, 2013
23	Friday, April 26, 2013	May 15, 2013

**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\*\*\***

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, April 12, 2013, at 8:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the April 3, 2013, Iowa Administrative Bulletin.

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Approval of membership in employee organizations, 41.7(8) Filed **ARC 0636C**..... 3/6/13

**AGING, DEPARTMENT ON[17]**

Definitions, 1.5 Filed **ARC 0619C** ..... 3/6/13

Department mission statement and organizational structure, 2.1, 2.5 Filed **ARC 0621C** ..... 3/6/13

Area agency on aging planning and administration, ch 6 Notice of Termination **ARC 0627C** ..... 3/6/13

Area agency on aging planning and administration, 6.2, 6.3, 6.13 to 6.18 Notice **ARC 0640C**..... 3/6/13

AAAs—dietary guidelines and manuals, nutrition sites, 7.14(1), 7.18, 7.23 Filed **ARC 0623C**..... 3/6/13

Aging and disability resource center, ch 23 Filed **ARC 0624C**..... 3/6/13

Iowa senior living program—home- and community-based services for seniors, rescind ch 28 Filed **ARC 0625C** ..... 3/6/13

Reduction of area agencies on aging, ch 29 Filed **ARC 0626C**..... 3/6/13

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

Renewable fuel infrastructure program—update of citations, amendments to chs 13 to 16 Notice **ARC 0645C** ..... 3/20/13

Alternate test for tuberculosis in cervids, 64.34(10)“b,” 64.73(4), 65.9(3)“a”(1) Notice **ARC 0642C**..... 3/6/13

Alternate test for tuberculosis in cervids, 64.34(10)“b,” 64.73(4), 65.9(3)“a”(1) Filed Emergency **ARC 0656C**..... 3/20/13

Meat and poultry inspection, 76.1 to 76.4, 76.13, 76.14 Notice **ARC 0634C** ..... 3/6/13

**ATTORNEY GENERAL[61]**

Forfeited property, 33.3(1), 33.4 Notice **ARC 0646C**..... 3/20/13

**DENTAL BOARD[650]**

**PUBLIC HEALTH DEPARTMENT[641]“umbrella”**  
Public health settings, 10.5(1) Filed **ARC 0629C** ..... 3/6/13

Initial registration for dental assistants, 11.6(2)“e,” 15.3 Filed **ARC 0618C** ..... 3/6/13

Iowa practitioner program and review committee, 35.1 Filed **ARC 0617C**..... 3/6/13

**EDUCATION DEPARTMENT[281]**

Bus inspection fee, 43.30 Notice **ARC 0641C** ..... 3/6/13

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

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Air quality—plantwide applicability limitations (PALs), 33.3(1), 33.9 Notice **ARC 0648C** ..... 3/20/13

**HUMAN SERVICES DEPARTMENT[441]**

Supplementary assistance programs—cost-of-living increase, 51.4(1), 51.7, 52.1 Filed **ARC 0633C**..... 3/6/13

Medicaid—dental coverage, 78.4, 78.28(2) Filed **ARC 0631C** ..... 3/6/13

Medicaid—reclassification and coverage for certain devices and equipment, 78.10, 7.28, 79.1(4) Notice **ARC 0649C**..... 3/20/13

Prior authorization for diabetic equipment and supplies, 78.10, 78.28(1) Filed **ARC 0632C**..... 3/6/13

Programs of all-inclusive care for the elderly (PACE)—eligibility, 88.84(1)“a” Notice **ARC 0639C** ..... 3/6/13

Inclusion of Indian health care providers in IowaCare network, 92.1, 92.8 Notice **ARC 0637C**..... 3/6/13

IowaCare premiums, 92.7(1)“a” Notice **ARC 0638C**..... 3/6/13

**IOWA PUBLIC INFORMATION BOARD[497]**

Organization and administration; complaint investigation and resolution; declaratory orders; contested cases; rule making; fair information practices, chs 1 to 7 Notice **ARC 0644C**..... 3/20/13

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**WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”**  
Boiler and pressure vessel program—“institution of health and custodial care” defined, 90.2 Notice **ARC 0647C** ..... 3/20/13

**PHARMACY BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Emergency/first dose drug supply; destruction of controlled substances in long-term care facilities, 10.18(3), 22.7, 23.5, 23.21(1) Notice **ARC 0652C**..... 3/20/13
- Provision of emergency/first dose drug supply, 22.7(1), 23.5 Notice of Termination **ARC 0643C**..... 3/20/13

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Nursing home administrators—provisional licensure, 141.1, 141.5(1)"e," 141.6, 144.1 Notice **ARC 0651C** ..... 3/20/13

**PUBLIC HEALTH DEPARTMENT[641]**

- AIDS drug assistance program (ADAP), 11.84 to 11.93 Notice **ARC 0650C** ..... 3/20/13
- EMS system development grants, 140.1, 140.4 Notice **ARC 0654C**..... 3/20/13

**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Continuing education, 11.2 Filed **ARC 0635C**..... 3/6/13

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- Continuing education course topics, 17.5(1) Notice **ARC 0628C** ..... 3/6/13

**REGENTS BOARD[681]**

- Application fees, 1.7 Filed **ARC 0630C**..... 3/6/13

**REVENUE DEPARTMENT[701]**

- Valuation of agricultural real estate, 71.3(1) Notice **ARC 0653C**..... 3/20/13

**SOIL CONSERVATION DIVISION[27]**

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

- Soil conservation and water protection practices—funding, amendments to chs 10, 12 Notice **ARC 0655C** ..... 3/20/13

**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

Senator Mark Chelgren  
819 Hutchinson  
Ottumwa, Iowa 52501

Senator Thomas Courtney  
2609 Clearview  
Burlington, Iowa 52601

Senator Wally Horn  
101 Stoney Point Road, SW  
Cedar Rapids, Iowa 52404

Senator Pam Jochum  
2368 Jackson Street  
Dubuque, Iowa 52001

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Representative Rick Olson  
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Representative Dawn Pettengill  
P.O. Box A  
Mt. Auburn, Iowa 52313

Representative Jeff Smith  
1006 Brooks North Lane  
Okoboji, Iowa 51355

Representative Guy Vander Linden  
1610 Carbonado Road  
Oskaloosa, Iowa 52577

Brenna Findley  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 18  
Des Moines, Iowa 50319  
Telephone (515)281-5211

**EDUCATION DEPARTMENT[281]**

Bus inspection fee, 43.30 IAB 3/6/13 <b>ARC 0641C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 26, 2013 10 to 11 a.m.
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**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Air quality—plantwide applicability limitations (PALs), 33.3(1), 33.9 IAB 3/20/13 <b>ARC 0648C</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	April 23, 2013 1 p.m.
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**IOWA PUBLIC INFORMATION BOARD[497]**

Organization and administration; complaint investigation and resolution; agency procedures, chs 1 to 7 IAB 3/20/13 <b>ARC 0644C</b>	Room G-9 State Capitol Des Moines, Iowa	April 9, 2013 10 to 11 a.m.
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**LABOR SERVICES DIVISION[875]**

Boiler and pressure vessel program—"institution of health and custodial care" defined, 90.2 IAB 3/20/13 <b>ARC 0647C</b>	Capitol View Room 1000 East Grand Ave. Des Moines, Iowa	April 10, 2013 9 a.m. (If requested)
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**PROFESSIONAL LICENSURE DIVISION[645]**

Nursing home administrators— provisional licensure, 141.1, 141.5(1)"e," 141.6, 144.1 IAB 3/20/13 <b>ARC 0651C</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 9, 2013 10 to 11 a.m.
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**REAL ESTATE COMMISSION[193E]**

Continuing education course topics, 17.5(1) IAB 3/6/13 <b>ARC 0628C</b>	Conference Room, Second Floor Professional Licensing Bureau 1920 SE Hulsizer Rd. Ankeny, Iowa	March 26, 2013 9 a.m.
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**SOIL CONSERVATION DIVISION[27]**

Soil conservation and water protection practices—funding, amendments to chs 10, 12 IAB 3/20/13 <b>ARC 0655C</b>	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 9, 2013 1:30 p.m.
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The following list will be updated as changes occur.

“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 are included alphabetically in SMALL CAPITALS at the left-hand margin.

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## ARC 0645C

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 159.5, the Iowa Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 13, “Renewable Fuel Infrastructure Board—Organization,” Chapter 14, “Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites,” Chapter 15, “Renewable Fuel Infrastructure Program for Terminal Grants,” and Chapter 16, “Renewable Fuel Infrastructure Program Administration,” Iowa Administrative Code.

The proposed amendments update citations and implementation sentences for the provisions.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 9, 2013. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or e-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

The proposed amendments are subject to the Department’s general waiver provision.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 159 and 159A.

The following amendments are proposed.

ITEM 1. Amend rule 21—13.1(84GA,SF531), introductory paragraph, as follows:

**21—13.1(84GA,SF531 159A) Definitions.** As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section ~~15G.201 as amended by 2011 Iowa Acts, Senate File 531, 159A.11~~ shall apply to this chapter and to 21—Chapters 14, 15, and 16. The following definitions shall also apply:

ITEM 2. Amend rule **21—13.1(159A)**, definition of “Board,” as follows:

“*Board*” means the renewable fuel infrastructure board established by Iowa Code section ~~15G.202 as amended by 2011 Iowa Acts, Senate File 531 159A.13.~~

ITEM 3. Amend rule 21—13.2(84GA,SF531), parenthetical implementation statute, as follows:

**21—13.2(84GA,SF531 159A) Renewable fuel infrastructure board.**

ITEM 4. Amend 21—Chapter 13, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~15G.202 and 2011 Iowa Acts, Senate File 531 159A.13.~~

ITEM 5. Amend rule 21—14.1(84GA,SF531), parenthetical implementation statute, as follows:

**21—14.1(84GA,SF531 159A) Purpose.**

ITEM 6. Amend rule 21—14.2(84GA,SF531), parenthetical implementation statute, as follows:

**21—14.2(84GA,SF531 159A) Eligible applicants.**

ITEM 7. Amend **21—Chapter 14**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~15G.203 and 2011 Iowa Acts, Senate File 531 159A.14.~~

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ITEM 8. Amend rule 21—15.1(84GA,SF531), parenthetical implementation statute, as follows:

**21—15.1(~~84GA,SF531~~ 159A) Purpose.**

ITEM 9. Amend rule 21—15.2(84GA,SF531), parenthetical implementation statute, as follows:

**21—15.2(~~84GA,SF531~~ 159A) Eligible applicants.**

ITEM 10. Amend **21—Chapter 15**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~15G.204~~ and ~~2011 Iowa Acts, Senate File 531~~ 159A.15.

ITEM 11. Amend rule 21—16.1(84GA,SF531), parenthetical implementation statute, as follows:

**21—16.1(~~84GA,SF531~~ 159A) Allocation of awards by congressional district.**

ITEM 12. Amend rule 21—16.2(84GA,SF531), parenthetical implementation statute, as follows:

**21—16.2(~~84GA,SF531~~ 159A) Form of award available; award amount.**

ITEM 13. Amend rule 21—16.3(84GA,SF531), parenthetical implementation statute, as follows:

**21—16.3(~~84GA,SF531~~ 159A) Application process.**

ITEM 14. Amend rule 21—16.4(84GA,SF531), parenthetical implementation statute, as follows:

**21—16.4(~~84GA,SF531~~ 159A) Review process.**

ITEM 15. Amend rule 21—16.5(84GA,SF531), parenthetical implementation statute, as follows:

**21—16.5(~~84GA,SF531~~ 159A) Contract administration.**

ITEM 16. Amend **21—Chapter 16**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~15G.201, 15G.202 and 15G.205~~ as amended by ~~2011 Iowa Acts, Senate File 531, and Iowa Code sections 15G.203 and 15G.204~~ 159A.11 to 159A.16.

**ARC 0646C**

**ATTORNEY GENERAL[61]**

**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 809A.25, the Attorney General hereby gives Notice of Intended Action to amend Chapter 33, “Forfeited Property,” Iowa Administrative Code.

Forfeited property may be used by the Attorney General (“the Department”) in the enforcement of the criminal law. The Department may give forfeited property to any other law enforcement agency within the state if, in the opinion of the Attorney General, it will enhance law enforcement within the state. (See Iowa Code section 809A.17.)

The proposed amendments decrease the amount of forfeited funds retained by the Department from 20 percent to 10 percent and increase the amount of forfeited funds given to local law enforcement agencies from 80 percent to 90 percent. The proposed amendments also decrease from 20 percent to 10 percent the amount of proceeds from the sale of forfeited real estate retained by the Department.

ATTORNEY GENERAL[61](cont'd)

The proposed amendments correspond with the provisions of Iowa Code section 809A.17(5). The proposed amendments remove a requirement that law enforcement agencies notify the Department whenever they seize property for forfeiture, except seizure of real property. The proposed amendments also require a seizing agency to apply within ten days for a certificate of title or a junking certificate for a forfeited vehicle which has been transferred to the agency.

The proposed amendments are not subject to waiver.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 9, 2013. Such written material should be directed to Corwin Ritchie, Assistant Attorney General, Hoover State Office Building, 1305 East Walnut St., Des Moines, Iowa 50319; fax (515)281-4313. Persons who wish to convey their views orally should contact Corwin Ritchie at (515)281-5428.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 809A.

The following amendments are proposed.

ITEM 1. Amend subrule 33.3(1) as follows:

**33.3(1)** An agency which seizes real property for forfeiture must notify the department within ten days of the seizure. Notice shall include the identity of the party from whom the property was seized, the date and county of seizure, and ~~an inventory~~ a legal description of the property seized for forfeiture.

ITEM 2. Amend paragraph **33.4(4)“e”** as follows:

*e.* The department will retain ~~20~~ 10 percent of the gross sale price of the real property. The balance of the proceeds, ~~80~~ 90 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.

ITEM 3. Adopt the following new paragraph **33.4(6)“d”**:

*d.* The seizing agency shall, within ten days of receipt of the transferred title, send to the Iowa department of transportation an application for certificate of title or a junking certificate for the vehicle.

ITEM 4. Amend subrule 33.4(7) as follows:

**33.4(7) Cash.**

*a.* The department will retain ~~20~~ 10 percent of forfeited cash. The balance of forfeited cash, ~~80~~ 90 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.

*b.* In the event of a cash forfeiture in excess of \$400,000, amounts over \$400,000 shall be apportioned as follows: ~~40~~ 45 percent to the seizing agency or agencies; ~~40~~ 45 percent to other law enforcement agencies within the region; and ~~20~~ 10 percent to be retained by the department.

**ARC 0648C**

## **ENVIRONMENTAL PROTECTION COMMISSION[567]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

The purpose of this rule making is to adopt recent federal amendments to the PSD program related to greenhouse gas emissions. The proposed changes will match federal regulations and will streamline

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa's PSD program by providing additional opportunities for plantwide applicability limitations (PALs) for greenhouse gases.

**Background (PSD Program and PALs)**

New source review (NSR) is a federal term for review and preconstruction permitting of new or modified stationary sources of air pollution. The PSD program is a component of NSR that includes procedures to ensure that air quality standards are maintained. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control emissions. The permit requires the facility to apply Best Available Control Technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control. The specific nature of the project determines if it is subject to PSD requirements for greenhouse gases.

A PAL permit is a voluntary program that is available to qualifying facilities and that establishes plantwide emission limits on a pollutant-by-pollutant basis. If a facility can maintain its overall emissions of a particular pollutant below the PAL level, the facility can make changes at the facility without triggering PSD review.

**Need for Rule Changes**

The proposed amendments will implement recent changes that the U.S. Environmental Protection Agency (EPA) made to the federal PSD regulations. The federal amendments were published in the Federal Register on July 12, 2012, and became effective on August 13, 2012 (available at <http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16704.pdf>). The proposed amendments to state rules match the federal amendments, and will provide additional opportunities for new and existing facilities to apply for PALs for greenhouse gases.

The new PAL provisions offer maximum regulatory flexibility to affected facilities that choose to apply for PAL permits and that can maintain emissions of greenhouse gases below the PAL levels. Obtaining and complying with a PAL permit allows a facility to make changes without triggering PSD review. A PAL permit allows a facility to respond more rapidly to market conditions, while still generally ensuring that the environment is protected from adverse impacts from the changes.

A PAL may also result in environmental benefit by providing the public with knowledge of the long-term emissions from the facility because PAL permits require enhanced monitoring, record keeping, and reporting to demonstrate compliance. The Department of Natural Resources (Department) anticipates that the reduced regulatory burden associated with the PAL permitting process will offset any costs of enhanced monitoring, record-keeping, and reporting requirements.

At this time, the Department has received an application for a PAL permit from one facility, the University of Iowa (U of I). U of I has requested a PAL for greenhouse gases under the new federal amendments. Other companies have also inquired about the availability of a PAL for greenhouse gases since the federal amendments became effective.

**Consequences of Not Amending State Rules**

Because Iowa has its own federally approved PSD program, the Department cannot issue a final PAL permit including the new greenhouse gas provisions until these provisions are adopted into state administrative rules. Without final rules, applicants would need to apply to the EPA to use the new PAL provisions. EPA would likely take significantly longer than the Department to issue a PAL.

Additionally, if the Department does not proceed at this time, state rules for PSD will continue to be inconsistent with federal regulations, and will also be more stringent than federal regulations, which is prohibited by statute (Iowa Code section 455B.133(4)).

Because of the urgency expressed by stakeholders to expedite this rule making, the Department is also proposing that the amendments be Adopted and Filed Emergency After Notice and become effective upon the date of filing with the Administrative Rules Coordinator. The rule making confers a benefit or removes a restriction on a segment of the public, according to the provisions of Iowa Code section 17A.5(2)“b”(2). Under this schedule, the Department will accept comments following publication of this Notice of Intended Action until April 23, 2013. If the Department does not receive any public comments opposed to the proposed amendments or to an immediate effective date for the adopted amendments, the Department plans to present the amendments for final approval to the Commission on May 21, 2013.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

This will allow the Department to file the amendments with the Administrative Rules Coordinator no later than May 22, 2013, at which time the amendments would become effective.

**Proposed Amendments**

Item 1 amends the PSD program rules to revise the definition of “subject to regulation” in subrule 33.3(1). The amendment adds provisions specifying that greenhouse gases (GHGs) are not “subject to regulation” if the stationary source maintains its total sourcewide emissions below the GHG PAL level and meets all of the requirements for the PAL program and the requirements specified in a PAL permit. The proposed amendment matches the changes the EPA made to federal regulations published on July 12, 2012 (see 40 Code of Federal Regulations (CFR) 52.21(b)(49)(i)). The GHG PAL level and PAL requirements are adopted by reference in rule 567—33.9(455B).

Item 2 amends rule 567—33.9(455B) to revise the adoption by reference of the federal PAL provision. The proposed amendment will adopt by reference the new PAL provisions for GHGs that EPA published on July 12, 2012 (see 40 CFR 52.21(aa)).

The proposed amendments will allow the Department to approve PALs and issue PAL permits for GHGs on either a mass basis or using the specified calculation for “tons per year carbon dioxide equivalent emissions (CO<sub>2</sub>e)” basis, for any existing major stationary source or any existing GHG-only source.

Any person may make written suggestions or comments on the proposed amendments on or before Tuesday, April 23, 2013. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)242-5094; or by e-mail to [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov).

A public hearing will be held on Tuesday, April 23, 2013, at 1 p.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. All comments must be received no later than 4:30 p.m. on April 23, 2013.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 or by e-mail at [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov) to advise of any specific needs.

The Department has determined after analysis and review that no adverse impact on jobs exists. The amendments will reduce the regulatory burden on affected facilities and will provide additional flexibility to facilities that choose to apply for a PAL permit. The amendments could have a positive impact on jobs in Iowa by increasing Department collaboration with job creators to reduce the regulatory burden and by providing additional flexibility for the regulated community, while still ensuring that Iowa’s air quality is protected and maintained. The ability to respond more rapidly to market conditions facilitates economic growth and the associated jobs creation.

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

The following amendments are proposed.

ITEM 1. Amend subrule **33.3(1)**, definition of “Subject to regulation,” as follows:

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended ~~on May 7, 2010 through September 15, 2011~~) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs “4” and “5.” ~~“5,” and shall not be subject to regulation if the stationary source maintains its total sourcewide emissions below the GHG PAL level, meets the requirements in rule 567—33.9(455B), and complies with the PAL permit containing the GHG PAL.~~

2. For purposes of paragraphs “3,” “4,” and “5,” the term “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” shall represent an amount of GHGs emitted and shall be computed as follows:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, "Global Warming Potentials," (as amended on October 30, 2009). For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO<sub>2</sub>e.

3. to 5. No change.

ITEM 2. Amend rule 567—33.9(455B) as follows:

**567—33.9(455B) Plantwide applicability limitations (PALs).** This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) as amended through ~~November 29, 2005~~ July 12, 2012, are adopted by reference, except that the term "Administrator" shall mean "the department of natural resources."

**ARC 0649C**

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 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.

The purposes of these amendments are to:

- Provide clarifying language.
- Rename "augmentative communication device" as "speech generating device" and reclassify the device from the prosthetics category to the medical equipment category consistent with Medicare classification.
- Reclassify oral nutrition from the prosthetics category to the medical supply category consistent with the classification in the healthcare common procedure coding system (HCPCS).
- Add coverage for bath chairs, nonstandard patient lifters, power wheelchair attendant control, a secondary ventilator, and wheelchairs for members in an intermediate care facility for persons with an intellectual disability.
  - Lower the age limit for incontinence products from four years of age to three years of age.
  - Allow for reimbursement over the established Medicaid fee schedule amounts for some items.
  - Add a prior authorization requirement for shower commode chairs.

Exceptions to policy have routinely been granted according to established criteria for bath chairs, nonstandard patient lifters, power wheelchair attendant control, a secondary ventilator, wheelchairs for members in an intermediate care facility for persons with an intellectual disability, incontinence products for children between three and four years of age, and reimbursement over established Medicaid fee schedule amounts.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Given the complex coverage criteria and the cost for shower commode chairs, authorization prior to the delivery of this item is more efficient than review of a submitted claim.

Any interested person may make written comments on the proposed amendments on or before April 9, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

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

The following amendments are proposed.

ITEM 1. Amend subrule 78.10(1) as follows:

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

*a.* and *b.* No change.

*c.* A physician's (doctor of medicine, osteopathy, or podiatry), physician assistant's, or advanced registered nurse practitioner's prescription is required to establish medical necessity. The prescription shall state the member's name, diagnosis, prognosis, and item(s) to be dispensed, quantity, and length of time the item is to be required and shall include the signature of the prescriber and the date of signature.

For items requiring prior approval authorization, a request shall include a physician's, physician assistant's, or advanced registered nurse practitioner's written order or prescription and sufficient medical documentation to permit an independent conclusion that the requirements for the equipment or device are met and the item is medically necessary and reasonable. A request for prior approval authorization is made on Form 470-0829, Request for Prior Authorization. See rule 441—78.28(249A) for prior approval authorization requirements.

*d.* Nonmedical items will not be covered. These include but are not limited to:

(1) to (5) No change.

(6) Equipment which basically serves comfort or convenience functions; or is primarily for the convenience of a person caring for the patient member, e.g., elevators, stairway elevators and posture chairs.

*e.* The amount payable is based on the least expensive item which meets the patient's member's medical needs. Payment will not be approved for duplicate items that serve duplicate functions. EXCEPTION: A second ventilator for which prior authorization has been granted. See 78.10(5) "k" for prior authorization requirements.

*f.* Consideration will be given to rental or purchase based on the price of the item and the length of time it would be required. The decision on rental or purchase shall be made by the Iowa Medicaid enterprise; and be based on the most reasonable method to provide the equipment.

(1) and (2) No change.

(3) EXCEPTION: Ventilators will and oxygen systems shall be maintained on a rental basis for the duration of use.

(4) A deposit shall not be charged by a provider to a Medicaid member or any other person on behalf of a Medicaid member for rental of medical equipment.

*g.* to *i.* No change.

*j.* Reimbursement over the established fee schedule amount is allowed when prior authorization has been obtained. See 78.10(5) "n" for prior authorization requirements.

ITEM 2. Amend subrule 78.10(2) as follows:

**78.10(2) Durable medical equipment.** DME is equipment ~~which~~ that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, and is appropriate for use in the home.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~a. Durable medical equipment will not be provided in a hospital, nursing facility, or intermediate care facility for persons with mental retardation~~ an intellectual disability is not separately payable.  
~~EXCEPTION: Medicaid will provide payment to medical equipment and supply dealers to provide oxygen services in a nursing facility or an intermediate care facility for persons with mental retardation when all of the following requirements and conditions have been met:~~

~~(1) A physician's, physician assistant's, or advanced registered nurse practitioner's prescription documents that the member has significant hypoxemia as defined by Medicare and evidenced by supporting medical documentation and the member requires oxygen for 12 hours or more per day for at least 30 days. Oxygen prescribed "PRN" or "as necessary" is not allowed. The documentation maintained in the provider record must contain the following:~~

~~1. The number of hours oxygen is required per day;~~  
~~2. The diagnosis of the disease requiring continuous oxygen, prognosis, and length of time the oxygen will be needed;~~  
~~3. The oxygen flow rate and concentration; the type of system ordered, i.e., cylinder gas, liquid gas, or concentrator;~~

~~4. A specific estimate of the frequency and duration of use; and~~

~~5. The initial reading on the time meter clock on each concentrator, where applicable.~~

~~(2) The maximum Medicaid payment shall be based on the least costly method of oxygen delivery.~~

~~(3) Medicaid payment shall be made for the rental of equipment only. All accessories and disposable supplies related to the oxygen delivery system, servicing and repairing of equipment are included in the Medicaid payment.~~

~~(4) Oxygen logs must be maintained by the provider. When random postpayment review of these logs indicates less than an average of 12 hours per day of oxygen was provided over a 30-day period, recoupment of the overpayment may occur.~~

~~(5) Payment will be made for only one mode of oxygen even if the physician's, physician assistant's, or advanced registered nurse practitioner's prescription allows for multiple modes of delivery.~~

~~(6) Payment will not be made for oxygen that is not documented according to department of inspections and appeals 481—subrule 58.21(8).~~

EXCEPTIONS:

(1) Oxygen services in a nursing facility or an intermediate care facility for persons with an intellectual disability when all of the following requirements and conditions have been met:

1. A Certificate of Medical Necessity for Oxygen, Form CMS-484, or a reasonable facsimile is completed by a physician, physician assistant, or advanced registered nurse practitioner and qualifies the member in accordance with Medicare criteria.

2. Additional documentation shows that the member requires oxygen for 12 hours or more per day for at least 30 days.

3. Oxygen logs must be maintained by the provider. The time between any reading shall not exceed more than 45 days. The documentation maintained in the provider record must contain the following:

- The initial, periodic and ending reading on the time meter clock on each oxygen system, and
- The dates of each initial, periodic and ending reading, and
- Evidence of ongoing need for oxygen services.

4. The maximum Medicaid payment shall be based on the least costly method of oxygen delivery.

5. Oxygen prescribed "PRN" or "as necessary" is not payable.

6. Medicaid payment shall be made for the rental of equipment only. All accessories and disposable supplies related to the oxygen delivery system and costs for servicing and repair of equipment are included in the Medicaid payment and shall not be separately payable.

7. Payment is not allowed for oxygen services that are not documented according to the department of inspections and appeals requirements at 481—subrule 58.21(8).

(2) Speech generating devices for which prior authorization has been obtained. See 78.10(5) "f" for prior authorization requirements.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) Wheelchairs for members in an intermediate care facility for persons with an intellectual disability.

~~b. Only the following~~ The types of durable medical equipment can be covered through the Medicaid program include, but are not limited to:

~~Alternating pressure pump.~~

Automated medication dispenser. See 78.10(5) "d" for prior authorization requirements.

Bathub/shower chair, bench. See 78.10(5) "g" and "j" for prior authorization requirements.

~~Bedpan.~~

~~Blood glucose monitors. See 78.10(5) "e" for prior authorization requirements.~~

~~Blood pressure cuffs.~~

~~Cane.~~

~~Cardiorespiratory monitor (rental and supplies).~~

Commode, shower commode chair. See 78.10(5) "j" for prior authorization requirements.

~~Commode pail.~~

~~Crutches.~~

Decubitus equipment.

Dialysis equipment.

Diaphragm (contraceptive device).

Enclosed bed. See 78.10(5) "a" for prior authorization requirements.

Enuresis alarm system (bed-wetting alarm device) for members five years of age or older.

Heat/cold application device.

Hospital bed and accessories.

~~Hospital bed accessories.~~

Inhalation equipment. See 78.10(5) "c" for prior authorization requirements.

Insulin infusion pump. See 78.10(5) "b" and 78.10(5) "e" for prior authorization requirements.

Lymphedema pump.

Mobility device and accessories. See 78.10(5) "i" for prior authorization requirements.

Neuromuscular stimulator.

Oximeter.

Oxygen, subject to the limitations in 78.10(2) "a" and 78.10(2) "c."

Patient lift (Hoyer). See 78.10(5) "h" for prior authorization requirements.

Phototherapy bilirubin light.

~~Pressure unit.~~

Protective helmet.

~~Respirator.~~

~~Resuscitator bags and pressure gauge.~~

Seat lift chair.

Speech generating device. See 78.10(5) "f" for prior authorization requirements.

~~Suction machine.~~

Traction equipment.

~~Urinal (portable).~~

~~Vaporizer.~~

Ventilator.

~~Vest airway clearance system. See 78.10(5) "c" for prior authorization requirements.~~

~~Walker.~~

~~Wheelchair—standard and adaptive.~~

~~Whirlpool bath.~~

c. Coverage of home oxygen equipment and oxygen will be considered reasonable and necessary ~~only~~ for members in accordance with significant hypoxemia as defined by Medicare criteria and as shown by supporting medical documentation. The physician's, physician assistant's, or advanced registered nurse practitioner's prescription physician, physician assistant, or advanced registered nurse practitioner shall document that other forms of treatment are contraindicated or have been tried and have not been

## HUMAN SERVICES DEPARTMENT[441](cont'd)

successful and that oxygen therapy is required. EXCEPTION: Home oxygen equipment and oxygen are covered for children through three years of age when prescribed by a physician, physician assistant or advanced registered nurse practitioner. A pulse oximeter reading must be obtained ~~at one year of age and at two years of age~~ yearly and documented in the provider and physician record.

(1) ~~To identify the medical necessity for oxygen therapy, the supplier and a physician, physician assistant, or advanced registered nurse practitioner shall jointly submit Medicare Form B-7401, Physician's Certification for Durable Medical Equipment, or a reasonable facsimile. The following information is required: a Certificate of Medical Necessity for Oxygen, Form CMS-484, or a reasonable facsimile completed by a physician, physician assistant, or advanced registered nurse practitioner, shall qualify the member in accordance with Medicare criteria.~~

- ~~1. A diagnosis of the disease requiring home use of oxygen;~~
  - ~~2. The oxygen flow rate and concentration;~~
  - ~~3. The type of system ordered, i.e., cylinder gas, liquid gas, or concentrator;~~
  - ~~4. A specific estimate of the frequency and duration of use; and~~
  - ~~5. The initial reading on the time meter clock on each concentrator, where applicable.~~
- Oxygen prescribed "PRN" or "as necessary" is not allowed.

(2) If the ~~patient's~~ member's condition or need for oxygen services changes, the attending physician, physician assistant, or advanced registered nurse practitioner must adjust the documentation accordingly.

(3) A second oxygen system is not covered by Medicaid when used as a backup for oxygen concentrators or as a standby in case of emergency. Members may be provided with a portable oxygen system to complement a stationary oxygen system, or to be used by itself, with documentation from the physician (~~doctor of medicine or osteopathy~~), physician assistant, or advanced registered nurse practitioner of the ~~medical necessity for portable oxygen for specific activities~~ specific activities for which portable oxygen is medically necessary.

(4) ~~Payment for concentrators~~ oxygen systems shall be made only on a rental basis for the duration of use.

(5) All accessories, disposable supplies, servicing, and repairing of ~~concentrators~~ oxygen systems are included in the monthly Medicaid payment for ~~concentrators~~ oxygen systems.

(6) Oxygen prescribed "PRN" or "as necessary" is not allowed.

ITEM 3. Amend subrule 78.10(3) as follows:

**78.10(3) Prosthetic devices.** Prosthetic devices mean replacement, corrective, or supportive devices prescribed by a physician (doctor of medicine, osteopathy or podiatry), physician assistant, or advanced registered nurse practitioner within the scope of practice as defined by state law to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body. This does not require a determination that there is no possibility that the ~~patient's~~ member's condition may improve sometime in the future.

a. Prosthetic devices are not covered when dispensed to a ~~patient~~ member prior to the time the ~~patient~~ member undergoes a procedure which will make necessary the use of the device.

b. ~~Only the following~~ The types of prosthetic devices ~~shall be covered through the Medicaid program~~ include, but are not limited to:

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

(4) (3) Enteral delivery supplies and products. See ~~78.10(3) "e"~~ 78.10(5) "l" for prior approval authorization requirements.

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

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(6) Oral nutritional products. See 78.10(3)“e” for prior approval requirements. Nutritional products consumed orally are not covered for members in nursing facilities or intermediate care facilities for the mentally retarded.~~

~~(7) (5) Orthotic devices. See 78.10(3)“d”“c” for limitations on coverage of cranial orthotic devices.~~

~~(8) (6) Ostomy appliances.~~

~~(9) (7) Parenteral delivery supplies and products. Daily parenteral nutrition therapy is considered necessary and reasonable for a member with severe pathology of the alimentary tract that does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the member’s general condition.~~

~~(10) (8) Prosthetic shoes, orthopedic shoes. See rule 441—78.15(249A).~~

~~(11) (9) Tracheotomy tubes.~~

~~(12) (10) Vibrotactile aids. Vibrotactile aids are payable only once in a four-year period unless the original aid is broken beyond repair or lost. (Cross-reference 78.28(4))~~

~~e.—Prior approval is required for the following prosthetic devices:~~

~~(1) Augmentative communication systems.—Form 470-2145, Augmentative Communication System Selection, completed by a speech pathologist and a physician’s, physician assistant’s, or advanced registered nurse practitioner’s prescription for a particular device shall be submitted to the Iowa Medicaid enterprise medical services unit to request prior approval. Information requested on the prior approval form includes a medical history, diagnosis, and prognosis completed by a physician, physician assistant, or advanced registered nurse practitioner. In addition, a speech or language pathologist needs to describe current functional abilities in the following areas: communication skills, motor status, sensory status, cognitive status, social and emotional status, and language status. Also needed from the speech or language pathologist is information on educational ability and needs, vocational potential, anticipated duration of need, prognosis regarding oral communication skills, prognosis with a particular device, and recommendations. The department’s consultants with expertise in speech pathology will evaluate the prior approval requests and make recommendations to the department. (Cross-reference 78.28(1)“e”)~~

~~(2) Enteral products and enteral delivery pumps and supplies. Daily enteral nutrition therapy shall be approved as medically necessary only for a member who either has a metabolic or digestive disorder that prevents the member from obtaining the necessary nutritional value from usual foods in any form and cannot be managed by avoidance of certain food products or has a severe pathology of the body that does not allow ingestion or absorption of sufficient nutrients from regular food to maintain weight and strength commensurate with the member’s general condition.~~

~~A request for prior approval shall include a physician’s, physician assistant’s, or advanced registered nurse practitioner’s written order or prescription and documentation to establish the medical necessity for enteral products and enteral delivery pumps and supplies pursuant to the above standards.—The documentation shall include:~~

~~1.—A statement of the member’s total medical condition that includes a description of the member’s metabolic or digestive disorder or pathology.~~

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

~~3.—Documentation of the medical necessity for an enteral pump, if the request includes an enteral pump.—The information submitted must identify the medical reasons for not using a gravity feeding set.~~

~~Examples of conditions that will not justify approval of enteral nutrition therapy are: weight loss diets, wired shut jaws, diabetic diets, milk or food allergies (unless the member is under five years of age and coverage through the Women, Infant and Children’s program is not available), and the use of enteral products for convenience reasons when regular food in pureed form would meet the medical need of the member.~~

~~Basis of payment for nutritional therapy supplies shall be the least expensive method of delivery that is reasonable and medically necessary based on the documentation submitted.~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(3) Oral nutritional products. Payment for oral nutritional products shall be approved as medically necessary only when the member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology, to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member's condition. Nutritional products consumed orally are not covered for members in nursing facilities or intermediate care facilities for the mentally retarded. A request for prior approval shall include a physician's, physician assistant's, or advanced registered nurse practitioner's written order or prescription and documentation to establish the medical necessity for oral supplementation pursuant to these standards. The documentation shall include:~~

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

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

~~3. Documentation to support the fact that regular foods will not provide sufficient nutritional value to the member. Examples of conditions that will not justify approval of oral supplementation are: weight loss diets, wired shut jaws, diabetic diets, milk or food allergies (unless the member is under five years of age and coverage through the Women, Infant and Children's program is not available), supplementation to boost caloric or protein intake by less than 51 percent of the daily intake, and the absence of severe pathology of the body or psychological pathology or disorder.~~

~~d. c. Cranial orthotic device. Payment shall be approved for cranial orthotic devices when the device is medically necessary for the postsurgical treatment of synostotic plagiocephaly. Payment shall also be approved when there is ~~photographic evidence~~ documentation supporting moderate to severe nonsynostotic positional plagiocephaly and either:~~

~~(1) The member is ~~between 3 and 5 months~~ 12 weeks of age but younger than 36 weeks of age and has failed to respond to a two-month trial of repositioning therapy; or~~

~~(2) The member is ~~between 6 and 18 months~~ 36 weeks of age but younger than 108 weeks of age and there is documentation of either of the following conditions:~~

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

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

ITEM 4. Amend subrule 78.10(4) as follows:

**78.10(4) Medical supplies.** Medical supplies are nondurable items consumed in the process of giving medical care, for example, nebulizers, gauze, bandages, sterile pads, adhesive tape, and sterile absorbent cotton. Medical supplies are payable for a specific medicinal purpose. This does not include food or drugs. However, active pharmaceutical ingredients and excipients that are identified as preferred on the preferred drug list published by the department pursuant to Iowa Code section 249A.20A are covered. Medical supplies shall not be dispensed at any one time in quantities exceeding a 31-day supply for active pharmaceutical ingredients and excipients or a three-month supply for all other items. After the initial dispensing of medical supplies, the provider must document a refill request from the Medicaid member or the member's caregiver for each refill.

~~a. Only the following~~ The types of medical supplies and supplies necessary for the effective use of a payable item ~~can be purchased~~ covered through the medical assistance Medicaid program include, but are not limited to:

Active pharmaceutical ingredients and excipients identified as preferred on the preferred drug list published pursuant to Iowa Code section 249A.20A.

Catheter (indwelling Foley).

Colostomy and ileostomy appliances.

Colostomy and ileostomy care dressings, liquid adhesive, and adhesive tape.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Diabetic supplies (including but not limited to blood glucose test strips, lancing devices, lancets, needles, syringes, and diabetic urine test supplies). See 78.10(5) "e" for prior authorization requirements.

Dialysis supplies.

~~Diapers (for members aged four and above).~~

Disposable catheterization trays or sets (sterile).

Disposable irrigation trays or sets (sterile).

Disposable saline enemas (e.g., sodium phosphate type).

~~Disposable underpads.~~

Dressings.

Elastic antiembolism support stocking.

Enema.

Hearing aid batteries.

Incontinence products (for members three years of age and older).

Oral nutritional products. See 78.10(5) "m" for prior authorization requirements.

Ostomy appliances and supplies.

Respirator supplies.

Shoes, diabetic.

Surgical supplies.

Urinary collection supplies.

b. Only the following types of medical supplies will be approved for payment for members receiving care in a nursing facility or an intermediate care facility for persons with an intellectual disability when prescribed by the physician, physician assistant, or advanced registered nurse practitioner:

Catheter (indwelling Foley).

~~Colostomy and ileostomy appliances.~~

~~Colostomy and ileostomy care dressings, liquid adhesive and adhesive tape.~~

Diabetic supplies (including but not limited to lancing devices, lancets, needles and syringes, blood glucose test strips, and diabetic urine test supplies).

Disposable catheterization trays or sets (sterile).

Disposable irrigation trays or sets (sterile).

Disposable saline enemas (e.g., sodium phosphate type).

Ostomy appliances and supplies.

Shoes, diabetic.

ITEM 5. Amend subrule 78.10(5) as follows:

**78.10(5) Prior authorization requirements.** Prior authorization pursuant to rule 441—79.8(249A) is required for the following medical equipment and supplies (Cross-reference 78.28(1)):

a. Enclosed beds. Payment for an enclosed bed ~~will~~ shall be approved when prescribed for a ~~patient~~ member who meets all of the following conditions:

(1) The ~~patient~~ member has a diagnosis-related cognitive or communication impairment that results in risk to safety.

(2) The ~~patient's~~ member's mobility puts the ~~patient~~ member at risk for injury.

~~(3) The patient has suffered injuries when getting out of bed.~~

b. No change.

c. Vest airway clearance systems. Payment will be approved for a vest airway clearance system when prescribed by a pulmonologist for a ~~patient~~ member with a diagnosis of a lung disorder if all of the following conditions are met:

(1) Pulmonary function tests for the 12 months before the initiation of the vest demonstrate an overall significant decrease in lung function.

(2) The ~~patient~~ member resides in an independent living situation or has a medical condition that precludes the caregiver from administering traditional chest physiotherapy.

(3) Treatment by flutter device failed or is contraindicated.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(4) Treatment by intrapulmonary percussive ventilation failed or is contraindicated.

(5) All other less costly alternatives have been tried.

*d.* and *e.* No change.

*f.* Speech generating device. Payment shall be approved according to Medicare coverage criteria. Form 470-2145, Speech Generating Device System Selection, completed by a speech-language pathologist and a physician's, physician assistant's, or advanced registered nurse practitioner's prescription for a particular device shall be submitted with the request for prior authorization. In addition, documentation from a speech-language pathologist must include information on the member's educational ability and needs, vocational potential, anticipated duration of need, prognosis regarding oral communication skills, prognosis with a particular device, and recommendations. A minimum one-month trial period is required for all devices. The Iowa Medicaid enterprise consultant with expertise in speech-language pathology will evaluate each prior authorization request and make recommendations to the department.

*g.* Bathtub/shower chair, bench. Payment shall be approved for specialized bath equipment for members whose medical condition necessitates additional body support while bathing.

*h.* Patient lift, nonstandard. Payment shall be approved for a nonstandard lift, such as a portable, ceiling or electric lifter, when the member meets the Medicare criteria for a patient lift and a standard lifter (Hoyer type) will not work.

*i.* Power wheelchair attendant control. Payment shall be approved when the member has a power wheelchair and:

(1) Has a sip 'n puff attachment, or

(2) The medical documentation demonstrates the member's difficulty operating the wheelchair in tight space, or

(3) The medical documentation demonstrates the member becomes fatigued.

*j.* Shower commode chairs. Prior authorization shall be granted when documentation from a physician, physician assistant, advanced registered nurse practitioner, physical therapist or occupational therapist indicates that the member:

(1) Is unable to stand for the duration of a shower or is unable to get in or out of a bathtub, and

(2) Needs upper body support while sitting, and

(3) Needs to be tilted back for safety or pressure relief, if a tilt-in-space chair is requested.

*k.* Ventilator, secondary. Payment shall be approved according to the Medicare coverage criteria.

*l.* Enteral products and enteral delivery pumps and supplies. Payment shall be approved according to Medicare coverage criteria. EXCEPTION: The Medicare criteria for permanence is not required.

*m.* Oral nutritional products. Payment shall be approved when the member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology, to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member's condition. Nutritional products consumed orally are not covered for members in nursing facilities or intermediate care facilities for persons with an intellectual disability.

*n.* Reimbursement over the established Medicaid fee schedule amount. Payment shall be approved for bariatric equipment, pediatric equipment or other specialized medical equipment, supply, prosthetic or orthotic which:

(1) Meets the definition of a code in the current healthcare common procedure coding system (HCPCS), and

(2) Has an established Medicaid fee schedule amount that is inadequate to cover the provider's cost to obtain the equipment or supply.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 6. Amend rule 441—78.28(249A), catchwords, as follows:

**441—78.28(249A) List of medical services and equipment requiring prior approval authorization, preprocedure review or preadmission review.**

ITEM 7. Amend subrule 78.28(1) as follows:

**78.28(1)** Services, procedures, and medications prescribed by a physician (M.D. or D.O.), physician assistant, or advanced registered nurse practitioner which are subject to prior approval authorization or preprocedure review are as follows or as specified in the preferred drug list published by the department pursuant to Iowa Code Supplement section 249A.20A:

a. No change.

b. Automated medication dispenser. ~~(Cross-reference 78.10(2)“b”)~~ Payment will shall be approved for an automated medication dispenser when prescribed for a member who meets all of the following conditions: pursuant to the criteria at 78.10(5)“d.”

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

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

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

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

c. Enteral products and enteral delivery pumps and supplies. Payment shall be approved pursuant to the criteria at 78.10(5)“l.” ~~require prior approval. Daily enteral nutrition therapy shall be approved as medically necessary only for a member who either has a metabolic or digestive disorder that prevents the member from obtaining the necessary nutritional value from usual foods in any form and cannot be managed by avoidance of certain food products or has a severe pathology of the body that does not allow ingestion or absorption of sufficient nutrients from regular food to maintain weight and strength commensurate with the member’s general condition. (Cross-reference 78.10(3)“e”(2))~~

~~(1) A request for prior approval shall include a physician’s, physician assistant’s, or advanced registered nurse practitioner’s written order or prescription and documentation to establish the medical necessity for enteral products and enteral delivery pumps and supplies pursuant to the above standards. The documentation shall include:~~

~~1. A statement of the member’s total medical condition that includes a description of the member’s metabolic or digestive disorder or pathology.~~

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

~~3. Documentation of the medical necessity for an enteral pump, if the request includes an enteral pump. The information submitted must identify the medical reasons for not using a gravity feeding set.~~

~~(2) Examples of conditions that will not justify approval of enteral nutrition therapy are: weight loss diets, wired shut jaws, diabetic diets, milk or food allergies (unless the member is under five years of age and coverage through the Women, Infant and Children’s program is not available), and the use of enteral products for convenience reasons when regular food in pureed form would meet the medical need of the member.~~

~~(3) Basis of payment for nutritional therapy supplies shall be the least expensive method of delivery that is reasonable and medically necessary based on the documentation submitted.~~

d. Rescinded IAB 5/11/05, effective 5/1/05.

e. Speech generating device. Payment shall be approved pursuant to the criteria at 78.10(5)“f.” ~~Augmentative communication systems, which are provided to persons unable to communicate their basic needs through oral speech or manual sign language, require prior approval. Form 470-2145, Augmentative Communication System Selection, completed by a speech pathologist and a physician’s prescription for a particular device shall be submitted to request prior approval. (Cross-reference 78.10(3)“e”(1))~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(1) Information requested on the prior authorization form includes a medical history, diagnosis, and prognosis completed by a physician. In addition, a speech or language pathologist needs to describe current functional abilities in the following areas: communication skills, motor status, sensory status, cognitive status, social and emotional status, and language status.~~

~~(2) Also needed from the speech or language pathologist is information on educational ability and needs, vocational potential, anticipated duration of need, prognosis regarding oral communication skills, prognosis with a particular device, and recommendations.~~

~~(3) The department's consultants with an expertise in speech pathology will evaluate the prior approval requests and make recommendations to the department.~~

*f.* No change.

*g.* Enclosed beds. Payment shall be approved pursuant to the criteria at 78.10(5)“a.” ~~Prior authorization is required for enclosed beds. (Cross-reference 78.10(2)“c”)~~ The department shall approve payment for an enclosed bed when prescribed for a patient who meets all of the following conditions:

~~(1) The patient has a diagnosis related cognitive or communication impairment that results in risk to safety.~~

~~(2) The patient's mobility puts the patient at risk for injury.~~

~~(3) The patient has suffered injuries when getting out of bed.~~

*h.* No change.

*i.* Oral nutritional products. Payment shall be approved pursuant to the criteria at 78.10(5)“m.” ~~Prior authorization is required for oral nutritional products. (Cross-reference 78.10(2)“c”)~~ The department shall approve payment for oral nutritional products when the member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member's condition.

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

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

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

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

~~(2) Examples of conditions that will not justify approval of oral nutritional products are: weight loss diets, wired shut jaws, diabetic diets, and milk or food allergies (unless the member is under five years of age and coverage through the Special Supplemental Nutrition Program for Women, Infants, and Children is not available).~~

*j.* Vest airway clearance system. Payment shall be approved pursuant to the criteria at 78.10(5)“c.” ~~Prior authorization is required for vest airway clearance systems. (Cross-reference 78.10(2)“c”)~~ The department shall approve payment for a vest airway clearance system when prescribed by a pulmonologist for a patient with a medical diagnosis related to a lung disorder if all of the following conditions are met:

~~(1) Pulmonary function tests for the 12 months before initiation of the vest demonstrate an overall significant decrease of lung function.~~

~~(2) The patient resides in an independent living situation or has a medical condition that precludes the caregiver from administering traditional chest physiotherapy.~~

~~(3) Treatment by flutter device failed or is contraindicated.~~

~~(4) Treatment by intrapulmonary percussive ventilation failed or is contraindicated.~~

~~(5) All other less costly alternatives have been tried.~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- k.* No change.
- l.* Reimbursement over the established Medicaid fee schedule amount. Payment shall be approved pursuant to the criteria at 78.10(5)“n.”
- m.* Bathtub/shower chair, bench. Payment shall be approved pursuant to the criteria at 78.10(5)“g.”
- n.* Patient lift, nonstandard. Payment shall be approved pursuant to the criteria at 78.10(5)“h.”
- o.* Power wheelchair attendant control. Payment shall be approved pursuant to the criteria at 78.10(5)“i.”
- p.* Shower commode chair. Payment shall be approved pursuant to the criteria at 78.10(5)“j.”
- q.* Ventilator, secondary. Payment shall be approved pursuant to the Medicare coverage criteria.

ITEM 8. Amend subrule 79.1(4) as follows:

**79.1(4)** *Durable medical equipment, prosthetic devices, medical supply dealers.* Fees for durable medical appliances, prosthetic devices and medical supplies are developed from several pricing sources and are based on pricing appropriate to the date of service; prices are developed using prior calendar year price information. The average wholesale price from all available sources is averaged to determine the fee for each item. Payment for used equipment will be no more than 80 percent of the purchase allowance. For supplies, equipment, and servicing of standard wheelchairs, standard hospital beds, enteral nutrients, and enteral and parenteral supplies and equipment, the fee for payment shall be the lowest price for which the devices are widely and consistently available in a locality. Reimbursement over an established Medicaid fee schedule amount may be allowed pursuant to the criteria at 441—paragraph 78.10(5)“n.”

**ARC 0644C**

## IOWA PUBLIC INFORMATION BOARD[497]

### 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 2012 Iowa Acts, chapter 1115, section 9, the Iowa Public Information Board hereby gives Notice of Intended Action to adopt Chapter 1, “Organization and General Administration,” Chapter 2, “Complaint Investigation and Resolution Procedures,” Chapter 3, “Declaratory Orders,” Chapter 4, “Contested Cases,” Chapter 5, “Petitions for Rule Making,” Chapter 6, “Agency Procedures for Rule Making,” and Chapter 7, “Fair Information Practices,” Iowa Administrative Code.

The Board was created under 2012 Iowa Acts, Senate File 430, as a body to provide an alternative means to “secure compliance with and enforcement of the requirements of chapters 21 and 22”—the laws governing open meetings and public records. Board members were appointed by the Governor soon after enactment of Senate File 430. Under the enabling Act, the Board will become effective on July 1, 2013, and is promulgating this full set of rules to be ready to conduct business on July 1. The rules cover the following matters:

Chapter 1: Organization and General Administration. These rules describe the Board’s structure and organization, including requirements for requesting and processing advisory opinions and addressing conflicts of interest of Board members.

Chapter 2: Complaint Investigation and Resolution Procedures. These rules describe the requirements for filing and processing written complaints as well as investigating complaints, assessing civil penalties, and reaching settlements.

Chapter 3: Declaratory Orders. These rules delineate the procedures for petitioning the Board for a declaratory order which may bind the requester based on the facts presented.

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

Chapter 4: Contested Cases. These rules set out the procedures that will apply in the event that a complaint is not resolved informally and results in charges by the Board that proceed to hearing.

Chapter 5: Petitions for Rule Making. These rules describe the procedures that any person or agency may utilize to request the Board to adopt specific rules, which may be new rules or the amendment or repeal of existing rules.

Chapter 6: Agency Procedures for Rule Making. These rules describe the procedures that apply in any rule making undertaken by the Board under Iowa Code chapter 17A.

Chapter 7: Fair Information Practices. These rules describe the records that will be maintained by the Board, including which records are open, which records are confidential, and which records contain personally identifiable information about members of the public. In addition, the rules describe the procedures for requesting access to records and for requesting that records provided to the Board be kept confidential, the procedures for making additions, dissents, or objections to records maintained by the Board, and the uses to which the records may be put and the conditions under which the records may be released.

Chapters 3 to 7 are based on the Uniform Rules on Agency Procedure which were developed by a nine-member task force appointed by Governor Branstad in 1985. The task force drafted uniform rules suitable for adoption by all or most state agencies. The Uniform Rules on Agency Procedure were later amended by the Iowa Attorney General's Office to comply with the 1999 amendments to the Iowa Administrative Procedure Act.

The Board is interested in comments on all matters within the scope of these proposed rules and is open to all suggestions for additions, deletions or changes.

Consideration will be given to all written suggestions or comments on the proposed rules on or before April 9, 2013. Such written comments should be directed to Iowa Public Information Board, Attention: Larry Johnson, Governor's Office, State Capitol, Des Moines, Iowa 50319. Comments may be sent by e-mail to [Larry.Johnson@iowa.gov](mailto:Larry.Johnson@iowa.gov).

There will be a public hearing on April 9, 2013, from 10 to 11 a.m. in the State Capitol, Room G-9, Des Moines, Iowa, 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 rules.

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

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement 2012 Iowa Acts, chapter 1115, section 3.

The following amendments are proposed.

ITEM 1. Adopt the following **new** 497—Chapter 1:

CHAPTER 1  
ORGANIZATION AND GENERAL ADMINISTRATION

**497—1.1(84GA,ch1115) Board description.**

**1.1(1)** The Iowa public information board is established by 2012 Iowa Acts, chapter 1115, section 6, and consists of nine members, including a chairperson.

**1.1(2)** The term “board” shall mean the Iowa public information board.

**1.1(3)** Board members are appointed by the governor for staggered terms of four years and are subject to confirmation by the senate. No more than three members appointed shall be representatives from the media, including newspapers, and no more than three members appointed shall be representatives of cities, counties, and other political subdivisions of the state.

**1.1(4)** On an annual basis at the board's first meeting on or after July 1, the members shall elect a chairperson. The board shall also employ a person who shall be an attorney admitted to practice law before the courts of Iowa to serve as the executive director of the board.

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

**1.1(5)** Vacancies on the board are filled in the same manner as regular appointments. Appointees who fill vacancies serve for the balance of the term.

**1.1(6)** The board shall meet at least quarterly and at the call of the chairperson.

**1.1(7)** Five board members constitute a quorum for conducting board business.

**1.1(8)** The board is available to assist in achieving compliance with open meetings and public records laws in alternative ways. Information is available on the board's Web site at [Web address]. The members of governmental bodies and the public may call the board for informal answers to questions during office hours from 8 a.m. to 4:30 p.m. on Monday through Friday at [telephone number]. Written guidance about compliance with the open meetings and public records laws may be provided by advisory opinions (see rules 497—1.2(84GA,ch1115) and 497—1.3(84GA,ch1115)) or by declaratory orders (see rules 497—3.1(84GA,ch1115) to 497—3.8(84GA,ch1115)). In addition, complaints may be filed alleging violations of open meetings or public records laws under rule 497—2.1(84GA,ch1115).

This rule is intended to implement 2012 Iowa Acts, chapter 1115, section 6.

**497—1.2(84GA,ch1115) Requirements for requesting board advisory opinions.**

**1.2(1) *Jurisdiction.*** The board will only issue advisory opinions pertaining to Iowa Code chapters 21 and 22, or rules adopted thereunder. The board shall not have jurisdiction over the judicial or legislative branches of state government or any entity, officer, or employee of those branches, or over the governor or the office of the governor.

**1.2(2) *Who may request an advisory opinion.*** Any person may request a board advisory opinion construing or applying Iowa Code chapters 21 and 22. The board may issue declaratory orders with the force of law pursuant to Iowa Code section 17A.9.

**1.2(3) *Form of request.*** The request for an advisory opinion shall pose specific legal questions and should describe any specific facts relating to the questions posed. Requests shall be sent to the board as provided in subrule 1.3(1).

This rule is intended to implement 2012 Iowa Acts, chapter 1115, section 9(3).

**497—1.3(84GA,ch1115) Processing of advisory opinion requests.**

**1.3(1)** Requests for board advisory opinions may be mailed to the Iowa Public Information Board, [address]. Requests may also be submitted by fax to [fax number] or by e-mail to [e-mail address].

**1.3(2)** After receiving an opinion request, the board's executive director shall prepare a draft opinion for board review. If the same or similar issue has been addressed in an opinion of a court, or in an attorney general's opinion, or in another prior advisory opinion, the executive director may respond to the requester by sending a copy of the prior opinion. Upon an affirmative vote of at least five members, the executive director shall issue a board advisory opinion on behalf of the board. The executive director may also cause an opinion to be issued on a routine matter on behalf of the board and shall provide notice to the board in writing of the opinion given. Advice contained in a board opinion, if followed, constitutes a defense to a subsequent complaint that is based on the same facts and circumstances.

**1.3(3)** A person who receives a board advisory opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request. The board may take up modification or reconsideration of an advisory opinion on its own motion within 30 days after the issuance of an opinion. The board aspires to issue an opinion within 30 days after a formal request is made.

**1.3(4)** Board advisory opinions are open records and shall be made available at the board office and via the board's Web site at [Web address].

**1.3(5)** Nothing in this rule precludes a person who has received a board opinion or advice from petitioning for a declaratory order pursuant to Iowa Code section 17A.9. The board may refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requester demonstrates a significant change in circumstances from those in the board opinion.

IOWA PUBLIC INFORMATION BOARD[497](cont'd)

**497—1.4(84GA,ch1115) Conflict of interest.**

**1.4(1) Definition.** “Conflict of interest” means that a board member, the executive director, or a board member’s immediate family has significant personal, financial, or employment relationship with: a person who has requested an advisory opinion; a person who has petitioned for a declaratory order or a rule making; a complainant; or a government employee or official or a governmental body that would be directly impacted by an advisory opinion, declaratory order, rule making, or a complaint. For purposes of this rule, “immediate family” means a member’s spouse, child, grandchild, or parent.

**1.4(2) Procedures.** As soon as a member of the board or the executive director becomes aware of a conflict of interest, the member or executive director shall follow these procedures:

*a.* If the conflict is known before a meeting, the member or executive director shall fully disclose the interest to the chairperson of the board in writing at least 24 hours before the meeting.

*b.* If the conflict is discovered during a meeting, the member or executive director shall orally inform the board and the nature of the conflict shall be reported in writing to the chairperson of the board within 24 hours after the meeting.

*c.* The board member or executive director who has the conflict shall not participate in discussion or vote on any advisory opinion, declaratory order, rule making, or complaint.

These rules are intended to implement 2012 Iowa Acts, chapter 1115, section 6.

ITEM 2. Adopt the following **new** 497—Chapter 2:

CHAPTER 2

COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

**497—2.1(84GA,ch1115) Complaints.**

**2.1(1) Form.** A complaint shall be written and signed by the person filing the complaint on forms provided by the board. The complaint shall allege a violation of Iowa Code chapter 21 or 22; provide specific facts in support of the allegation, including the identification of persons and government entity involved in the alleged violation; and provide the specific relief sought.

**2.1(2) Board acceptance or dismissal.** Upon receipt of a written complaint alleging a violation of Iowa Code chapter 21 or 22, the board shall either:

*a.* Accept the complaint, following a review of the allegations on their face, having determined that the complaint is within the board’s jurisdiction, appears legally sufficient, and could have merit; or

*b.* Dismiss the complaint, following a review of the allegations on their face, having determined that the complaint is outside the board’s jurisdiction, appears legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been disposed of on its merits by the board or a court.

**2.1(3) Delegation.** In order to expedite proceedings, the board may delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.

**2.1(4) Notice.** If the complaint is accepted, the board shall notify the parties in writing. If the complaint is dismissed, the board shall notify the complainant in writing and explain its reasons for dismissal.

**2.1(5) Board review.** The board’s review of a formal complaint for legal sufficiency is not a contested case proceeding and shall be made solely on the facts alleged in the complaint.

**497—2.2(84GA,ch1115) Investigations—board action.**

**2.2(1) Referral to staff.** Upon acceptance of a complaint, the board shall work with the executive director toward an informal, expeditious resolution. If the complaint is not resolved, the staff shall initiate an investigation to determine whether there is probable cause to believe a violation of Iowa Code chapter 21 or 22 has occurred.

*a. Statements inadmissible and confidential.* Statements made in the course of discussions undertaken to attempt to reach an informal, expeditious resolution cannot be admitted in subsequent

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

contested case proceedings and shall not be related by any participating board member or staff to nonparticipating board members who may later be assigned to hear and decide the contested case.

*b. Board member participation.* A board member who participates in discussions undertaken to attempt to reach an informal, expeditious resolution shall not participate in subsequent contested case proceedings or any appeal from a proposed decision to the full board.

**2.2(2) Subpoenas.** Investigations may include the issuance and enforcement of investigative subpoenas requiring the production of books, papers, records, electronic records and other real evidence, as well as requiring the attendance and testimony of witnesses.

**2.2(3) Completion.** Upon completion of an investigation, staff shall make a report to the board and may provide a recommendation for board action.

**2.2(4) Board action.** Upon receipt and review of the staff investigative report and any recommendations, the board may:

- a.* Redirect the matter for further investigation;
- b.* Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c.* As an exercise of administrative discretion, dismiss the matter without a determination regarding probable cause; or
- d.* Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

**497—2.3(84GA,ch1115) Civil penalties and other appropriate remedies.** If it is determined after a contested case proceeding that a violation of statute or rule under the board's jurisdiction has occurred, the board may impose any of the remedies set out in 2012 Iowa Acts, chapter 1115, section 9(8) or section 13(3b).

**497—2.4(84GA,ch1115) Settlements.** Settlements may be negotiated during an investigation or after the commencement of a contested case proceeding. Negotiations shall be conducted between the prosecutor and a governmental body or government official against whom a complaint has been filed.

**2.4(1) Board member participation.** The board may designate the chairperson or another board member to participate in settlement negotiations after initiation of a contested case.

**2.4(2) Ex parte communications.** If settlement negotiations are undertaken after a contested case has been initiated, the respondent may be required to waive any objections to ex parte communications.

**2.4(3) Approval.** A settlement shall be in writing and is subject to approval of a majority of the board. If the board declines to approve a proposed settlement, the settlement shall be of no force or effect.

These rules are intended to implement 2012 Iowa Acts, chapter 1115.

ITEM 3. Adopt the following new 497—Chapter 3:

CHAPTER 3  
DECLARATORY ORDERS

**497—3.1(17A) Petition for declaratory order.** Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board, at Iowa Public Information Board, [address]. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

## IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER
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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 497—3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

**497—3.2(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 497—3.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

**497—3.3(17A) Intervention.**

**3.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**3.3(2)** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

**3.3(3)** A petition for intervention shall be filed at Iowa Public Information Board, [address]. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

## IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.

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2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

**497—3.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

**497—3.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the board's executive director at Iowa Public Information Board, [address].

**497—3.6(17A) Service and filing of petitions and other papers.**

**3.6(1) When service required.** Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**3.6(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Public Information Board, [address]. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

**3.6(3) Method of service, time of filing, and proof of mailing.** Method of service, time of filing, and proof of mailing shall be as provided by rule 497—4.11(17A).

**497—3.7(17A) Consideration.** Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

**497—3.8(17A) Action on petition.**

**3.8(1)** Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board's executive director or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

**3.8(2)** The date of issuance of an order or of a refusal to issue an order means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

**497—3.9(17A) Refusal to issue order.**

**3.9(1)** The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- a. The petition does not substantially comply with the required form.

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

- b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- c.* The board does not have jurisdiction over the questions presented in the petition.
- d.* The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
- e.* The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f.* The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g.* There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h.* The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
- i.* The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
- j.* The petitioner requests the board to determine whether a statute is unconstitutional on its face.

**3.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**3.9(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

**497—3.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

**497—3.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**497—3.12(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9.

ITEM 4. Adopt the following **new** 497—Chapter 4:

CHAPTER 4  
CONTESTED CASES

**497—4.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the board.

**497—4.2(17A) Definitions.** Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

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

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

*“Presiding officer”* means the board, or one or more members of the board, or an administrative law judge assigned by the department of inspections and appeals.

*“Proposed decision”* means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board did not preside.

**497—4.3(17A) Time requirements.**

**4.3(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**4.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**497—4.4(17A) Notice of hearing.**

**4.4(1) Delivery.** Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

**4.4(2) Contents.** The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as prosecutor for the board and of the parties’ counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known; and
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1)“a,” that the presiding officer be an administrative law judge.

**497—4.5(17A) Presiding officer.**

**4.5(1)** Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within ten days after service of a notice of hearing which identifies or describes the presiding officer as the board or one or more members of the board.

**4.5(2)** The board may deny the request only upon a finding that one or more of the following apply:

- a. Neither the board nor any member of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. A qualified administrative law judge is unavailable to hear the case within a reasonable time.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

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- f.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- g.* The request was not timely filed.

**4.5(3)** The board shall issue a written ruling specifying the grounds for its decision within ten days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

**4.5(4)** An administrative law judge assigned to act as presiding officer in contested cases involving open meetings or public records laws shall have knowledge of or experience with Iowa Code chapters 21 and 22 unless waived by the agency.

**4.5(5)** Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**4.5(6)** Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

**497—4.6(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

**497—4.7(17A) Telephone proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

**497—4.8(17A) Disqualification.**

**4.8(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**4.8(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than

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investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3).

**4.8(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**4.8(4)** If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 497—4.24(17A) and seek a stay under rule 497—4.28(17A).

**497—4.9(17A) Consolidation—severance.**

**4.9(1)** *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

**4.9(2)** *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

**497—4.10(17A) Pleadings.**

**4.10(1)** Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

**4.10(2)** Petition.

*a.* Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

*b.* A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

**4.10(3)** Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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

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

**4.10(4)** Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

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**497—4.11(17A) Service and filing of pleadings and other papers.**

**4.11(1) *When service required.*** Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**4.11(2) *Service—how made.*** Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**4.11(3) *Filing—when required.*** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board at [address]. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa public information board.

**4.11(4) *Filing—when made.*** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**4.11(5) *Proof of mailing.*** Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

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

(Date)

(Signature)

**497—4.12(17A) Discovery.**

**4.12(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**4.12(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**4.12(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

**497—4.13(17A) Subpoenas.****4.13(1) *Issuance.***

*a.* An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

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

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

**4.13(2)** *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

**497—4.14(17A) Motions.**

**4.14(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**4.14(2)** Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**4.14(3)** The presiding officer may schedule oral argument on any motion.

**4.14(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

**4.14(5)** Motions for summary judgment. Motions for summary judgment shall comply with the requirements of the Iowa Rules of Civil Procedure and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 30 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 497—4.27(17A) and appeal pursuant to rule 497—4.26(17A).

**497—4.15(17A) Prehearing conference.**

**4.15(1)** Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

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

**4.15(2)** Each party shall bring to the prehearing conference:

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

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

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

**4.15(3)** In addition to the requirements of subrule 4.15(2), the parties at a prehearing conference may:

*a.* Enter into stipulations of law or fact;

*b.* Enter into stipulations on the admissibility of exhibits;

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

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

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

**4.15(4)** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

**497—4.16(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**4.16(1)** A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

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

**4.16(2)** In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

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

**497—4.17(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

**497—4.18(17A) Intervention.**

**4.18(1) Motion.** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within ten days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**4.18(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**4.18(3) Grounds for intervention.** The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

**4.18(4) Effect of intervention.** If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

**497—4.19(17A) Hearing procedures.**

**4.19(1)** The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**4.19(2)** All objections shall be timely made and stated on the record.

**4.19(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

**4.19(4)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**4.19(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**4.19(6)** Witnesses may be sequestered during the hearing.

**4.19(7)** The presiding officer shall conduct the hearing in the following manner:

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

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

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

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

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

**497—4.20(17A) Evidence.**

**4.20(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**4.20(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**4.20(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**4.20(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

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

**4.20(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**4.20(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

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**497—4.21(17A) Default.**

**4.21(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**4.21(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**4.21(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 497—4.26(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**4.21(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**4.21(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**4.21(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under the Iowa Rule of Civil Procedure 1.977.

**4.21(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 497—4.24(17A).

**4.21(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**4.21(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

**4.21(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 497—4.28(17A).

**497—4.22(17A) Ex parte communication.**

**4.22(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.8(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**4.22(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

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**4.22(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

**4.22(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 497—4.11(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**4.22(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**4.22(6)** The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 4.22(1).

**4.22(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 497—4.16(17A).

**4.22(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**4.22(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**4.22(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the executive director or the individual designated by the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**497—4.23(17A) Recording costs.** Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

**497—4.24(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for

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interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

**497—4.25(17A) Final decision.**

**4.25(1)** When the board, or a quorum of the board, presides over the reception of evidence at the hearing, its decision is a final decision.

**4.25(2)** When the board, or a quorum of the board, does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in rule 497—4.26(17A).

**497—4.26(17A) Appeals and review.**

**4.26(1)** *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

**4.26(2)** *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

**4.26(3)** *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought; and
- e. The grounds for relief.

**4.26(4)** *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**4.26(5)** *Scheduling.* The board shall issue a schedule for consideration of the appeal.

**4.26(6)** *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

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

**497—4.27(17A) Applications for rehearing.**

**4.27(1)** *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

**4.27(2)** *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.26(4), the applicant requests an opportunity to submit additional evidence.

**4.27(3)** *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

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**4.27(4) Notice to other parties.** A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

**4.27(5) Disposition.** Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

**497—4.28(17A) Stays of agency actions.**

**4.28(1) When available.**

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

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

**4.28(2) When granted.** In determining whether to grant a stay, the presiding officer or the board shall consider the factors listed in Iowa Code section 17A.19(5) "c."

**4.28(3) Vacation.** A stay may be vacated by the issuing authority upon application of any party.

**497—4.29(17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

These rules are intended to implement Iowa Code section 17A.12 and 2012 Iowa Acts, chapter 1115, section 6.

ITEM 5. Adopt the following new 497—Chapter 5:

CHAPTER 5  
PETITIONS FOR RULE MAKING

**497—5.1(17A) Petition for rule making.** Any person or agency may file a petition for rule making with the board at Iowa Public Information Board, [address]. A petition is deemed filed when it is received by the board. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject of matter).	PETITION FOR RULE MAKING
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The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendments to a rule and, if it is a petition to amend or

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repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

3. A brief summary of petitioner's arguments in support of the action urged in the petition.

4. A brief summary of the data supporting the action urged in the petition.

5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.

6. Any request by petitioner for a meeting provided for by rule 497—5.4(17A).

**5.1(1)** The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**5.1(2)** The board may deny a petition because it does not substantially conform to the required form.

**497—5.2(17A) Briefs.** The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

**497—5.3(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the board at Iowa Public Information Board, [address].

**497—5.4(17A) Board consideration.**

**5.4(1)** Within 14 days after the filing of a petition, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

**5.4(2)** Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

**5.4(3)** Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 and 2012 Iowa Acts, chapter 1115, section 6.

ITEM 6. Adopt the following **new** 497—Chapter 6:

CHAPTER 6  
AGENCY PROCEDURE FOR RULE MAKING

**497—6.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

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**497—6.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the board by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**497—6.3(17A) Public rule-making docket.**

**6.3(1) Docket maintained.** The board shall maintain a current public rule-making docket.

**6.3(2) Anticipated rule making.** The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the board. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of board personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects upon which public comment is desired.

**6.3(3) Pending rule-making proceedings.** The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any board determinations with respect thereto;
- h. Any known timetable for board decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

**497—6.4(17A) Notice of proposed rule making.**

**6.4(1) Contents.** At least 35 days before the adoption of a rule the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the board shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that

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omitted text of the proposed rule, and the range of possible choices being considered by the board for the resolution of each of those issues.

**6.4(2) *Incorporation by reference.*** A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 6.12(2) of this chapter.

**6.4(3) *Copies of notices.*** Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the board a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the board for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one calendar year.

**497—6.5(17A) Public participation.**

**6.5(1) *Written comments.*** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Iowa Public Information Board, [address], or the person designated in the Notice of Intended Action.

**6.5(2) *Oral proceedings.*** The board may, at any time, schedule an oral proceeding on a proposed rule. The board shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

*a.* A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

*b.* A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

*c.* A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

**6.5(3) *Conduct of oral proceedings.***

*a. Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b” or this chapter.

*b. Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

*c. Presiding officer.* The board, a member of the board, or another person designated by the board who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding.

*d. Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the board at least one business day prior to the proceeding and

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indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the board.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

**6.5(4) *Additional information.*** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**6.5(5) *Accessibility.*** The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the board's executive director at [telephone number] in advance to arrange access or other needed services.

**497—6.6(17A) Regulatory analysis.**

**6.6(1) *Definition of small business.*** A "small business" is defined in Iowa Code section 17A.4A(8).

**6.6(2) *Mailing list.*** Small businesses or organizations of small businesses may be registered on the board's small business impact list by making a written application addressed to Iowa Public Information Board, [address]. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact; and
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The board may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The board may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

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**6.6(3) *Time of mailing.*** Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(3), the board shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

**6.6(4) *Qualified requesters for regulatory analysis—economic impact.*** The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) “a” after a proper request from:

- a. The administrative rules coordinator; or
- b. The administrative rules review committee.

**6.6(5) *Qualified requesters for regulatory analysis—business impact.*** The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) “b” after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

**6.6(6) *Time period for analysis.*** Upon receipt of a timely request for a regulatory analysis the board shall adhere to the time lines described in Iowa Code section 17A.4A(4).

**6.6(7) *Contents of request.*** A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A.

**6.6(8) *Contents of concise summary.*** The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A.

**6.6(9) *Publication of a concise summary.*** The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A.

**6.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “a” unless a written request expressly waives one or more of the items listed in the section.

**6.6(11) *Regulatory analysis contents—substantial impact on small business.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

**497—6.7(17A) Fiscal impact statement.**

**6.7(1)** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

**6.7(2)** If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**497—6.8(17A) Time and manner of rule adoption.**

**6.8(1) *Time of adoption.*** The board shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the

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Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**6.8(2) *Consideration of public comment.*** Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**6.8(3) *Reliance on board expertise.*** Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**497—6.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**6.9(1)** The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

*a.* The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

*b.* The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

*c.* The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

**6.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

*a.* The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

*b.* The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

*c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

**6.9(3)** The board shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

**6.9(4)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**497—6.10(17A) Exemptions from public rule-making procedures.**

**6.10(1) *Omission of notice and comment.*** To the extent the board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**6.10(2) *Categories exempt.*** The following narrowly tailored category of rules is exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by either state or federal law.

**6.10(3) *Public proceedings on rules adopted without them.*** The board may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in

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reliance upon subrule 6.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 6.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 6.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**497—6.11(17A) Concise statement of reasons.**

**6.11(1) General.** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Iowa Public Information Board, [address]. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

**6.11(2) Contents.** The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the board's reasons for overruling the arguments made against the rule.

**6.11(3) Time of issuance.** After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

**497—6.12(17A) Contents, style, and form of rule.**

**6.12(1) Contents.** Each rule adopted by the board shall contain the text of the rule and, in addition:

- a. The date the board adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(2) or the board in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(2) or the board in its discretion decides to include such reasons; and
- g. The effective date of the rule.

**6.12(2) Incorporation by reference.** The board may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board finds that the incorporation of its text in the board proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this board, and how and where copies may be obtained from the agency of the United States, this

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state, another state, or the organization, association, or persons originally issuing that matter. The board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

If the board adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative code editor for deposit in the state law library and may make the standards available electronically.

**6.12(3) *References to materials not published in full.*** When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board. The board will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the board shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

**6.12(4) *Style and form.*** In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

**497—6.13(17A) Agency rule-making record.**

**6.13(1) *Requirement.*** The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

**6.13(2) *Contents.*** The board rule-making record shall contain:

*a.* Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of board submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

*b.* Copies of any portions of the board's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

*c.* All written petitions, requests, and submissions received by the board, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board and considered by the board, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the board is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the board shall identify in the record the particular materials deleted and state the reasons for that deletion;

*d.* Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

*e.* A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

*f.* A copy of the rule and any concise statement of reasons prepared for that rule;

*g.* All petitions for amendment or repeal or suspension of the rule;

*h.* A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(3) by the administrative rules review committee, the governor, or the attorney general;

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*i.* A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any board response to that objection;

*j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

*k.* A copy of any executive order concerning the rule.

**6.13(3) *Effect of record.*** Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

**6.13(4) *Maintenance of record.*** The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 6.13(2) “g,” “h,” “i,” or “j.”

**497—6.14(17A) *Filing of rules.*** The board shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.

**497—6.15(17A) *Effectiveness of rules prior to publication.***

**6.15(1) *Grounds.*** The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**6.15(2) *Special notice.*** When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 6.15(2).

**497—6.16(17A) *General statements of policy.***

**6.16(1) *Compilation, indexing, public inspection.*** The board shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11) “a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

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**6.16(2) Enforcement of requirements.** A general statement of policy subject to the requirements of this subsection shall not be relied on by the board to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 6.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

**497—6.17(17A) Review by agency of rules.**

**6.17(1)** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The board may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**6.17(2)** In conducting the formal review, the board shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the board's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the board or granted by the board. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code section 17A.4.

ITEM 7. Adopt the following **new** 497—Chapter 7:

CHAPTER 7  
FAIR INFORMATION PRACTICES

The Iowa public information board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices which are published on the Iowa general assembly's Web site at <https://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf>.

**497—7.1(17A,22) Definitions.** As used in this chapter:

“Agency” means the Iowa public information board.

“Confidential records” means records, as defined under Iowa Code section 22.7 or any other provision of law, which are not disclosed to members of the public unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release the records. This includes records which the board is prohibited by law from making available for inspection by members of the public and those exempt records which the board has lawfully determined not to disclose to members of the public.

“Open records” means those records which are not authorized or required to be kept confidential under Iowa Code section 22.7 or any other provision of law.

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1 that is owned by or is in the physical possession of the board.

“Record system” means any group of records under the control of the board from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

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**497—7.2(17A,22) Statement of policy.** The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22, and board staff shall cooperate with members of the public in implementing the provisions of that chapter.

**497—7.3(17A,22) Requests for access to records.**

**7.3(1) Location of record.** A request for access to a record shall be directed to the Iowa Public Information Board, [address]. If the requested record is not on file in the board office, the custodian will arrange for it to be retrieved from state archives and made available in the board office.

**7.3(2) Office hours.** Records shall be made available during customary office hours of 8 a.m. to 4:30 p.m. on Monday through Friday, excluding Saturdays, Sundays, and legal holidays. Records made available via the board's Web site at [Web address] are available at all hours and on all days.

**7.3(3) Request for access.** Requests for access to records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

**7.3(4) Granting access to records.** The custodian is authorized to grant or deny access to the record according to the provisions of Iowa Code chapter 22, this chapter or any other provision of law. The decision to grant or deny access may be delegated to one or more designated employees. Access to an open record shall be granted immediately upon request. If the size or nature of the request requires time for compliance, the board shall comply with the request as soon as possible. However, access to such a record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4). The board shall promptly inform the requester of the reason for the delay.

**7.3(5) Security of record.** No person shall, without permission, search or remove any record from board files. Examination and copying of records shall be done under the supervision of board staff. Records shall be protected from damage and disorganization.

**7.3(6) Copying.** A reasonable number of copies may be made in the board office unless printed copies are available. If copying equipment is not available in the office where a record is kept, the board shall permit its examination in that office and shall arrange to have copies promptly made elsewhere. Records made available on the board's Web site may be copied without restriction.

**7.3(7) Fees.**

*a. Copying costs.* Price schedules for regularly published records and for copies of records not regularly published shall be posted by the board. Copies may be made by or for members of the public at cost as determined and posted by the custodian of the record. The cost of postage and of other services provided in connection with the request may be charged as appropriate.

*b. Search and supervisory fee.* An hourly fee may be charged for actual board expenses in searching for, and supervising the examination and copying of, requested records. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. No fee shall be charged if the records are not made available for inspection, or if the time required does not exceed three hours in duration, or if the time required for the search was the result of a board error or a record-keeping problem. The board shall post the hourly fees to be charged in routine cases for search and supervision of records. The board shall give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the particular records in question, and shall indicate the amount of that higher hourly wage to the requester.

*c. Advance deposits.*

(1) The board may require a requester to make an advance deposit of the estimated fee.

(2) When a requester has previously failed to pay a fee charged under this subrule, the board may require advance payment of the full amount of any estimated fee before the board processes a new or pending request for access to records from that requester, as well as payment in full of the amount previously owed.

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**497—7.4(17A,22) Procedures for access to confidential records.** The following procedures for access to confidential records are in addition to those specified for all records in rule 497—7.3(17A,22).

**7.4(1) Proof of identity.** A person requesting access to a confidential record shall be required to provide proof of identity if access to the record is restricted to a particular person or class of persons.

**7.4(2) Requests.** A request to review a confidential record shall be in writing. A person requesting access to a confidential record may be required to sign a certified statement or affidavit enumerating the specific grounds justifying access to the confidential record and to provide any proof necessary to establish relevant facts. Such request may be referred to the full board for consideration.

**7.4(3) Request denied.** When the custodian of a confidential record or the board denies a request for access to a confidential record, in whole or in part, the requester shall be notified in writing. The denial shall be signed by the custodian of the confidential record and shall include:

- a. The name and title or position of the person or persons responsible for the denial and a brief citation to the statute or other provision of law that prohibits disclosure of the record;
- b. A brief citation to the statute vesting discretion in the custodian to deny disclosure of the record; and
- c. A brief statement of the grounds for the denial to this requester.

**497—7.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.**

**7.5(1) Who may file request.** Any person who would be aggrieved or adversely affected by disclosure of all or a part of a record to members of the public may file a request, as provided in this rule, for the record's treatment as a confidential record. Failure of a person to request confidential record treatment for all or part of a record, such as information obtained in the course of a board investigation or to achieve voluntary compliance with 2012 Iowa Acts, chapter 1115, does not preclude the board from treating the record as a confidential record. The information may become a public record once the matter is resolved or dismissed.

**7.5(2) Form of request.** A request for the treatment of a record as a confidential record shall be in writing and shall be filed with the custodian of the record. The request shall include the specific grounds justifying confidential record treatment for all or part of the record; the specific provision of law that authorizes such confidential record treatment; and the name, address, and telephone number of the person authorized to respond to any board action concerning the request. A person filing such a request shall attach a copy of the record in question. The material to which the request applies shall be physically separated from any materials to which the request does not apply. The request shall be attached to the materials to which it applies. Each page of the material to which the request applies shall be clearly marked confidential. If the original record is being submitted to the board by the person requesting confidentiality at the same time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are a confidential record. A request for treatment of all or portions of a record as a confidential record for a limited time period shall also specify the precise period of time for which such confidential record treatment is requested.

**7.5(3) Failure to request confidentiality.** If a person who has submitted business information to the board does not request confidential record treatment for all or part of that information, the custodian of records containing that information may assume that the person who submitted the information has no objection to its disclosure.

**7.5(4) Time.** A board decision with respect to the disclosure of all or parts of a record may be made when a request for the record's treatment as a confidential record is filed or when the board receives a request for access to the record.

**7.5(5) Effect of granted request.** If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the board decision will be placed in the public file in lieu of the original record.

**7.5(6) Effect of denied request.** If a request for confidential record treatment is denied, the board shall advise the requester in writing on the grounds the request was denied and treat the record as a confidential record for 30 days to allow the person requesting such treatment for the record an opportunity

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

to seek injunctive relief. However, if the board determines that a 30-day delay is not in the public interest and furnishes the requester with a written copy of that determination, including the appropriate grounds, the record will be treated as a confidential record for at least three working days unless prior release of the record is necessary to avoid imminent peril to the public health, safety, or welfare. The board may extend the period of confidential record treatment of such a record beyond 30 days only if a court directs the board to treat the record as a confidential record or to the extent permitted by Iowa Code chapter 22 or with the consent of the person requesting access.

**497—7.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records.** Except as otherwise provided by law, the subject shall have the right to have a written statement of additions, dissents or objections entered into the record. However, any additions, dissents or objections entered into the record shall not be considered evidence in a contested case proceeding. The subject shall send the statement to the Executive Director, Iowa Public Information Board, [address]. The statement shall be dated and signed by the subject and shall include the subject's current address and telephone number.

**497—7.7(17A,22) Consensual disclosure of confidential records.**

**7.7(1) Consent to disclose by a subject individual.** To the extent allowed by law, the subject may consent in writing to agency disclosure of confidential records.

**7.7(2) Complaints to public officials.** A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**7.7(3) Obtaining information from a third party.** The board is required to obtain information to assist in making decisions regarding classification, programming, security and administrative management. Requests to third parties for this information may involve the release of confidential information about individuals. Except as provided by law, the board may make these requests only when the individual has authorized the release.

**497—7.8(17A,22) Routine use.** To the extent allowed by law, the following uses are considered routine uses of all agency records:

**7.8(1)** Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

**7.8(2)** Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

**7.8(3)** Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

**7.8(4)** Transfers of information within the agency, to other state agencies, or to units of local government as appropriate to administer the program for which the information is collected.

**7.8(5)** Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

**7.8(6)** Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**497—7.9(17A,22) Disclosures without the consent of the subject.**

**7.9(1)** Open records are routinely disclosed without the consent of the subject.

**7.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances when disclosure, if lawful, will generally occur without notice to the subject:

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

- a. For a routine use as permitted by law and in the particular record system.
- b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e. To the legislative services agency under Iowa Code section 2A.3.
- f. Disclosures in the course of employee disciplinary proceedings.
- g. In response to a court order or subpoena.

**497—7.10(17A,22) Release to subject.**

**7.10(1)** The subject of a confidential record may file a written request to review confidential records about that person. However, the board need not release the following records to the subject:

- a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).
- b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
- c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.
- d. As otherwise authorized by law.

**7.10(2)** When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.

**497—7.11(17A,22) Availability of records.**

**7.11(1)** *Open records.* Board records are open for public inspection and copying unless otherwise prohibited by current rule or law.

**7.11(2)** *Confidential records.* The following records may be kept confidential. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Records obtained under subpoena or through a board investigation that are confidential under Iowa Code section 22.7 or any another provision of law;
- b. Minutes of closed meetings of a governmental body (Iowa Code section 21.5(4));
- c. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d";
- d. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerance or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
  - (1) Enable law violators to avoid detection;
  - (2) Facilitate disregard of requirements imposed by law; or
  - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency;
- e. Records which constitute attorney work product, or attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa Rule of Civil Procedure 1.503(3), Federal Rule of Civil Procedure 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility and case law; or

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

*f.* Other records made confidential by law.

**497—7.12(17A,22) Personally identifiable information.**

**7.12(1)** This rule describes the nature and extent of personally identifiable information which is collected, maintained and retrieved by the agency by personal identifier in record systems as defined in this rule. For each record system, this rule:

*a.* Describes the legal authority for the collection of that information and the means of storage of that information; and

*b.* Indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

**7.12(2)** Complaint files. These records are the complaints filed with the board alleging a violation of Iowa Code chapter 21 or 22. The complaint will include a description of the facts on which the complaint is based and the name of the person filing the complaint.

**7.12(3)** Records of telephone inquiries. Records of the telephone inquiries may be kept for statistical reasons or to inform the board of the nature and volume of informal, verbal advice.

**7.12(4)** Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

**7.12(5)** Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, and tax withholding information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

**497—7.13(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security), meeting minutes.** This rule describes groups of records maintained by the board other than record systems as previously defined. These records are routinely available to the public. However, the board's file of these records may contain confidential information, as discussed in rule 497—7.12(17A,22). The following records are stored both as hard copy and in automated data processing systems unless otherwise noted.

**7.13(1)** *Rule-making records.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

**7.13(2)** *Board meeting records.* Agendas, minutes and materials presented to the board are available from the office of the executive director, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Board meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

**7.13(3)** *Publications.* News releases, annual reports, project reports, board newsletters, and related documents are available from the board office. Board news releases, project reports, and newsletters may contain information about individuals, including board staff or members of the board. This information is not retrieved by individual identifier.

**7.13(4)** *Statistical reports.* Periodic reports of the board for various board programs are available from the board office. Statistical reports do not contain personally identifiable information.

## IOWA PUBLIC INFORMATION BOARD[497](cont'd)

**7.13(5) *Published materials.*** The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law. These records are hard copy only.

**7.13(6) *Policy manuals.*** The board employees' manual, containing procedures describing the board's regulations and practices, is available. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to the board office. Policy manuals do not contain information about individuals.

**7.13(7) *Other records.*** All other records that are not exempt from disclosure by law are available from the board office.

**497—7.14(17A,22) *Applicability.*** This chapter does not:

**7.14(1)** Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

**7.14(2)** Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

**7.14(3)** Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.

**7.14(4)** Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, rules of discovery, evidentiary privileges and applicable regulations of the agency.

These rules are intended to implement Iowa Code chapters 17A and 22.

**ARC 0647C**

## **LABOR SERVICES DIVISION[875]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby gives Notice of Intended Action to amend Chapter 90, “Administration of the Boiler and Pressure Vessel Program,” Iowa Administrative Code.

The proposed amendment would define the statutory phrase “institution of health and custodial care.” This definition codifies existing practice.

The purposes of this amendment are to set forth existing practice in the rules and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on April 9, 2013, a public hearing will be held on April 10, 2013, at 9 a.m. in the Capitol View Room, 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than April 10, 2013, to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

After analysis and review of this rule making, no impact on jobs will occur.

## LABOR SERVICES DIVISION[875](cont'd)

This amendment is intended to implement Iowa Code chapter 89.

The following amendment is proposed.

Adopt the following **new** definition of “Institution of health and custodial care” in rule **875—90.2(89,261,252J,272D)**:

“*Institution of health and custodial care*” means any of the following:

1. A health care facility as defined by Iowa Code section 135C.1;
2. An assisted living program as defined by Iowa Code section 231C.2;
3. A boarding home as defined by Iowa Code section 135O.1;
4. A hospice that offers inpatient services in an institutional setting;
5. Any institution or facility in which persons are housed to receive medical, health, or other care or treatment; or
6. Any other institution or facility in which persons are housed to receive assistance with meeting personal needs or activities of daily living.

A facility or office that provides care and services only on an outpatient basis shall not be an “institution of health and custodial care.”

**ARC 0652C**

## **PHARMACY BOARD[657]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 10, “Controlled Substances,” Chapter 22, “Unit Dose, Alternative Packaging, and Emergency Boxes,” and Chapter 23, “Long-Term Care Pharmacy Practice,” Iowa Administrative Code.

The amendments were approved at the January 16, 2013, regular meeting of the Board of Pharmacy.

The proposed amendments authorize a pharmacy other than a facility’s primary provider pharmacy to provide to the facility to meet the needs of the facility’s patients an emergency/first dose drug supply containing those drugs and products not stocked or available from the primary provider pharmacy. This additional supply may include, but is not limited to, parenteral or compounded drug products. The proposed amendments also provide that a multidose container of a drug removed from the emergency drug supply for administration to a patient be labeled with a patient-specific label within 24 hours of initial administration or that an appropriately labeled new drug order be dispensed and delivered by the provider pharmacy. The record requirements for controlled substances destroyed in a long-term care facility and for previously dispensed controlled substances destroyed by a pharmacy are amended to require the recording of the dispensing pharmacy or other source of the controlled substance and the prescription number or other unique identification assigned to the prescription.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on April 9, 2013. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 124.301, 155A.13, and 155A.15.

The following amendments are proposed.

## PHARMACY BOARD[657](cont'd)

ITEM 1. Amend subrule 10.18(3) as follows:

**10.18(3) *Previously dispensed controlled substances.*** Controlled substances dispensed to or for a patient and subsequently requiring destruction due to discontinuance of the drug, death of the patient, or other reasons necessitating destruction may be destroyed or otherwise disposed of by a pharmacist in witness of one other responsible adult pursuant to this subrule. All licenses and registrations issued to the pharmacy, the pharmacist, and any individual witnessing the destruction or other disposition shall not be subject to sanctions relating to controlled substances at the time of the destruction or disposition. The individuals involved in the destruction or other disposition shall not have been subject to any criminal, civil, or administrative action relating to violations of controlled substances laws, rules, or regulations within the past five years. The pharmacist in charge shall be responsible for designating pharmacists authorized to participate in the destruction or other disposition pursuant to this subrule. The authorized pharmacist shall prepare and maintain in the pharmacy a readily retrievable record of the destruction or other disposition, which shall be clearly marked to indicate the destruction or other disposition of noninventory or patient drugs. The record shall include, at a minimum, the following:

- a. ~~Source~~ The source of the controlled substance (patient identifier or administering practitioner, if applicable, prescription number or other unique identification number, and date of return);
- b. The name, strength, and dosage form of the substance;
- c. The quantity returned and destroyed or otherwise disposed of;
- d. The date the substance is destroyed or otherwise disposed of;
- e. The signatures or other unique identification of the pharmacist and the witness;
- f. The name and address of the dispensing pharmacy or practitioner if the controlled substance was not dispensed by the pharmacy completing the destruction.

ITEM 2. Amend subrule 22.7(1) as follows:

**22.7(1) *Emergency/first dose drug supplies.*** ~~All contents~~ Contents of the emergency/first dose drug supply shall be provided by ~~one~~ a primary provider pharmacy designated by the facility, and the drug supply shall be available to meet the needs of all patients of the facility, without penalty or discrimination. If the primary provider pharmacy does not supply or is unable to supply all drugs and products needed for the emergency care of facility patients, a second provider pharmacy may provide an emergency/first dose drug supply consisting only of drugs and products not stocked or available from the primary provider pharmacy including, but not limited to, parenteral or compounded drug products. The provider ~~pharmacy~~ pharmacies shall be properly registered with the federal Drug Enforcement Administration (DEA) and the board and shall be currently licensed by the board. The provider pharmacist or pharmacists, the consultant pharmacist, the director of nursing of the facility, and the medical director of the facility, or their respective designees, shall jointly determine and prepare a list of drugs necessary for prompt use in patient care that will be available in ~~the~~ each emergency/first dose drug supply. Drugs shall be listed by identity and quantity, shall be limited to drugs necessary to meet the emergency needs of the patients served, and shall be periodically reviewed pursuant to policy. Careful patient planning should be a cooperative effort between the ~~pharmacy~~ pharmacies and the facility to make drugs available, and ~~this supply~~ emergency/first dose drug supplies shall only be used for emergency or unanticipated needs. The intent of the emergency/first dose drug supply is not to relieve a pharmacy of the responsibility for timely provision of a patient's routine drug needs and is not intended to relieve any provider pharmacy from the provider pharmacy's responsibility to provide 24-hour services to facility patients; the intent is to ensure that a supply of drugs is available to each patient in case of urgent need. The drugs in ~~the~~ emergency/first dose drug supply supplies are the responsibility of the respective provider pharmacy and, therefore, shall not be used or altered in any way except as provided in this rule.

ITEM 3. Amend subrule 22.7(5) as follows:

**22.7(5) *Removal of drugs.*** A drug shall be removed from the emergency/first dose drug supply only pursuant to a valid prescription order and by authorized personnel or by the provider pharmacist. The patient's dispensing pharmacy shall be notified, prior to the administration of a second dose, that a drug was administered to a specific patient. Upon notification, the dispensing pharmacist shall perform drug use review to assess the appropriateness of the drug therapy for the patient. If the emergency/first

## PHARMACY BOARD[657](cont'd)

dose drug supply contains a multidose package of a drug product that is removed from the supply for administration of one or more doses of the product to a patient and if following that administration the package contains one or more additional doses of the drug product and if the prescriber authorizes continuation of the drug product for that patient, the provider pharmacy shall complete either of the following processes.

a. Prepare and affix to the multidose package a label in compliance with rule 657—23.11(124,155A). The label shall be prepared and affixed to the package within 24 hours of administration of the emergency dose or doses.

b. Dispense, pursuant to a valid prescription order and in compliance with rule 657—23.11(124,155A), an appropriately labeled supply of the drug for the patient. The new prescription shall be delivered to the facility within 24 hours of administration of the emergency dose or doses.

ITEM 4. Amend rule 657—23.5(124,155A) as follows:

**657—23.5(124,155A) Emergency drugs.** A supply of emergency drugs may be provided by one or more long-term care ~~pharmacy~~ provider pharmacies to the facility pursuant to rule 657—22.7(124,155A).

**23.5(1) Emergency medication order—pharmacist review.** When an emergency drug is provided pursuant to rule 657—22.7(124,155A), the medication order shall be reviewed by the resident's dispensing pharmacist prior to the administration of a second dose.

**23.5(2) Other emergency drugs and devices.** In addition to ~~an~~ one or more emergency ~~box~~ boxes or stat drug ~~box~~ boxes, a long-term care facility staffed by one or more persons licensed to administer drugs may maintain a stock of intravenous fluids, irrigation fluids, heparin flush kits, medicinal gases, sterile water and saline, and prescription devices. Such stock shall be limited to a listing to be determined by the provider pharmacist in consultation with the consultant pharmacist and the medical director and director of nursing of the facility.

ITEM 5. Amend subrule 23.21(1) as follows:

**23.21(1) Destruction in the facility.** In facilities staffed by one or more persons licensed to administer drugs, a licensed health care professional (pharmacist, registered nurse, licensed practical nurse) may destroy controlled substances in witness of one other responsible adult. The professional destroying or otherwise disposing of the drug shall prepare and maintain a readily retrievable record of the destruction or other disposition which shall be clearly marked to indicate the destruction or other disposition of resident drugs. The record shall include, at a minimum, the following:

a. Resident name and unique identification or number assigned by the dispensing pharmacy to the prescription;

b. The name, strength, and dosage form of the substance;

c. The quantity destroyed or otherwise disposed of;

d. The date the substance is destroyed or otherwise disposed of;

e. The signature or uniquely identifying initials or other unique identification of the professional and the witness;

f. The name and address of the dispensing pharmacy or the dispensing practitioner.

**ARC 0643C**

**PHARMACY BOARD[657]**

**Notice of Termination**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on October 3, 2012, as **ARC 0373C**, proposing to amend Chapter 22, "Unit Dose, Alternative Packaging, and Emergency Boxes," and Chapter 23, "Long-Term Care Pharmacy Practice," Iowa Administrative Code.

## PHARMACY BOARD[657](cont'd)

The Notice proposed to authorize a pharmacy other than a facility's primary provider pharmacy to provide to the facility to meet the needs of the facility's patients an emergency/first dose drug supply containing those drugs and products not stocked or available from the primary provider pharmacy.

The Board is terminating the rule making commenced in **ARC 0373C** based on comments and suggestions received from members of the public and the profession. The Board has determined that responding to those comments and suggestions in this rule making would result in substantive changes and additional proposed amendments. A new Notice of Intended Action is published herein as **ARC 0652C**.

After analysis and review of this rule making, no impact on jobs has been found.

**ARC 0651C****PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 141, “Licensure of Nursing Home Administrators,” and Chapter 144, “Discipline for Nursing Home Administrators,” Iowa Administrative Code.

These proposed amendments add a definition of a provisional license; clarify that the provisional license shall not count toward the experience required of a practicum preceptor; provide the circumstances under which a provisional license may be obtained; establish the time limits for serving as a provisional administrator; define the provisional license application requirements; and add “provisional license” to the definitions for discipline to be consistent with changes in Iowa Code chapter 155.

Any interested person may make written comments on the proposed amendments no later than April 9, 2013, addressed to Sharon Dozier, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail [Sharon.Dozier@idph.iowa.gov](mailto:Sharon.Dozier@idph.iowa.gov).

A public hearing will be held on April 9, 2013, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

The proposed amendments are subject to the waiver provisions at 645—Chapter 18.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 21, 147, 155 and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition in rule **645—141.1(155)**:

“*Provisional license*” means a license issued to an administrator appointed on a temporary basis to perform the duties of a nursing home administrator.

ITEM 2. Amend subparagraph **141.5(1)“e”(2)** as follows:

(2) Shall have at least two years' experience as a licensed nursing home administrator. Any experience as an administrator under a provisional license shall not count toward the required two years; and

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 3. Rescind rule 645—141.6(155) and adopt the following **new** rule in lieu thereof:

**645—141.6(155) Provisional license.** Under certain limited circumstances, and only upon the filing of an application requesting approval, a provisional license may be issued to an administrator appointed on a temporary basis to perform the duties of a nursing home administrator. A provisional license is considered a temporary appointment, and the person appointed may serve as an administrator for a period of time not to exceed 12 months in an entire career. The 12 months in service are not required to be consecutive; however, a new application is required for each appointment period. It is the responsibility of the approved provisional administrator to maintain documentation of the actual dates the administrator serves in that capacity.

**141.6(1)** The limited circumstances under which the request for a provisional appointment shall be granted include the inability of the licensed administrator to perform the administrator's duties, the death of the licensed administrator, or circumstances which prevent the immediate transfer of the licensed administrator's duties to another licensed administrator. A provisional license shall not be issued to a licensed nursing home administrator.

**141.6(2)** Application for a provisional license shall be in writing on forms prescribed by the board. Application forms may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to the Board of Nursing Home Administrators, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Applicants shall meet the following minimum qualifications:

- a. Be at least 18 years of age.
- b. Be employed on a full-time basis of no less than 40 hours per week to perform the duties of the nursing home administrator.
- c. Be knowledgeable about the nursing home administrator's domains of practice including resident care; human resources; finance; physical environment; and leadership and management.
- d. Be without a history of unprofessional conduct or denial of or disciplinary action against a license to practice nursing home administration or any other profession by any lawful licensing authority for reasons outlined in 645—Chapter 144.
- e. Provide evidence to establish that the provisional appointment will not exceed the lifetime maximum period of 12 calendar months in duration. For any period in which the applicant previously served as a provisional administrator, written employment verification or a written attestation of the facility owner, chief operating officer, or board officer shall satisfy this requirement.
- f. Provide evidence that the provisional appointment complies with the requirements in 481—subrule 58.8(4). A written attestation of the facility owner, chief operating officer, or board officer shall satisfy this requirement.

**141.6(3)** Applications for an extension of the time period for the provisional appointment within the same facility do not require the payment of an additional fee, as long as all other requirements stated in this rule are met.

**141.6(4)** The board expressly reserves the right to withdraw approval of a provisional appointment. Withdrawal of approval shall be based on information or circumstances warranting such action. The provisional administrator shall be notified of the withdrawal of approval in writing by certified mail.

ITEM 4. Adopt the following **new** definition in rule **645—144.1(155)**:

*"Provisional license"* means a license issued to an administrator appointed on a temporary basis to perform the duties of a nursing home administrator.

## ARC 0650C

## PUBLIC HEALTH DEPARTMENT[641]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 141A.2(2), the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 11, “Acquired Immune Deficiency Syndrome (AIDS),” Iowa Administrative Code.

The rules in Chapter 11 describe procedures and programs related to HIV/AIDS, including laboratory certification, training programs, notification and testing of exposed persons, and the AIDS Drug Assistance Program (ADAP). These proposed amendments for the Iowa ADAP provide updated and consistent language, an expansion of program definitions, and a clear delineation between program components.

Any interested person may make written comments or suggestions on the proposed amendments on or before April 9, 2013. Such written comments should be directed to Randy Mayer, Bureau of HIV, STD and Hepatitis, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [Randall.Mayer@idph.iowa.gov](mailto:Randall.Mayer@idph.iowa.gov).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 141A.3.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of “Deductible,” “Health insurance assistance program,” “Medication assistance program” and “Payer of last resort” in rule **641—11.84(141A)**:

“*Deductible*” means an amount of money that an insured person must pay out of pocket before any benefits from the health insurance policy can be used.

“*Health insurance assistance program*” means a component of ADAP that purchases health insurance and pays insurance premiums, copayments for medications, and deductibles for eligible enrollees in ADAP.

“*Medication assistance program*” means a component of ADAP that provides medications directly to eligible enrollees in ADAP.

“*Payer of last resort*” means a requirement to coordinate services and seek payment from all other sources before Ryan White funds are used.

ITEM 2. Amend the following definitions in rule **641—11.84(141A)**:

“*ADAP advisory committee*” means the committee appointed by the bureau of ~~disease prevention and immunization~~ HIV, STD, and hepatitis to provide advice and technical assistance to the department regarding the ADAP program.

“*AIDS drug assistance program*” or “*ADAP*” means the Iowa AIDS drug assistance program administered by the bureau of ~~disease prevention and immunization~~ HIV, STD, and hepatitis within the department and includes two components, the medication assistance program and the health insurance assistance program.

“*Bureau*” means the bureau of ~~disease prevention and immunization~~ HIV, STD, and hepatitis within the department.

“*Family Household income*” means the combined gross earned and unearned income of all individuals within the family unit household.

“*Family unit Household*” means a group of individuals residing together who are related by birth, marriage, or adoption; or an individual who does not reside with any other individual to whom the individual is related by birth, marriage, or adoption.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*“Iowa AIDS ADAP formulary”* means the list of drugs approved for use in the ADAP program by the bureau upon recommendation of the ADAP advisory committee.

ITEM 3. Amend rule 641—11.85(141A) as follows:

**641—11.85(141A) Purpose.** The AIDS drug assistance program is a state-administered program that provides certain HIV/AIDS medications to eligible low-income individuals diagnosed with HIV or AIDS if adequate funding is available for administration of the program. There are two components to the Iowa AIDS drug assistance program: the medication assistance program and the health insurance assistance program. The AIDS drug assistance program is authorized under Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Part B of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87). This legislation requires that the Ryan White program, including the AIDS drug assistance program, be the payer of last resort for HIV-related services. The AIDS drug assistance program will cease to provide medications when available funding is exhausted or terminated. ADAP is not an entitlement program and does not create a right to assistance. In the event that funding is exhausted or terminated or there are changes in state or federal guidelines, programs, or regulations that impact funding available to ADAP, the department reserves the right to close enrollment, cease to provide medication assistance or health insurance assistance, or alter eligibility criteria until such time that funding is again sufficient.

ITEM 4. Renumber current rules **641—11.86(141A)** and **641—11.87(141A)** as **641—11.87(141A)** and **641—11.88(141A)**.

ITEM 5. Adopt the following new rule 641—11.86(141A):

**641—11.86(141A) Ensuring payer of last resort.** To ensure that ADAP is the payer of last resort, the Iowa Medicaid enterprise shall grant the department access to client-level information for persons enrolled in Medicaid.

ITEM 6. Amend renumbered rules 641—11.87(141A) and 641—11.88(141A) as follows:

**641—11.87(141A) Eligibility requirements.**

**11.87(1)** An applicant is eligible to participate in ADAP the ADAP medication assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has no ~~or inadequate~~ health insurance to cover the cost of the drugs that are or may become available from ADAP;
- c. ~~Is not fully covered under the Iowa Medicaid program~~ currently being prescribed a drug on the ADAP formulary;
- d. Has an annual gross ~~family~~ household income that is less than or equal to 200 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the United States Department of Health and Human Services for the size of the household (this income shall be determined after a \$500 work-related ~~deduction~~ allowance is deducted from the monthly gross salary of an employed person with HIV/AIDS);
- e. ~~Has liquid assets, not including major residence, household furnishings, and one vehicle, valued at less than \$10,000;~~
- f. e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and
- g. ~~f.~~ f. Is a resident of Iowa.

**11.87(2)** An applicant is eligible to participate in the ADAP health insurance assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has creditable health insurance coverage;
- c. Is currently being prescribed a drug on the ADAP formulary;

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*d.* Has an annual gross household income that is less than or equal to 400 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the United States Department of Health and Human Services for the size of the household;

*e.* Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and

*f.* Is a resident of Iowa.

~~11.87(2)~~ **11.87(3)** For purposes of paragraph 11.86(1)“*d*,” paragraphs 11.87(1)“*d*” and 11.87(2)“*d*,” an individual may report annual family household income by using actual family household income for the most recent 12 months or by using estimated annual family household income determined by multiplying the current monthly family household income by 12.

**641—11.88(141A) Enrollment process.**

**11.88(1)** The department shall review each completed application and shall determine enrollment based upon applicant eligibility, the date on which the application was completed, and the availability of funds. When the department determines that an applicant is eligible for enrollment, the applicant may be enrolled for ~~42~~ six months commencing with the date of the determination or may be enrolled for a shorter time period at the discretion of the department.

**11.88(2)** An applicant shall provide the department with all requested information and shall execute any consent forms or releases of information necessary for the department to verify eligibility.

~~11.88(3)~~ The department shall review eligibility annually after enrollment unless one of the following events occurs within the 12-month period to end eligibility:

*a.* The enrolled individual dies;

*b.* The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer;

*c.* The enrolled individual's annual family income increases to an amount above 200 percent of the poverty level; or

*d.* The enrolled individual establishes residency outside the state of Iowa.

~~11.88(4)~~ An applicant must submit a renewal application form on an annual basis, accompanied by all information requested by the department.

ITEM 7. Renumber current rules **641—11.88(141A)**, **641—11.89(141A)**, **641—11.90(141A)** and **641—11.91(141A)** as **641—11.90(141A)**, **641—11.91(141A)**, **641—11.92(141A)** and **641—11.93(141A)**, respectively.

ITEM 8. Adopt the following **new** rule **641—11.89(141A)**:

**641—11.89(141A) Discontinuation of services.**

**11.89(1)** The department shall review eligibility semiannually after enrollment unless one of the following events occurs within the six-month period to end eligibility:

*a.* The enrolled individual dies;

*b.* The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer and is able to fully pay the insurance deductibles and copayments;

*c.* The enrolled individual's annual household income increases to an amount above the respective ADAP component's income guidelines;

*d.* The enrolled individual establishes residency outside the state of Iowa;

*e.* The enrolled individual does not request drugs within a 90-day period; or

*f.* The enrolled individual is placed in an institution such as a nursing home, state prison, or jail for more than 30 days.

**11.89(2)** An applicant must submit renewal documentation on a semiannual basis, accompanied by all information requested by the department.

ITEM 9. Amend renumbered paragraph **11.90(1)“b”** as follows:

*b.* Are on the Iowa AIDS ADAP formulary.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 10. Amend renumbered subrule 11.91(2) as follows:

**11.91(2)** The department shall place names on the waiting list ~~in the following order:~~ in chronological order based upon the date of receipt of a completed application by the department.

~~a.— Women who have been diagnosed with HIV infection or AIDS and who are pregnant shall be placed on the waiting list with priority over all other applicants.~~

~~b.— Applicants who are already on medications shall be placed on the waiting list with priority over all applicants listed in paragraphs “c” and “d.”~~

~~c.— HIV medication naïve patients shall be placed on the waiting list in the following order with priority over all applicants listed in paragraph “d”:~~

~~(1) CD4 count of < 200 cells/mm<sup>3</sup> regardless of viral load.~~

~~(2) New opportunistic (HIV-related) infection or malignancy.~~

~~(3) Asymptomatic and CD4 count of 200-350 and viral load > 55,000 copies/ml.~~

~~(4) Asymptomatic and CD4 count of > 350. If viral load is > 55,000, a documented fall in CD4 counts on three measurements of at least 15 percent of first measurement (i.e., 500 on first test must drop to less than or equal to 425).~~

~~d.— All other applicants shall be placed on the waiting list in chronological order based upon the date of receipt of a completed application by the department.~~

ITEM 11. Amend renumbered subrule 11.91(3) as follows:

**11.91(3)** To verify that applicants on the waiting list continue to meet ADAP eligibility requirements, the department shall require applicants on the waiting list to submit reapplication forms ~~annually~~ semiannually.

ITEM 12. Adopt the following new subrule 11.91(4):

**11.91(4)** The department shall remove applicants from the waiting list in the chronological order in which their completed applications were approved, provided all updates were received by the department.

ITEM 13. Amend renumbered rule 641—11.93(141A) as follows:

**641—11.93(141A) Confidentiality.** The ADAP application and all information received or maintained by the department in connection with ~~the ADAP program~~ shall be considered confidential information in accordance with Iowa Code section 141A.9.

**ARC 0654C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135.25, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 140, “Emergency Medical Services System Development Grants Fund,” Iowa Administrative Code.

The rules in Chapter 140 describe the process to apply for and receive the Department’s emergency medical services (EMS) system development grants. The proposed amendments eliminate a requirement that the funds be awarded competitively, which will remove barriers that local applicants currently experience and improve the accessibility to these grants. Appropriate audit protections are taken to ensure funds are expended in an appropriate manner. The Department consulted with the state Emergency Medical Services Advisory Council, which voted in favor of recommending these amendments to the Director of Public Health.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

The changes to definitions within these amendments are intended to bring Chapter 140 into compliance with EMS regulatory definitions found in other existing Department rules.

Any interested person may make written comments or suggestions on the proposed amendments on or before April 9, 2013. Such written comments should be directed to Gerd Clabaugh, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 135.25.

The following amendments are proposed.

ITEM 1. Rescind the definitions of “Applicant” and “Emergency medical care personnel” in rule **641—140.1(135)**.

ITEM 2. Amend the following definitions in rule **641—140.1(135)**:

“*Ambulance service*” means ~~any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation and emergency medical services~~ ambulance service as defined in 641—132.1(147A).

“*CEHs*” means ~~continuing education hours which are based upon a minimum of 50 minutes of training per hour~~ CEH as defined in 641—131.1(147A).

“*Continuing education*” means ~~training approved by the department which is obtained by a certified emergency medical care provider to maintain, improve, or expand relevant skills and knowledge and to satisfy renewal of certification requirements~~ continuing education as defined in 641—131.1(147A).

“*EMS Emergency medical care provider*” means ~~an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT basic, EMT intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department~~ emergency medical care provider as defined in 641—131.1(147A).

“*Nontransport service*” means ~~any privately or publicly owned rescue or first response service program which does not provide patient transportation (except when no ambulance is available or in a disaster situation) and utilizes only first response vehicles to provide emergency medical care at the scene of an emergency~~ nontransport service as defined in 641—132.1(147A).

“*Service program*” means ~~any 24-hour emergency medical care ambulance service or nontransport service that has received authorization by the department~~ service program as defined in 641—131.1(147A).

ITEM 3. Amend rule 641—140.4(135) as follows:

**641—140.4(135) County EMS system development grants.** Grants for EMS system development proposals at the regional, county, and local level are available through a ~~competitive selection grant~~ process from the department to county boards of supervisors for equipment, training, and support of infrastructure needs as identified in the countywide EMS strategic plan and the department system standards. County boards of supervisors may not take any administrative fee from these funds to support their work under this rule. County recipients of funds may subcontract work under this agreement to a county EMS association. Funds for training will be used to train members of a service program that provides service on a regular basis to residents of the county being funded. Funds for equipment require a \$1 match of regional, county, or local funds for each \$1 of EMS system development grant funds.

**140.4(1) Eligible costs.** Costs which are eligible for EMS system development grant expenditures as defined in the request for proposal (RFP) include:

a. Training.

(1) Reimbursement for initial training tuition, fees and materials up to an amount that is the lowest fee charged by the training entity following successful completion of an EMS course. Practical and written examination fees may also be included.

(2) Payment of continuing education tuition, fees and materials. Education provided by an EMS service program for the general public is an allowable expense.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

- (3) Payment for EMS training aids.
  - b. Other equipment as defined by the RFP.
  - c. Infrastructure support.
- (1) Development and enhancement of EMS systems.
- (2) Office equipment and supplies necessary to coordinate a countywide EMS system.
- (3) Personnel services for staffing to provide countywide continuous quality improvement and medical direction.

The title to any EMS equipment purchased with these funds shall not lie with the department, but shall be determined by the county ~~EMS association~~.

**140.4(2)** No change.

**ARC 0653C**

## REVENUE DEPARTMENT[701]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 71, “Assessment Practices and Equalization,” Iowa Administrative Code.

The subject matter of rule 701—71.3(421,428,441) is the valuation of agricultural real estate. The proposed amendment to this rule requires the assessor to adjust non-cropland in distributing agricultural productivity valuation to each parcel. The adjustment shall be applied to non-cropland with a corn suitability rating that is greater than 50 percent of the average corn suitability rating for cropland for the county.

This amendment is proposed to address the lack of uniformity in the distribution of agricultural productivity value at a parcel level across the state of Iowa. The amendment to subrule 71.3(1) adds a requirement that the assessor adjust non-cropland in distributing agricultural valuation to each parcel and provides an example of the calculation used to compute the adjustment required under this subrule. The amendment also allows a taxpayer to apply to the county for the adjustment to non-cropland beginning with the 2014 assessment and until the county’s full implementation of this subrule.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Pursuant to Executive Order Number 80, the Director of the Department of Revenue formed a stakeholder group to review this proposed amendment to subrule 71.3(1). The stakeholder group was made up of impacted stakeholders that included members from the following groups: Iowa Association of Assessors, Iowa Cattlemen’s Association, Iowa Corn Growers Association, Farm Bureau, Iowa Natural Heritage Foundation, Iowa Soybean Association, and a farmer representative. The stakeholder group made five recommendations, three of which the Department incorporated into this proposed amendment.

The Department included the stakeholder group’s recommendation to add an example of the calculation used to compute adjustment on land defined as non-cropland. The Department also included the recommendation to have an implementation deadline for the 2017 assessment year but allow a hardship waiver that would extend the implementation deadline to the 2019 assessment year. Finally, the Department included the recommendation to allow a taxpayer to apply for the adjustment as set out

## REVENUE DEPARTMENT[701](cont'd)

in subrule 71.3(1) for the 2014 assessment year and subsequent years until full implementation of this subrule.

The Department declined to include the stakeholder group's recommendation to begin determinations of cropland and non-cropland with the determinations from the 2008 USDA Farm Service Agency Common Land Unit layer with adjustments moving forward for changes that have occurred; this recommendation is already within the proposed amendment. The Department also declined to include the recommendation for further adjustments to be allowed for non-cropland producing insignificant or zero income when it is maintained in conservation vegetation in cooperation with a federal, state, or local conservation agency because this recommendation is contrary to the intent of this proposed amendment, which is to address the lack of uniformity in the distribution of agricultural productivity value at a parcel level across the state of Iowa.

Any interested person may make written suggestions or comments on this proposed amendment on or before April 9, 2013. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by April 9, 2013.

After analysis and review of this rule making, a positive impact on jobs could exist.

This amendment is intended to implement Iowa Code sections 441.17, 428.4, and 441.21.

The following amendment is proposed.

Amend subrule 71.3(1) as follows:

**71.3(1) Productivity.**

a. In determining the productivity and net earning capacity of agricultural real estate, the assessor shall also use available data from Iowa State University, the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), the USDA Farm Service Agency (FSA), the Iowa department of revenue, or other reliable sources. The assessor shall also consider the results of a modern soil survey, if completed. The assessor shall determine the actual valuation of agricultural real estate within the assessing jurisdiction and spread distribute such valuation throughout the jurisdiction so that each parcel of real estate is assessed at its actual value as defined in Iowa Code section 441.21.

b. In distributing such valuation to each parcel under paragraph 71.3(1) "a," the assessor shall adjust non-cropland. The adjustment shall be applied to non-cropland with a corn suitability rating (CSR) that is greater than 50 percent of the average CSR for cropland for the county. The adjustment shall be determined for each county based upon the five-year average difference in cash rent between non-irrigated cropland and pastureland as published by NASS. The assessor may utilize the USDA FSA-published Common Land Unit digital data or other reliable sources in determining non-cropland. Counties shall implement the adjustments under this paragraph on or before the 2017 assessment year. The department of revenue may, in a case involving hardship, extend the implementation of the adjustments required under this paragraph to the 2019 assessment year. No extension of time shall be granted unless the county makes a written request to the department of revenue for such action.

c. A taxpayer may apply to the county for the adjustment to non-cropland under paragraph 71.3(1) "b" beginning with the 2014 assessment and until the county's full implementation of this subrule. Upon application, and subsequent approval by the assessor, the county assessor shall adjust non-cropland as provided in paragraph 71.3(1) "b." Once a taxpayer applies for the adjustment, and upon approval, the assessor shall make the adjustment to the assessment year for which the application was submitted and until the county's full implementation of this subrule, without the need to reapply for the adjustment.

d. EXAMPLE. The following is an example of the calculation used to compute adjustment on land determined to be non-cropland with a CSR that is greater than 50 percent of the average CSR for cropland for the county:

## REVENUE DEPARTMENT[701](cont'd)

<u>Average county CSR rating for cropland</u>	<u>80 CSR</u>
<u>50% of average cropland CSR</u>	<u>40 CSR</u>
<u>Example of non-cropland soil 11b CSR rating</u>	<u>58 CSR</u>
<u>Non-cropland CSR points to be adjusted</u>	<u>58 – 40 = 18 CSR points</u>
<u>5-year average rent for non-irrigated cropland</u>	<u>\$163.60</u>
<u>5-year average rent for pasture land</u>	<u>\$48.30</u>
<u>Percent difference (rounded)</u>	<u>1 – (\$48.30/\$163.60) = 70%</u>
<u>Apply the percent difference to points to be adjusted</u>	<u>18 CSR points × (1 – .70) = 5.40 adjusted CSR points</u>
<u>Adjusted CSR non-cropland</u>	<u>40 + 5.40 = 45.40 adjusted CSR points</u>

**ARC 0655C****SOIL CONSERVATION DIVISION[27]****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 161A.4(1) and 161C.2(4), the Division of Soil Conservation hereby gives Notice of Intended Action to amend Chapter 10, “Iowa Financial Incentive Program for Soil Erosion Control,” and Chapter 12, “Water Protection Practices—Water Protection Fund,” Iowa Administrative Code.

The amendments update allocation factors for individual counties for initial distribution of soil conservation funding. The amendments allow additional funding to be used to protect public lakes and would set September 1 as the date to recall unobligated funding. Soil and water conservation districts would be required to review the priority ranking system annually and to share the information electronically with IDALS. The amendments would also allow funding for water protection practices to be used in combination with other public funds. Additional flexibility would be granted by expanding the list of eligible practices and adjusting some of the eligibility criteria.

Any interested persons may make written suggestions or comments on the proposed amendments on or before April 10, 2013. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

A public hearing will be held on April 9, 2013, at 1:30 p.m. in the Second Floor Conference Room, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa.

These proposed amendments are subject to the Division’s general waiver provisions.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code section 161A.2 and Iowa Code chapter 161C.

The following amendments are proposed.

ITEM 1. Amend subrules 10.41(2) and 10.41(3) as follows:

**10.41(2)** Publicly owned lakes. For the approved cost of permanent soil conservation practices on watersheds above publicly owned lakes, a minimum of 5 percent of the amount appropriated is to be set aside for cost sharing at a rate not to exceed 75 percent.

## SOIL CONSERVATION DIVISION[27](cont'd)

**10.41(3)** Mandatory program. ~~Five~~ A maximum of 5 percent of the appropriation shall be set aside for cost sharing with landowners or farm operators who are required to install soil erosion control practices as a result of an administrative order from the district to abate complaints filed under Iowa Code section 161A.47.

ITEM 2. Rescind subrules **10.41(8)** and **10.41(9)**.

ITEM 3. Amend paragraph **10.51(1)“e”** as follows:

e. The following table provides the value of “w” for each district:

## Individual Soil and Water Conservation District

## Percentage Allocation Factors

W(%) District	W(%) District	W(%) District	W(%) District
<del>1.8</del> <u>1.7</u> Adair	1.2 Davis	1.0 Jefferson	0.2 Pocahontas*
<del>1.2</del> <u>1.1</u> Adams	<del>1.3</del> <u>1.4</u> Decatur	<del>1.1</del> <u>1.2</u> Johnson	<del>0.7</del> <u>0.8</u> Polk
1.5 Allamakee	0.8 Delaware	1.2 Jones	1.4 E. Pottawattamie
1.1 Appanoose	<del>0.6</del> <u>0.5</u> Des Moines	1.4 Keokuk	1.2 W. Pottawattamie
<del>1.4</del> <u>1.3</u> Audubon	0.4 Dickinson	<del>0.6</del> <u>0.5</u> Kossuth	<del>1.5</del> <u>1.6</u> Poweshiek
<del>1.4</del> <u>1.2</u> Benton	<del>1.9</del> <u>1.8</u> Dubuque	1.0 Lee	1.6 Ringgold
<del>0.5</del> <u>0.3</u> Black Hawk*	<del>0.3</del> <u>0.4</u> Emmet*	<del>1.1</del> <u>1.0</u> Linn	0.7 Sac
<del>0.5</del> <u>0.6</u> Boone	1.1 Fayette	0.5 Louisa	<del>0.9</del> <u>0.8</u> Scott
0.3 Bremer*	0.3 Floyd*	1.1 Lucas	<del>1.7</del> <u>1.8</u> Shelby
<del>0.4</del> <u>0.3</u> Buchanan*	0.6 Franklin	<del>0.8</del> <u>0.9</u> Lyon	1.0 Sioux
<del>0.4</del> <u>0.5</u> Buena Vista	1.0 Fremont	1.2 Madison	0.6 Story
0.6 Butler	<del>0.4</del> <u>0.5</u> Greene	1.2 Mahaska	1.5 Tama
0.3 Calhoun*	0.5 Grundy	1.3 Marion	1.7 Taylor
1.2 Carroll	1.5 Guthrie	<del>1.4</del> <u>1.5</u> Marshall	1.1 Union
1.5 Cass	0.4 Hamilton	<del>1.0</del> <u>1.1</u> Mills	1.2 Van Buren
1.2 Cedar	<del>0.3</del> <u>0.4</u> Hancock*	<del>0.3</del> <u>0.2</u> Mitchell*	1.0 Wapello
<del>0.5</del> <u>0.4</u> Cerro Gordo	0.7 Hardin	<del>1.2</del> <u>1.3</u> Monona	<del>1.1</del> <u>1.2</u> Warren
1.0 Cherokee	<del>1.6</del> <u>1.7</u> Harrison	1.0 Monroe	1.1 Washington
0.4 Chickasaw	0.9 Henry	1.2 Montgomery	1.4 Wayne
1.2 Clarke	0.4 Howard	<del>0.6</del> <u>0.5</u> Muscatine	0.3 Webster*
<del>0.3</del> <u>0.4</u> Clay*	0.2 Humboldt*	<del>0.4</del> <u>0.5</u> O’Brien	0.5 Winnebago
2.0 Clayton	1.3 Ida	0.3 Osceola*	<del>1.8</del> <u>2.0</u> Winneshiek
1.2 Clinton	1.4 Iowa	1.5 Page	<del>2.3</del> <u>2.2</u> Woodbury
<del>2.4</del> <u>2.5</u> Crawford	<del>1.6</del> <u>1.7</u> Jackson	0.4 Palo Alto	<del>0.3</del> <u>0.2</u> Worth*
0.8 Dallas	<del>1.7</del> <u>1.8</u> Jasper	2.4 Plymouth	0.4 Wright

\*The minimum value to be used in determining original allocations to districts shall be 0.4.

ITEM 4. Amend subrule 10.52(2) as follows:

**10.52(2)** *Recall of unobligated funds.* Funds that are allocated to districts under this program and are not obligated ~~within three months~~ by September 1 shall be recalled by the division and reallocated.

ITEM 5. Amend rule 27—10.60(161A), introductory paragraph, as follows:

**27—10.60(161A) Funding rates.** The purpose of this division is to establish the funding rates at which the state will fund or share the cost for approved soil conservation practices under the various incentive programs. In all cases, except for the mandatory program, the state’s share will be computed using the percentages specified below and the estimated cost, the amended estimated cost, or the actual cost of

## SOIL CONSERVATION DIVISION[27](cont'd)

implementing the practice, whichever is less. Payments under the mandatory program will be based on actual costs. Funds distributed to annual programs for permanent practices may be used in combination with other public funds as long as the maximum cost-share rate realized by the district cooperator does not exceed 75 percent of the total eligible costs.

ITEM 6. Amend subrule 10.73(6) as follows:

**10.73(6) District priorities.** Each application for financial incentives shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The district priority system shall be reviewed annually by the district. The priority system shall be sent electronically to the division for the division's record after the annual review. The priority system shall give consideration to ~~family-operated farms and~~ the public benefit derived. The priority system adopted by the district shall be made available for review at the district office. ~~In establishing its priorities for funds made available beginning July 1, 1983, the district shall also give consideration to the district cooperator's effort to implement Iowa Soil 2000 program requirements.~~

ITEM 7. Amend rule 27—12.50(161C) as follows:

**27—12.50(161C) Water protection practices account.** This part defines procedures for allocation, recall and reallocation of water protection practices funds to soil and water conservation districts and to the division's reserve fund. ~~These funds shall not be used alone or in combination with other public funds to provide a financial incentive payment greater than 75 percent of the approved cost for practices listed in 12.84(161C), or 50 percent in 12.77(1), 12.77(2) and 12.77(3).~~

ITEM 8. Amend subrule 12.51(2) as follows:

**12.51(2) Recall of funds.** Any funds allocated in the current fiscal year that the districts have not spent or obligated by June 30 ~~may~~ shall be recalled by the division.

ITEM 9. Amend paragraph **12.63(3)“b”** as follows:

*b.* Privately owned land not used for agricultural production shall not qualify for water protection practices funds. Windbreaks, streambank and shoreline protection, and stormwater quality best management practices established on privately owned land are eligible whether or not the land is in agricultural production.

ITEM 10. Amend subrule 12.72(5) as follows:

**12.72(5) Pasture and hay planting.** The practice must include the conversion of land from row crop production to a permanent vegetative cover to control excessive water erosion.

ITEM 11. Adopt the following **new** subrule 12.72(9):

**12.72(9) Stormwater quality best management practices (BMPs).** A technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost-effective manner. BMPs can be either:

*a.* Nonstructural BMPs, which include a range of pollution prevention, education, or institutional management and development practices designed to limit the conversion of rainfall to runoff and to prevent pollutants from entering runoff at the source of runoff generation; or

*b.* Structural BMPs, which are engineered and constructed systems that are used to treat the stormwater at either the point of generation or the point of discharge to either the storm sewer system or to receiving waters (e.g., detention ponds or constructed wetlands).

ITEM 12. Rescind subrule **12.73(7)**.

ITEM 13. Amend rule 27—12.77(161C), introductory paragraph, as follows:

**27—12.77(161C) Cost-share rates.** The following cost-share rates shall apply for eligible practices designated in rules 27—12.72(161C) to 27—12.74(161C). These rates represent the maximum allowable cost-share provided by state funds. These rates may be used in combination with other public funds to provide a total cost-share rate not to exceed 75 percent of the lesser of the eligible or the estimated cost of installation.

### TREASURER OF STATE

#### Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for March is 4.00%.

#### INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective March 9, 2013, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

#### TIME DEPOSITS

7-31 days .....	Minimum .05%
32-89 days .....	Minimum .05%
90-179 days .....	Minimum .05%
180-364 days .....	Minimum .05%
One year to 397 days .....	Minimum .05%
More than 397 days .....	Minimum .15%

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

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

## ARC 0656C

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 163.1(1), the Department of Agriculture and Land Stewardship hereby amends Chapter 64, “Infectious and Contagious Diseases,” and Chapter 65, “Animal and Livestock Importation,” Iowa Administrative Code.

The amendments allow the use of an alternate test for tuberculosis in cervids. The Cervid TB Stat-Pak test has recently been approved by the USDA Animal and Plant Health Inspection Service.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 0642C** on March 6, 2013. These Adopted and Filed Emergency amendments are identical to those published under Notice of Intended Action.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation have begun and will be continued. However, delaying implementation until completion of the notice and public participation process would be contrary to the public interest.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective March 1, 2013. Adoption of these amendments on an emergency basis confers a benefit to the public because the new test is more cost-effective and provides quicker results.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 163.1 and 163.14.

These amendments became effective on March 1, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **64.34(10)“b,”** introductory paragraph, as follows:

*b. Cervidae originating outside Iowa.* Cervidae that originate outside Iowa must obtain an entry permit from the state veterinarian’s office prior to import into Iowa. Cervidae that originate outside Iowa which are six months of age or older must originate from a herd not under quarantine and have been tested negative for Tuberculosis (TB) by the Single Cervical Tuberculin (SCT) test (Cervidae) or by the Cervid TB Stat-Pak test within 90 days of exhibition, or originate from an Accredited Herd (Cervidae), or originate from a Qualified Herd (Cervidae), with test dates shown on the Certificate of Veterinary Inspection. Herd status and SCT test are according to USDA Tuberculosis Eradication in Cervidae Uniform Methods and Rules, effective January 22, 1999.

ITEM 2. Adopt the following new subrule 64.73(4):

**64.73(4)** The TB Stat-Pak test for cervids.

ITEM 3. Amend paragraph **65.9(3)“a”(1)“1”** as follows:

1. Originate from a herd not under quarantine and be tested negative for tuberculosis (TB) within 90 days of importation by the Single Cervical Tuberculin (SCT) test (Cervidae) or by the Cervid TB Stat-Pak test; or

[Filed Emergency 3/1/13, effective 3/1/13]

[Published 3/20/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/13.