



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXIV  
April 18, 2012

NUMBER 21  
Pages 1345 to 1426

## CONTENTS IN THIS ISSUE

Pages 1357 to 1425 include ARC 0080C to ARC 0107C

### AGENDA

Administrative rules review committee . . . . . 1349

### ALL AGENCIES

Agency identification numbers . . . . . 1355  
Citation of administrative rules . . . . . 1347  
Schedule for rule making . . . . . 1348

### COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Notice, Governor Terry E. Branstad Iowa  
state fair scholarship program, 36.1(4)  
ARC 0089C . . . . . 1357

### EDUCATION DEPARTMENT[281]

Notice Terminated, Funding for  
instructional programs for children  
residing in juvenile homes, ch 63  
ARC 0101C . . . . . 1357  
Filed, Pathways for academic career  
and employment program; gap tuition  
assistance program, ch 25 ARC 0102C . . . . . 1410  
Filed, Early ACCESS integrated system  
of early intervention services, ch 120  
ARC 0100C . . . . . 1410

### ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Notice, Air quality, 20.2, 22.3(3), 22.100,  
22.108(3), 25.1 ARC 0087C . . . . . 1358  
Notice, Air quality—fine particulate  
matter, 33.3 ARC 0097C . . . . . 1364

### EXECUTIVE DEPARTMENT

Executive order number 76 . . . . . 1426

### HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Notice, Historic preservation program  
administration, 35.2 ARC 0104C . . . . . 1372  
Notice, Review and compliance program,  
42.1 to 42.7 ARC 0103C . . . . . 1375

### IOWA FINANCE AUTHORITY[265]

Notice, Shelter assistance fund, 41.2,  
41.6, 41.8, 41.10(3), 41.12(2)"a"  
ARC 0096C . . . . . 1380  
Notice, Emergency shelter grants  
program, amendments to ch 42 ARC 0095C . . . 1381

### LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Notice, OSHA standards for general  
industry and construction—adoption  
by reference, 10.20, 26.1 ARC 0105C . . . . . 1385

### LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Professional Licensing and Regulation Bureau[193]  
COMMERCE DEPARTMENT[181]"umbrella"

Notice, "Retired" status, 1.1, 2.1, 2.8,  
2.10 ARC 0086C . . . . . 1386

### MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Notice, Permanent physician licensure,  
amendments to ch 9 ARC 0090C . . . . . 1388  
Notice, Resident, special and temporary  
physician licensure, amendments to  
ch 10 ARC 0091C . . . . . 1392  
Notice, Continuing education and training  
requirements, amendments to ch 11  
ARC 0092C . . . . . 1396

**NURSING BOARD[655]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Filed, Organization and procedures of the board, 1.3(2) **ARC 0085C** . . . . . 1411
- Filed, Discipline, 4.6, 4.14 **ARC 0084C** . . . . . 1412

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Filed, Physical therapists and physical therapist assistants—licensure, discipline, 200.4(3), 200.5(1)“a”(1), 200.9(1), 202.2(11) **ARC 0094C** . . . . . 1413
- Filed, Social workers—supervision, licensure, continuing education, 280.6, 280.7, 280.14(3)“b,” 281.2 **ARC 0093C** . . . . . 1414

**PUBLIC HEARINGS**

- Summarized list . . . . . 1352

**PUBLIC SAFETY DEPARTMENT[661]**

- Notice, Criminalistics laboratory—operations, 95.5, 150.3(8), 150.4(2), 156.1 to 156.10, 157.2, 157.7 **ARC 0098C** . . . . . 1400

**REGENTS BOARD[681]**

- Notice, Parking at universities, 4.26, 4.31(2) **ARC 0099C** . . . . . 1402

**SCHOOL BUDGET REVIEW COMMITTEE[289]**

EDUCATION DEPARTMENT[281]“umbrella”

- Filed, Hearing procedures; documentation, amendments to ch 6 **ARC 0088C** . . . . . 1417

**SECRETARY OF STATE[721]**

- Notice, Election forms and instructions, 21.203(8), 21.303, 21.320 **ARC 0106C** . . . . . 1403
- Notice, Athlete agent registration, 42.1 to 42.3 **ARC 0083C** . . . . . 1404
- Notice, Electronic communication, 43.7 **ARC 0081C** . . . . . 1404
- Filed Emergency, Election forms and instructions, 21.203(8), 21.303, 21.320 **ARC 0107C** . . . . . 1407
- Filed Emergency, Certificate of notarial acts, 43.1 **ARC 0082C** . . . . . 1408

**TREASURER OF STATE[781]**

- Notice—Public funds interest rates . . . . . 1405
- Filed, Disclosure of information regarding open-end credit and credit cards; fairgrounds infrastructure grant program, rescind chs 5, 20 **ARC 0080C** . . . . . 1425

## 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

Telephone: (515)281-3355

Fax: (515)281-5534

### 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 2012

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
23	Friday, April 27, 2012	May 16, 2012
24	Friday, May 11, 2012	May 30, 2012
25	Wednesday, May 23, 2012	June 13, 2012

**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 Tuesday, May 8, 2012, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the May 2, 2012, Iowa Administrative Bulletin.

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

Egg handlers, 1.5(2), ch 36 Notice **ARC 0078C** ..... 4/4/12  
 Renewable fuel infrastructure program—timing of application, 16.2(2) Notice **ARC 0069C** ..... 4/4/12  
 Rating for ethanol blended gasoline, 85.48, 85.50 Filed Emergency After Notice **ARC 0079C** ..... 4/4/12

#### **CAPITAL INVESTMENT BOARD, IOWA[123]**

Verification of tax credits for investment in fund of funds, 4.2, 4.5  
Notice **ARC 0077C**, also Filed Emergency **ARC 0076C** ..... 4/4/12

#### **COLLEGE STUDENT AID COMMISSION[283]**

EDUCATION DEPARTMENT[281]“umbrella”  
 Governor Terry E. Branstad Iowa state fair scholarship program, 36.1(4) Notice **ARC 0089C**..... 4/18/12

#### **EARLY CHILDHOOD IOWA STATE BOARD[249]**

Online guidelines and standards for services, 1.4(2)“d” Notice **ARC 0058C** ..... 4/4/12

#### **EDUCATION DEPARTMENT[281]**

Pathways for academic career and employment program; gap tuition assistance program, ch 25 Filed **ARC 0102C** ..... 4/18/12  
 Funding for instructional programs for children residing in juvenile homes, ch 63  
Notice of Termination **ARC 0101C** ..... 4/18/12  
 Early ACCESS integrated system of early intervention services, ch 120 Filed **ARC 0100C** ..... 4/18/12

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

NATURAL RESOURCES DEPARTMENT[561]“umbrella”  
 Air quality, 20.2, 22.3(3), 22.100, 22.108(3), 25.1 Notice **ARC 0087C** ..... 4/18/12  
 Air quality—fine particulate matter, 33.3 Notice **ARC 0097C** ..... 4/18/12

#### **HISTORICAL DIVISION[223]**

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”  
 Historic preservation program administration, 35.2 Notice **ARC 0104C** ..... 4/18/12  
 Review and compliance program, 42.1 to 42.7 Notice **ARC 0103C** ..... 4/18/12

#### **HUMAN SERVICES DEPARTMENT[441]**

State supplementary assistance program—annual adjustments to eligibility and payment levels, 51.4(1), 51.7, 52.1 Filed **ARC 0064C** ..... 4/4/12  
 Medicaid payment for vaccines, amendments to ch 78 Filed **ARC 0065C**..... 4/4/12

#### **INSPECTIONS AND APPEALS DEPARTMENT[481]**

Minimum construction standards for critical access hospitals, 51.50(1) Notice **ARC 0071C** ..... 4/4/12

#### **INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]“umbrella”  
 Certificates of insurance for commercial lending transactions, amendments to ch 20 Notice **ARC 0070C**..... 4/4/12

#### **IOWA FINANCE AUTHORITY[265]**

Shelter assistance fund, 41.2, 41.6, 41.8, 41.10(3), 41.12(2)“a” Notice **ARC 0096C** ..... 4/18/12  
 Emergency shelter grants program, amendments to ch 42 Notice **ARC 0095C**..... 4/18/12

#### **LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”  
 OSHA standards for general industry and construction—adoption by reference, 10.20, 26.1  
Notice **ARC 0105C** ..... 4/18/12

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

Professional Licensing and Regulation Bureau[193]  
 COMMERCE DEPARTMENT[181]“umbrella”  
 “Retired” status, 1.1, 2.1, 2.8, 2.10 Notice **ARC 0086C**..... 4/18/12

#### **MANAGEMENT DEPARTMENT[541]**

Early childhood Iowa initiative—definition of “audit,” 9.1 Notice **ARC 0067C**..... 4/4/12

**MEDICINE BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Permanent physician licensure, amendments to ch 9 Notice **ARC 0090C** ..... 4/18/12  
 Resident, special and temporary physician licensure, amendments to ch 10 Notice **ARC 0091C** ..... 4/18/12  
 Continuing education and training requirements, amendments to ch 11 Notice **ARC 0092C** ..... 4/18/12

**NURSING BOARD[655]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Organization and procedures of the board, 1.3(2) Filed **ARC 0085C** ..... 4/18/12  
 Discipline, 4.6, 4.14 Filed **ARC 0084C** ..... 4/18/12

**PHARMACY BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Outpatient medication orders—schedule II controlled substance, 7.11(2)"c" Notice **ARC 0075C** ..... 4/4/12  
 Prescription monitoring program—reporting, definition of "dispenser," 24.3(3), 37.2, 37.3  
Notice **ARC 0074C** ..... 4/4/12  
 Prescription monitoring program, 37.2, 37.4, 37.9 Filed **ARC 0056C** ..... 4/4/12

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Physical therapists and physical therapy assistants—licensure, discipline, 200.4(3),  
 200.5(1)"a"(1), 200.9(1), 202.2(11) Filed **ARC 0094C** ..... 4/18/12  
 Social workers—supervision, licensure, continuing education, 280.6, 280.7, 280.14(3)"b,"  
 281.2 Filed **ARC 0093C** ..... 4/18/12

**PUBLIC HEALTH DEPARTMENT[641]**

- Screening program for breast and cervical cancer and cardiovascular disease, adopt ch 8;  
 rescind ch 37 Filed **ARC 0059C** ..... 4/4/12  
 Iowa get screened: colorectal cancer program, ch 10 Filed **ARC 0060C** ..... 4/4/12  
 Local substitute medical decision-making boards, 85.2, 85.3(5), 85.9 to 85.12 Filed **ARC 0061C** ..... 4/4/12  
 EMS providers—scope of practice, 131.3(3)"b" Filed **ARC 0062C** ..... 4/4/12  
 Emergency medical service—service program authorization, amendments to ch 132 Filed **ARC 0063C** ..... 4/4/12

**PUBLIC SAFETY DEPARTMENT[661]**

- Criminalistics laboratory—operations, 95.5, 150.3(8), 150.4(2), 156.1 to 156.10, 157.2,  
 157.7 Notice **ARC 0098C** ..... 4/18/12

**REGENTS BOARD[681]**

- Parking at universities, 4.26, 4.31(2) Notice **ARC 0099C** ..... 4/18/12

**REVENUE DEPARTMENT[701]**

- Capital gain deduction or exclusion for certain types of net capital gains, 40.38 Filed **ARC 0073C** ..... 4/4/12

**SCHOOL BUDGET REVIEW COMMITTEE[289]**

EDUCATION DEPARTMENT[281]"umbrella"

- Hearing procedures; documentation, amendments to ch 6 Filed **ARC 0088C** ..... 4/18/12

**SECRETARY OF STATE[721]**

- Election forms and instructions, 21.203(8), 21.303, 21.320  
Notice **ARC 0106C**, also Filed **Emergency** **ARC 0107C** ..... 4/18/12  
 Athlete agent registration, 42.1 to 42.3 Notice **ARC 0083C** ..... 4/18/12  
 Certificate of notarial acts, 43.1 Filed **Emergency** **ARC 0082C** ..... 4/18/12  
 Electronic communication, 43.7 Notice **ARC 0081C** ..... 4/18/12

**TRANSPORTATION DEPARTMENT[761]**

- Vehicle title, registration, plates; dark window exemption; salvage; regular business hours;  
 federal motor carrier regulations, amendments to chs 400, 401, 405, 425, 431, 450, 511,  
 524, 529 Notice **ARC 0068C** ..... 4/4/12

**TREASURER OF STATE[781]**

- Disclosure of information regarding open-end credit and credit cards; fairgrounds  
 infrastructure grant program, rescind chs 5, 20 Filed **ARC 0080C** ..... 4/18/12

**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**

- Veterans—programs and funds, amend chs 11, 14; rescind ch 12; adopt ch 17 Filed **ARC 0057C** ..... 4/4/12

## 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 Merlin Bartz  
2081 410th Street  
Grafton, Iowa 50440

Senator Thomas Courtney  
2609 Clearview  
Burlington, Iowa 52601

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

Senator John P. Kibbie  
P.O. Box 190  
Emmetsburg, Iowa 50536

Senator James Seymour  
901 White Street  
Woodbine, Iowa 51579

Joseph A. Royce  
**Legal Counsel**  
Capitol  
Des Moines, Iowa 50319  
Telephone (515)281-3084  
Fax (515)281-8451

Representative David Heaton  
510 East Washington Street  
Mt. Pleasant, Iowa 52641

Representative Jo Oldson  
4004 Grand Avenue, #302  
Des Moines, Iowa 50312

Representative Rick Olson  
3012 East 31st Court  
Des Moines, Iowa 50317

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

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

**EARLY CHILDHOOD IOWA STATE BOARD[249]**

Online guidelines and standards for services, 1.4(2)“d” IAB 4/4/12 <b>ARC 0058C</b>	Room 142 Lucas State Office Bldg. Des Moines, Iowa	April 24, 2012 8:30 a.m.
--	--	-----------------------------

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Compliance and enforcement procedures, ch 17 IAB 3/21/12 <b>ARC 0051C</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa (To attend by conference call, dial (866)685-1580 and enter code 5152425196#)	April 23, 2012 10 a.m.
Air quality, 20.2, 22.3(3), 22.100, 22.108(3), 25.1 IAB 4/18/12 <b>ARC 0087C</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	May 18, 2012 1 p.m.
Air quality—fine particulate matter, 33.3 IAB 4/18/12 <b>ARC 0097C</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	May 18, 2012 1 p.m.
Commercial septic tank cleaners; private sewage disposal systems, amendments to chs 68, 69 IAB 3/21/12 <b>ARC 0046C</b>	Public Library 104 West Adams Fairfield, Iowa	April 18, 2012 4 to 6 p.m.
	Public Library 609 Cayuga St. Storm Lake, Iowa	April 19, 2012 4 to 6 p.m.

**HISTORICAL DIVISION[223]**

Historic preservation program administration, 35.2 IAB 4/18/12 <b>ARC 0104C</b>	Auditorium, First Floor, Historical Bldg. 600 E. Locust St. Des Moines, Iowa	May 10, 2012 10 a.m.
Review and compliance program, 42.1 to 42.7 IAB 4/18/12 <b>ARC 0103C</b>	Auditorium, First Floor, Historical Bldg. 600 E. Locust St. Des Moines, Iowa	May 10, 2012 10 a.m.

**INSURANCE DIVISION[191]**

Certificates of insurance for commercial lending transactions, amendments to ch 20 IAB 4/4/12 <b>ARC 0070C</b>	Division Offices 330 Maple St. Des Moines, Iowa	April 24, 2012 10 a.m.
---	---	---------------------------

**IOWA FINANCE AUTHORITY[265]**

Shelter assistance fund, 41.2, 41.6, 41.8, 41.10(3), 41.12(2) IAB 4/18/12 <b>ARC 0096C</b>	Presentation Room, IFA Headquarters 2015 Grand Ave. Des Moines, Iowa	May 8, 2012 1:30 p.m.
Emergency shelter grants program, amendments to ch 42 IAB 4/18/12 <b>ARC 0095C</b>	Presentation Room, IFA Headquarters 2015 Grand Ave. Des Moines, Iowa	May 8, 2012 1:30 p.m.

**LABOR SERVICES DIVISION[875]**

OSHA standards for general industry and construction—adoption by reference, 10.20, 26.1 IAB 4/18/12 <b>ARC 0105C</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	May 9, 2012 10:30 a.m. (If requested)
--	---	---

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

“Retired” status, 1.1, 2.1, 2.8, 2.10 IAB 4/18/12 <b>ARC 0086C</b>	Professional Licensing Bureau Offices 1920 SE Hulsizer Rd. Ankeny, Iowa	May 10, 2012 9 to 11 a.m.
--	---	------------------------------

**MANAGEMENT DEPARTMENT[541]**

Early childhood Iowa initiative—definition of “audit,” 9.1 IAB 4/4/12 <b>ARC 0067C</b>	Room 142 Lucas State Office Bldg. Des Moines, Iowa	April 24, 2012 8:30 a.m.
---	--	-----------------------------

**MEDICINE BOARD[653]**

Permanent physician licensure, amendments to ch 9 IAB 4/18/12 <b>ARC 0090C</b>	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	May 8, 2012 2 p.m.
Resident, special and temporary physician licensure, amendments to ch 10 IAB 4/18/12 <b>ARC 0091C</b>	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	May 8, 2012 2 p.m.
Continuing education and training requirements, amendments to ch 11 IAB 4/18/12 <b>ARC 0092C</b>	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	May 8, 2012 2 p.m.

**NATURAL RESOURCES DEPARTMENT[561]**

Groundwater hazard statement, 9.2(1) IAB 3/21/12 <b>ARC 0045C</b>	Public Library 104 West Adams Fairfield, Iowa	April 18, 2012 4 to 6 p.m.
	Public Library 609 Cayuga St. Storm Lake, Iowa	April 19, 2012 4 to 6 p.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Criminalistics laboratory— operations, 95.5, 150.3(8), 150.4(2), 156.1 to 156.10, 157.2, 157.7 IAB 4/18/12 <b>ARC 0098C</b>	First Floor Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	May 8, 2012 9:30 a.m.
---	---	--------------------------

**PUBLIC SAFETY DEPARTMENT[661]** (cont'd)

Electrical examining board—reciprocal licensing, failure to pay fees, 502.2(14), 502.4(6), 552.2(4) IAB 3/7/12 <b>ARC 0038C</b>	First Floor Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	April 19, 2012 10 a.m.
---	---	---------------------------

**TRANSPORTATION DEPARTMENT[761]**

Vehicle title, registration, plates; dark window exemption; salvage; regular business hours; federal motor carrier regulations, amendments to chs 400, 401, 405, 425, 431, 450, 511, 524, 529 IAB 4/4/12 <b>ARC 0068C</b>	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	April 26, 2012 10 a.m. (If requested)
---	---	---

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.

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
AGING, DEPARTMENT ON[17]  
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
    Agricultural Development Authority[25]  
    Soil Conservation Division[27]  
ATTORNEY GENERAL[61]  
AUDITOR OF STATE[81]  
BEEF INDUSTRY COUNCIL, IOWA[101]  
BLIND, DEPARTMENT FOR THE[111]  
CAPITAL INVESTMENT BOARD, IOWA[123]  
CITIZENS’ AIDE[141]  
CIVIL RIGHTS COMMISSION[161]  
COMMERCE DEPARTMENT[181]  
    Alcoholic Beverages Division[185]  
    Banking Division[187]  
    Credit Union Division[189]  
    Insurance Division[191]  
    Professional Licensing and Regulation Bureau[193]  
        Accountancy Examining Board[193A]  
        Architectural Examining Board[193B]  
        Engineering and Land Surveying Examining Board[193C]  
        Landscape Architectural Examining Board[193D]  
        Real Estate Commission[193E]  
        Real Estate Appraiser Examining Board[193F]  
        Interior Design Examining Board[193G]  
    Savings and Loan Division[197]  
    Utilities Division[199]  
CORRECTIONS DEPARTMENT[201]  
    Parole Board[205]  
CULTURAL AFFAIRS DEPARTMENT[221]  
    Arts Division[222]  
    Historical Division[223]  
EARLY CHILDHOOD IOWA STATE BOARD[249]  
ECONOMIC DEVELOPMENT AUTHORITY[261]  
    City Development Board[263]  
IOWA FINANCE AUTHORITY[265]  
EDUCATION DEPARTMENT[281]  
    Educational Examiners Board[282]  
    College Student Aid Commission[283]  
    Higher Education Loan Authority[284]  
    Iowa Advance Funding Authority[285]  
    Libraries and Information Services Division[286]  
    Public Broadcasting Division[288]  
    School Budget Review Committee[289]  
EGG COUNCIL, IOWA[301]  
EMPOWERMENT BOARD, IOWA[349]  
ENERGY INDEPENDENCE, OFFICE OF[350]  
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
EXECUTIVE COUNCIL[361]  
FAIR BOARD[371]  
HUMAN RIGHTS DEPARTMENT[421]  
    Community Action Agencies Division[427]  
    Criminal and Juvenile Justice Planning Division[428]  
    Deaf Services Division[429]  
    Persons With Disabilities Division[431]

Latino Affairs Division[433]  
Status of African-Americans, Division on the[434]  
Status of Women Division[435]  
Status of Iowans of Asian and Pacific Islander Heritage[436]  
HUMAN SERVICES DEPARTMENT[441]  
INSPECTIONS AND APPEALS DEPARTMENT[481]  
Employment Appeal Board[486]  
Foster Care Review Board[489]  
Racing and Gaming Commission[491]  
State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
Appeal Board, State[543]  
City Finance Committee[545]  
County Finance Committee[547]  
NATURAL RESOURCES DEPARTMENT[561]  
Energy and Geological Resources Division[565]  
Environmental Protection Commission[567]  
Natural Resource Commission[571]  
Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]  
PUBLIC DEFENSE DEPARTMENT[601]  
Homeland Security and Emergency Management Division[605]  
Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
Professional Licensure Division[645]  
Dental Board[650]  
Medicine Board[653]  
Nursing Board[655]  
Pharmacy Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]  
VETERINARY MEDICINE BOARD[811]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
Labor Services Division[875]  
Workers' Compensation Division[876]  
Workforce Development Board and Workforce Development Center Administration Division[877]

ARC 0089C

**COLLEGE STUDENT AID COMMISSION[283]****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 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 36, “Governor Terry E. Branstad Iowa State Fair Scholarship Program,” Iowa Administrative Code.

The rules in Chapter 36 describe the administration of the Governor Terry E. Branstad Iowa State Fair Scholarship Program. This amendment proposes the elimination of a sentence that restricts use of the fund.

Interested persons may submit comments orally or in writing by 4:30 p.m. on May 15, 2012, to the Executive Director, Iowa College Student Aid Commission, 5th Floor, 603 East 12th Street, Des Moines, Iowa 50319-9017; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there could be a positive impact on jobs. This rule making increases the dollar amount of scholarship dollars distributed to individuals who will attend higher education. Individuals will be able to attend higher education institutions and obtain good jobs.

This amendment is intended to implement Iowa Code chapter 261.

The following amendment is proposed.

Amend subrule 36.1(4) as follows:

**36.1(4) Monetary award.**

*a.* Up to four awards ranging from \$500 to \$1,000 will be awarded annually. No student shall receive more than the student’s established financial need.

*b.* A scholarship of up to \$2,000 will be awarded each year to the Iowa state fair queen.

*c.* The Governor Terry E. Branstad Iowa state fair scholarship fund will be established in the office of the state treasurer. ~~Only the interest earned on the scholarship fund will be used for scholarship awards.~~

ARC 0101C

**EDUCATION DEPARTMENT[281]****Notice of Termination**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on February 22, 2012, as **ARC 0019C**. The Notice proposed to rescind Chapter 63, “Educational Programs and Services for Pupils in Juvenile Homes,” and to adopt a new Chapter 63 which would have made the funding of instructional programs for children residing in juvenile homes more parallel to the funding of instructional programs offered to children who reside in state institutions or mental health institutions as provided in 281—Chapter 34.

Prior to the publication of the Notice, the Department met with interested stakeholders. These stakeholders raised new issues. The Department agrees that further study is needed. The Department proceeded to hold the public meeting on March 13, 2012, and will continue to meet with interested parties and stakeholders to improve the provisions of Chapter 63.

The State Board of Education is terminating the rule making commenced in **ARC 0019C**.

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

**ARC 0087C****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 20, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 22, “Controlling Pollution,” and Chapter 25, “Measurement of Emissions,” Iowa Administrative Code.

The purposes of the proposed amendments are to: (1) reduce the regulatory burden by eliminating state-only emissions testing procedures (the Compliance Sampling Manual) and adopting federal methods for emissions testing; (2) provide additional flexibility for regulated portable plants by reducing the notification time and allowing electronic submittals; (3) offer uniform regulations by updating the definition of “particulate matter” and other air quality definitions to be consistent with federal regulations; and (4) increase transparency and consistency in conducting emissions testing by placing into rule the specific procedures for conducting emissions testing. The amendments related to eliminating state-only emissions testing procedures and adopting current federal test methods are proposed to apply retroactively, as appropriate.

Item 1 amends rule 567—20.2(455B) to revise the definitions of “EPA reference method,” “particulate matter,” “standard conditions,” and “total suspended particulate” to match federal regulations.

The definition of “EPA reference method” is amended to adopt by reference EPA’s revisions to stack test methods to establish procedures for measuring fine particulate matter (PM<sub>2.5</sub>) and to adopt the most current EPA reference methods for measuring other pollutant emissions (e.g., stack testing and continuous monitoring).

The definition of “particulate matter” is amended to be consistent with EPA’s recently clarified definition of particulate matter (see 40 Code of Federal Regulations (CFR) Part 51, Appendix M). However, for purposes of New Source Performance Standards, the definition of particulate matter remains as defined in 40 CFR Part 60. The proposed amendment also makes clear that particulate matter is measured by EPA-approved reference methods.

The definition of “standard conditions” is amended to match the current federal definition (see 40 CFR 60.3). Currently, the Department uses a different temperature for standard conditions, which was based on past engineering standard practices.

The definition of “total suspended particulate” is amended to clarify that it has the same meaning as “particulate matter.”

Item 2 adopts a definition of “PM<sub>2.5</sub>” in rule 567—20.2(455B). The definition is based on the current definition of “PM<sub>10</sub>” in Chapter 20 and is consistent with federal regulations (see 40 CFR Part 51, Subparts A and Z and Appendix M, and 40 CFR Part 58, Subpart A).

Item 3 amends paragraph 22.3(3)“f,” which contains the provisions for portable plant relocations. This amendment is in response to the Department’s recent discussions with industry representatives. The amendment includes several changes that will provide additional flexibility and reduce the regulatory burden for owners and operators that need to relocate portable plant equipment quickly.

First, the amendment reduces the notification requirement for portable plant relocation from 14 days before relocation to 7 days before relocation if the plant or equipment is being relocated to an area of the state that is classified as “attainment” with ambient air quality standards. (Currently, the vast majority of portable plant relocations are to attainment areas). This reduced notification lead time will better allow owners and operators of portable plants to quickly respond to their customers’ requests.

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

Second, the Department is also reducing the notification lead time required for portable plants relocating to areas that are classified as “nonattainment” or areas that are classified as “maintenance areas” for the ambient air quality standards. Owners and operators of portable plants relocating to these areas will need to submit their notifications to the Department 14 days before relocating (instead of the currently required 30 days’ advance notice). This reduced lead time will provide the Department with sufficient time to assess the possible impact to air quality from facilities relocating to these areas, while at the same time allowing for increased flexibility for owners and operators of portable plants in making relocation decisions based on the changing needs of their customers.

Third, the amendment adds the options to submit the written relocation notice to the Department by E-mail or by other electronic format specified by the Department. In many cases, E-mail is the quickest and most efficient method for owners and operators to submit these notifications. The Department has accepted E-mailed notifications for a number of years and has found it to be a practical and effective means of communication for both the Department and plant owners/operators. The amendment merely confirms and administratively codifies this option.

The Department does not currently offer an electronic format other than E-mail (such as a Web-based form or database) for submitting relocation notifications but hopes to offer such a system in the future, as resources allow. The option of electronic submittal to state agencies is already allowed under Iowa Code chapter 554D. This amendment simply codifies in the administrative rules the option to use an electronic format for portable plant relocation notifications.

The amendment also makes clear that owners and operators may still submit their written relocation notifications to the Department in a hard-copy format (such as by facsimile, hand delivery, or mail delivery, including U.S. mail).

Item 4 amends rule 567—22.100(455B) to revise the definition of “EPA reference method” for the Title V Operating Permit Program. The changes proposed to this definition are identical to the revisions proposed for the definition of “EPA reference method” in Item 1.

Item 5 amends subrule 22.108(3) to adopt by reference a revised version of the Title V “Periodic Monitoring Guidance.” The Department is revising the Guidance’s appendix to update the emissions measurement methods so that these methods match the changes being proposed in this rule making. The updated appendix and methods are the only changes the Department is proposing to the Guidance. The proposed revisions to the Guidance are available for review on the Department’s Web site at <http://www.iowadnr.gov/InsideDNR/RegulatoryAir/StakeholderInvolvement/PublicInput.aspx> or from the Department by request.

Item 6 amends subrule 25.1(7) to add procedures for owners and owners’ authorized representatives to conduct emission tests. These procedures have been incorporated into various EPA reference methods and into Department-issued air quality permits for many years. To increase transparency and clarity, the Department is now proposing to include these procedures in administrative rules.

Item 7 amends subrule 25.1(9) to amend the methods and procedures to evaluate compliance with emission limitations or permit conditions.

First, the proposed amendment rescinds the adoption by reference of the Department’s “Compliance Sampling Manual” (CSM). The Department developed the CSM many years ago and periodically revised the CSM to prescribe the test methods and procedures for particulate matter emissions and for sulfur dioxide emissions. However, because of recent changes to federal test methods, the CSM is no longer necessary. The Department is now proposing to eliminate the CSM. Only EPA-approved test methods shall be allowed, unless the equipment owner or the owner’s authorized representative requests an alternative methodology and the alternative methodology is approved by the Department in writing.

Second, the proposed amendment revises the reference methods for performance tests and for continuous monitoring systems so that the provisions are identical to the proposed revisions to the definition of “EPA reference method” (see Items 1 and 4). This change ensures that the administrative rules for emissions measurement include up-to-date and EPA-approved test methods.

Third, the proposed amendment adds a provision that all compliance demonstrations and performance tests specified in construction and operating permits shall be conducted using only the methodology allowed in this rule (567—25.1(455B)). This change makes certain that emissions tests

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

and demonstrations no longer rely upon the CSM and that these tests and demonstrations are conducted according to EPA-approved methods.

The changes in this amendment are proposed to apply retroactively to all permits and compliance demonstrations. Specifically, if a compliance demonstration or performance test was required in a permit issued prior to the effective date for the final (adopted) amendment, and the demonstration or test was not required to be completed prior to the effective date, then the methodology referenced in this rule (567—25.1(455B)) shall apply retroactively. As noted above, however, the Department will consider alternative test methodologies if requested by the owner or owner's representative before the required test is conducted.

Any person may make written suggestions or comments on the proposed amendments on or before Friday, May 18, 2012, at 4:30 p.m. Written comments shall 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 Friday, May 18, 2012, 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 Friday, May 18, 2012.

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 complete Jobs Impact Statement prepared by the Department is available from the Department upon request. The following is a summary of the Jobs Impact Statement.

The Department has determined after analysis and review of this rule making that no adverse impact on jobs exists. The proposed amendments will reduce the regulatory burden and will provide additional flexibility to many facilities. This rule making could have a positive impact on jobs in Iowa because it increases collaboration with job creators to reduce the regulatory burden, provides additional flexibility, offers uniform regulations, and increases transparency for the regulated community while still ensuring that Iowa's air quality is protected and maintained.

These amendments are intended to implement Iowa Code section 455B.133 and chapter 554D.

The following amendments are proposed.

ITEM 1. Amend rule **567—20.2(455B)**, definitions of "EPA reference method," "Particulate matter," "Standard conditions" and "Total suspended particulate," as follows:

*"EPA reference method"* means ~~any method of sampling and analyzing for an air pollutant as described in 40 CFR 51, Appendix M (as amended through June 16, 1997); 40 CFR 52, Appendices D and E (as amended through February 6, 1975); 40 CFR 60, Appendices A (as amended through September 28, 2007), B (as amended through September 28, 2007), C (as amended through December 16, 1975), and F (as amended through January 12, 2004); 40 CFR 61, Appendix B (as amended through October 17, 2000); 40 CFR 63, Appendix A (as amended through October 17, 2000); and 40 CFR 75, Appendices A (as amended through January 24, 2008), B (as amended through January 24, 2008), F (as amended through January 24, 2008, and corrected on February 13, 2008) and K (as amended through January 24, 2008).~~ the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through December 21, 2010); 40 CFR 60, Appendix A (as amended through September 9, 2010); 40 CFR 61, Appendix B (as amended through October 17, 2000); and 40 CFR 63, Appendix A (as amended through August 20, 2010).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through September 9, 2010); 40 CFR 60, Appendix F (as amended through September 9, 2010); 40 CFR 75, Appendix A (as amended through March 28, 2011); 40 CFR 75, Appendix B (as amended through March 28, 2011); and 40 CFR 75, Appendix F (as amended through March 28, 2011).

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

“Particulate matter” (except for the purposes of New Source Performance Standards as defined in 40 CFR 60) means any material, except uncombined water, that exists in a finely divided form as a liquid or solid at standard conditions and includes gaseous emissions that condense to liquid or solid form as measured by EPA-approved reference methods.

“Standard conditions” means a gas temperature of 70 68°F and a gas pressure of 29.92 inches of mercury absolute.

“Total suspended particulate” means particulate matter as measured by an EPA-approved reference method as defined in this rule.

ITEM 2. Adopt the following **new** definition of “PM<sub>2.5</sub>” in rule **567—20.2(455B)**:

“PM<sub>2.5</sub>” means particulate matter as defined in this rule with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA-approved reference method.

ITEM 3. Amend paragraph **22.3(3)“f”** as follows:

*f.* A permit is not transferable from one location to another or from one piece of equipment to another unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least ~~14~~ 7 days prior to the transfer of the portable equipment to the new location. Written notification shall be submitted to the department through one of the following methods: electronic mail (e-mail), mail delivery service (including U.S. Mail), hand delivery, facsimile (fax), or by electronic format specified by the department (at such time as an Internet-based submittal system or other, similar electronic submittal system becomes available). However, if the owner or operator is relocating the portable equipment to an area currently classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least ~~30~~ 14 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas may be obtained from the department, upon request, or on the department’s Internet Web site. The owner or operator will be notified by the department at least 10 days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case, the owner or operator shall obtain a supplemental permit ~~shall be obtained~~ prior to the initiation of construction, installation, or alteration of such additional control equipment.

ITEM 4. Amend rule **567—22.100(455B)**, definition of “EPA reference method,” as follows:

“EPA reference method” means any method of sampling and analyzing for an air pollutant as described in 40 CFR 51, Appendix M (as amended through June 16, 1997); 40 CFR 52, Appendices D (as amended through February 6, 1975) and E (as amended through February 6, 1975); 40 CFR 60, Appendices A (as amended through September 28, 2007), B (as amended through September 28, 2007), C (as amended through December 16, 1975), and F (as amended through January 12, 2004); 40 CFR 61, Appendix B (as amended through October 17, 2000); 40 CFR 63, Appendix A (as amended through October 17, 2000); and 40 CFR 75, Appendices A (as amended through January 24, 2008), B (as amended through January 24, 2008), F (as amended through January 24, 2008, and corrected on February 13, 2008) and K (as amended through January 24, 2008). the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through December 21, 2010); 40 CFR 60, Appendix A (as amended through September 9, 2010); 40 CFR 61, Appendix B (as amended through October 17, 2000); and 40 CFR 63, Appendix A (as amended through August 20, 2010).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through September 9, 2010); 40 CFR 60, Appendix F (as amended through September 9, 2010); 40 CFR 75, Appendix A (as amended through March 28, 2011); 40 CFR 75, Appendix B (as amended through March 28, 2011); and 40 CFR 75, Appendix F (as amended through March 28, 2011).

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

ITEM 5. Amend subrule 22.108(3) as follows:

**22.108(3) Monitoring.** Each permit shall contain the following requirements with respect to monitoring:

*a.* All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

*b.* Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subrule 22.108(5). Such monitoring shall be determined by application of the "Periodic Monitoring Guidance" (~~June 18, 2001~~ as amended through [insert effective date of this amendment]) available from the department;

*c.* As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods; and

*d.* As required, Compliance Assurance Monitoring (CAM) consistent with 40 CFR Part 64 (as amended through October 22, 1997).

ITEM 6. Amend subrule 25.1(7) as follows:

**25.1(7) Tests by owner.** The owner of new or existing equipment or the owner's authorized agent shall conduct emission tests to determine compliance with applicable rules in accordance with these requirements.

*a. General.* The owner of new or existing equipment or the owner's authorized agent shall notify the department in writing not less than 30 days before a required test or before a performance evaluation of a continuous emission monitor to determine compliance with applicable requirements of 567—Chapter 23 or a permit condition. Such notice shall include the time, the place, the name of the person who will conduct the tests and other information as required by the department. If the owner or operator does not provide timely notice to the department, the department shall not consider the test results or performance evaluation results to be a valid demonstration of compliance with applicable rules or permit conditions. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held not later than 15 days before the owner or operator conducts the compliance demonstration. A testing protocol shall be submitted to the department no later than 15 days before the owner or operator conducts the compliance demonstration. A representative of the department shall be permitted to witness the tests. Results of the tests shall be submitted in writing to the director in the form of a comprehensive report within six weeks of the completion of the testing.

*b. New equipment.* Unless otherwise specified by the department, all new equipment shall be tested by the owner or the owner's authorized agent to determine compliance with applicable emission limits. Tests conducted to demonstrate compliance with the requirements of the rules or a permit shall be conducted within 60 days of achieving maximum production but no later than 180 days of following startup, unless a shorter time frame is specified in the permit.

*c. Existing equipment.* The director may require the owner or the owner's authorized agent to conduct an emission test on any equipment if the director has reason to believe that the equipment does not comply with applicable requirements. Grounds for requiring such a demonstration of compliance include a modification of control or process equipment, age of equipment, or observation of opacities or other parameters outside the range of those indicative of properly maintained and operated equipment. Testing may be required as necessary to determine actual emissions from a source where that source is believed to have a significant impact on the public health or ambient air quality of an area. The director shall provide the owner or agent not less than 30 days to perform the compliance demonstration and shall provide written notice of the requirement.

*d. Testing procedures.* The equipment being tested shall be operated in a normal manner. For compliance demonstrations, the equipment being tested shall be operated at a rate of at least 90 percent of either its maximum continuous output as rated by the manufacturer or its permitted maximum operating

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

rate. For testing other than compliance demonstrations, the equipment being tested shall be operated at a rate demonstrable by production records of the source to be equal to or greater than the normal production rate of the source. The “normal” production rate of the source shall be defined as the total annual production volume divided by the number of hours the source or process has operated during the previous 12 months. Each test shall consist of at least three separate test runs. Unless otherwise specified by the department, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs.

ITEM 7. Amend subrule 25.1(9) as follows:

**25.1(9) *Methods and procedures.*** Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are those specified in the “Compliance Sampling Manual”<sup>21</sup> adopted by the commission on May 19, 1977, as revised through January 30, 2003. Sampling methods, analytical determinations, minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are those found in Appendices A (as amended through September 28, 2007), B (as amended through September 28, 2007) and F (as amended through January 12, 2004) of 40 CFR Part 60, and Appendices A (as amended through January 24, 2008), B (as amended through January 24, 2008), F (as amended through February 13, 2008) and K (as amended through January 24, 2008) of 40 CFR Part 75. as follows:

*a. Performance test (stack test).* A stack test shall be conducted according to EPA reference methods as specified in 40 CFR 51, Appendix M (as amended through December 21, 2010); 40 CFR 60, Appendix A (as amended through September 9, 2010); 40 CFR 61, Appendix B (as amended through October 17, 2000); and 40 CFR 63, Appendix A (as amended through August 20, 2010). The owner of the equipment or the owner’s authorized agent may use an alternative methodology if approved by the department in writing before testing.

*b. Continuous monitoring systems.* Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through September 9, 2010); 40 CFR 60, Appendix F (as amended through September 9, 2010); 40 CFR 75, Appendix A (as amended through March 28, 2011); 40 CFR 75, Appendix B (as amended through March 28, 2011); and 40 CFR 75, Appendix F (as amended through March 28, 2011). The owner of the equipment or the owner’s authorized agent may use an alternative methodology for continuous monitoring systems if approved by the department in writing prior to conducting the minimum performance specification and quality assurance procedures.

*c. Permit and compliance demonstration requirements.* After [insert effective date of this amendment], all stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or required in a permit issued by the department pursuant to 567—Chapter 22 or 33 shall be conducted using the methodology referenced in this rule. If stack sampling was required for a compliance demonstration pursuant to 567—Chapter 23 or for a performance test required in a permit issued by the department pursuant to 567—Chapter 22 or 33 before [insert effective date of this amendment] and the demonstration or test was not required to be completed before [insert effective date of this amendment], then the methodology referenced in this subrule applies retroactively.

**ARC 0097C****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 the proposed amendments is to adopt changes to the federal regulations for Prevention of Significant Deterioration (PSD) into Iowa’s administrative rules for air quality. The U.S. Environmental Protection Agency (EPA) finalized amendments to the PSD regulations over a three-year period to address the revised national ambient air quality standards (NAAQS) for fine particulate matter that is less than or equal to 2.5 micrometers in diameter (PM<sub>2.5</sub>). EPA issued the final regulation necessary for PM<sub>2.5</sub> implementation for the PSD program on December 21, 2010.

Through this rule making, the Department is also proposing a mechanism to allow industry to request rescission of a PSD permit. The proposed amendment matches federal regulations and will be a benefit to facilities that meet the qualifications for rescission of a PSD permit. Additionally, the Department is proposing an amendment to clarify under what circumstances facilities are required to keep records and the types of records that must be kept. The proposed amendment matches federal regulations and will be a benefit to facilities that must meet record-keeping requirements.

To ensure that Iowans have clean air to breathe, the Department is required by federal and state law to develop state implementation plans that manage outdoor air resources so that existing, new, and modified sources of air pollution do not cause or contribute to violations of the NAAQS.

Community, business and industry, agriculture, and transportation activities all contribute to air pollution in the atmosphere. Appropriate plans and programs to address these contributions are the building blocks necessary to ensure that the air Iowans breathe meets health-based air quality standards. One of these building blocks is the federal PSD program that establishes requirements for very large sources of air pollution.

The PSD program is a component of New Source Review (NSR) that includes procedures to ensure that air quality standards are maintained. The NSR program was designed to allow economic growth in harmony with the preservation of existing clean air. Requirements and limits are specified in preconstruction permits to protect the public from the adverse effects which might occur if sources were allowed to operate unregulated.

There are three types of preconstruction air quality permitting that comprise NSR: minor, major, and nonattainment NSR. Minor preconstruction permitting is for sources that emit less than either 100 or 250 tons per year (tpy) of any one air pollutant depending on the facility’s source category. Major source preconstruction permitting is for sources whose plantwide emissions exceed the 100 or 250 tpy threshold for any one air pollutant. Major source preconstruction permitting entails issuance of either a PSD permit or a permit to avoid PSD applicability. Lastly, nonattainment NSR preconstruction permitting occurs within those areas of the state that are not meeting the ambient air quality standards. Iowa currently does not have any nonattainment areas for PM<sub>2.5</sub>.

The Department has administered an EPA-approved state PSD program since 1987. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control air 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. Ambient air impact analyses are conducted to determine whether

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

the proposed emission limits, controls, and operating conditions will be sufficient to prevent violations of the NAAQS and unacceptable levels of air quality deterioration.

The NAAQS for PM<sub>2.5</sub> establish limits on the acceptable exposure and public health impacts of PM<sub>2.5</sub>. PM<sub>2.5</sub> can easily bypass most of the body's defense mechanisms and become lodged deep in the lungs, where the particles can cause coughing, difficulty breathing, or aggravated asthma; development of chronic bronchitis; nonfatal heart attacks; and premature death in people with heart or lung disease.

EPA created an NAAQS in 1997 for this pollutant in order to better protect the public from the adverse impacts of PM<sub>2.5</sub> on human health. EPA strengthened the PM<sub>2.5</sub> NAAQS in 2006 based on reviews of the latest public health information and scientific data, reducing the acceptable level of PM<sub>2.5</sub> to which humans can be exposed from 65 micrograms per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ) to 35  $\mu\text{g}/\text{m}^3$ .

An important component to establishing the revised air quality standards for PM<sub>2.5</sub> is EPA's corresponding changes to the PSD program. EPA finalized the first of its PSD amendments for PM<sub>2.5</sub> implementation in May 2008 but did not finalize the last of the necessary updates until December 21, 2010. Now that EPA has completed the PSD amendments for PM<sub>2.5</sub>, the Department is proceeding with proposing necessary amendments to Iowa's air quality rules for the PSD program.

This rule making proposes to amend Iowa's air quality rules to implement changes to the federal PM<sub>2.5</sub> regulations that EPA finalized in a phased approach over three years. This rule making addresses two EPA actions:

- On May 16, 2008, EPA publication of final rules setting PSD significant emissions rates for PM<sub>2.5</sub> and addressing PM<sub>2.5</sub> precursors; and
- On October 20, 2010, EPA publication of final rules setting PSD increments, significant impact levels (SILs), and significant monitoring concentrations (SMCs) for PM<sub>2.5</sub>.

On December 21, 2010, EPA published federal rules establishing EPA stack testing methods for PM<sub>2.5</sub>. The Department is proposing adoption by reference of these federal rules in a separate rule making published herein under Notice of Intended Action as **ARC 0087C**.

For industry to continue to receive federally acceptable PSD permits from the State, the Department must adopt these PM<sub>2.5</sub> requirements into administrative rules. On September 8, 2011, EPA published a finding of failure of the State of Iowa to submit a State Implementation Plan (SIP) for the NAAQS for PM<sub>2.5</sub>. EPA's finding became effective on October 11, 2011, and establishes a deadline for EPA to issue a Federal Implementation Plan for PM<sub>2.5</sub> if the outstanding SIP elements, including adoption of the PSD requirements included in these proposed amendments, are not completed. Failure to adopt PSD requirements for PM<sub>2.5</sub> may result in loss of the State's PSD program, which would cause the EPA to become the permitting authority and would significantly increase the amount of time required for a facility to obtain a PSD permit.

Additionally, two amendments included in the proposed rule making, the permit rescission and record-keeping provisions, will provide regulatory flexibility to affected facilities. Failure to adopt these amendments would prevent the Department from providing these benefits to industry.

Item 1 amends subrule 33.3(1) to revise the definitions of "baseline area," "baseline date," "enforceable permit condition," "federally enforceable," "regulated NSR pollutant," and "significant" to match the changes EPA made in 40 Code of Federal Regulations (CFR) 51.166 and 52.21 to implement the PM<sub>2.5</sub> NAAQS. The revised definitions match the federal definitions in 40 CFR 51.166 and 52.21. The Department is also revising references to specific sections of the Clean Air Act to match corrections that EPA made to the CFR.

Item 2 amends subrule 33.3(3) to adopt by reference EPA's revisions to the ambient air increments to include thresholds for PM<sub>2.5</sub>.

Item 3 amends subrule 33.3(9) to adopt by reference EPA's amendments to the PSD exemptions to incorporate PM<sub>2.5</sub>.

Item 4 amends subrule 33.3(11) to adopt by reference EPA's revisions to the source impact analysis requirements to include PM<sub>2.5</sub>.

Item 5 amends subrule 33.3(16) to adopt by reference EPA's revisions to the requirements for sources impacting federal Class I areas to include PM<sub>2.5</sub>.

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

Item 6 amends subrule 33.3(18) to revise the “source obligation” provisions to match current federal PSD regulations. This amendment clarifies under what conditions source owners and operators must keep records and the specific records that must be kept. The amendment also adds the federal definition of “reasonable possibility” for purposes of keeping records under subrule 33.3(18). This amendment will allow facilities additional record-keeping flexibility and reduce the record-keeping burden.

Item 7 amends subrule 33.3(20) to revise the provisions for the conditions for permit issuance to match EPA amendments that establish the PSD significance levels for PM<sub>2.5</sub>.

Item 8 adds new subrule 33.3(22) to establish provisions for rescinding a PSD permit. Currently, there is no mechanism in rules for the Department to rescind a PSD permit, even if PSD program requirements no longer apply to a facility. This provision was inadvertently excluded when the Department adopted amendments to PSD rules in 2006. The proposed amendment matches EPA’s regulations in 40 CFR 52.21(w).

Any person may make written suggestions or comments on the proposed amendments on or before Friday, May 18, 2012, at 4:30 p.m. 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 Friday, May 18, 2012, 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 Friday, May 18, 2012.

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 complete Jobs Impact Statement prepared by the Department is available from the Department upon request. The following is a summary of the Jobs Impact Statement.

After analysis and review of this rule making, there could be an impact on jobs. However, these amendments are mandated by EPA federal regulations, and the State of Iowa is not requiring additional regulations. The Department will continue to work with stakeholders to minimize any adverse impact on jobs and to maximize any positive impact on jobs.

One of Congress’s goals for PSD as set forth in the Clean Air Act was to allow economic growth in harmony with the preservation of existing clean air. Requirements and limits are specified in preconstruction permits to protect the public from adverse effects that might occur if sources were allowed to operate unregulated. The requirements in PSD permits help prevent areas of the state from becoming nonattainment areas. Major sources locating in or undergoing modifications in nonattainment areas must generally meet emissions requirements stricter than those called for under the PSD program. Communities in nonattainment areas attempting to meet the Clean Air Act requirements can face significant challenges that make it very difficult or impossible for businesses to locate or expand in that area. Currently, Iowa does not have any nonattainment areas for PM<sub>2.5</sub>, in part because of the success of the PSD program in preventing air quality from deteriorating. Companies may locate or expand in any area of the state without the significant barriers that would be imposed by PM<sub>2.5</sub> nonattainment, and this may create a positive jobs impact.

The Department estimated emissions control costs required for the PSD program’s BACT provisions. These estimates are based on three companies’ tax filings from 2009, 2010, and 2011. These costs ranged from \$30,000 to \$10 million and included all costs associated with equipment and installation. However, because BACT is also required for total particulate matter (PM) emissions and coarse particulate matter (PM<sub>10</sub>) emissions, only one-half to one-third of these very generally estimated costs can be attributed to PM<sub>2.5</sub>. Additionally, because EPA requires a PSD program for each state, these costs are not unique to Iowa and would likely vary little from state to state.

In addition, the Department estimated costs of preparing PSD permit applications based on information from consultants that prepare PSD applications for their clients. Total application preparation costs ranged from \$25,000 to \$100,000. Typically, a project does not go through PSD review for just one pollutant. Costs attributed to PM<sub>2.5</sub> would be only a portion of the PSD application costs, likely ranging from 15 percent to 50 percent.

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

The PSD program is a national program imposed through the Clean Air Act, so any company locating a large, new facility or considering a major expansion in any state in the United States will be required to go through PSD review. Although PSD requirements are consistent across states, some of the variables include the cost to apply for a PSD permit and the turnaround time to get a PSD permit.

The Department does not charge a fee for submitting a PSD permit application. Application fees in other states range from several hundred dollars per project to tens of thousands of dollars per project. The Department's no-cost PSD application process may have a positive impact on jobs.

Because companies are allowed to conduct only very limited preparatory construction activities prior to obtaining the PSD permit, it is a significant incentive for the company to receive the PSD permit as quickly as possible. For this reason, the Department's no-cost application and relatively quick turnaround time may be incentives for companies to build or expand in Iowa. This may be a positive jobs impact for industrial jobs.

These amendments are intended to implement Iowa Code subsections 455B.133(1), 455B.133(4), and 455B.133(5) and the U.S. Clean Air Act (CAA) Title I, Part C (CAA §160-169b; U.S.C. §7470-7492).

The following amendments are proposed.

ITEM 1. Amend the following definitions in subrule **33.3(1)**:

*"Baseline area"* means:

1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section ~~107(d)(1)(D) or (E)~~ 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than  $1 \mu\text{g}/\text{m}^3$  (annual average) of the pollutant for which the minor source baseline date is established for the pollutant for which the baseline date is established, as follows: equal to or greater than  $1 \mu\text{g}/\text{m}^3$  (annual average) for sulfur dioxide ( $\text{SO}_2$ ), nitrogen dioxide ( $\text{NO}_2$ ) or  $\text{PM}_{10}$ ; or equal to or greater than  $0.3 \mu\text{g}/\text{m}^3$  (annual average) for  $\text{PM}_{2.5}$ .

2. Area redesignations under Section ~~107(d)(1)(D) or (E)~~ 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a minor source baseline date or is subject to regulations specified in this rule, in 40 CFR 52.21 (PSD requirements), or in department rules approved by EPA under 40 CFR Part 51, Subpart I, and would be constructed in the same state as the state proposing the redesignation.

3. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available  $\text{PM}_{10}$  increments, except that such baseline area shall not remain in effect if the permitting authority rescinds the corresponding minor source baseline date in accordance with the definition of "baseline date" specified in this subrule.

*"Baseline date"* means:

1. Either "major source baseline date" or "minor source baseline date" as follows:

(a) The "major source baseline date" means, in the case of ~~particulate matter~~  $\text{PM}_{10}$  and sulfur dioxide, January 6, 1975, ~~and~~; in the case of nitrogen dioxide, February 8, 1988; and in the case of  $\text{PM}_{2.5}$ , October 20, 2010.

(b) The "minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 as amended through ~~November 29, 2005~~, October 20, 2010, or subject to this rule (PSD program requirements), or subject to a department rule approved by EPA under 40 CFR Part 51, Subpart I, submits a complete application under the relevant regulations. The trigger date for ~~particulate matter~~  $\text{PM}_{10}$  and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988. For  $\text{PM}_{2.5}$ , the trigger date is October 20, 2011.

2. The "baseline date" is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section ~~107(d)(1)(D) or (E)~~ 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 as amended through ~~November 29, 2005~~, October 20, 2010, or under regulations specified in this rule (PSD program requirements); and

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

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions.

“*Enforceable permit condition*,” for the purpose of this chapter, means any of the following limitations and conditions: requirements ~~development~~ developed pursuant to new source performance standards, prevention of significant deterioration standards, emissions standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any permit requirements established pursuant to 40 CFR 52.21 or Part 51, Subpart I, as amended through ~~November 29, 2005~~, October 20, 2010, or under conditional, construction or Title V operating permit rules.

“*Federally enforceable*” means all limitations and conditions which are enforceable by the Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR Parts 60, 61 and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through ~~November 29, 2005~~, October 20, 2010, including operating permits issued under an EPA-approved program, that are incorporated into the SIP and expressly require adherence to any permit issued under such program.

“*Regulated NSR pollutant*” means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (~~e.g., volatile organic compounds and NO<sub>x</sub> are precursors for ozone~~);

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas;

(c) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless the department demonstrates to EPA’s satisfaction that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area’s ambient PM<sub>2.5</sub> concentrations;

(d) Volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment and unclassifiable areas, unless the department demonstrates to EPA’s satisfaction that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area’s ambient PM<sub>2.5</sub> concentrations;

2. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

4. Any pollutant that otherwise is subject to regulation under the Act as defined in 33.3(1), definition of “subject to regulation.”

5. Notwithstanding paragraphs “1” through “4,” the definition of “regulated NSR pollutant” shall not include any or all hazardous air pollutants that are either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act and that have not been delisted pursuant to Section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

6. Particulate matter (PM) emissions, PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations in establishing emissions limitations for PM, PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits. Compliance with emissions limitations for PM, PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to January 1, 2011, shall not be based on condensable particulate matter unless required by the terms or conditions

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

of the permit or Iowa's state implementation plan (SIP). Applicability determinations made prior to January 1, 2011, without accounting for condensable particulate matter shall not be considered in violation of this requirement unless the Iowa SIP required condensable particulate matter to be included.

"Significant" means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy of particulate matter emissions ~~or 15 tpy of PM<sub>10</sub> emissions~~
- PM<sub>10</sub>: 15 tpy
- PM<sub>2.5</sub>: 10 tpy of direct PM<sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions (unless the department demonstrates to EPA's satisfaction that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient PM<sub>2.5</sub> concentrations)

- Ozone: 40 tpy of volatile organic compounds or NO<sub>x</sub>
- Lead: 0.6 tpy
- Fluorides: 3 tpy
- Sulfuric acid mist: 7 tpy
- Hydrogen sulfide (H<sub>2</sub>S): 10 tpy
- Total reduced sulfur (including H<sub>2</sub>S): 10 tpy
- Reduced sulfur compounds (including H<sub>2</sub>S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans):  $3.2 \times 10^{-6}$  megagrams per year ( $3.5 \times 10^{-6}$  tons per year)
- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

2. "Significant" means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant not listed in paragraph "1," any emissions rate.

3. Notwithstanding paragraph "1," "significant," for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup> (24-hour average).

ITEM 2. Amend subrule 33.3(3) as follows:

**33.3(3) Ambient air increments.** The provisions for ambient air increments as specified in 40 CFR 52.21(c) as amended through ~~November 29, 2005,~~ October 20, 2010, are adopted by reference.

ITEM 3. Amend subrule 33.3(9) as follows:

**33.3(9) Exemptions.** The provisions for allowing exemptions from certain requirements for PSD-subject sources as specified in 40 CFR 52.21(i) as amended through ~~May 1, 2007,~~ October 20, 2010, are adopted by reference.

ITEM 4. Amend subrule 33.3(11) as follows:

**33.3(11) Source impact analysis.** The provisions for a source impact analysis as specified in 40 CFR 52.21(k) as amended through ~~November 29, 2005,~~ October 20, 2010, are adopted by reference.

ITEM 5. Amend subrule 33.3(16) as follows:

**33.3(16) Sources impacting federal Class I areas—additional requirements.** The provisions for sources impacting federal Class I areas as specified in 40 CFR 51.166(p) as amended through ~~November~~

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

29, 2005, October 20, 2010, are adopted by reference. The following phrases contained in 40 CFR 51.166(p) are not adopted by reference: “the plan may provide that,” “the plan shall provide that,” “the plan shall provide” and “mechanism whereby.”

ITEM 6. Amend subrule 33.3(18) as follows:

**33.3(18) Source obligation.**

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, the requirements of subrules 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

c. Any owner or operator who constructs or operates a source or modification not in accordance with the application pursuant to the provisions in rule 567—33.3(455B) or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the provisions in rule 567—33.3(455B) who commences construction after April 15, 1987 (the effective date of Iowa’s PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action.

d. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The department may extend the 18-month period upon a satisfactory showing that an extension is justified. These provisions do not apply to the time between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

e. Reserved.

f. ~~The Except as otherwise provided in subparagraph (8), the following specific provisions shall apply to with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances in which where there is a “reasonable possibility,” within the meaning of subparagraph (8), that a project that is not part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method for calculating projected actual emissions as specified in subrule 33.3(1), paragraphs “1” through “3” of the definition of “projected actual emissions.”~~

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;
2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph “3” of the definition of “projected actual emissions” in subrule 33.3(1), an explanation describing why such amount was excluded, and any netting calculations, if applicable.

(2) No less than 30 days before beginning actual construction, the owner or operator shall meet with the department to discuss the owner’s or operator’s determination of projected actual emissions for the project and shall provide to the department a copy of the information specified in paragraph “f.” The owner or operator is not required to obtain a determination from the department regarding the project’s projected actual emissions prior to beginning actual construction.

(3) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (1) to the department. The requirements in subparagraphs (1), (2) and (3) shall not be construed to require

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

the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(4) The owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (1);

2. Calculate the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations and maintain a record of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit (for purposes of this requirement, "regular" shall be determined by the department on a case-by-case basis); and

3. Maintain a written record containing the information required in this subparagraph.

(5) The written record containing the information required in subparagraph (4) shall be retained by the owner or operator for a period of ten years after the project is completed.

(6) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under subparagraph (4) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(7) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph (1), exceed the baseline actual emissions, as documented and maintained pursuant to subparagraph (4), by an amount that is "significant" as defined in subrule 33.3(1) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph (4). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source;

2. The annual emissions as calculated pursuant to subparagraph (4); and

3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(8) A "reasonable possibility" under this paragraph (paragraph 33.3(18) "f") occurs when the owner or operator calculates the project to result in either:

1. A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under subrule 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

2. A projected actual emissions increase that, when added to the amount of emissions excluded under subrule 33.3(1), paragraph "3" of the definition of "projected actual emissions," equals at least 50 percent of the amount that is a "significant emissions increase," as defined under subrule 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this numbered paragraph, and not also within the meaning of numbered paragraph "1" of this subparagraph (subparagraph (8)), then the provisions of subparagraphs (3) through (7) do not apply to the project.

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph "f" available for review upon request for inspection by the department or the general public pursuant to the requirements for Title V operating permits contained in 567—subrule 22.107(6).

ITEM 7. Amend subrule 33.3(20) as follows:

**33.3(20) Conditions for permit issuance.** Except as explained below, a permit may not be issued to any new "major stationary source" or "major modification" as defined in subrule 33.3(1) that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major stationary source or major modification

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

will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Significant Impact Levels (SILs)					
	Averaging Time				
	Annual	24 hrs.	8 hrs.	3 hrs.	1 hr.
Pollutant	( $\mu\text{g}/\text{m}^3$ )				
SO <sub>2</sub>	1.0	5	—	25	—
PM <sub>10</sub>	1.0	5	—	—	—
PM <sub>2.5</sub>	0.3	1.2	—	—	—
NO <sub>2</sub>	1.0	—	—	—	—
CO	—	—	500	—	2000

A permit may be granted to a major stationary source or major modification as identified above if the major stationary source or major modification reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major stationary source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

ITEM 8. Adopt the following **new** subrule 33.3(22):

**33.3(22) Permit rescission.** Any permit issued under 40 CFR 52.21 or this chapter or any permit issued under rule 567—22.4(455B) shall remain in effect unless and until it is rescinded. The department will consider requests for rescission that meet the conditions specified under paragraphs “a” and “b” of this subrule. If the department rescinds a permit or a condition in a permit issued under 40 CFR 52.21, this chapter, or rule 567—22.4(455B), the public shall be given adequate notice of the proposed rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region 60 days prior to the proposed date for rescission shall be considered adequate notice.

*a.* The department may rescind a permit or a portion of a permit upon request from an owner or operator of a stationary source who holds a permit for a source or modification that was issued under 40 CFR 52.21 as in effect on July 30, 1987, or earlier, provided the application also meets the provisions in paragraph “b” of this subrule.

*b.* If the application for rescission meets the provisions in paragraph “a” of this subrule, the department may rescind a permit if the owner or operator shows that the PSD provisions under 40 CFR 52.21 would not apply to the source or modification.

**ARC 0104C**

## **HISTORICAL DIVISION[223]**

### **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 303.1A, the Director of the Department of Cultural Affairs hereby gives Notice of Intended Action to amend Chapter 35, “Administration,” Iowa Administrative Code.

## HISTORICAL DIVISION[223](cont'd)

The State Historic Preservation Office annually receives a federal grant through the Historic Preservation Fund administered by the National Park Service. Acceptance of the federal grant stipulates compliance with the requirements of the Historic Preservation Fund Grants Manual. The rules in Chapter 35 set forth the general procedures by which the historic preservation program operates in order to implement the requirements of the Historic Preservation Fund Grants Manual, the National Historic Preservation Act, and Iowa Code chapter 303. This proposed amendment clarifies definitions and adds a definition for "historic property."

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on May 8, 2012. Interested persons may submit written or oral comments by contacting Kristen Vander Molen, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)282-0502; E-mail [Kristen.VanderMolen@iowa.gov](mailto:Kristen.VanderMolen@iowa.gov). Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515)281-4228.

Also, there will be a public hearing on May 10, 2012, at 10 a.m. at the above address in the Auditorium, First Floor, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

After analysis and review of this rule making, a positive impact on jobs exists. This rule making streamlines the process to allow construction projects to proceed. Construction projects can commence after review by the state's State Historic Preservation Officer's (SHPO) Office. This rule making implements recent legislation by streamlining the application process conducted by SHPO and improving the permit process for construction projects.

The direct impacts of construction per 100 miles which would take approximately 52 weeks would be approximately 18 to 20 jobs for construction personnel, three digger derrick trucks, three backset trucks, and four pick-up trucks. FEMA and the state of Iowa have approved 2,400 miles of line construction directly tied to the FEMA 404 Mitigation Program. Currently pending, there are another 1,300 miles of construction projects being evaluated and considered for approval by FEMA.

The total cost of these projects is \$225 million. If each project allows for approximately 18 to 20 jobs per 100 miles and each project takes approximately 52 weeks, this rule making will help create approximately 740 jobs for a 52-week period. Obligations for funding these projects have begun, as FEMA requested that Archaeological Phase 1 Surveys be completed. The schedule of this work is concurrent with the FEMA 406 storm rebuild projects.

The crew stays in local Iowa hotels and eats three meals a day at local Iowa restaurants. The majority of these projects take place in rural Iowa and would greatly benefit small towns in Iowa. Also, each truck (approximately ten) would use approximately 60 to 80 gallons of fuel per week. All fuel purchases would be local in Iowa. The total fuel purchases for ten trucks for 52-week projects would be approximately 36,400 gallons of fuel purchases in Iowa per project. Contractors rent space to park the ten vehicles used per project, storage for materials, and office space for contractors. Contractors utilize local Iowa mechanic shops for repairs on trucks. Further, the bulk of the construction materials are provided by distributors located in the state of Iowa. Multiple jobs will be created due to the sheer volume of materials required for each construction project. The transportation industry in Iowa will benefit because of the materials being shipped to Iowa. The State will receive a positive fiscal impact due to the significant amount of sales tax on materials bought here in Iowa.

The Department of Cultural Affairs and the State of Iowa's SHPO Office will continue to collaborate with stakeholders to maximize this rule making's positive impact on jobs.

This amendment is intended to implement 2011 Iowa Code Supplement section 303.2, subsection 2, paragraph "c," and section 303.18 and 16 U.S.C. 470 et seq.

The following amendment is proposed.

HISTORICAL DIVISION[223](cont'd)

Amend rule 223—35.2(303) as follows:

**223—35.2(303) Definitions.** The definitions listed in Iowa Code section 17A.2 and rule 223—1.2(303), Iowa Administrative Code, shall apply for terms as they are used throughout Title V of these rules. In addition, the following definitions apply:

“*Act*” means the National Historic Preservation Act of 1966, Public Law 89-665.

“*Advisory council*” means the Advisory Council on Historic Preservation established under Section 201 of the National Historic Preservation Act of 1966, Public Law 89-665.

“*Applicant*” means any individual or entity seeking funding or service for a historic preservation activity from the society.

“*Certified local government*” means a unit of local government which is certified by the National Park Service to carry out the purposes of the National Historic Preservation Act in accordance with Section 101(c) of the Act and 36 CFR 61, April 13, 1984, and August 30, 1985.

“*Comprehensive historic preservation planning*” means the ongoing planning process by the division or a local community that is consistent with technical standards issued by the U.S. Department of the Interior and which produces reliable, understandable, and up-to-date information for decision making related to the identification, evaluation, and protection or treatment of historic resources.

“*Considered eligible*” means those properties that both the state historic preservation officer and a state or federal agency agree may be considered eligible for listing in the National Register of Historic Places, but have not been forwarded to the National Park Service for a formal determination of eligibility.

“*Cultural resource*” means man-made components of the physical environment which are of some historical significance or importance and which represent or reflect the history and prehistory of the state.

“*Deputy state historic preservation officer*” means the designee of the state historic preservation officer who is responsible for the daily administration of the historic preservation program in the state.

“*Determination of eligibility*” means the finding by the National Park Service that a district, site, building, structure, or object meets the National Register criteria, but a formal nomination has not been forwarded to the National Park Service. A determination of eligibility does not make the property eligible for such benefits as grants, loans, or tax incentives that have listing on the National Register as a prerequisite.

“*Historical Historic Preservation Fund*” means the federal source from which moneys are appropriated to fund the program of matching grants-in-aid to the states and other authorized grant recipients for historic preservation programs, as authorized by Section 101(d)(1) of the National Historic Preservation Act ~~of 1966~~.

“*Historic context*” means a historical theme summary created for planning purposes that links historical information with related historic properties based on the minimal components of a shared theme, specific time period, and geographical area.

“*Historic preservation*” means the protection, rehabilitation, restoration, and appropriate adaptive reuse of historic properties significant in American history, architecture, archaeology, engineering, or culture.

“*Historic property*” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. “Historic property” includes artifacts, records, and remains that are related to and located within such properties. “Historic property” includes properties of traditional religions and cultural importance to an Indian tribe and that meet the National Register criteria.

“*Investment tax credit*” means a federal income tax credit for the substantial rehabilitation of historic buildings for commercial, industrial, and rental residential and nonresidential purposes.

“*National Register of Historic Places*” means the national list of historic properties significant in American history, architecture, archaeology, engineering, or culture, maintained by the Secretary of the Interior.

“*National Trust for Historic Preservation*” means the private, nonprofit organization chartered by legislation approved by Congress on October 26, 1949, with the responsibility for encouraging

## HISTORICAL DIVISION[223](cont'd)

public participation in the preservation of districts, structures, sites, buildings, and objects significant in American history and culture.

*"Property owner"* means that individual who pays local property tax for a historic property that they either own or are purchasing by contract.

*"Review and compliance"* means the review of federal, state and local undertakings according to 36 CFR Part 800: Protection of Historic Properties, ~~September 21, 1986~~, and the regulations of the Advisory Council on Historic Preservation governing the Section 106 review process.

*"Review committee"* means the Iowa state national register nominations review committee, which is appointed by the state historic preservation officer.

*"Secretary's Standards and Guidelines"* means the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (36 CFR Part 61) which provide technical information about archaeological and historic preservation activities and methods. The subjects covered include preservation planning; identification, evaluation, registration, historic research and documentation; architectural and engineering documentation; archaeological investigation; historic preservation projects; and preservation terminology.

*"Section 106"* means the section of the National Historic Preservation Act of 1966, Public Law 89-665, which requires the federal agency head with jurisdiction over a ~~federal~~ an undertaking or ~~federally licensed undertaking~~ to take into account the effects of the agency's ~~undertakings~~ actions on properties included in or eligible for the National Register of Historic Places and, prior to ~~approval of an undertaking~~ expenditure of funds, to afford the Advisory Council ~~for~~ on Historic Preservation a reasonable opportunity to comment ~~on the undertaking~~. The regulations of 36 CFR Part 800, ~~September 21, 1986~~, define the process used by an agency to meet these responsibilities and the role of the state historic preservation officer in review and comment on these undertakings.

*"State historic preservation officer" or "SHPO"* means the governor's appointee who is responsible for the management of the historic preservation program of the state and compliance of the state historic preservation program with federal statutes and regulations of the National Park Service.

*"Survey and planning grants"* means the grants which result in the survey, evaluation, and nomination to the National Register of Historic Places of historic properties as well as the planning for these activities.

*"Technical assistance"* means services provided to the public for the development of skills or the provision of knowledge relative to the background, significance, operation, or implications of some aspect of the historic preservation program.

**ARC 0103C**

## **HISTORICAL DIVISION[223]**

### **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 303.1A, the Director of the Department of Cultural Affairs hereby gives Notice of Intended Action to amend Chapter 42, "Review and Compliance Program," Iowa Administrative Code.

The State Historic Preservation Office annually receives a federal grant through the Historic Preservation Fund administered by the National Park Service. Acceptance of the federal grant stipulates compliance with the requirements of the Historic Preservation Fund Grants Manual. The rules in Chapter 42 explain the procedures the State Historic Preservation Office follows in order to implement the Review and Compliance Program requirements in the Historic Preservation Fund Grants Manual, the National Historic Preservation Act, and Iowa Code chapter 303. These proposed amendments set

## HISTORICAL DIVISION[223](cont'd)

forth how the Department will implement changes in state law while continuing to ensure compliance with applicable federal law and regulation. The amendments also set forth the process by which the Director will review recommendations.

Written public comments concerning these proposed amendments will be accepted until 4:30 p.m. on May 8, 2012. Interested persons may submit written or oral comments by contacting Kristen Vander Molen, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)282-0502; E-mail [Kristen.VanderMolen@iowa.gov](mailto:Kristen.VanderMolen@iowa.gov). Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515)281-4228.

Also, there will be a public hearing on May 10, 2012, at 10 a.m. at the above address in the Auditorium, First Floor, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

After analysis and review of this rule making, a positive impact on jobs exists. This rule making streamlines the process to allow construction projects to proceed. Construction projects can commence after review by the state's State Historic Preservation Officer's (SHPO) Office. This rule making implements recent legislation by streamlining the application process conducted by SHPO and improving the permit process for construction projects.

The direct impacts of construction per 100 miles which would take approximately 52 weeks would be approximately 18 to 20 jobs for construction personnel, three digger derrick trucks, three backset trucks, and four pick-up trucks. FEMA and the state of Iowa have approved 2,400 miles of line construction directly tied to the FEMA 404 Mitigation Program. Currently pending, there are another 1,300 miles of construction projects being evaluated and considered for approval by FEMA.

The total cost of these projects is \$225 million. If each project allows for approximately 18 to 20 jobs per hundred miles and each project takes approximately 52 weeks, this rule making will help create approximately 740 jobs for a 52-week period. Obligations for funding these projects have begun, as FEMA requested Archaeological Phase 1 surveys be completed. The schedule of this work is concurrent with the FEMA 406 storm rebuild projects.

The crew stays in local Iowa hotels and eats three meals a day at local Iowa restaurants. The majority of these projects take place in rural Iowa and would greatly benefit small towns in Iowa. Also, each truck (approximately ten) would use approximately 60 to 80 gallons of fuel per week. All fuel purchases would be local in Iowa. The total fuel purchases for ten trucks for 52-week projects would be approximately 36,400 gallons of fuel purchases in Iowa per project. Contractors rent space to park the ten vehicles used per project, storage for materials, and office space for contractors. Contractors utilize local Iowa mechanic shops for repairs on trucks. Further, the bulk of the construction materials are provided by distributors located in the state of Iowa. Multiple jobs will be created due to the sheer volume of materials required for each construction project. The transportation industry in Iowa will benefit because of the materials being shipped to Iowa. The State will receive a positive fiscal impact due to the significant amount of sales tax on materials bought here in Iowa.

The Department of Cultural Affairs and the State of Iowa's SHPO Office will continue to collaborate with stakeholders to maximize this rule making's positive impact on jobs.

These amendments are intended to implement 2011 Iowa Code Supplement section 303.2, subsection 2, paragraph "c," and section 303.18 and 16 U.S.C. 470 et seq.

The following amendments are proposed.

ITEM 1. Amend rule 223—42.1(303) as follows:

**223—42.1(303) Purpose.** ~~The review and compliance program implements Section 106 of the National Historic Preservation Act of 1966 for the purpose of taking into account the effects of an agency's undertaking on properties included in or eligible for the National Register of Historic Places.~~ state historic preservation program activities to advise and assist public (federal, state, and local government) agencies in carrying out their historic preservation responsibilities broadly described and established

## HISTORICAL DIVISION[223](cont'd)

under the National Historic Preservation Act, particularly Sections 106 and 110, as well as other state and federal historic preservation laws and regulations.

ITEM 2. Amend rule 223—42.2(303) as follows:

**223—42.2(303) Regulations Federal regulations and requirements.** The Iowa review and compliance program shall operate in accordance with the National Historic Preservation Act of 1966, Section 106; and 36 CFR Part 800, September 21, 1986. following requirements:

42.2(1) The National Historic Preservation Act (16 U.S.C 470 et seq.).

42.2(2) Title 36 of the Code of Federal Regulations Part 60 (36 CFR 60).

42.2(3) Title 36 of the Code of Federal Regulations Part 61 (36 CFR 61).

42.2(4) Title 36 of the Code of Federal Regulations Part 63 (36 CFR 63).

42.2(5) Title 36 of the Code of Federal Regulations Part 800 (36 CFR 800).

42.2(6) Contract requirements outlined in the state of Iowa's Historic Preservation Fund grant agreement with the National Park Service, including requirements described in the Historic Preservation Fund Grants Manual, special conditions attached to the grant agreement, and any other National Park Service requirement considered a condition of receiving the annual federal grant.

42.2(7) Nationwide Programmatic Agreements and other federal program alternatives executed or issued by the Advisory Council on Historic Preservation under 36 CFR 800.14, as applicable.

42.2(8) State-level programmatic agreements and memoranda of agreements executed under 36 CFR 800.6 and 800.14.

42.2(9) Easements and covenants granted pursuant to the implementation of state historic program activities.

42.2(10) Iowa Code chapter 303.

ITEM 3. Renumber rule 223—42.3(303) as 223—42.5(303).

ITEM 4. Adopt the following new rules 223—42.3(303) and 223—42.4(303):

**223—42.3(303) Professional qualifications.** In keeping with federal Historic Preservation Fund grant requirements, the department shall employ a professionally qualified staff that meets the requirements set forth in 36 CFR 61.4(e).

**223—42.4(303) Definitions.** Unless the context requires otherwise, the definitions provided in the National Historic Preservation Act and its implementing regulations at 36 CFR 60, 36 CFR 61, and 36 CFR 800 shall apply to terms as they are used through this chapter. In addition, the following definitions apply:

*“Act”* means the National Historic Preservation Act (16 U.S.C. 470 et seq.).

*“Adequate documentation”* means documentation consistent with 36 CFR 800.11 and shall include a statement of significance or nonsignificance with sufficient historic context to make an evaluation of National Register eligibility pursuant to 36 CFR 60 and an assessment of proposed treatment methods pursuant to 36 CFR 61.

*“Agency”* means federal agency.

*“Agreements”* means any programmatic agreements, memoranda of agreement, state-level agreements, or other agreements executed between the state historic preservation officer, federal or state agencies including those authorized by Iowa Code section 28E.4, and other consulting parties as part of consultation under Section 106 of the Act.

*“Area of potential effects”* or *“APE”* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR 800.16(d)).

*“Historic property”* means “historic property” as defined in 36 CFR 800.16(l).

## HISTORICAL DIVISION[223](cont'd)

“*Undertaking*” means, as defined in Section 301 of the National Historic Preservation Act, a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including (1) those carried out by or on behalf of the federal agency; (2) those carried out with federal financial assistance; (3) those requiring a federal permit, license or approval; and (4) those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

ITEM 5. Amend renumbered rule 223—42.5(303) as follows:

**223—42.5(303) Procedures.**

~~42.5(1) *Technical assistance.* The state historic preservation officer, or designee, shall consult with agency officials expending federal funds to identify historic properties, assess effects of the undertaking on historic properties, and consider alternatives to avoid or reduce the effects. The state historic preservation office (SHPO) shall advise and assist federal agencies in carrying out their responsibilities under the Act (and other federal historic preservation laws) and shall cooperate with federal agencies, state agencies, local governments, or their applicants; organizations; and individuals to ensure historic properties are taken into consideration at all levels of planning and development.~~

~~42.5(2) *SHPO review of federal undertakings.*~~

~~a. In accordance with applicable federal and state laws and regulations, agency officials and agency program applicants or recipients requesting formal SHPO comment on an undertaking shall submit documentation regarding the undertaking and potential effects to historic properties.~~

~~b. Agency officials desiring a Section 106 review shall contact the review and compliance coordinator to obtain the appropriate forms required to evaluate the effects. Completion of the forms does not constitute clearance of the proposed projects, but is intended to assist the review and compliance staff in rendering an informed recommendation. The SHPO shall make available forms intended to assist agency officials and agency program applicants and recipients in organizing information and to allow the review and compliance program staff and other consulting parties to render informed advice on an undertaking. Forms will be made available on the state historical society of Iowa Web site. ~~Inquiries may~~ Submittals shall be directed to Review and Compliance Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-4137.~~

~~c. SHPO reviews shall be conducted by professional staff that meet federal qualification standards for preservation disciplines appropriate to the types of resources the undertaking may affect.~~

~~d. The SHPO shall respond to initial determinations submitted by agency clients pursuant to formal agency delegations or to a final agency determination of eligibility.~~

~~e. The SHPO shall apply the National Register Criteria for Evaluation when making determinations of National Register eligibility.~~

~~f. A SHPO nonconcurrence with an agency determination of eligibility shall include an explanation based in the National Register Criteria and relevant National Park Service guidelines for evaluation of historic properties.~~

~~g. The SHPO shall respond to agency determinations or findings of effect.~~

~~h. A SHPO nonconcurrence with an agency finding or determination of effect shall include an explanation based in the Council’s criteria of adverse effect (36 CFR 800.5).~~

~~i. If the SHPO elects to consult, the SHPO shall respond within 30 calendar days of receipt of an agency’s request for review of a finding or determination in accordance with 36 CFR 800.3(c)(4) and the National Park Service’s applicable requirements.~~

~~j. The recommendations and decisions of the state historic preservation officer are subject to the review and approval of the director. This review may be initiated by the director for any reason or may be requested in the manner described in rule 223—42.7(303). To facilitate this opportunity for review, the SHPO will generally submit its recommendation to the director within 14 calendar days of receipt.~~

~~k. If the director is unable to make a determination regarding the request for review within the federally mandated 30-day consultation period, the director may, if the applicant agrees, request that the federal agency extend the consultation period for such time as the director requires to make such a determination, but in no event shall the requested extension exceed 14 days.~~

## HISTORICAL DIVISION[223](cont'd)

**42.5(3)** *Resolution of adverse effects.* The SHPO shall consult with agencies and other consulting parties to develop and evaluate alternatives or modifications to undertakings that could avoid, minimize, or mitigate adverse effects on historic properties in accordance with the provisions of 36 CFR 800.6 or the terms of executed agreements, easements and covenants.

**42.5(3)** Responses to agency requests shall be made by the review and compliance staff within 30 days. Responses may indicate that no historic properties are located within the impact area, request the presentation of additional information and research, or that there is an effect. If an impact is indicated the review and compliance staff shall indicate the steps desired to mitigate the impact.

**42.5(4)** After initiating consultation, the state historic preservation officer or designee, the funding agency official, or the Advisory Council for Historic Preservation, at its discretion, may state that further consultation may not be productive and thereby terminate the consultation process. The agency official may then request the Council's comments in accordance with Section 800.6(b) of the National Historic Preservation Act of 1966 and notify all other consulting parties of the request.

ITEM 6. Adopt the following new rules 223—42.6(303) and 223—42.7(303):

**223—42.6(303) Level of effort required to identify historic properties.**

**42.6(1)** The level of effort required to meet the “reasonable and good faith” standard in Section 106 review is set forth in 36 CFR 800.4. The level of effort required shall be based on past planning, research and studies, the magnitude and nature of the undertaking and the degree of federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the APE and may consist of any combination of background research, consultations, oral history interviews, sample field investigations and field surveys.

**42.6(2)** In response to the agency's request for consultation, the SHPO shall base any recommendation for the identification of historic properties upon a review of existing information on historic properties within the APE or historical factors that would indicate such properties are likely to exist within the APE.

**42.6(3)** It is the statutory obligation of the agency to fulfill the requirements of Section 106.

**42.6(4)** The level of effort required of rural electric cooperatives and municipalities shall be consistent with the requirements set forth in 2011 Iowa Code Supplement section 303.18.

**223—42.7(303) Review and appeal of the recommendations and decisions of the state historic preservation officer.**

**42.7(1)** The recommendations and decisions of the state historic preservation officer are subject to the review and approval of the director. This review may be initiated by the director for any reason or may be requested in the manner described in this rule.

**42.7(2)** A person requesting the review of a recommendation or decision of the state historic preservation officer directly affecting that person shall provide the director with the following information, orally or in writing:

- a. Name and address of the requester.
- b. A description of the action of the SHPO requested to be reviewed.
- c. A short and plain statement of the reasons the review is requested.

**42.7(3)** Within 15 days following receipt of a request for review, the director shall notify the requester of the disposition of the request or of the need for additional information. Within 30 days following the receipt of the requested additional information the director will notify the requester in writing of the disposition of the request for review.

**42.7(4)** A decision of the director is a final agency action. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A.

ARC 0096C

## IOWA FINANCE AUTHORITY[265]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority proposes to amend Chapter 41, “Shelter Assistance Fund,” Iowa Administrative Code.

The purpose of these amendments is to revise rules relating to the administration of the Shelter Assistance Fund to conform the rules to recent changes in federal regulations.

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

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on May 8, 2012. Comments may be addressed to Amber Lewis, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Amber Lewis at (515)725-4901 or E-mailed to [amber.lewis@iowa.gov](mailto:amber.lewis@iowa.gov).

The Authority will hold a public hearing on the proposed amendments on May 8, 2012, at 1:30 p.m. in the presentation room of the Authority’s headquarters, located at 2015 Grand Avenue, Des Moines, Iowa.

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

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

These amendments are intended to implement Iowa Code sections 16.5 and 16.40.

The following amendments are proposed.

ITEM 1. Amend rule **265—41.2(16)**, definitions of “ESG program” and “Homeless,” as follows:  
*“ESG program” or “ESGP” means the Emergency Shelter Grants Solutions Grant Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).*

*“Homeless” or “homeless individual” shall have the meaning set forth in 42 U.S.C. Section 11302 24 CFR Part 91.*

ITEM 2. Rescind the definition of “HUD ESG Desk Guide” in rule **265—41.2(16)**.

ITEM 3. Amend rule 265—41.6(16) as follows:

**265—41.6(16) Application procedures.** IFA ~~will~~ may issue requests for proposals from eligible applicants as often as the state expects funding from HUD for the ESG program. Requests for proposals ~~will~~ may combine the ESG program with the SAF program. The proposals must be submitted on the forms or on-line system prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match for the ESG program, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

ITEM 4. Amend rule 265—41.8(16) as follows:

**265—41.8(16) Matching requirement.** Subrecipients ~~are not~~ may be required to provide a match for SAF program funds. The rules of each competition will specify what, if any, match is required.

ITEM 5. Amend subrule 41.10(3) as follows:

**41.10(3) Participation by homeless individuals and families.** To the maximum extent possible, SAF program subrecipients must involve, through employment, volunteer services, or otherwise, homeless

IOWA FINANCE AUTHORITY[265](cont'd)

individuals and families in constructing, renovating, maintaining, and operating facilities assisted with SAF funds, in providing services assisted with SAF funds, and in providing services for occupants of facilities assisted with SAF funds.

~~a. SAF program recipients and subrecipients must certify that homeless individuals and families are involved, through employment, volunteer services, or otherwise, in constructing, renovating, maintaining, and operating assisted facilities and in providing services.~~

~~b. Subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policymaking entity. The Secretary of HUD may issue a waiver to the subrecipient if the subrecipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.~~

ITEM 6. Amend paragraph **41.12(2)“a”** as follows:

a. Records for any assisted activity shall be retained for ~~three~~ five years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.

**ARC 0095C**

## **IOWA FINANCE AUTHORITY[265]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority proposes to amend Chapter 42, “Emergency Shelter Grants Program,” Iowa Administrative Code.

The purpose of these amendments is to revise rules relating to the administration of the Emergency Shelter Grants Program to conform the rules to recent changes in federal regulations.

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

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on May 8, 2012. Comments may be addressed to Amber Lewis, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Amber Lewis at (515)725-4901 or E-mailed to [amber.lewis@iowa.gov](mailto:amber.lewis@iowa.gov).

The Authority will hold a public hearing on the proposed amendments on May 8, 2012, at 1:30 p.m. in the presentation room of the Authority’s headquarters, located at 2015 Grand Avenue, Des Moines, Iowa.

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

After analysis and review of this rule making, there should be no adverse impact on jobs. Although homeless shelters and nonprofits may now be required to match the funds they receive, these organizations will receive a credit for all employee salaries. Therefore, this rule making encourages the hiring of full-time employees.

These amendments are intended to implement Iowa Code section 16.5(1)“m” and 24 CFR Parts 91, 576, 582, and 583.

The following amendments are proposed.

ITEM 1. Amend **265—Chapter 42**, title, as follows:

**EMERGENCY SHELTER GRANTS SOLUTIONS GRANT PROGRAM**

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 2. Amend rule 265—42.1(16) as follows:

**265—42.1(16) Purpose.** ~~The emergency shelter grants program~~ Emergency Solutions Grant Program is designed to improve the quality of services to the homeless and to prevent individuals and families from becoming homeless. The program will make available needed services and help meet the costs of providing essential social services so that homeless individuals and families have access not only to safe and sanitary shelter but also to the supportive services and other types of assistance the individuals and families need to improve their situations.

ITEM 3. Amend rule **265—42.2(16)**, definitions of “Emergency shelter,” “ESG program” and “Homeless,” as follows:

*“Emergency shelter”* means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons, in accordance with the definition at 24 CFR Part 576.

*“ESG program”* or *“ESGP”* means the ~~Emergency Shelter Grants~~ Solutions Grant Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

*“Homeless”* or *“homeless individual”* shall have the meaning set forth in ~~42 U.S.C. Section 11302~~ 24 CFR Part 91.

ITEM 4. Rescind the definition of “HUD ESG Desk Guide” in rule **265—42.2(16)**.

ITEM 5. Amend rule 265—42.3(16) as follows:

**265—42.3(16) Eligible applicants.** City governments, county governments, and private, nonprofit organizations are eligible applicants under the ESG program. City or county governments may apply on behalf of a nonprofit service provider within their jurisdictions when the nonprofit service provider serves homeless and near-homeless clients by providing overnight shelter, ~~meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services,~~ and other services eligible under the ESG program as determined by HUD.

ITEM 6. Amend rule 265—42.4(16) as follows:

**265—42.4(16) Eligible activities.** Eligible activities are based on guidelines established by the Stewart B. McKinney Homeless Assistance Act of 1987 and are further defined in 24 CFR Part 576 ~~and the HUD Desk Guide.~~ Activities assisted by this program may include only the following:

**42.4(1) Construction Street outreach.** ~~Rehabilitation, renovation, or conversion of buildings for use in the provision of services for the homeless.~~ Provision of essential services necessary to reach out to unsheltered homeless people; to connect them with emergency shelter, housing, or critical services; and to provide urgent, non-facility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility.

**42.4(2) ~~Essential services—new or increased level of services~~ Emergency shelter.** ~~Provision of essential services if the service is a new service or quantifiable increase in the level of service. ESG program funds may not be used to replace existing funding sources for services; however, once a new or increased level of service meets the standards, ESG program funds may be used to continue funding the service in subsequent years. No more than 30 percent of the IFA annual grant amount may be used for this purpose.~~ Provision of essential services to homeless families and individuals in emergency shelters and the operation of emergency shelters.

**42.4(3) ~~Operating costs.~~** ~~Payment of emergency shelter and transitional housing operating costs including shelter maintenance, operations, rent, repairs, security, fuel, equipment, insurance, utilities, food and furnishings. Staff salaries, including fringe benefits, paid under the operating cost category are limited to 10 percent of the grant amount. Maintenance and security costs are not subject to the 10 percent standard.~~

**42.4(4) ~~42.4(3) Prevention of homelessness.~~** ~~Payment for eligible activities that assist in the prevention of homelessness. Grants may be made for homeless prevention as long as the total amount~~

IOWA FINANCE AUTHORITY[265](cont'd)

~~of such grants does not exceed 30 percent of the total emergency shelter grants program allocation. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month's rent to enable a family to acquire its own rental unit; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure. The provision of housing relocation and stabilization services and short- or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the definition of "homeless" in 24 CFR Part 576.2.~~

**42.4(4) *Rapid re-housing.*** The provision of housing relocation and stabilization services and short- or medium-term rental assistance necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.

**42.4(5) *Administrative costs.*** A recipient may use a portion of a grant received for administrative purposes as determined by IFA. ~~The maximum allowed for these administrative costs shall be 5 percent of the state ESGP allocation.~~ IFA reserves the authority for distribution of administrative funds.

**42.4(6) *Homeless Management Information System (HMIS) projects.*** IFA may award grants for HMIS implementation to support data collection, reporting, and analysis as long as the total amount of such grants does not exceed 10 percent of the total ~~emergency shelter grants program~~ Emergency Solutions Grant Program allocation. Eligible costs may include equipment, software, services, personnel, space and operations for HMIS activities. In the case of parties to a supportive housing grant agreement or renewal grant agreement with the United States Department of Housing and Urban Development for HMIS implementation who are in need of the required cash match, IFA may in its discretion award such a grant, subject to the terms of this subrule, without regard to the application and review provisions of rules 265—42.6(16) and 265—42.7(16). Subrecipients of grants in support of other eligible activities listed in subrules 42.4(1) to 42.4(4) may also use a portion of such grants to support data collection and reporting using the HMIS or comparable database.

ITEM 7. Amend rule 265—42.6(16) as follows:

**265—42.6(16) *Application procedures.*** IFA will issue requests for proposals from eligible applicants as often as the state expects funding from HUD. Requests for proposals ~~will~~ may combine the ESG program with the SAF program. The proposals must be submitted on the forms or on-line system prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

ITEM 8. Amend rule 265—42.8(16) as follows:

**265—42.8(16) *Matching requirement.*** Each subrecipient of ESG program funds must match the grant amount with an equal amount. In calculating the amount of matching funds, the following may be included: ~~the value of any donated material or building used in the project, the value of any lease on a building used in the project, any salary paid to staff of the subrecipient or to any state subrecipient in carrying out the ESG program, and the time and services contributed by volunteers at the rate of \$5 per hour.~~ For purposes of this rule, IFA will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish fair market value. cash contributions expended for allowable costs of the subrecipient for the ESG program or noncash contributions, including the value of any real property, equipment, goods, or services contributed to the subrecipient's ESG program provided that, if the subrecipient had to pay for them with grant funds, the costs would have been allowable. IFA may allow an exemption of matching funds up to a maximum of \$100,000 of the state allocation received from HUD for the subrecipients least capable of providing such matching amounts.

## IOWA FINANCE AUTHORITY[265](cont'd)

The subrecipient must document its need to participate in this exemption from matching requirements and must receive prior approval from IFA before the exemption will be effective.

ITEM 9. Amend subrule 42.10(3) as follows:

**42.10(3) *Participation by homeless individuals and families.*** To the maximum extent possible, the subrecipient must involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted with ESG funds, in providing services assisted with ESG funds, and in providing services for occupants of facilities assisted with ESG funds.

~~a. A recipient or subrecipient of ESG program funds must certify that it involves, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating assisted facilities and in providing services.~~

~~b. Local government recipients or subrecipients or qualified recipients or subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policymaking entity. The Secretary of HUD may issue a waiver to the recipient or subrecipient if the recipient or subrecipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.~~

ITEM 10. Adopt the following **new** subrules 42.10(7) and 42.10(8):

**42.10(7) *Coordination with other homeless services.*** Subrecipients must coordinate and integrate, to the maximum extent practicable, grant-funded activities with other homeless service programs in the community.

**42.10(8) *Access to mainstream services and resources.*** Subrecipients must ensure that all program participants are assisted, to the maximum extent practicable, in obtaining mainstream services and financial assistance, including housing, health, social services, employment, education, and youth programs for which participants are eligible.

ITEM 11. Amend rule ~~265~~—**42.11(16)**, introductory paragraph, as follows:

**265—42.11(16) Compliance with applicable federal and state laws and regulations.** All recipients and subrecipients shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Act of 1987 and its implementing regulations, as well as the revising regulations of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), as defined by 24 CFR Part 576. Use of ESG program funds must comply with the following additional requirements.

ITEM 12. Adopt the following **new** paragraphs **42.11(1)“e”** to **“i”**:

~~e. The Drug-Free Workplace Act of 1988 and HUD’s implementing regulations at 24 CFR Part 24.~~

~~f. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.~~

~~g. Contracting requirements at 24 CFR Part 24 that prohibit the use of federally disbarred, suspended, or ineligible contractors for expenses related to the ESG program.~~

~~h. Job training and employment for low-income residents requirements of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR Part 135, except that homeless individuals have priority over other Section 3 residents in accordance with 24 CFR Part 576.405(c).~~

~~i. The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR Part 35, Subparts A, B, H, J, K, M, and R, which apply to all shelters assisted under the ESG program and all housing occupied by program participants.~~

ITEM 13. Amend paragraph **42.12(2)“a”** as follows:

~~a. Records for any assisted activity shall be retained for three five years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.~~

**ARC 0105C****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 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, “General Industry Safety and Health Rules,” and Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The proposed amendments adopt by reference changes to federal occupational safety and health standards. The federal standard changes amend the hazard communication standards to facilitate international trade and substitute a reference to a 2009 edition of a Compress Gas Association publication for a reference to a 2003 edition of the publication.

The principal reasons for adoption of these amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa’s regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1) and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on May 8, 2012, a public hearing will be held on May 9, 2012, at 10:30 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. 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 May 9, 2012, to 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).

No variance procedures are included in this rule making. Variances procedures are set forth in 875—Chapter 5.

After analysis and review of this rule making, jobs could be impacted. However, these amendments are implementing federally mandated regulations and the State of Iowa is only implementing the federal regulations. This rule making does not impose any unnecessary regulations on Iowa businesses not required by federal law.

These amendments are intended to implement Iowa Code section 88.5 and 29 CFR 1953.5.

The following amendments are proposed.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:

76 Fed. Reg. 75786 (December 5, 2011)

77 Fed. Reg. 17764 (March 26, 2012)

ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:

77 Fed. Reg. 17764 (March 26, 2012)

**ARC 0086C****LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 544B.5, the Landscape Architectural Examining Board proposes to amend Chapter 1, “Description of Organization,” and Chapter 2, “Examinations and Licensing,” Iowa Administrative Code.

These proposed amendments provide a more comprehensive definition and description of the “retired” status for registrants. These amendments also improve service to registrants.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before May 10, 2012. Comments should be directed to Robert Lampe, Executive Officer, Iowa Landscape Architectural Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; by telephone at (515)281-7360; or by E-mail to [robert.lampe@iowa.gov](mailto:robert.lampe@iowa.gov).

A public hearing will be held on Thursday, May 10, 2012, from 9 to 11 a.m. at the offices of the Professional Licensing Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any person who plans to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact the Board to discuss specific needs.

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

These amendments were approved by the Board on March 20, 2012.

After analysis and review of this rule making, no adverse impact on jobs has been found. The rule making defines the term “landscape architect, retired.” Although there should be no impact on jobs, the Board will continue to work with stakeholders to minimize any negative impact and maximize any positive impact toward jobs.

These amendments are intended to implement Iowa Code sections 544B.1 and 544B.13.

The following amendments are proposed.

ITEM 1. Adopt the following new definitions of “Landscape architect, retired” and “PLA” in rule **193D—1.1(544B,17A)**:

“*Landscape architect, retired*” means a person who has retired from working as a landscape architect in all states of registration, who has requested “landscape architect, retired” status on the licensure renewal form, and whose request for “landscape architect, retired” status has been approved by the board. For the purpose of these rules, a “professional landscape architect, retired” may be referred to as a “landscape architect, retired.”

“*PLA*” means professional landscape architect.

ITEM 2. Amend rule **193D—2.1(544B,17A)**, definition of “Landscape architect, retired,” as follows:

“*Landscape architect, retired*” means a person who ~~held a license as a professional landscape architect and who is retired from the practice of landscape architecture in all states of registration~~ has retired from working as a landscape architect in all states of registration, who has requested “landscape architect, retired” status on the licensure renewal form, and whose request for “landscape architect, retired” status has been approved by the board.

ITEM 3. Amend subrule 2.8(1) as follows:

**2.8(1)** It is the policy of the board to ~~mail~~ e-mail to each registrant a notice of the pending expiration date at the registrant’s last-known address approximately one month prior to the date the certificate of

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

registration is scheduled to expire. Failure to receive this notice does not relieve the registrant of the responsibility to timely renew the certificate and pay the renewal fee. A registrant should contact the board office if the registrant does not receive a renewal notice prior to the date of expiration.

ITEM 4. Amend subrule 2.8(7) as follows:

**2.8(7) Retired status.** A person who held a license as a professional landscape architect and who is retired from the practice of landscape architecture in all states of registration may use the title "landscape architect, retired" or "L.A., retired," respectively, in the context of non-income-producing personal activities. registration as a professional landscape architect, who is retired from the practice of landscape architecture in all states of registration, and who has applied for and has been granted retired status from the board may use the title "professional landscape architect, retired" or "PLA, retired." If the board determines an applicant is eligible, the retired status would become effective on the first scheduled registration renewal date. Applicants do not need to reinstate an expired registration to be eligible for retired status. Applicants may apply for retired status on forms provided by the board. The board will not provide a refund of biennial registration fees if an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Licensees with retired status are exempt from the renewal requirement.

*a. Permitted practices.* Persons registered in retired status may engage in the practices identified in paragraph 2.8(8)"c." Such persons may also provide services as technical experts before a court, including pre-litigation preparation, discovery, and testimony, on matters directly related to landscape architectural services provided by such persons prior to registering with the board in retired status.

*b. Exemption.* A person whose registration as a landscape architect has been placed on probation, suspended, revoked, or voluntarily surrendered in connection with a disciplinary investigation or proceeding shall not be eligible for retired status unless the board, upon appropriate application, first reinstates the registration to good standing.

ITEM 5. Amend paragraph 2.8(8)"c" as follows:

*c. Permitted practices.* A person may, while registered as inactive or retired, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of registration has never been issued. ~~Such~~ For an "inactive" registrant, such services may be performed as long as the person does not in connection with such services use the title "landscape architect" or any other title restricted for use only by landscape architects pursuant to Iowa Code section 544B.18 (with or without additional designations such as "inactive"). Restricted titles may be used only by active landscape architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education. A "landscape architect, retired" may use the "landscape architect, retired" title; however, the person shall inform whomever the person is providing services to that the person once held an active landscape architect license but is no longer actively licensed or permitted to practice landscape architecture.

ITEM 6. Amend rule 193D—2.10(544B,17A) as follows:

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

Examination fee	not to exceed \$1000
Initial examination filing fee	\$50
Proctoring fee	\$50
Examination exemption fee	\$300
(This certificate of registration is to be effective to the June 30 which is at least 12 months beyond the date of the application.)	
Wall certificate fee	\$50

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

Wall certificate replacement fee	\$25
Certificate of registration fee	\$15/month
(This certificate of registration is to be effective the day of board action until June 30.)	
Biennial registration fee (active)	\$350
Biennial registration fee (inactive)	\$100
Reinstatement of lapsed registration	not to exceed \$750
<u>“Landscape architect, retired” status</u>	<u>\$0 (No fee)</u>

**ARC 0090C****MEDICINE BOARD[653]****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 147.76 and 272C.2, the Board of Medicine hereby proposes to amend Chapter 9, “Permanent Physician Licensure,” Iowa Administrative Code.

The purpose of Chapter 9 is to establish provisions for permanent physician licensure. The proposed amendments update language throughout the chapter, apply the existing mandatory CME requirements for licensure reinstatement, and streamline the application process.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on March 1, 2012.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on May 8, 2012. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to [mark.bowden@iowa.gov](mailto:mark.bowden@iowa.gov).

There will be a public hearing on May 8, 2012, at 2 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

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

These amendments are intended to implement Iowa Code chapter 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of “Training for chronic pain management,” “Training for end-of-life care” and “Uniform application for physician state licensure” in rule **653—9.1(147,148)**:

“*Training for chronic pain management*” means required training on chronic pain management identified in 653—Chapter 11.

“*Training for end-of-life care*” means required training on end-of-life care identified in 653—Chapter 11.

“*Uniform application for physician state licensure*” means a Web-based application that is intended to standardize and simplify the licensure application process for state medical licensure. The Federation of State Medical Boards created and maintains the application. This application is used for all license types issued by the Iowa board of medicine.

## MEDICINE BOARD[653](cont'd)

ITEM 2. Amend rule **653—9.1(147,148)**, definitions of “Category 1 activity,” “Committee” and “Mandatory training for identifying and reporting abuse,” as follows:

“*Category 1 activity credit*” means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of AOA that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. ~~Activities~~ Credits designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed ~~credit~~ credits by the American Academy of Family Physicians are accepted as equivalent to category 1 ~~activities~~ credits.

“*Committee*” means the licensure ~~and examination~~ committee of the board.

“~~Mandatory training~~ *Training for identifying and reporting abuse*” means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69; the full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

ITEM 3. Amend subparagraph **9.2(2)“a”(1)** as follows:

(1) A medical student or osteopathic medical student in an international medical school may not take on the role of a medical student in the patient care setting unless ~~enrolling the student is~~ enrolled in the University of Iowa’s Carver College of Medicine or in Des Moines University’s College of Osteopathic Medicine; however, an international medical student not enrolled at either of these institutions may be an observer as defined in rule 653—9.1(147,148).

ITEM 4. Amend paragraph **9.3(1)“c”** as follows:

c. Have successfully completed one year of resident training in a hospital-affiliated program approved by the board at the time the applicant was enrolled in the program. ~~Beginning July 1, 2006,~~ ~~an~~ An applicant who is a graduate of an international medical school shall have successfully completed 24 months of such training.

(1) For those required to have 12 months of training, the program shall have been 12 months of progressive training in not more than two specialties and in not more than two programs approved for resident training by the board. ~~Beginning July 1, 2006, for~~ For those required to have 24 months of training, the program shall have been 24 continuous months of progressive training in not more than two specialties and in not more than two programs approved for resident training by the board.

(2) to (4) No change.

ITEM 5. Amend paragraph **9.4(2)“b”** as follows:

b. Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant. ~~A completed fingerprint packet is not required if the applicant has held active physician licensure in Iowa within 12 months of applying for permanent licensure and fingerprinting was done prior to the issuance of that license.~~

ITEM 6. Amend paragraphs **9.4(3)“a,” “h” and “k”** as follows:

a. ~~Name~~ Full legal name, date and place of birth, home address, mailing address and principal business address.

h. An official transcript, or its equivalent, received directly from the school for every medical school attended if requested by the board. A complete translation of any transcript not written in English shall be submitted if requested by the board. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

k. Verification of an applicant’s hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.

## MEDICINE BOARD[653](cont'd)

ITEM 7. Amend paragraph **9.5(2)“b”** as follows:

*b.* Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant. ~~A completed fingerprint packet is not required if the applicant has held active physician licensure in Iowa within 12 months of applying for permanent licensure and fingerprinting was done prior to the issuance of that license.~~

ITEM 8. Amend paragraphs **9.5(3)“a,” “h”** and **“k”** as follows:

*a.* ~~Name~~ Full legal name, date and place of birth, home address, mailing address and principal business address.

*h.* An official transcript, or its equivalent, received directly from the school for every medical school attended if requested by the board. A complete translation of any transcript not written in English shall be submitted if requested by the board. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

*k.* Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.

ITEM 9. Amend paragraphs **9.6(2)“b”** and **“h”** as follows:

*b.* Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant. ~~A completed fingerprint packet is not required if the applicant has held active physician licensure in Iowa within 12 months of applying for permanent licensure and fingerprinting was done prior to the issuance of that license.~~

*h.* Have been engaged in continuous, active practice within the five years immediately preceding the date of submitting an application for licensure. Continuous, active practice includes private practice, employment in a hospital or clinical setting, employment by any governmental entity in community or public health, or practice of administrative, academic or research medicine. Continuous, active practice does not include residency, fellowship or postgraduate training of any kind.

ITEM 10. Amend paragraphs **9.6(3)“a”** and **“e”** as follows:

*a.* ~~Name~~ Full legal name, date and place of birth, home address, mailing address and principal business address.

*e.* Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.

ITEM 11. Amend subparagraph **9.7(1)“e”(6)** as follows:

(6) Successful completion of a progressive three-year resident training program is required if the applicant passes the examination after more than six attempts on Step 1 or six attempts on Step 2 CK and Step 2 CS combined or three attempts on Step 3.

ITEM 12. Amend subrule **9.8(2)**, introductory paragraph, as follows:

**9.8(2)** After reviewing each application, staff shall notify the applicant about how to resolve any problems. An applicant shall provide additional information when requested by staff or the board. Staff shall refer an expedited endorsement applicant to the process for licensure by endorsement or to the committee if:

ITEM 13. Amend paragraph **9.8(7)“c”** as follows:

*c.* If the physician has not engaged in active practice in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

- (1) Successfully pass a competency evaluation approved by the board;
- (2) Successfully pass SPEX, COMVEX-USA, or another examination approved by the board; ~~or~~
- (3) Successfully complete a retraining program arranged by the physician and approved in advance by the board; or
- (4) Successfully complete a reentry to practice program or monitoring program approved by the board.

## MEDICINE BOARD[653](cont'd)

ITEM 14. Amend paragraph **9.8(8)“c”** as follows:

c. If the physician has not engaged in active practice in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

- (1) Successfully pass a competency evaluation approved by the board;
- (2) Successfully pass SPEX, COMVEX-USA, or another examination approved by the board; or
- (3) Successfully complete a retraining program arranged by the physician and approved in advance by the board; or
- (4) Successfully complete a reentry to practice program or monitoring program approved by the board.

ITEM 15. Amend subrule 9.9(1) as follows:

**9.9(1) Failure to submit application materials.** If the applicant does not submit all materials, including a completed fingerprint packet, within 90 days of the ~~board office's last documented~~ board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status.

ITEM 16. Amend paragraph **9.9(2)“c”** as follows:

c. Once the reactivation period expires, an applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials. ~~Beginning July 1, 2006, an applicant who holds a valid ECFMG certificate and who reapplies shall submit evidence of having successfully completed two years of postgraduate training as specified in paragraph 9.3(1)“d.”~~

ITEM 17. Adopt the following new paragraph **9.11(1)“d”**:

d. When a physician with a special license receives a permanent Iowa license, the special license shall immediately become inactive.

ITEM 18. Amend subrule **9.13(3)**, introductory paragraph, as follows:

**9.13(3) Renewal application requirements.** A licensee seeking renewal shall submit a completed renewal application, ~~including~~ information on continuing education, training on chronic pain management, training on end-of-life care, and mandatory training on identifying and reporting abuse; and the required fee, ~~not later than~~ prior to the expiration date on the current license.

ITEM 19. Amend subrule 9.13(5) as follows:

**9.13(5) Renewal penalties.** If the licensee fails to submit the renewal application and renewal fee by prior to the expiration date on the current license, the licensee shall be charged a penalty fee ~~of \$50 for each month the renewal is in arrears, up to two months, or \$100. For example, if the license expires on January 1, a penalty of \$50 will be charged for renewal in January and an additional \$50 or a total of \$100 shall be charged for renewal in February.~~ as set forth in 653—paragraph 8.4(1)“d.”

ITEM 20. Amend subrule **9.13(6)**, introductory paragraph, as follows:

**9.13(6) Failure to renew.** Failure of the licensee to renew a license within two months following its expiration date shall cause the license to become inactive and invalid. A licensee whose license is invalid is prohibited from practice until the license is reinstated in accordance with rule ~~9.13(147,148)~~ 653—9.15(147,148).

ITEM 21. Amend subrule 9.15(1) as follows:

**9.15(1) Reinstatement within one year of the license's becoming inactive.** An individual whose license is in inactive status for up to one year and who wishes to reinstate the license shall submit a completed renewal application; documentation of continuing education; training on chronic pain management, training on end-of-life care, and mandatory training on identifying and reporting abuse; ~~the renewal fee,~~ and the reinstatement penalty fee. All of the information shall be received in the board office within one year of the license's becoming inactive for the applicant to reinstate under this subrule. For example, a physician whose license became inactive on March 1 has until the last day of the following February to renew under this subrule.

a. No change.

## MEDICINE BOARD[653](cont'd)

*b. Continuing education and ~~mandatory~~ training requirements.* The requirements for continuing education, training on chronic pain management, training on end-of-life care, and ~~mandatory~~ training on identifying and reporting abuse are found in 653—Chapter 11. Applicants for reinstatement shall provide documentation of having completed:

(1) The number of hours of category 1 ~~activity credit~~ needed for renewal in the most recent license period. None of the ~~hours credits~~ obtained in the inactive period may be carried over to a future license period; and

(2) ~~Mandatory training on~~ Training on chronic pain management, end-of-life care, and identifying and reporting abuse, if applicable, within the previous five years.

*c. No change.*

*d. Reinstatement application process.* The applicant who fails to submit all reinstatement information required within 365 days of the license's becoming inactive shall be required to meet the reinstatement requirements of ~~9.13(2)~~ 9.15(2). For example, if a physician's license expires on January 1, the completed reinstatement application is due in the board office by December 31, in order to meet the requirements of this subrule.

ITEM 22. Amend paragraph **9.15(2)“a”** as follows:

*a.* Submit an application for reinstatement to the board upon forms provided by the board. The application shall require the following information:

(1) ~~Name~~ Full legal name, date and place of birth, license number, home address, mailing address and principal business address;

(2) and (3) No change.

(4) Verification of the applicant's hospital and clinical staff privileges, and other professional experience for the past five years if requested by the board;

(5) to (9) No change.

ITEM 23. Amend paragraphs **9.15(2)“c”** and **“d”** as follows:

*c.* Provide documentation of completion of 80 hours of category 1 ~~continuing education activity credit~~ within the previous two years and documentation of training on chronic pain management, end-of-life care, and ~~mandatory training on~~ identifying and reporting abuse as specified in 653—Chapter 11.

*d.* If the physician has not engaged in active practice in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

(1) Successfully pass a competency evaluation approved by the board;

(2) Successfully pass SPEX, COMVEX-USA, or another examination approved by the board; ~~or~~

(3) Successfully complete a retraining program arranged by the physician and approved in advance by the board; or

(4) Successfully complete a reentry to practice program or monitoring program approved by the board.

**ARC 0091C**

## **MEDICINE BOARD[653]**

### **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 147.76 and 272C.2, the Board of Medicine hereby proposes to amend Chapter 10, “Resident, Special and Temporary Physician Licensure,” Iowa Administrative Code.

## MEDICINE BOARD[653](cont'd)

The purpose of Chapter 10 is to establish provisions for resident, special and temporary physician licensure. The proposed amendments update language throughout the chapter, apply the existing mandatory CME requirements for renewal of a special license, and raise the age of eligibility for a special license from 21 to 30.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on March 1, 2012.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on May 8, 2012. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to [mark.bowden@iowa.gov](mailto:mark.bowden@iowa.gov).

There will be a public hearing on May 8, 2012, at 2 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

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

These amendments are intended to implement Iowa Code chapter 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of “Training for chronic pain management,” “Training for end-of-life care” and “Uniform application for physician state licensure” in rule **653—10.1(147,148)**:

“*Training for chronic pain management*” means required training on chronic pain management identified in 653—Chapter 11.

“*Training for end-of-life care*” means required training on end-of-life care identified in 653—Chapter 11.

“*Uniform application for physician state licensure*” means a Web-based application that is intended to standardize and simplify the licensure application process for state medical licensure. The Federation of State Medical Boards created and maintains the application. This application is used for all license types issued by the Iowa board of medicine.

ITEM 2. Amend rule **653—10.1(147,148)**, definitions of “Category 1 activity,” “Committee” and “Mandatory training for identifying and reporting abuse,” as follows:

“*Category 1 activity credit*” means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of AOA that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. ~~Activities Credits~~ designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed ~~credit~~ credits by the American Academy of Family Physicians are accepted as equivalent to category 1 ~~activities credits~~.

“*Committee*” means the licensure ~~and examination~~ committee of the board.

“~~Mandatory training~~ *Training for identifying and reporting abuse*” means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69; the full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

ITEM 3. Amend subparagraph **10.3(3)“a”(2)** as follows:

(2) Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant. ~~A completed fingerprint packet is not required if the applicant has held active physician licensure in Iowa within 12 months of applying for licensure and fingerprinting was done prior to the issuance of that license.~~

## MEDICINE BOARD[653](cont'd)

ITEM 4. Amend subparagraph **10.3(3)“b”(1)** as follows:

- (1) ~~Name~~ Full legal name, date and place of birth, home address, and mailing address;

ITEM 5. Amend subrule 10.3(5) as follows:

**10.3(5) Resident license application cycle.** If the applicant does not submit all materials within 90 days of the ~~board office's last documented~~ board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials.

ITEM 6. Amend subrule 10.3(6) as follows:

**10.3(6) Extension of a resident physician license.**

~~a. On or after February 14, 2003, the board shall issue a resident license for the full period of the resident training program. The board shall offer to all who hold a current, active resident license on February 13, 2003, an extension of the license to the expected completion date of the resident training program. A licensee who wishes to extend the license shall submit the extension application materials within two months of the offer.~~

~~b. a.~~ If the licensee fails to complete the program by the expiration date on the license, the licensee has a one-month grace period in which to complete the program or secure an extension from the board.

~~e. b.~~ The resident physician licensee is responsible for applying for an extension if the licensee has not been granted permanent physician licensure and the licensee will not complete the program within the grace period. The following extension application materials are due in the board office prior to the expiration of the license;

- (1) A letter requesting an extension and providing an explanation of the need for an extension;
- (2) The extension fee of \$25; and
- (3) A statement from the director of the resident training program attesting to the new expected date of completion of the program and the individual's progress in the program and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

~~No documentation of continuing medical education or mandatory training on identifying and reporting abuse is required since a resident is in training.~~

~~d. c.~~ Failure of the licensee to extend a license within one month following the expiration date shall cause the license to become inactive and invalid. For example, a license that expires on June 26 becomes inactive and invalid on July 26. A licensee whose license is inactive is prohibited from practice until the license is extended or replaced by a permanent physician or new resident physician license.

~~e. d.~~ To extend an inactive resident license within one year of becoming inactive, an applicant shall submit the following:

- (1) A letter requesting an extension and providing an explanation of the need for an extension;
- (2) The extension fee of \$25;
- (3) A \$50 late fee; and
- (4) A statement from the director of the resident training program attesting to the new expected date of completion of the program and the individual's progress in the program and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

~~No documentation of continuing medical education or mandatory training on identifying and reporting abuse is required since a resident is in training.~~

~~f. e.~~ If more than one year has passed since the resident license became inactive, the applicant shall apply for a new resident license as described in subrule 10.3(3).

## MEDICINE BOARD[653](cont'd)

ITEM 7. Renumber subrules **10.3(7)** to **10.3(10)** as **10.3(8)** to **10.3(11)**.

ITEM 8. Adopt the following **new** subrule 10.3(7):

**10.3(7) Continuing education and training.** Applicants seeking an extension of a resident physician license or an extension of an inactive resident physician license are not required to complete continuing medical education or training requirements as identified in 653—Chapter 11.

ITEM 9. Amend renumbered paragraph **10.3(8)“b”** as follows:

*b.* After reviewing each request for extension, staff shall notify the licensee or designee about how to resolve any problems identified by the reviewer. The applicant for license extension shall provide additional information when requested by staff or the board.

ITEM 10. Rescind renumbered paragraph **10.3(9)“d.”**

ITEM 11. Amend paragraph **10.4(1)“d”** as follows:

*d.* A special license shall automatically ~~expire~~ be placed on inactive status when the licensee discontinues service on the academic medical staff for which the special license was granted.

ITEM 12. Amend paragraph **10.4(4)“b”** as follows:

*b.* After reviewing each application, staff shall notify the applicant or the applicant's academic institution about how to resolve any problems identified by the reviewer. The applicant shall provide additional information when requested by staff or the board.

ITEM 13. Amend subrule 10.4(5) as follows:

**10.4(5) Special license application cycle.** If the applicant does not submit all materials within 90 days of the ~~board office's last documented~~ board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials.

ITEM 14. Amend subparagraph **10.4(6)“b”(3)** as follows:

(3) Evidence of continuing education and ~~mandatory~~ training on pain management, end-of-life care, and identifying and reporting abuse.

1. The requirement for continuing education is 20 hours of category 1 ~~activity~~ credit as specified in 653—Chapter 11.

2. The requirement for ~~mandatory~~ training on chronic pain management, end-of-life care, and identifying and reporting abuse is specified in 653—Chapter 11.

The dean of the medical college shall submit a letter that addresses the individual's unique contribution to the practice of medicine in Iowa, how the anticipated contribution will serve the public interest of Iowans, and the need for renewal of this license. For a licensee who received the initial special license prior to July 1, 2001, the only statement needed from the dean is verification of the academic appointment the licensee continues to hold.

ITEM 15. Amend paragraph **10.5(3)“b”** as follows:

*b.* Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet and a sworn statement by the applicant attesting to the truth of all information provided by the applicant.

ITEM 16. Amend paragraph **10.5(4)“a”** as follows:

*a.* The applicant's full legal name, date and place of birth, home address, mailing address and principal business address;

ITEM 17. Adopt the following **new** paragraph **10.5(4)“n”**:

*n.* A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

## MEDICINE BOARD[653](cont'd)

ITEM 18. Amend subparagraph **10.5(5)“h”(4)** as follows:

(4) Deny a temporary license. The board may deny a temporary license for any grounds on which the board may discipline a license or for lack of need for a physician's services by the organization or individual. The procedure for appealing a license denial is set forth in ~~653—9.15(147,148)~~ 653—9.17(147,148).

ITEM 19. Amend subparagraph **10.5(6)“d”(4)** as follows:

(4) Deny a temporary license. The board may deny a temporary license for any grounds on which the board may discipline a license or for lack of need for a physician's services by the organization or individual. The procedure for appealing a license denial is set forth in ~~653—9.15(147,148)~~ 653—9.17(147,148).

ITEM 20. Amend subrule 10.5(7) as follows:

**10.5(7) Temporary license application cycle.** If the applicant does not submit all materials within 90 days of the ~~board office's last documented~~ board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant whose application is inactive must reapply and submit new nonrefundable fees and a new application, documents and credentials if the applicant wishes to pursue temporary licensure.

**ARC 0092C**

## MEDICINE BOARD[653]

### 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 147.76 and 272C.2, the Board of Medicine hereby proposes to amend Chapter 11, “Continuing Education and Training Requirements,” Iowa Administrative Code.

The purpose of Chapter 11 is to establish continuing medical education and training requirements for renewal or reinstatement of a permanent physician license or renewal of a special physician license. The proposed amendments update language throughout the chapter and grant continuing medical education credits to active physician members and active alternate physician members of the Board, active physician members of the Iowa Physician Health Committee, and physicians who complete peer reviews for the Board.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on March 1, 2012.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on May 8, 2012. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to [mark.bowden@iowa.gov](mailto:mark.bowden@iowa.gov).

There will be a public hearing on May 8, 2012, at 2 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

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

These amendments are intended to implement Iowa Code chapter 272C.

The following amendments are proposed.

## MEDICINE BOARD[653](cont'd)

ITEM 1. Adopt the following **new** definitions of “Training for chronic pain management” and “Training for end-of-life care” in rule **653—11.1(272C)**:

“*Training for chronic pain management*” means required training on chronic pain management identified in 653—Chapter 11.

“*Training for end-of-life care*” means required training on end-of-life care identified in 653—Chapter 11.

ITEM 2. Amend rule **653—11.1(272C)**, definitions of “Accredited provider,” “Approved program or activity,” “Carryover,” “Category 1 activity,” “Committee” and “Hour of continuing education,” as follows:

“*Accredited provider*” means an organization approved as a provider of category 1 activity credit by one of the following board-approved accrediting bodies: Accreditation Council for Continuing Medical Education, Iowa Medical Society, or the Council on Continuing Medical Education of the AOA.

“*Approved program or ~~activity~~ credit*” means any category 1 activity credit offered by an accredited provider or any other program or activity credit meeting the standards set forth in these rules.

“*Carryover*” means hours of category 1 activity credit earned in excess of the required hours in a license period that may be applied to the continuing education requirement in the subsequent license period; carryover may not exceed 20 hours of category 1 activity credit per renewal cycle.

“*Category 1 ~~activity~~ credit*” means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of the AOA that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Activities Credits designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed credit credits by the American Academy of Family Physicians are accepted as equivalent to category 1 activities credits.

“*Committee*” means the licensure ~~and examination~~ committee of the board.

“*Hour of continuing education*” means a clock hour spent by a licensee in actual attendance at or completion of an approved category 1 activity credit.

ITEM 3. Amend rule 653—11.2(272C) as follows:

**653—11.2(272C) Continuing education credit and alternatives.**

**11.2(1)** Continuing education credit may be obtained by attending category 1 activities credits as defined in this chapter.

**11.2(2)** The board shall accept the following as equivalent to 50 hours of category 1 activity credit: participation in an approved resident training program or board certification or recertification by an ABMS or AOA specialty board within the licensing period.

**11.2(3)** The board shall in January of each year award 10 hours of category 1 credits to physicians who actively served as members or alternate members of the Iowa board of medicine during the previous year; to physicians who actively served as members of the Iowa physician health committee during the previous year; and to physicians who performed peer reviews for the Iowa board of medicine during the previous year. The physicians receiving these category 1 credits will be notified by U.S. mail in January by the executive director of the board.

ITEM 4. Amend rule 653—11.3(272C) as follows:

**653—11.3(272C) Accreditation of providers.** The board approves the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, and the Council on Continuing Medical Education of the AOA as organizations acceptable to accredit providers of category 1 activity credits.

MEDICINE BOARD[653](cont'd)

ITEM 5. Amend rule 653—11.4(272C) as follows:

**653—11.4(272C) Continuing education and training requirements for renewal or reinstatement.** A licensee shall meet the requirements in this rule to qualify for renewal of a permanent or special license or reinstatement of a permanent license.

**11.4(1) Continuing education and training requirements.**

*a. Continuing education for permanent license renewal.* Except as provided in these rules, a total of 40 hours of category 1 activity credit or board-approved equivalent shall be required for biennial renewal of a permanent license. This may include up to 20 hours of credit carried over from the previous license period and category 1 activity credit acquired within the current license period.

(1) To facilitate license renewal according to birth month, a licensee's first license may be issued for less than 24 months. The number of hours of category 1 activity credit required of a licensee whose license has been issued for less than 24 months shall be reduced on a pro-rata basis.

(2) A licensee desiring to obtain credit for carryover hours shall report the carryover, not to exceed 20 hours of category 1 activity credit, on the renewal application.

~~(3) Category 1 CME activity. A licensee shall complete the training as part of a category 1 CME activity or an approved training program. A licensee may apply the category 1 CME activity credit received for the training during the license period in which the training occurred toward the 40 hours of continuing education required for biennial renewal.~~

*b. Continuing education for special license renewal.* A total of 20 hours of category 1 activity credit shall be required for annual renewal of a special license. No carryover hours are allowed.

*c. Training for identifying and reporting child and dependent adult abuse for permanent or special license renewal.* The licensee in Iowa shall complete the training for identifying and reporting child and dependent adult abuse as part of a category 1 credit or an approved training program. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)“a.”

(1) Training to identify child abuse. A licensee who resides in Iowa or regularly provides primary health care to children in Iowa must complete at least two hours of training in child abuse identification and reporting every five years. “A licensee who regularly provides primary health care to children” means all emergency physicians, family physicians, general practice physicians, pediatricians, and psychiatrists, and any other physician who regularly provides primary health care to children.

(2) Training to identify dependent adult abuse. A licensee who resides in Iowa or regularly provides primary health care to adults in Iowa must complete at least two hours of training in dependent adult abuse identification and reporting every five years. “A licensee who regularly provides primary health care to adults” means all emergency physicians, family physicians, general practice physicians, internists, obstetricians, gynecologists, and psychiatrists, and any other physician who regularly provides primary health care to adults.

(3) Combined training to identify child and dependent adult abuse. A licensee who resides in Iowa or regularly provides primary health care to adults and children in Iowa must complete at least two hours of training in the identification and reporting of abuse in dependent adults and children every five years. The training may be completed through separate courses as identified in subparagraphs 11.4(1)“c”(1) and (2) or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. “A licensee who regularly provides primary health care to children and adults” means all emergency physicians, family physicians, general practice physicians, internists, and psychiatrists, and any other physician who regularly provides primary health care to children and adults.

*d. Training for chronic pain management for permanent or special license renewal.* The licensee shall complete the training for chronic pain management as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)“a.”

(1) A licensee who resides in Iowa or regularly provides primary health care to patients in Iowa must complete at least two hours of ~~training~~ category 1 credit for chronic pain management every

## MEDICINE BOARD[653](cont'd)

five years. "A licensee who regularly provides primary health care to patients" means all emergency physicians, family physicians, general practice physicians, internists, neurologists, pain medicine specialists, psychiatrists, and any other physician who regularly provides primary health care to patients.

(2) A licensee who had a permanent license on August 17, 2011, has until August 17, 2016, to complete the chronic pain management training, and shall then complete the training once every five years thereafter.

*e. Training for end-of-life care for permanent or special license renewal. The licensee shall complete the training for end-of-life care as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1) "a."*

(1) A licensee who resides in Iowa or regularly provides primary health care to patients in Iowa must complete at least two hours of ~~training~~ category 1 credit for end-of-life care every five years. "A licensee who regularly provides primary health care to patients" means all emergency physicians, family physicians, general practice physicians, internists, neurologists, pain medicine specialists, psychiatrists, and any other physician who regularly provides primary health care to patients.

(2) A licensee who had a permanent license on August 17, 2011, has until August 17, 2016, to complete the end-of-life care training, and shall then complete the training once every five years thereafter.

**11.4(2) Exemptions from renewal requirements.**

*a.* No change.

*b.* The requirements for training on identifying and reporting abuse, chronic pain management and end-of-life care for license renewal shall be suspended for a licensee who provides evidence for:

(1) Periods described in ~~paragraph 11.4(2) "a,"~~ subparagraph (1), (2), (3), or (4) subparagraph 11.4(2) "a" (1), (2), (3), or (4); or

(2) Periods that the licensee resided outside of Iowa and did not practice in Iowa.

**11.4(3)** No change.

**11.4(4) Reinstatement requirement.** An applicant for license reinstatement whose license has been inactive for one year or more shall provide proof of successful completion of 80 hours of category 1 ~~activity~~ credit completed within 24 months prior to submission of the application for reinstatement or proof of successful completion of SPEX or COMVEX-USA within one year immediately prior to the submission of the application for reinstatement.

**11.4(5) to 11.4(8)** No change.

ITEM 6. Amend paragraph **11.5(1) "c"** as follows:

*c.* The committee shall consider the staff's recommendation for denial of credit for continuing education or training for identifying and reporting abuse, chronic pain management, and end-of-life care.

(1) If the committee approves the credit, it shall authorize the staff to inform the licensee or applicant that the matter is resolved.

(2) If the committee disapproves the credit, it shall refer the matter to the board with a recommendation for resolution.

ARC 0098C

**PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3, 81.4, and 691.3, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 95, “Disposition of Seized and Forfeited Weapons and Ammunition,” Chapter 150, “Division of Criminal Investigation Criminalistics Laboratory,” Chapter 156, “DNA Database,” and Chapter 157, “Devices and Methods to Test Body Fluids for Alcohol or Drugs,” Iowa Administrative Code.

The Division of Criminal Investigation Criminalistics Laboratory is created within the Department of Public Safety in Iowa Code section 691.1. The Commissioner of Public Safety is authorized to adopt administrative rules defining the capabilities of the Criminalistics Laboratory and governing the handling of items to be processed by the Criminalistics Laboratory in Iowa Code section 691.3. Several other provisions of the Code of Iowa require the adoption of administrative rules regarding responsibilities and operations of the Laboratory. Among these are Iowa Code chapter 81, which established a DNA Database within the Criminalistics Laboratory and requires the adoption of administrative rules for the collection, submission, analysis, identification, storage, and disposition of DNA records, and Iowa Code section 321J.2, which requires the adoption of standards for minimum detectable levels of controlled substances in the body fluids and tissues of samples analyzed by the Laboratory. The amendments proposed herein update and clarify rules applicable to the operations of the Criminalistics Laboratory.

Any interested person may submit comments regarding these proposed amendments by mail to Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by fax to (515)725-6195; or by e-mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us). Comments must be received by 4:30 p.m. on May 8, 2012, or may be submitted at the public hearing.

There will be a public hearing to hear comments from any interested member of the public regarding these proposed amendments at 9:30 a.m. on May 8, 2012, in the First Floor Public Conference Room, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa. Persons who speak at the hearing are encouraged to submit their remarks in writing also but are not required to do so.

No fiscal impact is anticipated from these amendments.

Rules of the Department of Public Safety are subject to the provisions for waivers of administrative rules found in 661—10.222(17A).

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

These amendments are intended to implement Iowa Code chapters 81, 691, 809, and 809A.

The following amendments are proposed.

ITEM 1. Amend rule 661—95.5(809,809A) as follows:

**661—95.5(809,809A) Disposition of firearms (interstate).** Any firearm in the possession of the division of criminal investigation criminalistics laboratory pursuant to Iowa Code section 809A.17 which is not entered into the firearms reference file pursuant to the provisions of rule 661—95.4(809,809A) and which the commissioner of public safety deems appropriate for distribution to other crime laboratories may be offered to them. ~~The transfer of a firearm shall be completed within one year of its evaluation.~~

ITEM 2. Amend subrule 150.3(8) as follows:

**150.3(8) Photography.** The photography section provides photographic and video processing services, both digital and film-based, required by all divisions of the department of public safety.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 3. Rescind subrule 150.4(2) and adopt the following **new** subrule in lieu thereof:

**150.4(2)** Evidence may be submitted to the laboratory via regular, certified, or registered mail or personal service. Any evidence to be submitted to the laboratory shall be entered electronically into the laboratory information management system prior to submission. Each entry shall include a description of each item to be submitted and an examination request for each item to be submitted.

NOTE: Access to the laboratory information management system is restricted to authorized users representing agencies authorized to submit evidence to the laboratory. Authorized users should contact the laboratory for instructions regarding access to the system.

ITEM 4. Strike “81GA,HF619” wherever it appears in rules **661—156.1(81GA,HF619)** to **661—156.8(81GA,HF619)** and **661—156.10(81GA,HF619)** and insert “81” in lieu thereof.

ITEM 5. Amend rule 661—156.6(81) as follows:

**661—156.6(81) Analysis of DNA samples.** Samples of DNA submitted to the laboratory shall be analyzed by laboratory personnel and the results of the analysis entered into the database in accordance with the provisions of “Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories,” published by the DNA Advisory Board to the Federal Bureau of Investigation, ~~April 1999~~ September 1, 2011.

EXCEPTION: Analysis of DNA samples may be conducted by other laboratories under contract with the department, with the approval of the administrator. Any other laboratory conducting analysis of DNA samples for inclusion in the database shall comply with the requirements and procedures to which the division of criminal investigation criminalistics laboratory is subject under this rule.

ITEM 6. Rescind and reserve rule **661—156.9(81GA,HF619)**.

ITEM 7. Amend paragraph **156.10(2)“a”** as follows:

*a.* The ~~division~~ laboratory, upon receipt of a written request that validates reversal on appeal of a person’s conviction, adjudication, or commitment, and subsequent dismissal of the case, or upon receipt of a written request by a person who voluntarily submitted a DNA sample pursuant to ~~2005 Iowa Acts, House File 619, section 3~~ Iowa Code section 81.3, subsection 3, paragraph “b,” shall expunge all of the DNA records and identifiable information of the person in the database. The person or the person’s representative shall be notified upon completion of such action.

ITEM 8. Amend subrule 157.2(3) as follows:

**157.2(3)** The division of criminal investigation criminalistics laboratory shall maintain a list of devices approved by the commissioner of public safety for collection of breath samples for evidentiary purposes. The current list shall be available upon request to the Division of Criminal Investigation Criminalistics Laboratory at 2240 South Ankeny Boulevard, Ankeny, Iowa 50023, or on the Web site of the department of public safety.

NOTE: ~~The current address for information on approved evidentiary breath testing equipment from the criminalistics laboratory is: [http://www.dps.state.ia.us/DCI/Crime\\_Lab/Evidential\\_Breath\\_Testing/index.shtml](http://www.dps.state.ia.us/DCI/Crime_Lab/Evidential_Breath_Testing/index.shtml).~~

ITEM 9. Amend subrule 157.2(4) as follows:

**157.2(4)** The operator of an evidentiary breath testing device shall have been certified as competent in the operation of the breath testing device, and shall proceed in accordance with the instructions included in an operating manual furnished by the division of criminal investigation criminalistics laboratory. An operating manual, with number and date, specific to a particular approved device and prepared by the division of criminal investigation criminalistics laboratory shall be available to operators using the device. The current version of the operating manual for each device currently approved for use in Iowa may be obtained by contacting the Division of Criminal Investigation Criminalistics Laboratory at 2240 South Ankeny Boulevard, Ankeny, Iowa 50023, or from the department’s Web site.

NOTE: ~~The current location of operating manuals for approved evidentiary breath testing devices on the department’s Web site is: [http://www.dps.state.ia.us/DCI/Crime\\_Lab/Evidential\\_Breath\\_Testing/index.shtml](http://www.dps.state.ia.us/DCI/Crime_Lab/Evidential_Breath_Testing/index.shtml).~~

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 10. Amend rule 661—157.7(321J) as follows:

**661—157.7(321J) Detection of drugs other than alcohol.**

**157.7(1) Adoption of federal standards.** Initial test requirements based upon standards adopted by the federal Substance Abuse and Health Services Administration in “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” 59 FR 29908, as amended in “Revisions to the Mandatory Guidelines,” 62 FR 51118 73 FR 71858, and displayed in the following table are hereby adopted as standards for determining detectable levels of controlled substances in the division of criminal investigation criminalistics laboratory initial screening for controlled substances detected by the presence of the following: marijuana metabolites, cocaine metabolites, opiate metabolites, acetylmorphine, phencyclidine, and amphetamines. The following table shows the minimum levels of these substances which will result in a finding that a controlled substance is present at a detectable level:

Substance	Minimum Level (ng/ml) <sup>1</sup>
Marijuana metabolites	50
Cocaine metabolites	<del>300</del> <u>150</u>
Opiate metabolites <u>codeine/morphine</u>	2000
<u>Acetylmorphine</u>	<u>10</u>
Phencyclidine	25
Amphetamines <sup>2</sup> <u>(amphetamine, methamphetamine, and methylenedioxymethamphetamine)</u>	<del>1000</del> <u>500</u>

**NOTE:**

<sup>1</sup> “ng/ml” means “nanograms per milliliter.”

<sup>2</sup> Either a single initial test kit or multiple initial test kits may be used provided that the single test kit detects each target analyte independently at the specified cutoff.

**157.7(2) Reserved.**

**ARC 0099C**

**REGENTS BOARD[681]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 262.9(3) and 262.69, the Board of Regents hereby gives Notice of Intended Action to amend Chapter 4, “Traffic and Parking at Universities,” Iowa Administrative Code.

The amendment in Item 1 proposes a new definition for “guest” to distinguish persons visiting residents of the university residence halls from other visitors to the campus.

The amendment in Item 2 increases the sanction for improper parking in a space or stall designated for persons with disabilities from \$100 to \$200 in compliance with Iowa Code section 805.8A.

Any interested person may make written comments on the proposed amendments on or before May 8, 2012, addressed to Marcia Brunson, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905; fax (515)281-6421; or E-mail [mbruns@iastate.edu](mailto:mbruns@iastate.edu).

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681—19.18(17A).

REGENTS BOARD[681](cont'd)

After analysis and review of this rule making, no impact on jobs has been found. These amendments are intended to implement Iowa Code sections 262.9(3), 262.69 and 805.8A. The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Guest” in rule **681—4.26(262)**:

“*Guest*” means any person other than the person living at the designated residence hall.

ITEM 2. Amend subrule **4.31(2)**, list of offenses, entry for “Improper parking in a space or stall designated for persons with disabilities,” as follows:

Offenses	Sanctions for Each Offense
Improper parking in a space or stall designated for persons with disabilities (4.29(262), 4.30(4))	\$100 <u>\$200</u>

**ARC 0106C****SECRETARY OF STATE[721]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

These amendments are necessary to clarify that a separate heading is required to distinguish the judicial ballot as a separate ballot; to add a requirement to provide additional notice to absentee voters about absentee ballot return deadlines; to clarify the deadline for electronic return of voted balloting materials by UOCAVA voters; and to adopt procedures for maintaining voter records of UOCAVA voters submitting election-related materials electronically.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 8, 2012. Written suggestions or comments should be directed to Sarah Reisetter, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-0145 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by May 8, 2012.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 0107C**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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

These amendments are intended to implement Iowa Code chapters 46, 48A, 49, and 53.

**ARC 0083C****SECRETARY OF STATE[721]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 17A.4 and chapter 9A, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 42, “Athlete Agent Registration,” Iowa Administrative Code.

Chapter 42 states that the Secretary of State shall register athletic agents and collect a registration fee for each filing. Iowa Code sections 9A.104, 9A.105, and 9A.106 require registration of an athletic agent with the Secretary of State. This rule making updates the rules on athletic agents to be consistent with current practice and the Iowa Code. The amendment to rule 721—42.1(9A,17A) codifies existing fees and procedures for registering an athletic agent pursuant to Iowa Code sections 9A.104, 9A.105, and 9A.106. In collecting the fees associated with Iowa Code sections 9A.104, 9A.105, and 9A.106, the Secretary of State has followed the established procedures of previous Secretaries of State for collecting the fees. These procedures were not codified by previous Secretaries, and the current Secretary of State wishes to clarify compliance with Iowa Code chapter 17A. No new fees or increases to current fees will be added by the amendment to rule 721—42.1(9A,17A).

In addition, this rule making rescinds rules 721—42.2(9A,17A) and 721—42.3(9A,17A) because both rules are no longer applicable.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 8, 2012. Such written materials should be directed to the Secretary of State’s Office, Attn: Doug Struyk, Capitol Building, Des Moines, Iowa 50319; fax (515)242-5952. Persons who wish to convey their views orally should contact the Secretary of State’s office at (515)281-7041 or at the Secretary of State’s office on the first floor of the Lucas State Office Building.

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

These amendments are intended to implement Iowa Code chapter 9A.

The following amendments are proposed.

ITEM 1. Amend rule 721—42.1(9A,17A) as follows:

**721—42.1(9A,17A) Fees.** The fee for the initial application for certificate of registration as an athlete agent is ~~\$300~~ 500. The fee for a renewal application for certificate of registration is ~~\$450~~ 500.

ITEM 2. Rescind and reserve rules **721—42.2(9A,17A)** and **721—42.3(9A,17A)**.

**ARC 0081C****SECRETARY OF STATE[721]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 9E.3 and 9E.7, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 43, “Notarial Acts,” Iowa Administrative Code.

SECRETARY OF STATE[721](cont'd)

The rules in Chapter 43 describe the requirements of a notarial act, including the effects of notarial acts under law. This amendment adds new rule 721—43.7(9E), which requires that a notary provide an e-mail address through which to receive notices and other communication.

Any interested person may make written suggestions or comments on this proposed amendment on or before May 8, 2012. Such written materials should be directed to the Office of the Secretary of State, Attn: Doug Struyk, Capitol Building, Des Moines, Iowa 50319; fax (515)242-5952. Persons who wish to convey their views orally should contract the Secretary of State’s office by telephone at (515)281-7041 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

After analysis and review of this rule making, no adverse impact on jobs has been found. Official correspondence to notaries through e-mail addresses will decrease the costs of postage currently associated with such communications. E-mail correspondence also increases the timeliness and efficiency of communications from the Secretary of State to notaries.

This amendment is intended to implement Iowa Code chapter 9E.

The following amendment is proposed.

Adopt the following **new** rule 721—43.7(9E):

**721—43.7(9E) Electronic communication.** A notarial officer shall provide an e-mail address to the secretary of state for purposes of official correspondence.

**43.7(1)** An e-mail address disclosed in compliance with this rule shall not be viewed as a public record under Iowa Code chapter 22 and shall not be disclosed by the secretary of state.

**43.7(2)** The secretary of state may use e-mail for official correspondence with an entity, except when law requires delivery by the United States Postal Service.

**43.7(3)** All electronic correspondence shall be handled in accordance with the requirements set forth in the uniform electronic transactions Act, Iowa Code chapter 554D, subchapter 1.

## 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. Vautd have established today the following rates of interest for public obligations and special assessments. The usury rate for April 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 Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

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

New official state interest rates, effective April 9, 2012, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

## TREASURER OF STATE(cont'd)

## 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 .40%

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 0107C

## SECRETARY OF STATE[721]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

These amendments are necessary to clarify that a separate heading is required to distinguish the judicial ballot as a separate ballot; to add a requirement to provide additional notice to absentee voters about absentee ballot return deadlines; to clarify the deadline for electronic return of voted balloting materials by UOCAVA voters; and to adopt procedures for maintaining voter records of UOCAVA voters submitting election-related materials electronically.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are unnecessary because these amendments address very technical election administration practices and procedures which must be in place before the June 2012 primary election.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Secretary of State further finds that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments should be made effective upon filing on March 30, 2012. The normal effective date should be waived because these amendments are necessary components of preparations for the upcoming primary election. In addition, these amendments confer a benefit on the voting public and county commissioners by ensuring that election administration practices are uniform throughout the state.

These amendments are also published herein under Notice of Intended Action as **ARC 0106C** to allow for public comment.

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

These amendments are intended to implement Iowa Code chapters 46, 48A, 49, and 53.

These amendments became effective March 30, 2012.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 21.203(8):

**21.203(8) *Separate judicial ballot.*** The judicial ballot shall be separate from the rest of the ballot and shall be conspicuously distinguished by headings and lines.

ITEM 2. Amend rule 721—21.303(53) as follows:

**721—21.303(53) Mailing absentee ballots.** The commissioner shall mail the following materials to each person who has requested an absentee ballot:

1. Ballot. The ballot that corresponds to the voter's residence, as indicated by the residential address on the absentee ballot application.

2. Public measure text. The full text of any public measures that are summarized on the ballot, but not printed in full.

3. Secrecy envelope. Secrecy envelope, if the ballot cannot be folded to cover all of the voting ovals, as required by Iowa Code section 53.8(1).

4. Affidavit envelope. The affidavit envelope, which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records.

5. Return ~~carrier~~ envelope. The return ~~carrier~~ envelope, which shall be addressed to the commissioner's office and bear appropriate return postage or a postal permit guaranteeing that the commissioner will pay the return postage and which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records. All domestic and UOCAVA return envelope flaps or backs shall also be printed or stamped with a notice in substantially the following form: "This ballot will only be eligible for counting if it is received by the auditor's office before the polls close on election day or postmarked before election day and received by the deadline listed in the voting instructions included with this ballot. **Postmarks are not guaranteed!** Mail the ballot early to make sure it is received on time. Track the status of your absentee ballot at [www.sos.iowa.gov](http://www.sos.iowa.gov)."

SECRETARY OF STATE[721](cont'd)

6. Delivery envelope. The delivery envelope, which shall be addressed to the voter and bear the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records. All other materials shall be enclosed in the delivery envelope.

7. Instructions. Absentee voting instructions, which shall be in ~~substantially~~ the form ~~prescribed by the state commissioner of elections~~ required by rule 721—22.250(52).

8. Receipt. The receipt form required by ~~2007 Iowa Acts, Senate File 601, section 227~~ Iowa Code section 53.3, which may be printed on the instructions required by numbered paragraph "7" above.

This rule is intended to implement Iowa Code sections 53.8 and 53.17 ~~as amended by 2009 Iowa Acts, House File 475.~~

ITEM 3. Amend subparagraph **21.320(2)“c”(4)** as follows:

(4) Scanned application form or letter transmitted by E-mail. Requests by E-mail that do not include ~~either~~ an image of the ~~physical voter's written~~ signature ~~or a digital signature~~ as defined by Iowa Code section 39.3, subsection 17, shall not be accepted.

ITEM 4. Adopt the following **new** paragraph **21.320(4)“d”**:

d. The deadline for returning an absentee ballot pursuant to this subrule is the close of polls on election day, Central Standard Time.

ITEM 5. Adopt the following **new** subrule 21.320(5):

**21.320(5) Original signature for voter registration record.** Voters must submit original signatures on voter registration applications unless otherwise provided by this subrule.

a. *UOCAVA voters ineligible to return voted balloting materials electronically.* UOCAVA voters who are not currently registered to vote in a county and are not eligible to return voted ballot materials electronically pursuant to this rule shall submit an original, signed application for voter registration. The application may be the Iowa voter registration application, the National Mail Voter Registration Form, a Federal Post Card Application, a declaration/affirmation accompanying a federal write-in absentee ballot or a signature on a voted UOCAVA absentee ballot affidavit. Ballots transmitted to UOCAVA voters who do not submit an original voter registration application shall not be counted, and the voter who requested the ballot shall be assigned a status of "Incomplete" with a status reason "No Signature" following the election for which the ballot was requested.

b. *UOCAVA voters eligible to return voted balloting materials electronically.* UOCAVA voters who are not currently registered to vote and are eligible to return voted ballot materials electronically pursuant to this rule shall submit a signed, scanned application for voter registration. The application may be the Iowa voter registration application, the National Mail Voter Registration Form, a Federal Post Card Application, a declaration/affirmation accompanying a federal write-in absentee ballot or a signature on a voted UOCAVA absentee ballot affidavit. Ballots transmitted to UOCAVA voters who do not submit signed, scanned voter registration applications shall not be counted, and the voter who requested the ballot shall be assigned a status of "Incomplete" with a status reason "No Signature" following the election for which the ballot was requested.

[Filed Emergency 3/30/12, effective 3/30/12]

[Published 4/18/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/18/12.

**ARC 0082C**

**SECRETARY OF STATE[721]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 9E.3 and 9E.7, the Secretary of State hereby amends Chapter 43, "Notarial Acts," Iowa Administrative Code.

The rules in Chapter 43 describe the requirements of a notarial act, including the effects of notarial acts under law. Rule 721—43.1(9E) states that a notarial certificate "may include the official stamp or

SECRETARY OF STATE[721](cont'd)

seal of office.” However, Iowa Code section 9E.6A(1) states that “[e]ach person performing a notarial act pursuant to section 9E.10 must acquire and use a stamp or seal as provided by this chapter.” In addition, Iowa Code section 9E.14(1) states that the “certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and shall include the official stamp or seal of the office.” This amendment changes the permissive language regarding the stamp or seal on notarial documents to required action.

In compliance with Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are impracticable because of the immediate need for rule making to implement the provisions of this law.

The Secretary also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on March 19, 2012, because the amendment is necessary for consistency between Iowa Code section 9E.6A(1) and rule 721—43.1(9E).

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

This amendment is intended to implement Iowa Code chapter 9E.

This amendment became effective March 19, 2012.

The following amendment is adopted.

Amend rule 721—43.1(9E), introductory paragraph, as follows:

**721—43.1(9E) Certificate of notarial acts.** A notarial act shall be evidenced by a certificate signed and dated by a notarial officer. The certificate shall include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer (for example, notary public, judge, clerk of court) and ~~may~~ shall include the official stamp or seal of office. A certificate of a notarial act is sufficient if it substantially meets the requirements of this rule, or other applicable law. The form of the certificate may consist of:

[Filed Emergency 3/19/12, effective 3/19/12]

[Published 4/18/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/18/12.

**ARC 0102C****EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5) and 2011 Iowa Code Supplement sections 260H.8 and 260I.11, the State Board of Education hereby adopts new Chapter 25, “Pathways for Academic Career and Employment Program; Gap Tuition Assistance Program,” Iowa Administrative Code.

This chapter provides for the implementation of the Pathways for Academic Career and Employment Program. This is a program for the development of projects that will lead to gainful, quality, in-state employment for members of target populations by providing them with both effective academic and employment training to secure such employment and customized support services to maintain such employment. This chapter also provides for the implementation of a need-based tuition assistance program to enable applicants to complete continuing education certificate training programs for in-demand occupations.

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

Notice of Intended Action was published in the February 22, 2012, Iowa Administrative Bulletin as **ARC 0020C**. Public comments were allowed until 4:30 p.m. on March 13, 2012. On that date, a public hearing was held and no persons attended. No written or oral comments were received. These rules are identical to those published under Notice.

There will be an impact on jobs in the private sector. The Pathways for Academic Career and Employment (PACE) Program is targeted to match underemployed and unemployed workers with in-demand occupations in Iowa. PACE will assist private businesses and industry by providing skilled workers for a variety of positions. PACE will allow low-skilled/low-income unemployed and underemployed adult and dislocated workers to rapidly and efficiently acquire and demonstrate competency in a specified technical field. These occupations will be determined regionally and will include, but not be limited to: information technology, health care, advanced manufacturing and transportation. Certificate programs are aligned with credit certificates, diplomas and degrees. PACE does not replace existing training but will target a currently underserved population in the state.

These rules are intended to implement 2011 Iowa Code Supplement chapters 260H and 260I.

These rules shall become effective May 23, 2012.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 25] is being omitted. These rules are identical to those published under Notice as **ARC 0020C**, IAB 2/22/12.

[Filed 3/30/12, effective 5/23/12]

[Published 4/18/12]

[For replacement pages for IAC, see IAC Supplement 4/18/12.]

**ARC 0100C****EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 120, “Early ACCESS Integrated System of Early Intervention Services,” Iowa Administrative Code, and adopts a new Chapter 120 with the same title.

The sequence and format of new Chapter 120 parallel the pertinent federal regulations under Part C of the Individuals with Disabilities Education Act. As a matter of convenience for Early ACCESS practitioners and families, new Chapter 120 aligns the rules with federal statutory and regulatory changes. The substantive revisions in Chapter 120 include state monitoring and general supervision, timelines for referrals for evaluation and assessment, and the conduct and content of evaluations and

EDUCATION DEPARTMENT[281](cont'd)

assessments. The changes are necessary to allow Iowa to continue to draw down federal Part C dollars and are family-friendly in that they streamline the process by which a family may access services under the chapter for a child under the age of three years.

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

Notice of Intended Action was published in the February 22, 2012, Iowa Administrative Bulletin as **ARC 0018C**. Public comments were allowed until 4:30 p.m. on March 15, 2012. Two public hearings were held, one on March 13, 2012, and the other on March 15, 2012, and no persons attended. No written or oral comments were received. However, rule 281—120.30(34CFR303) has been revised since publication under Notice to add more specificity to what is meant by “public agency.” Rule 281—120.30(34CFR303) now reads as follows:

**“281—120.30(34CFR303) Public agency.** As used in this chapter, ‘public agency’ means the lead agency and any other agency or political subdivision of the state. The particular public agency serving each infant or toddler and that infant or toddler’s family shall be determined by the particular Early ACCESS needs of each infant and toddler and pursuant to the interagency agreements established under this chapter. Disputes about which agency will serve a particular infant or toddler shall be resolved by the mechanisms that those agreements contain.”

With the exception of the change noted above, these rules are identical to those published under Notice of Intended Action.

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

These rules are intended to implement the Individuals with Disabilities Education Act as amended through July 1, 2005, and Part 303 of Title 34 of the Code of Federal Regulations published in the Federal Register on September 28, 2011.

These rules shall become effective May 23, 2012.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 120] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 0018C**, IAB 2/22/12.

[Filed 3/30/12, effective 5/23/12]

[Published 4/18/12]

[For replacement pages for IAC, see IAC Supplement 4/18/12.]

**ARC 0085C**

## **NURSING BOARD[655]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 1, “Administrative and Regulatory Authority,” Iowa Administrative Code.

The amendment to subrule 1.3(2) updates the organization of the Board by changing “secretary” to “vice chairperson” as a result of changes to Iowa Code chapter 147. In addition, the amendment removes the phrase “and elect a chairperson for each committee” and eliminates the election of a committee chairperson.

The amendment to subrule 1.3(2) was initially published under Notice of Intended Action in the July 27, 2011, Iowa Administrative Bulletin as **ARC 9621B**. A Notice of Termination for that rule making was published in the November 30, 2011, Iowa Administrative Bulletin as **ARC 9868B** and a new Notice of Intended Action was published as **ARC 9866B** on the same date. A public hearing on the amendment was held on Tuesday, December 20, 2011.

One person was in attendance at the public hearing, one oral comment was received and no written comments were received. The comment expressed concern about removing Roberts Rules of Order without having a fair and orderly process to replace it. The amendment to paragraph 1.3(2)“g” in **ARC**

## NURSING BOARD[655](cont'd)

**9866B** (IAB 11/30/11) striking the language that provides for the use of Robert's Rules of Order has not been adopted.

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

This amendment is intended to implement Iowa Code sections 147.14, 147.19 and 147.22.

This amendment will become effective May 23, 2012.

The following amendment is adopted.

Amend subrule 1.3(2) as follows:

**1.3(2) Organization of the board and meetings.** The composition of the board is defined in Iowa Code sections 147.14 and 147.19. The board shall:

*a.* At the last regularly scheduled meeting prior to May 1:

(1) Elect a chairperson and ~~secretary~~ vice chairperson from its membership to begin serving as officers on May 1.

(2) Establish standing committees ~~and elect a chairperson for each committee.~~

(3) and (4) No change.

*b. to f.* No change.

*g.* Govern its meetings in accordance with Iowa Code chapter 21 and its proceedings by "Robert's Rules of Order, Revised."

*h. to j.* No change.

[Filed 3/20/12, effective 5/23/12]

[Published 4/18/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/18/12.

**ARC 0084C**

**NURSING BOARD[655]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 4, "Discipline," Iowa Administrative Code.

The amendments in Items 1 and 2 update and clarify the reporting of deferred judgments by licensees when reporting criminal convictions. The amendment in Item 3 defines certified copy.

Proposed amendments to paragraph 4.6(3)"e," paragraph 4.6(4)"p," and rule 655—4.14(17A,152E) were initially published under Notice of Intended Action in the July 27, 2011, Iowa Administrative Bulletin as **ARC 9622B**. The amendments were subsequently published under Amended Notice of Intended Action in the November 30, 2011, Iowa Administrative Bulletin as **ARC 9867B** to allow for a public hearing, which was held on Tuesday, December 20, 2011.

One person was in attendance at the public hearing, one oral comment was received and no written comments were received. The comment expressed concern regarding convictions for actions that occurred on personal time and stated that these convictions should not be considered for disciplinary action. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code chapters 147, 152, 152E and 272C.

These amendments will become effective May 23, 2012.

The following amendments are adopted.

ITEM 1. Amend paragraph **4.6(3)"e"** as follows:

*e.* Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction wherein it occurred.

NURSING BOARD[655](cont'd)

ITEM 2. Amend paragraph **4.6(4)“p”** as follows:

*p.* Pleading guilty to or being convicted of a ~~misdemeanor or felony~~ crime related to the practice profession of nursing, or conviction of any crime that would affect the licensee’s ability to practice nursing, regardless of whether the judgment of conviction or sentence was deferred, and regardless without regard to of the jurisdiction wherein the action occurred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

ITEM 3. Adopt the following new definition of “Certified copy” in rule ~~655—4.14(17A,152E)~~:

“*Certified copy*,” as used in the statutes and rules administered by the board, means a complete and accurate copy of a document, as verified by the board or the agency providing that document. “Certified copy” includes an electronic version of a document provided to another agency or individual by the board, or received from another agency, so long as the electronic record is:

1. Obtained directly from the official Web site of the board or other agency;
2. Regularly updated by the board or the other agency in accordance with standard practice;
3. Accessible as a “read only” document;
4. Properly safeguarded to prevent the document from being altered; and
5. Certified from another agency in accordance with the laws applicable in that jurisdiction.

[Filed 3/20/12, effective 5/23/12]

[Published 4/18/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/18/12.

**ARC 0094C**

## **PROFESSIONAL LICENSURE DIVISION[645]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy hereby amends Chapter 200, “Licensure of Physical Therapists and Physical Therapist Assistants,” and Chapter 202, “Discipline for Physical Therapists and Physical Therapist Assistants,” Iowa Administrative Code.

These amendments clarify examination requirements, remove outdated language concerning foreign-trained applicants, remove outdated language for renewal to be consistent with Iowa Code chapter 147 and clarify that conviction of a crime includes when judgment of conviction or sentence was deferred.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 11, 2012, as **ARC 9972B**. A public hearing was held January 31, 2012, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Board of Physical and Occupational Therapy on March 16, 2012.

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

These amendments will become effective May 23, 2012.

These amendments are intended to implement Iowa Code sections 147.3, 147.10, 147.34, 147.55, 148A.4 and 272C.3.

The following amendments are adopted.

ITEM 1. Amend subrule 200.4(3) as follows:

**200.4(3)** Before the board may approve an applicant for testing beyond three attempts, an applicant shall reapply for licensure and shall demonstrate evidence satisfactory to the board of having successfully completed additional ~~elinical training or coursework, or both.~~

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 2. Amend subparagraph **200.5(1)“a”(1)** as follows:

(1) If the degree is granted on or before January 31, 2004, the degree must be equivalent to at least a baccalaureate degree. ~~The baccalaureate program shall consist of a minimum of 60 hours of general education and 60 hours of professional education.~~

ITEM 3. Amend subrule 200.9(1) as follows:

**200.9(1)** The biennial license renewal period for a license to practice as a physical therapist or physical therapist assistant shall begin on the sixteenth day of the birth month and end on the fifteenth day of the birth month two years later. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive ~~the~~ notice from the board does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Amend subrule 202.2(11) as follows:

**202.2(11)** Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice physical therapy within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 3/28/12, effective 5/23/12]

[Published 4/18/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/18/12.

**ARC 0093C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 154C.4, the Board of Social Work hereby amends Chapter 280, "Licensure of Social Workers," and Chapter 281, "Continuing Education for Social Workers," Iowa Administrative Code.

The amendments in Items 1 and 2 clarify acceptable supervision by electronic means. The amendments allow for the use of videoconferencing technology when master level licensees are receiving supervision towards an independent level license.

The amendments in Items 3 to 7 update the requirements for a licensee's supervised professional practice. The amendments are required to ensure that licensees are properly prepared for independent practice. Before an independent level licensee provides supervision to a master level licensee who is working towards completing a supervised professional practice, the supervisor will be required to have been licensed at the independent level, and to have practiced at the independent level for at least 4,000 hours, over a period of three years. Rules currently require 2,000 hours over a period of two years. Supervisors are also required to have continuing education or coursework in the area of supervision. The continuing education hours earned in the area of supervision can be used as part of the 27 hours required of all licensees for renewal, so no additional financial burden would be placed on the licensee. The amendments also clarify what is required for a supervision plan. The plan would be reviewed by the Board of Social Work prior to the start of supervision instead of at the end of the supervised professional practice. This change will assure licensees that their supervision plan meets the expectations of the Board. These requirements will not go into effect for new supervised professional practices until July 1, 2013.

The amendment in Item 8 clarifies the examination requirements for licensure by endorsement. This change will reduce the need for the Board to consider petitions for waiver.

The amendments in Item 9 clarify the requirements for reactivation of a license that has been inactive for more than five years. This change will reduce the need for the Board to consider petitions for waiver.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The amendments in Items 10 to 12 require independent level licensees who are providing supervision for a supervised professional practice to earn three hours of continuing education in supervision. The continuing education hours earned in the area of supervision can be used as part of the 27 hours required of all licensees for renewal, so no additional financial burden would be placed on the licensee. The requirement will not go into effect until July 1, 2013.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9946B** on December 28, 2011. A public hearing was held on January 17, 2012. Public comment was received. The Board met on March 22, 2012, at which time additional public comment was received. Comments focused on Item 3, Item 5, and subparagraph 280.14(3)"b"(3) in Item 9.

In regard to Item 3, the public comment questioned whether the requirement for 4,000 hours of practice earned over a period of three years could be changed to a requirement for 4,000 hours or three years. The Board has determined that the amendment requiring 4,000 hours of practice over a period of three years is necessary to ensure that supervisors have enough experience to provide quality supervision. After discussion, no changes were made to Item 3.

Comments for Item 5 stressed the value of having training prior to becoming a supervisor and contended that having 10 or more hours of training in supervision would especially help first-time supervisors. After discussion, the Board determined that requiring more than the proposed 6 hours of training could become overly burdensome and negatively impact the number of licensed independent level social workers willing to provide supervision. No changes were made to Item 5.

In regard to subparagraph 280.14(3)"b"(3) in Item 9, comment was received requesting alternative options to the requirement for passing the appropriate ASWB examination. Two alternatives were presented. After discussion, the Board added new subparagraph 280.14(3)"b"(4) providing for one of the alternatives: verification of active licensure in another state.

After analysis and review of this rule making, no adverse impact on jobs exists. This rule making seeks to clarify existing regulations rather than add additional regulations for social workers.

These amendments are intended to implement Iowa Code sections 147.10, 147.11, 147.34, 147.36, 154C.4, and 272C.2.

These amendments will become effective May 23, 2012.

The following amendments are adopted.

ITEM 1. Renumber subparagraph **280.6(1)"d"(2)** as **280.6(1)"d"(3)**.

ITEM 2. Adopt the following **new** subparagraph **280.6(1)"d"(2)**:

(2) Supervision by electronic means is acceptable if:

1. The system utilized is an interactive, real-time system that provides for visual and audio interaction between the licensee and the supervisor; and
2. The first two meetings are face to face and in person.

ITEM 3. Amend paragraph **280.6(3)"b"** as follows:

*b.* Have a minimum of ~~2,000~~ 4,000 hours of practice earned over a period of ~~two~~ three years of practice beyond receipt of a license to practice independent social work in Iowa or the equivalent license from another state. This requirement shall apply to all supervised professional practices that commence on or after July 1, 2013.

ITEM 4. Reletter paragraphs **280.6(3)"c"** to **"g"** as **280.6(3)"d"** to **"h."**

ITEM 5. Adopt the following **new** paragraph **280.6(3)"c"**:

*c.* Complete at least 6 hours of training in social work practice supervision or one social work master level course in supervision. This requirement shall apply to all supervised professional practices that commence on or after July 1, 2013.

ITEM 6. Amend relettered paragraph **280.6(3)"d"** as follows:

*d.* Establish and maintain a plan throughout the supervisory period.

(1) Such a plan must be kept by the supervisor for a period of two years and must be submitted to the board upon its request for audit within 30 days from receipt of the request. The plan for supervision shall include:

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~(1)~~ 1. The name, license number, date of licensure, address, ~~and~~ telephone number, and e-mail address (when available) of supervisor;

~~(2)~~ 2. The name, license number, address, ~~and~~ telephone number, and e-mail address (when available) of supervisee;

3. The agency, institution, or organization providing the experience;

4. The nature, duration, and frequency of supervision, including:

- The number of hours of supervision per week;
- The supervisor/supervisee's face-to-face meetings schedule;
- The methodology for transmission of case information;
- For group supervision, a duration not to exceed 60 hours;

~~(3)~~ 5. The beginning date of ~~clinical work experience under supervision~~ supervised professional practice and estimated date of completion;

~~(4)~~ A plan for direct supervision hours, including frequency of supervisor/supervisee's face-to-face meetings;

~~(5)~~ A plan for any group supervision;

~~(6)~~ 6. The goals and objectives for the ~~clinical work experience~~ supervised professional practice;  
and

~~(7)~~ 7. The signatures of the supervisor and supervisee, and the dates of signatures.

(2) A plan for supervision must be filed with the board prior to the start of the supervised professional practice. The board shall complete review of the plan and provide a decision on the plan no later than 45 days after receipt of the plan, unless additional information is requested. This requirement shall apply to all supervised professional practices that commence on or after July 1, 2013.

ITEM 7. Adopt the following **new** paragraph **280.6(3)"i"**:

*i.* A supervisee shall submit in writing any change in supervisors within 10 days of the occurrence. The new supervisor shall submit, within 30 days of the change, a revised supervision plan for board approval.

ITEM 8. Amend rule **645—280.7(154C)**, numbered paragraph **"5,"** as follows:

5. Provides official copies of the appropriate or higher level examination score sent directly from the ASWB; and

ITEM 9. Amend paragraph **280.14(3)"b"** as follows:

*b.* If the license has been on inactive status for more than five years, an applicant must provide the ~~following~~ verifications in both subparagraphs (1) and (2) below plus the verification in either (3) or (4) below.

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 27 hours of continuing education within two years of application for reactivation; and

(3) Verification of ~~taking and~~ passing the ASWB examination within the last five years at the appropriate or higher level as follows:

1. Bachelor level social worker – the bachelor's level examination; or
2. Master level social worker – the master's level examination; or
3. Independent level social worker – the clinical level examination; or

(4) Verification of continued social work practice at the appropriate or higher level in another state for a minimum of two years immediately preceding the application for reactivation.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 10. Renumber subrules **281.2(3)** to **281.2(6)** as **281.2(4)** to **281.2(7)**.

ITEM 11. Adopt the following **new** subrule 281.2(3):

**281.2(3)** Requirement of supervisors. For licensure at the independent level, persons serving in a supervisory role must complete 3 hours of continuing education in supervision.

ITEM 12. Adopt the following **new** subrule 281.2(8):

**281.2(8)** The requirement of 3 hours of continuing education in supervision in subrule 281.2(3) shall apply to all licensees providing supervision on or after July 1, 2013.

[Filed 3/28/12, effective 5/23/12]

[Published 4/18/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/18/12.

**ARC 0088C**

## **SCHOOL BUDGET REVIEW COMMITTEE[289]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 257.30, the School Budget Review Committee hereby amends Chapter 6, "Duties and Operational Procedures," Iowa Administrative Code.

The amendments account for changes in statute, as well as in accounting terminology or procedures. Specifically, the law changed the procedures on cash reserve levy and what the School Budget Review Committee (SBRC) must consider before granting modified allowable growth.

A waiver provision is provided in 289—Chapter 8.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 2, 2011, as **ARC 9818B**. A public hearing was held on November 22, 2011, and public comments were allowed until the end of that day. The Committee received public comments from two school business officials, as well as from the Iowa Association of School Boards (IASB), Iowa Association of School Business Officials (IASBO), and Urban Education Network (UEN). As a result of some of the public comments, the following changes have been made since publication of the proposed amendments under Notice of Intended Action:

- The proposed amendment to the title of the chapter was not adopted. (This proposed amendment appeared as Item 1 of the Notice. Accordingly, all Items in this Adopted and Filed rule making have been renumbered.)
- The time frame in paragraph 6.3(1)"b" for submitting a request to the Committee for a hearing will remain one month. The proposed amendment, which suggested six weeks for this time frame, was not adopted.
- The amendment in paragraph 6.3(3)"a" has been changed to allow school corporations to provide hearing materials in any format that can be cut and pasted into official documentation, rather than specifying that the materials be provided in a non-PDF format. Also in this paragraph, the word "shall" in the penultimate sentence has been changed to "may."
- The words "of publication" have been removed from new paragraph 6.3(3)"b."
- The proposed new sentence in paragraph 6.3(3)"c" was not adopted.
- The word "administrative" in subrule 6.3(4) has been changed to "school corporation."
- New paragraph 6.3(6)"d" has been limited to two items that "shall" be considered by the Committee; other items included in paragraph 6.3(6)"d" in the Notice are now included in new paragraph 6.3(6)"e" as items that "may" be considered by the committee.
- Proposed new paragraphs 6.3(8)"c," "f," and "g" were not adopted, and the remaining paragraphs were relettered accordingly. Relettered paragraphs 6.3(8)"a" and "d" have been changed to clarify for what costs and in what budget year the Committee will consider requests for modified allowable growth, and relettered paragraph 6.3(8)"c" has been changed to clarify that modified allowable growth requests

## SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

may be brought before the Committee for unusual, unique or unforeseeable circumstances for prior years in addition to the current year.

- The proposed amendment to the introductory paragraph of rule 289—6.4(257) and the proposed rescission of subrule 6.4(1) were not adopted. However, the text that would have become the introductory paragraph of rule 289—6.4(257) has been revised and adopted as new subrule 6.5(2) in Item 8 herein. The striking of the existing text in subrule 6.4(2) as published under Notice was adopted, but a new sentence has been added to the subrule.

- A reference to the Uniform Financial Accounting for Iowa LEAs and AEAs has been added to subrule 6.5(1), and the proposed new sentence at the end of that subrule was not adopted.

- The first new sentence in subrule 6.5(3) as published under Notice was not adopted.

- New paragraph 6.5(4)“e” was not adopted.

- New subrule 6.5(5) as proposed in the Notice was not adopted; however, the proposed rescission of existing subrule 6.5(5) was adopted.

- The proposed rescission of rule 289—6.7(257) was not adopted. No changes have been made to that rule.

- New rule 289—6.10(257) has been changed to permit, rather than require, a reversion of year-end special education support services fund balances that exceed 10 percent of the special education support services expenditures for that fiscal year and to permit, rather than require, a reduction of the fund balances to 10 percent.

Other comments received but regarding which no changes were made include the following:

- IASB stated that subrules 6.3(2) and 6.3(3) as amended give the SBRC an implied subpoena power (forced attendance) not authorized in statute.

**SBRC response:** Iowa Code gives the SBRC the authority to require information to be provided and school corporations to appear. See Iowa Code sections 257.30 (“The committee may call in school board members and employees as necessary for the hearings.”) and 257.31(1) (“The school budget review committee may...direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district.”). Studies of costs are a primary responsibility of the SBRC as enacted in Iowa Code section 257.31(10) (“The committee shall take into account the intent of this chapter...to decrease the percentage of school costs paid from property taxes, and to provide reasonable control of school costs.”). Iowa Code section 257.31(11) (“Failure by any school district to provide information or appear before the committee as requested for the accomplishment of review or hearing is justification for the committee to instruct the director of the department of management to withhold any state aid to that district until the committee’s inquiries are satisfied completely.”) shows the level of importance that is attributed by the Legislature to the requirement that school districts provide information and appear personally before the Committee. This same information is in statute regarding AEAs in Iowa Code section 257.31(4). The Committee is not seeking to gather unnecessary information. For example, in order to conduct studies, the SBRC needs to be able to obtain the information related to that study. In order to conduct a Phase II visit of a school district, the SBRC needs to be able to obtain reorganization plans from the AEA. Should the need arise to study the costs of supplementary weighting, the SBRC needs to be able to obtain information provided to districts by community colleges on concurrent enrollment classes. When districts appear at a hearing because of a reorganization of another district, the SBRC needs the terms of the division of assets and liabilities from the reorganized district.

- IASB commented that there is no statutory authority for subrule 6.3(5) given to the SBRC to direct the Department of Management to withhold state aid to a school district that fails to file its certified annual report (CAR) by the September 15 deadline because only the Department of Education and the Department of Management have authority to enforce the manner, procedures and dates by which reports must be filed.

**SBRC response:** September 15 is not mentioned in this rule regarding the CAR due date. Instead the rule refers to the procedures and dates prescribed by the Department of Education and Department of Management. The September 15 due date has already been established in 281—Chapters 59, 60 and 97 of the Iowa Administrative Code.

## SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

- IASB also commented that the 2008 CAR Report Study recommends that the CAR due date be changed to a later date, following the completion of the audit.

**SBRC response:** Although districts may prefer delaying filings, doing so is not supported by best practice or by the recent study by GASB on timeliness and usefulness of financial data. The date has already been established by rule. In addition, the audit is required to examine the CAR that was filed. That examination would not be possible if the audit were completed first.

- IASB commented that subrule 6.5(3) appears to require that school districts resubmit reports/information to the SBRC that the Department of Education or Department of Management currently possesses.

**SBRC response:** This is an incorrect reading of the rule. The rule requires all districts to calculate their unspent balances, but only those districts that have negative unspent balances must contact the SBRC and begin working on their corrective action plans. This is current practice. Districts are responsible for knowing their own financial condition, and it is not appropriate for the districts to rely on the Department of Education or Department of Management to tell them how they are doing fiscally at the local level. Districts should know their unspent balances at least as soon as they file their CAR and special education supplements to the CAR (SES), if not much earlier in the school year.

- IASBO objected to the language in paragraph 6.5(4)“b” “or is in excess of the amount necessary for operations” and wanted only the 20 percent requirement to be followed.

**SBRC response:** This language is from Iowa Code section 298.10.

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

These amendments are intended to implement Iowa Code sections 257.30, 257.31, 273.2, 273.3, 282.30, 282.31, and 298.10.

These amendments will become effective May 23, 2012.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions in rule **289—6.1(257)**:

“*Area education agency*” or “*AEA*” means a regional service agency organized under Iowa Code chapter 273 that provides school improvement services for students, families, teachers, administrators, and the community.

“*Basis of accounting*” means the accrual or modified accrual accounting basis under generally accepted accounting principles (GAAP) as defined by the Governmental Accounting Standards Board (GASB).

“*Basis of budgeting*” means the accrual or modified accrual budgeting basis under GAAP as defined by GASB.

“*Class action*” means a situation that applies to multiple districts with the same or substantially similar needs and the SBRC has determined that the districts can be considered jointly in a single hearing.

“*Community college*” means a publicly supported school organized under Iowa Code chapter 260C.

“*Modified allowable growth*” means an amount expressed in dollars which is added to the district’s authorized budget.

“*School corporation*” means a school district, area education agency, or community college.

ITEM 2. Rescind the definitions of “Actual enrollment,” “Additional enrollment,” “Allowable growth,” “Basic enrollment for a budget year,” “Basic enrollment for the base year,” “Budget adjustment,” “Budget enrollment for the budget year,” “Combined district cost per pupil,” “Combined state cost per pupil,” “Property tax adjustment,” “Regular program district cost,” “Special needs adjustment,” “State percent of growth,” and “Weighted enrollment” in rule **289—6.1(257)**.

ITEM 3. Amend the following definitions in rule **289—6.1(257)**:

“*Authorized budget*” is means the total dollars available as the expenditure limit for a school district for a specific fiscal year. This total is the combined district cost plus miscellaneous income actually received during the fiscal year, plus the unspent balance of the previous year.

“*Certified budget*” is means the (document)-~~amount~~ which has been published and certified as provided for in Iowa Code chapter 24 and contains the amount proposed to be expended during the

## SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

budget year. ~~If the authorized budget exceeds the certified budget, the certified budget must be amended to expend those excess funds.~~

“Expenditures” means the total amounts paid from the general operating fund of a school district corporation.

“Miscellaneous income” means the receipts deposited to the general operating fund of the school district but not including any of the following:

1. Foundation aid.
2. Revenue obtained from the foundation property tax as defined in Iowa Code section 257.3(1).
3. Cash reserve levy.
4. Revenue obtained from the additional property tax under Iowa Code section 257.4.

“Unexpended cash fund balance” is means the school district’s or AEA’s cash position at any given time fund balance in the general fund reported by the school district or AEA on the GAAP basis of accounting on its certified annual report. (It does NOT have a direct relationship to the “unspent balance carried forward.”)

“Unspent balance” is means the amount of the authorized budget for the general fund less the amount not expended during the budget year on the GAAP basis of budgeting as reported by the school district on its certified annual report. (These funds are also commonly termed “unspent balance carried forward,” or “carryover dollars.”)

ITEM 4. Amend rule 289—6.3(257) as follows:

**289—6.3(257) Hearing procedures.**

**6.3(1) Request for *appearance hearing*.**

a. A school district The board of a school corporation requesting an appearance a hearing before the SBRC is required, after taking official board action on the subject of the hearing, to submit a written an electronic request to the committee stating the reason for the appearance request for a hearing. Confirmation of each request will be sent to the school district upon receipt of the request.

b. No change.

c. School districts corporations with similar requests may appear and present their requests jointly at the discretion of the SBRC chairperson.

**6.3(2) Notification to districts.**

a. School districts scheduled for hearings will be notified three weeks prior to the hearing. An electronic confirmation of each request shall be provided to the school corporation upon receipt of the request for hearing.

b. The SBRC may require board members or employees of any school corporation to appear. School corporations required to have a board member or employee appear shall be notified no later than three weeks prior to the hearing.

~~b. c.~~ School districts corporations scheduled for hearings will shall be listed as to time and place, and notice will be sent to school officials involved not notified no later than two weeks one week prior to the hearing.

e. d. A school district corporation desiring to withdraw its request to appear before the SBRC should shall immediately inform the committee, local media, and the legislators within whose constituency the school corporation is located. A school corporation required to appear may not withdraw without the approval of the SBRC.

**6.3(3) Material for agenda the hearing.**

a. Any information requested by the committee must be provided by the school district within the timelines requested by the committee in order for the school district corporation to be included on the agenda schedule for a hearing. Ten One original and 11 copies of written material, and one full set of the materials provided electronically in a format that can be cut and pasted into official documentation, shall be submitted at least two four weeks prior to the scheduled hearing. A summary not to exceed two pages of the school district’s request must be submitted to the committee. The SBRC chairperson may set an earlier due date for information if necessary for adequate review based on the quantity or complexity of hearings. If a school corporation’s exhibits for a hearing the school

## SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

corporation has requested are not received timely, the school corporation's hearing may be postponed to the next following regularly scheduled session. Where applicable, the committee will provide forms or checklists to school corporations to obtain uniform and comparable data for determining committee decisions.

b. School corporations shall include in their materials for the hearing a copy of the board minutes that include the official action taken by the applicable school corporation board on the subject of the hearing and authorizing the school corporation's administrative officials to request modified allowable growth or use of the unexpended fund balance.

~~b. c.~~ It shall be the responsibility of the administrative officials and board members to present information and materials in support of ~~the school district's~~ their school corporation's request to the committee in a timely manner.

d. The SBRC may require staff of the department of education or department of management to appear or provide information for a hearing or for a study. The SBRC may require staff of any school corporation to provide information for a hearing related to another school corporation or for a study.

e. In order for the SBRC to have the information necessary to evaluate balances and budgets as required by the Iowa Code or to evaluate materials submitted by school districts or AEAs, all school districts and AEAs shall file financial and enrollment reports, including the certified annual report, in the manner, by the procedures, and by the dates prescribed by the department of education or department of management.

f. If the requirements in paragraph 6.3(3)"e" are not met, the SBRC may implement the procedures described in subrule 6.3(5).

g. Applications for any supplemental aid funding shall be filed by the due date established in the Iowa Code, an administrative rule, or otherwise by the department of education or department of management.

h. Applications for modified allowable growth for increased certified enrollment over the prior year's enrollment, applications for modified allowable growth to pay tuition costs for open-enrolled-out students who were not enrolled in the district on the certified enrollment date in the prior year, and applications for modified allowable growth for excess costs of instructional programs for limited English proficient students must be received no later than December 1 of the budget year.

i. Applications for modified allowable growth for returning dropout and dropout prevention programs shall be filed by December 15 of the base year.

j. Requests to charge administrative costs to the special education program for the subsequent fiscal year must be received no later than February 1 of the base year.

k. Applications described in paragraphs 6.3(3)"g" and "i" that are not timely filed will not be considered for supplemental aid or for modified allowable growth. Applications described in paragraphs 6.3(3)"h" and "j" that are not timely filed may be considered at the discretion of the SBRC.

**6.3(4)** *Permission to speak during the hearing.* Any person wishing to appear before the committee, other than the board member or school corporation employee representing the school corporation, shall submit a request in writing prior to the hearing date. Permission may be granted to a request made at the hearing upon a majority vote of the committee members present.

**6.3(5)** *Failure to appear or to provide information.* If any school corporation fails to appear as required by the committee or fails to provide any information requested by the SBRC, including the reports described in paragraph 6.3(3)"e," the SBRC may direct the director of the department of management to withhold state foundation aid until the school corporation complies with the SBRC's request. When the school corporation satisfactorily complies with the SBRC request, the withheld state foundation aid will be released and paid to the school corporation with the next regularly scheduled payment of foundation aid.

**6.3(5) 6.3(6)** *Decisions by the committee.*

~~a. A decision shall be made no later than the end of the day of the hearing to either table, deny, modify or grant an adjustment where a school district has made a request~~ the request of a school corporation shall be made no later than the end of the day of the hearing.

## SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

~~b.~~ If the decision is made when the school district representatives are not present, the school district shall be informed of the decision by telephone the next working day following the hearing.

~~e. b.~~ On all decisions, the The school district corporation shall receive ~~written confirmation~~ electronic notification when a summary of the final action taken by the committee is posted on the SBRC Web site.

c. The committee shall consider the intent of Iowa Code chapter 257 in making its decisions. The intent includes the following:

- (1) Equalizing educational opportunities,
- (2) Providing good education to all Iowa children,
- (3) Providing property tax relief,
- (4) Decreasing the percentage of school costs paid by property tax, and
- (5) Providing reasonable control of school costs.

d. In addition to the requirements in Iowa Code section 257.31, the committee shall also consider in making its decisions the following:

- (1) The amount of unexpended fund balance available in all funds.
- (2) The amount of unspent balance in the general fund.

e. In addition to the requirements in Iowa Code section 257.31, the committee may consider the following if materials are requested or provided by the department or school corporation:

- (1) Local school district tax rates.
- (2) Local taxpayer support for the request.
- (3) Local effort to obtain alternative funding where available and applicable.
- (4) Documented actual costs of the program or project that is the subject of the request not otherwise covered by funding for the same program or need.
- (5) Sustainability of the program or need within the district or AEA budget without future requests.
- (6) Number and cost of previous requests for the same need and the number and cost of all previous requests.
- (7) Alternative procedures in the Iowa Code or administrative rules to provide funding for the same program or need.
- (8) Life safety issues other than those covered in Iowa Code section 257.31(6) documented through an independent, authoritative source.
- (9) Unusual or unique nature of the need.
- (10) Any other information the SBRC members consider pertinent to the consideration of the request.

~~6.3(6)~~ 6.3(7) Routine action by the committee. School ~~districts~~ corporations do not need to be represented when action under consideration is for such items as cash reserve levies, ~~gifted and talented, drop-out~~ returning dropout/dropout prevention programs, special education negative balances or other situations which could be ~~are~~ considered ~~“class action” decisions~~ class actions as determined by the SBRC.

6.3(8) Basic policies. The SBRC has established the following basic policies that it shall consider in rendering its decisions.

a. Modified allowable growth requests shall be considered only for costs up through the budget year, except where the Iowa Code expressly authorizes modified allowable growth to be granted for a subsequent year.

b. Modified allowable growth requests shall be considered only for expenditures permitted from the general fund pursuant to the Iowa Code.

c. Modified allowable growth requests may be brought before the committee for unusual, unique or unforeseeable circumstances.

d. Modified allowable growth requests shall be considered only to the extent of the actual, documented costs.

6.3(9) Use of the unexpended fund balance. If the SBRC approves use of the unexpended fund balance, the school district shall report to the committee as required by the committee an accounting of expenditures on the project until the project is completed. If any portion of the amount granted by the SBRC remains unexpended at the completion of the project, the school district shall notify the SBRC

## SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

on or before the SBRC's next regularly scheduled meeting. Any portion of the amount granted by the SBRC that remains unexpended at the completion of the project shall be returned to the unexpended fund balance in the general fund.

**6.3(10)** Modified allowable growth to an AEA. If the SBRC approves modified allowable growth for special education support services, approves an additional amount to be added to district costs for media services or educational services, or approves modified allowable growth for unusual circumstances, the amount shall be included in the budget of each district in the AEA for the subsequent budget year in the proportion that the appropriate enrollment of each district in the AEA bears to the total enrollment of all districts in the AEA.

ITEM 5. Amend subrule 6.4(2) as follows:

**6.4(2)** Report to general assembly: Hearing decisions. ~~The committee shall report to each session of the general assembly any recommended changes in laws relating to school districts and shall specify the number of hearings held annually, information about the amounts of property tax levied by school districts for a cash reserve, and other information the committee deems advisable. The committee shall maintain its decisions for each hearing. Materials provided by the requesting school corporation, materials provided by the department of education or department of management regarding each request, and the decisions of the committee are available for access by the public, including members of the general assembly.~~

ITEM 6. Amend subrule 6.5(1), introductory paragraph, as follows:

**6.5(1)** Generally accepted accounting principles. All school districts and AEAs shall budget on the ~~generally accepted accounting principles (GAAP) GAAP~~ basis of budgeting ~~beginning with fiscal year 2006-2007 as defined by GASB and as implemented in Uniform Financial Accounting for Iowa LEAs and AEAs (UFA).~~ School districts and area education agencies shall use the chart of accounts defined in Uniform Financial Accounting for Iowa LEAs and AEAs (UFA). ~~In order to effect this change in accounting/budgeting methods, the SBRC shall direct the departments of education and management to adjust calculations from the 2004-2005 certified annual report (CAR) related to the 2004-2005 unspent balances carried forward to the 2005-2006 unspent balances in order to hold districts harmless.~~

ITEM 7. Rescind paragraphs **6.5(1)“a”** to **“d.”**

ITEM 8. Rescind subrule 6.5(2) and adopt the following **new** subrule in lieu thereof:

**6.5(2)** Accounting and reporting. School districts and AEAs shall maintain financial records and prepare financial reports, including the certified annual report, in the manner and by the procedures prescribed by the department of education or department of management in the Uniform Financial Accounting for Iowa LEAs and AEAs (UFA) manual and GAAP. School districts and AEAs shall use the chart of accounts defined in Uniform Financial Accounting for Iowa LEAs and AEAs (UFA).

ITEM 9. Amend subrule 6.5(3) as follows:

**6.5(3)** Negative unspent balances (exceeding authorized budgets). If the school district has incurred a negative unspent balance, it shall notify the SBRC no later than October 15 and begin developing its corrective action plan to avoid future negative unspent balances.

*a.* A listing of the unspent balance as well as the unexpended cash fund balance of each school district for each fiscal year shall be reviewed by the committee. The unspent balance and the unexpended fund balance shall be presented on the GAAP basis.

*b.* No change.

*c.* The state board of education ~~shall~~ may be notified of the school districts with negative unspent balances each year. The notification shall include the amount by which the school district exceeded its authorized budget.

*d.* The board ~~members~~ president of ~~districts~~ each school district with a negative unspent ~~balances~~ balance shall be notified of the amount by which the school district exceeded its authorized budget. The school districts shall inform the SBRC at its the SBRC's next official hearing regularly scheduled session of the plans that are being implemented to avoid future negative unspent balances.

## SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

e. The SBRC may require the district to continue to report progress on the district's plans at regular intervals as determined by the committee until the committee is satisfied that the district's financial condition concerns have been resolved.

ITEM 10. Amend subrule 6.5(4) as follows:

**6.5(4) Cash reserve levy.**

a. No change.

b. If in the committee's judgment, the amount of a district's cash reserve levy is unreasonably high or is in excess of the amount necessary for operations, the committee shall instruct the district to use the unexpended fund balance in lieu of levying property taxes and shall direct the director of the department of management to reduce that school district's tax levy computed under Iowa Code section 257.4 for the following budget year by the amount the cash reserve levy is deemed excessive. limit that school district's cash reserve levy to a level that is not excessive as determined by the committee and does not exceed the cash reserve limitation in paragraph 6.5(4) "c."

c. Notwithstanding any other action approved by the committee, The cash reserve levies for the budget year (reference lines 15.9/15.10 of the Aid & Levy Worksheet) shall not exceed 25 20 percent of the (SAR reference Item L, column 9, cell 602) operating general fund expenditures for the year previous to the base year minus the (SAR reference Item J, column 1, cell 293) operating general fund unspent cash unexpended fund balance for the year previous to the base year. The expenditures and the fund balances shall be determined on the GAAP basis. For purposes of this subrule, "unexpended fund balance" shall mean the combined assigned and unassigned fund balances in the general fund.

d. No change.

ITEM 11. Rescind and reserve subrule **6.5(5)**.

ITEM 12. Rescind and reserve rule **289—6.6(257)**.

ITEM 13. Adopt the following new rule 289—6.9(257):

**289—6.9(257) Special education administrative costs.**

**6.9(1)** When a school district presents evidence of unusual circumstances that would justify charging administrative costs to the special education program, the committee may authorize such expenditures.

**6.9(2)** The committee shall use the following criteria in evaluating the evidence presented by the district:

a. The school district has a separate facility for special education which has a sufficient student population to warrant a certified special education administrator. In this case, the district, after it has received approval from the SBRC, may bill the prorated cost to other resident districts as well as include the prorated portion related to its own resident students in the special education program expenditures.

b. The school district has one or more private facilities located within the district with a sufficient special education student population that is served by the district. In this case, the district, after it has received approval from the SBRC, may include the lower of the prorated actual administrative costs or the prorated approved administrative costs in the billing to other resident districts in proportion to each district's resident students in the program, but shall not include the prorated portion related to its own resident students in the special education program expenditures.

ITEM 14. Adopt the following new rule 289—6.10(257):

**289—6.10(257) Area education agency budget review.** Year-end special education support services assigned and unassigned fund balances exceeding 10 percent of the special education support services expenditures for that fiscal year may be reverted and reduced to 10 percent. The AEA shall report the necessary information for this calculation on its certified annual report to the department. The committee shall review the recommended reversion calculated by the department of education and shall make a recommendation to the department regarding final amounts to be reverted. The components of fund balances shall be determined in compliance with department of education guidance and GAAP.

## SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

ITEM 15. Amend **289—Chapter 6**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 257.30, 257.31, 257.32, and 298.10 and chapter 260C.

[Filed 3/22/12, effective 5/23/12]

[Published 4/18/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/18/12.

**ARC 0080C**

**TREASURER OF STATE[781]**

**Adopted and Filed**

Pursuant to the authority of 1999 Iowa Acts, chapter 73, and 2009 Iowa Acts, chapter 184, the Treasurer of State hereby rescinds Chapter 5, "Disclosure of Information Regarding Open-End Credit and Credit Cards," and Chapter 20, "Fairgrounds Infrastructure Grant Program," Iowa Administrative Code.

Iowa Code section 12.27, 1999 Code of Iowa, directed the Treasurer of State to adopt rules to implement the filing of information relating to open-end credit accounts and credit cards. Because 1999 Iowa Acts, chapter 73, section 1, repealed Iowa Code section 12.27, the Treasurer is rescinding 781—Chapter 5.

Iowa Code sections 12.101 and 12.102, 2009 Code of Iowa, created the Fairgrounds Infrastructure Grant Program and directed that criteria for eligibility for infrastructure aid be provided by rule. Because 2009 Iowa Acts, chapter 184, section 40, repealed Iowa Code sections 12.101 and 12.102, the Treasurer is rescinding 781—Chapter 20.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 25, 2012, as **ARC 9974B**. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement 1999 Iowa Acts, chapter 73, and 2009 Iowa Acts, chapter 184.

These amendments shall become effective May 23, 2012.

The following amendments are adopted.

ITEM 1. Rescind and reserve **781—Chapter 5**.

ITEM 2. Rescind and reserve **781—Chapter 20**.

[Filed 3/16/12, effective 5/23/12]

[Published 4/18/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/18/12.



State of Iowa  
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

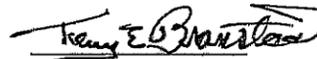
EXECUTIVE ORDER NUMBER SEVENTY-SIX

- WHEREAS, On April 26, 2010 the United States Department of Health & Human Services expressed concern that the Department on Aging's policy at that time effectively prohibited the State Long-Term Care Ombudsman from communicating directly with legislators; and
- WHEREAS, together, the Director of the Department on Aging, Donna Harvey, and State Long-Term Care Ombudsman, Deanna Clingan-Fischer, have announced that they are fulfilling all requirements of federal and state laws in Iowa, negating the need for Executive Order 24 by Governor Chester J. Culver; and
- WHEREAS, in cooperation that benefits older Iowans, the Director of the Department on Aging, Donna Harvey and State Long-Term Care Ombudsman, Deanna Clingan-Fischer, have brought positive and productive changes to the working relationship between their offices to serve the best interests of older Iowans; and
- WHEREAS, the Long-Term Care Ombudsman and Director of the Department on Aging are serving older Iowans by focusing on the safety of older Iowans and improving their quality of life; and
- WHEREAS, older Iowans are a treasured asset of our state and they will benefit from the positive changes that have occurred since 2010 with respect to the Long-Term Care Ombudsman and the Department on Aging.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, declare that the Long Term Care Ombudsman program is and shall remain an independent voice for Iowans in long-term care facilities and shall continue to meet all requirements of the Federal Older Americans Act, but shall be housed with and administratively supported by the Department on Aging. I hereby order and direct that Executive Order Number 24, dated May 28, 2010, issued by Governor Chester J. Culver, shall be rescinded.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 30<sup>th</sup> day of March, in the year of our Lord two thousand twelve.



TERRY E. BRANSTAD  
GOVERNOR

ATTEST:



MATT SCHULTZ  
SECRETARY OF STATE