



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXIII
July 14, 2010

NUMBER 1
Pages 1 to 40

CONTENTS IN THIS ISSUE

Pages 8 to 39 include **ARC 8926B** to **ARC 8939B**

AGING, DEPARTMENT ON[17]

- Filed Emergency After Notice, Long-term
care resident's advocate/ombudsman,
8.1 to 8.7 **ARC 8939B** 22

ALL AGENCIES

- Agency identification numbers 6
Citation of administrative rules 2
Schedule for rule making 3

CORRECTIONS DEPARTMENT[201]

- Notice, Electronic mail; appeals; medical
care; parole board notification, 20.4,
44.1(2)"c," 45.1(6), 45.4(2), 47.3(4),
47.4(10) **ARC 8926B** 8

HOMELAND SECURITY AND EMERGENCY

MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

- Filed Without Notice, Update of division
name, 1.1, 1.2 **ARC 8932B** 31
Filed Without Notice, Update of division
name and address, 2.1 to 2.4 **ARC 8933B** 32

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

- Filed, Suitability in annuity transactions,
15.68 to 15.75 **ARC 8934B** 33

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

- Notice, Covered wages; refunds; benefits,
4.8, 6.5(3), 9.3, 11.5, 13.2(9), 14.5,
14.16, 16.2 **ARC 8928B** 9
Filed Emergency, Covered wages;
refunds; benefits, 4.8, 6.5(3), 9.3, 11.5,
13.2(9), 14.5, 14.16, 16.2 **ARC 8929B** 24

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Notice, Intravenous therapy scope of
practice for LPNs, 6.1, 6.3, 6.5 **ARC 8930B** 10

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Notice, Board of mortuary science,
amendments to chs 4, 100 to 102 **ARC 8927B** 13

PUBLIC HEARINGS

- Summarized list 4

PUBLIC SAFETY DEPARTMENT[661]

- Notice, State building
code—factory-built structures,
16.610 **ARC 8938B** 18
Filed, Criminal history and fingerprint
records, rescind ch 11; adopt ch 82
ARC 8936B 34
Filed Emergency, State building
code—factory-built structures, 16.610
ARC 8937B 27
Filed Emergency After Notice, Peace
officers' retirement, accident, and
disability system, amend chs 400 to
402; rescind ch 404 **ARC 8935B** 29

USURY

- Notice 18

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Notice, Exterior flood lighting efficiency
standards—LED and solid-state
lighting, 35.15(3), 36.8(3) **ARC 8931B** 19

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

Schedule for Rule Making 2010

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 23 '09	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sep. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sep. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	***May 26***	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	***June 23***	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sep. 1	Nov. 29
May 26	June 16	July 6	July 21	July 23	Aug. 11	Sep. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sep. 29	Dec. 27
June 23	July 14	Aug. 3	Aug. 18	Aug. 20	Sep. 8	Oct. 13	Jan. 10 '11
July 9	July 28	Aug. 17	Sep. 1	***Sep. 1***	Sep. 22	Oct. 27	Jan. 24 '11
July 23	Aug. 11	Aug. 31	Sep. 15	Sep. 17	Oct. 6	Nov. 10	Feb. 7 '11
Aug. 6	Aug. 25	Sep. 14	Sep. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '11
Aug. 20	Sep. 8	Sep. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 7 '11
Sep. 1	Sep. 22	Oct. 12	Oct. 27	***Oct. 27***	Nov. 17	Dec. 22	Mar. 21 '11
Sep. 17	Oct. 6	Oct. 26	Nov. 10	***Nov. 10***	Dec. 1	Jan. 5 '11	Apr. 4 '11
Oct. 1	Oct. 20	Nov. 9	Nov. 24	***Nov. 24***	Dec. 15	Jan. 19 '11	Apr. 18 '11
Oct. 15	Nov. 3	Nov. 23	Dec. 8	***Dec. 8***	Dec. 29	Feb. 2 '11	May 2 '11
Oct. 27	Nov. 17	Dec. 7	Dec. 22	***Dec. 22***	Jan. 12 '11	Feb. 16 '11	May 16 '11
Nov. 10	Dec. 1	Dec. 21	Jan. 5 '11	Jan. 7 '11	Jan. 26 '11	Mar. 2 '11	May 30 '11
Nov. 24	Dec. 15	Jan. 4 '11	Jan. 19 '11	Jan. 21 '11	Feb. 9 '11	Mar. 16 '11	June 13 '11
Dec. 8	Dec. 29	Jan. 18 '11	Feb. 2 '11	Feb. 4 '11	Feb. 23 '11	Mar. 30 '11	June 27 '11
Dec. 22	Jan. 12 '11	Feb. 1 '11	Feb. 16 '11	Feb. 18 '11	Mar. 9 '11	Apr. 13 '11	July 11 '11

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
3	Friday, July 23, 2010	August 11, 2010
4	Friday, August 6, 2010	August 25, 2010
5	Friday, August 20, 2010	September 8, 2010

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*****

CORRECTIONS DEPARTMENT[201]

Electronic mail; appeals; medical care; parole board notification, 20.4, 44.1(2)“c,” 45.1(6), 45.4(2), 47.3(4), 47.4(10) IAB 7/14/10 ARC 8926B	First Floor Conference Room Jessie M. Parker State Office Bldg. 510 E. 12th St. Des Moines, Iowa	August 3, 2010 11 a.m. to 1 p.m.
--	---	-------------------------------------

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa jobs main street program, ch 40 IAB 6/30/10 ARC 8921B (See also ARC 8922B)	Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	July 20, 2010 8:30 to 10 a.m.
Iowa small business loan program, ch 80 IAB 6/30/10 ARC 8919B (See also ARC 8920B)	Iowa Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	July 20, 2010 10 to 11:30 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 23.1, 24.1, 28.1 IAB 6/16/10 ARC 8845B	Air Quality Bureau Office 7900 Hickman Rd. Windsor Heights, Iowa	July 19, 2010 1 p.m.
---	--	-------------------------

INSURANCE DIVISION[191]

Retrospective payment of claims for registered nurse practitioners and physician assistants, 70.10 IAB 6/30/10 ARC 8884B	330 Maple St. Des Moines, Iowa	July 29, 2010 10 a.m.
--	-----------------------------------	--------------------------

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Covered wages; refunds; benefits, 4.8, 6.5(3), 9.3, 11.5, 13.2(9), 14.5, 14.16, 16.2 IAB 7/14/10 ARC 8928B (See also ARC 8929B herein)	7401 Register Dr. Des Moines, Iowa	August 3, 2010 9 a.m.
--	---------------------------------------	--------------------------

MEDICINE BOARD[653]

Standards of practice—medical directors at medical spas; discipline, 13.8, 23.1 IAB 6/30/10 ARC 8925B	Suite C 400 SW 8th St. Des Moines, Iowa	July 20, 2010 11 a.m.
---	---	--------------------------

NATURAL RESOURCE COMMISSION[571]

Fishing regulations, 81.2 IAB 6/30/10 ARC 8881B	Swiss Valley Nature Center 13606 Swiss Valley Rd. Peosta, Iowa	July 20, 2010 7 p.m.
Fishing tournaments, 88.1 IAB 6/30/10 ARC 8882B	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	July 20, 2010 1 p.m.
Priority watersheds, 113.2, 113.5 IAB 6/30/10 ARC 8883B	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	July 20, 2010 2 p.m.

NURSING BOARD[655]

Intravenous therapy scope of
practice for LPNs, 6.1, 6.3, 6.5
IAB 7/14/10 **ARC 8930B**

Des Moines West Room, Holiday Inn
1050 6th Ave.
Des Moines, Iowa

September 15, 2010
6 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Board of mortuary science,
amendments to chs 4, 100 to 102
IAB 7/14/10 **ARC 8927B**

Fifth Floor Board Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

August 3, 2010
10 to 10:30 a.m.

PUBLIC SAFETY DEPARTMENT[661]

State building code—factory-built
structures, 16.610
IAB 7/14/10 **ARC 8938B**
(See also **ARC 8937B** herein)

First Floor Conference Room 125
Public Safety Headquarters Bldg.
215 E. 7th St.
Des Moines, Iowa

August 3, 2010
10 a.m.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Description of the organization,
1.5(2)
IAB 6/30/10 **ARC 8895B**

ICN Grand Conference Room
Grimes State Office Bldg.
Des Moines, Iowa

July 21, 2010
11 a.m.

TRANSPORTATION DEPARTMENT[761]

Update of motor vehicle rules,
amendments to chs 400, 401,
405, 415, 425, 431, 450, 480
IAB 6/30/10 **ARC 8869B**

DOT Division Office
6310 SE Convenience Blvd.
Ankeny, Iowa

July 22, 2010
10 a.m.
(If requested)

UTILITIES DIVISION[199]

Disconnection of residence with
a deployed service member,
19.4, 20.4
IAB 6/16/10 **ARC 8858B**

Board Hearing Room
350 Maple St.
Des Moines, Iowa

July 27, 2010
10 a.m.

Exterior flood lighting efficiency
standards—LED and solid-state
lighting, 35.15(3), 36.8(3)
IAB 7/14/10 **ARC 8931B**

Board Hearing Room
350 Maple St.
Des Moines, Iowa

August 24, 2010
10 a.m.

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]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 IOWA FINANCE AUTHORITY[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 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 8926B

CORRECTIONS DEPARTMENT[201]

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 904.108, the Iowa Department of Corrections hereby gives Notice of Intended Action to amend Chapter 20, “Institutions Administration,” Chapter 44, “Work Release,” Chapter 45, “Parole,” and Chapter 47, “OWI Programs,” Iowa Administrative Code.

The purpose of the proposed amendments to Chapter 20 is to provide offenders and their families and friends the option of communicating by electronic means. The purpose of the proposed amendments to Chapters 44, 45, and 47 is to ensure that the Judicial District Department of Correctional Services administrative rules are consistent with policies/procedures governing medical care to work releasees, parolees, and OWI offenders. The proposed amendments include nonsubstantive, technical updates related to offender time loss appeals to conform to the Iowa Code, notification to the Parole Board, and fees for OWI offenders.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 3, 2010. Such written material should be sent to the Department of Corrections, Legal and Policy Division, 510 E. 12th Street, Des Moines, Iowa 50319.

There will be a public hearing on August 3, 2010, from 11 a.m. to 1 p.m. in the First Floor Conference Room at the Iowa Department of Corrections, Jessie M. Parker State Office Building, 510 E. 12th Street, Des Moines, Iowa, at which time persons may present their views 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 matter of the amendments.

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

These amendments are intended to implement Iowa Code section 904.108.

The following amendments are proposed.

ITEM 1. Amend rule 201—20.4(904), introductory paragraph, as follows:

201—20.4(904) Mail. Constructive, unlimited correspondence with family, friends, and community sources will be encouraged and facilitated. Offenders have the responsibility in the use of correspondence to be truthful and honest. Institutions have the responsibility to maintain a safe, secure, and orderly procedure for offender use of the mail. Mail is additionally governed by the provisions of department of corrections policy OP-MTV-01.

ITEM 2. Adopt the following **new** paragraph **20.4(3)“x”**:

- x. O-mail. “O-mail” is electronic mail that can be sent to and from offenders and the public.
 - (1) The offender’s family and friends shall be responsible for registering on the corrlinks Internet site to enroll in the O-mail system: <http://www.corrlinks.com>.
 - (2) Each O-mail message is limited to two pages, and attachments are not allowed.
 - (3) There is a cost for sending an O-mail message, which shall be the responsibility of the sender.
 - (4) Incoming and outgoing O-mail shall meet the same standards as referenced in this rule for offender mail.
 - (5) Staff may review the contents of O-mail messages.

CORRECTIONS DEPARTMENT[201](cont'd)

ITEM 3. Amend paragraph **44.1(2)“c”** as follows:

c. The district departments shall have written policies which establish facility rules, possible sanctions and appeal procedures for all residents. ~~The final appeal step on any reports resulting in the loss of time or removal from the honor roll shall be the deputy director of the department of corrections or designee.~~

ITEM 4. Amend subrule 45.1(6) as follows:

45.1(6) *Hospitalization Medical services.* ~~The director of the department of corrections may send indigent parolees to the university hospitals at the University of Iowa for needed medical services without the court order required in other cases pursuant to Iowa Code section 255.29. The district department shall have written policies and procedures which govern the medical care of parolees in case of emergencies, sudden illnesses, accidents, or death.~~

ITEM 5. Amend subrule 45.4(2) as follows:

45.4(2) *Detention.* A parole officer, with supervisory approval, may arrest a parolee when there is probable cause to believe the parolee has violated conditions of parole which may result in parole revocation. The arresting agent may request temporary detention of the parolee in a local detention facility. In such cases, all actions of the agent shall be in accordance with Iowa Code sections 908.1 and 908.2. ~~A parole officer may also proceed without arrest by filing a complaint with the Iowa board of parole pursuant to Iowa Code section 908.8. When a parolee is arrested the agent shall immediately notify the board of parole.~~

~~A complaint, which is a preliminary parole violation information, shall be filed with the magistrate at the time of the initial appearance.~~

ITEM 6. Amend subrule 47.3(4) as follows:

47.3(4) The district department shall maintain a schedule of daily fees to be assessed to offenders. ~~The fee schedules shall be based on a minimum of \$10 per day; however, if in the opinion of the facility director or designee the offender is unable to pay the full amount, a reduced fee will be set and the balance of the fee up to \$10 shall accumulate and be assessed at such time as the offender is able to pay. If the offender is directly paying the substance abuse treatment provider, the fee schedule shall be appropriately reduced but not be less than \$5 per day.~~

ITEM 7. Amend subrule 47.4(10) as follows:

47.4(10) ~~The district department shall comply with established policies and develop procedures to ensure that all nonemergency medical treatment required by indigent offenders is obtained at the University of Iowa Hospitals. The district department shall have written policies and procedures which govern the medical care of OWI offenders in case of emergencies, sudden illnesses, accidents, or death.~~

ARC 8928B**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]****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 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 4, “Employers,” Chapter 6, “Covered Wages,” Chapter 9, “Refunds,” Chapter 11, “Application for, Modification of, and Termination of Benefits,” Chapter 13, “Disability for Regular and Special Service Members,” Chapter 14, “Death Benefits and Beneficiaries,” and Chapter 16, “Domestic Relations Orders and Other Assignments,” Iowa Administrative Code.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

The proposed amendments implement certain provisions of 2010 Iowa Acts, House File 2518, which require immediate amendment or adoption of rules, and include: adding provisions for covered wage restorations for employees who bump into lower-paying jobs to avoid layoff, extending the sunset provision for bona fide retirement for licensed health care professionals, adding a provision to clarify presumption for disease contracted by a special service member while on duty, and clarifying that noncovered employment for National Guard members called to active state duty is not covered employment. Additional amendments implementing provisions of 2010 Iowa Acts, House File 2518, which will have deferred effective dates, will be proposed at a later date.

The proposed amendments also accomplish the following:

- Eliminate a provision found at 495—subrule 6.5(8) that is already covered under the IPERS covered wage statute, Iowa Code section 97B.1A(26)(a)(1)(b), and other cafeteria plan rules that govern IPERS coverage for certain cafeteria plan payments referred to in the subrule as bounties (cash paid to employees in lieu of any coverage or family coverage under an employer's health care plan);
- Eliminate provisions regarding refunds to retired reemployed members' contributions that have been superseded by more beneficial statutory changes;
- Streamline the process for distribution of death benefits to multiple beneficiaries;
- Clarify calculations of death benefits under the required minimum distribution requirements; and
- Clarify that certain service purchases may or may not increase the numerator and denominator of the marital portion as used to determine the service factor under a domestic relations order.

There are no waiver provisions included in the proposed amendments.

Any person may make written suggestions or comments on the proposed amendments on or before August 3, 2010. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045 or by E-mail to adminrule@ipers.org.

A public hearing will be held on August 3, 2010, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be required to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These amendments were prepared after consultation with IPERS administration, the Benefits Advisory Committee, and the Investment, Legal, Operations and Benefits Divisions.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8929B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15 and 2010 Iowa Acts, House File 2518, sections 33, 36 and 41.

ARC 8930B**NURSING BOARD[655]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 6, “Nursing Practice For Registered Nurses/Licensed Practical Nurses,” Iowa Administrative Code.

The proposed amendments update and revise the current limited and expanded intravenous therapy scope of practice for the licensed practical nurse (LPN).

NURSING BOARD[655](cont'd)

Any interested person may make written comments or suggestions on or before September 15, 2010. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

There will be a public hearing on September 15, 2010, at 6 p.m. in the Des Moines West Room, Holiday Inn, 1050 6th Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapter 152.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **655—6.1(152)**:

“Expanded intravenous therapy certification course” means the Iowa board of nursing course required for licensed practical nurses to perform procedures related to the expanded scope of practice of intravenous therapy.

“Midline catheter” means a long peripheral catheter in which the distal end resides in the mid to upper arm, but the tip terminates no further than the axilla.

“Peripheral intravenous catheter” means a catheter 3 inches or less in length.

“Peripherally inserted central catheter” means a soft flexible central venous catheter inserted into an extremity and advanced until the tip is positioned in the vena cava.

ITEM 2. Adopt the following **new** implementation sentence in rule **655—6.1(152)**:

This rule is intended to implement Iowa Code chapter 152.

ITEM 3. Rescind subrule 6.3(4) and adopt the following **new** subrule in lieu thereof:

6.3(4) A licensed practical nurse, under the supervision of a registered nurse, may engage in the limited scope of practice of intravenous therapy. The licensed practical nurse shall be educated and have documentation of competency in the limited scope of practice of intravenous therapy. Limited scope of practice of intravenous therapy may include:

a. Addition of intravenous solutions without adding medications to established peripheral intravenous sites.

b. Regulation of the rate of nonmedicated intravenous solutions to established peripheral intravenous sites.

c. Administration of maintenance doses of analgesics via the patient-controlled analgesic pump set at a lock-out interval to established peripheral intravenous sites.

d. Discontinuation of peripheral intravenous therapy.

e. Administration of a prefilled heparin or saline syringe flush, prepackaged by the manufacturer or premixed and labeled by a registered pharmacist or registered nurse, to an established peripheral lock, in a licensed hospital, a licensed skilled nursing facility or a certified end-stage renal dialysis unit.

ITEM 4. Renumber subrules **6.3(5)** to **6.3(9)** as **6.3(6)** to **6.3(10)**.

ITEM 5. Adopt the following **new** subrule 6.3(5):

6.3(5) When nursing tasks are delegated by the registered nurse to the licensed practical nurse in a certified end-stage renal dialysis unit, the facility must have a written policy that defines the practice and written verification of the education and competency of the licensed practical nurse in accordance with the facility’s written policy. Nursing tasks which may be delegated to the licensed practical nurse for the sole purpose of hemodialysis treatment include:

a. Initiation and discontinuation of the hemodialysis treatment utilizing any of the following established vascular accesses: central line catheter, arteriovenous fistula, graft.

b. Administration during hemodialysis treatment of local anesthetic prior to cannulation of the vascular access site.

c. Administration of prescribed dosages of heparin solution or saline solution utilized in the initiation and discontinuation of hemodialysis.

NURSING BOARD[655](cont'd)

d. Administration during hemodialysis treatment, via the extracorporeal circuit, of the routine intravenous medications erythropoietin, Vitamin D Analog, intravenous antibiotic solutions prepackaged by the manufacturer or premixed and labeled by a registered pharmacist or registered nurse, and iron, excluding any iron preparation that requires a test dose. The registered nurse shall administer the first dose of erythropoietin, Vitamin D Analog, antibiotics, and iron.

ITEM 6. Adopt the following **new** implementation sentence in rule **655—6.3(152)**:

This rule is intended to implement Iowa Code chapters 152 and 152E.

ITEM 7. Rescind subrules **6.5(3)** to **6.5(5)**.

ITEM 8. Adopt the following **new** subrules 6.5(3) to 6.5(7):

6.5(3) A licensed practical nurse shall be permitted to perform, in addition to the functions set forth in subrule 6.3(4), procedures related to the expanded scope of practice of intravenous therapy upon completion of the board-approved expanded intravenous therapy certification course.

6.5(4) To be eligible to enroll in the course, the licensed practical nurse shall:

a. Hold a current unrestricted Iowa license or an unrestricted license in another state recognized for licensure in this state pursuant to the nurse licensure compact contained in Iowa Code chapter 152E.

b. Have documentation of 1040 hours of practice as a licensed practical nurse.

c. Be practicing in a licensed hospital, a licensed skilled nursing facility or a certified end-stage renal dialysis unit whose policies allow the licensed practical nurse to perform procedures related to the expanded scope of practice of intravenous therapy.

6.5(5) The course must be offered by an approved Iowa board of nursing provider of nursing continuing education. Documentation of course completion shall be maintained by the licensed practical nurse and employer.

6.5(6) The board-approved course shall incorporate the responsibilities of the licensed practical nurse when providing intravenous therapy via a peripheral intravenous catheter, a midline catheter and a peripherally inserted central catheter (PICC) to children, adults and elderly adults. When providing intravenous therapy, the LPN shall be under the supervision of a registered nurse. Procedures which may be performed if delegated by the registered nurse are as follows:

a. Initiation of a peripheral intravenous catheter for continuous or intermittent therapy using a catheter not to exceed three inches in length.

b. Administration via a peripheral intravenous catheter, midline catheter, and a PICC line of premixed electrolyte solutions or premixed vitamin solutions. The first dose shall be administered by the registered nurse. The solutions must be prepackaged by the manufacturer or premixed and labeled by a registered pharmacist or registered nurse.

c. Administration via a peripheral intravenous catheter, midline catheter, and a PICC line of solutions containing potassium chloride that do not exceed 40 meq per liter and that do not exceed a dose of 10 meq per hour. The first dose shall be administered by the registered nurse. The solutions must be prepackaged by the manufacturer or premixed and labeled by a registered pharmacist or registered nurse.

d. Administration via a peripheral intravenous catheter, midline catheter, and a PICC line of intravenous antibiotic solutions prepackaged by the manufacturer or premixed and labeled by a registered pharmacist or registered nurse. The first dose shall be administered by the registered nurse.

e. Maintenance of the patency of a peripheral intravenous catheter, midline catheter, and a PICC line with a prefilled heparin or saline syringe flush, prepackaged by the manufacturer or premixed by a registered pharmacist or registered nurse.

f. Changing the dressing of a midline catheter and a PICC line per sterile technique.

6.5(7) Procedures which shall not be delegated by the registered nurse to the licensed practical nurse are as follows:

a. Initiation and discontinuation of a midline catheter or a peripherally inserted central catheter (PICC).

b. Administration of medication by bolus or IV push except maintenance doses of analgesics via a patient-controlled analgesia pump set at a lock-out interval.

NURSING BOARD[655](cont'd)

c. Administration of blood and blood products, vasodilators, vasopressors, oxytocics, chemotherapy, colloid therapy, total parenteral nutrition, anticoagulants, antiarrhythmics, thrombolytics, and solutions with a total osmolarity of 600 or greater.

d. Provision of intravenous therapy to a client under the age of 12 or any client weighing less than 80 pounds, with the exception of those activities authorized in the limited scope of practice found in subrule 6.3(4).

e. Provision of intravenous therapy in any other setting except a licensed hospital, a licensed skilled nursing facility and a certified end-stage renal dialysis unit, with the exception of those activities authorized in the limited scope of practice found in subrule 6.3(4).

ITEM 9. Amend rule **655—6.5(152)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapters 136C and 152, ~~and 2000 Iowa Acts, House File 2105.~~

ARC 8927B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science hereby gives Notice of Intended Action to amend Chapter 4, “Board Administrative Processes,” Chapter 100, “Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments,” Chapter 101, “Licensure of Funeral Directors, Funeral Establishments, and Cremation Establishments,” and Chapter 102, “Continuing Education for Funeral Directors,” Iowa Administrative Code.

These proposed amendments update the rules to be consistent with guidance from the State Medical Director of the Department of Public Health and from the Medical Examiner’s Office. Universal precautions must always be followed by funeral directors when working with human remains even though there is a very low risk of contracting an infectious disease from human remains. Thus, amendments have been proposed to remove references to communicable disease. The proposed amendments reorganize the internship requirements and establish rules for instances when there is an interruption in the 12-month internship program. An amendment to the continuing education chapter is necessary to be consistent with legislative changes in 2010 Iowa Acts, Senate File 2325, that revises the automatic exemptions for funeral directors’ continuing education requirements in Iowa Code chapter 272C effective July 1, 2010. All other changes are technical in nature.

Interested parties were provided an opportunity to comment on the proposed amendments prior to publication of this Notice. The proposed amendments were prenoticed on May 10, 2010, and distributed to the Iowa Funeral Directors Association (IFDA) members and to other individuals who have requested to be notified of revisions to the Board’s administrative rules. Comments were due on the prenoticed amendments by May 27, 2010. The Board received no comments on the proposed amendments.

Any interested person may make written comments on the proposed amendments no later than August 3, 2010, addressed to Sharon Dozier, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail sdozier@idph.state.ia.us.

A public hearing will be held on August 3, 2010, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These amendments are intended to implement Iowa Code chapters 21, 147, 142D, 144C, 156 and 272C and 2010 Iowa Acts, Senate File 2325, section 1.

The following amendments are proposed.

ITEM 1. Rescind rule 645—4.12(272C) and adopt the following new rule in lieu thereof:

645—4.12(272C,83GA,SF2325) Automatic exemption.

4.12(1) A licensee, except a funeral director, shall be exempt from the continuing education requirement during the license biennium when the licensee:

- a. Served honorably on active duty in the military service; or
- b. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or
- c. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
- d. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

4.12(2) Automatic exemptions for a funeral director are identified in rule 645—102.5(83GA,SF2325).

ITEM 2. Rescind the definition of "Communicable disease" in rule **645—100.1(156)**.

ITEM 3. Adopt the following new subrule 100.2(5):

100.2(5) Withholding human remains. A funeral director shall not withhold human remains based solely on nonpayment of fees.

ITEM 4. Rescind paragraphs **100.4(1)"c"** and **"d."**

ITEM 5. Amend subrule 100.4(2) as follows:

100.4(2) After the funeral director has assumed custody of the human remains, ~~provided that death was not caused by a reportable communicable disease,~~ the funeral director may delegate the task of transferring the dead human remains to an unlicensed employee or agent. Prior to transfer, the funeral director shall topically disinfect the body, secure all body orifices to retain all secretions, place the human remains in a leakproof container for transfer that will control odor and prevent the leakage of body fluids, and issue a burial transit permit. ~~If the decedent died of a reportable communicable disease, transfer shall only be made by a funeral director.~~

ITEM 6. Adopt the following new subrules 100.4(3) and 100.4(4):

100.4(3) A funeral director may delegate the transportation of unembalmed human remains to an unlicensed employee or agent of the funeral home without first assuming custody and without topically disinfecting or securing body orifices if all of the following are true:

- a. The transportation is to or from the medical examiner's office, or otherwise at the direction of the medical examiner;
- b. The remains are placed in a leakproof container by medical examiner personnel; and
- c. The employee or agent is issued a burial transit permit or other evidence of authorization.

100.4(4) An unlicensed employee or agent referred to in subrules 100.4(2) and 100.4(3) shall have completed the annual OSHA training related to blood-borne pathogens.

ITEM 7. Amend paragraph **100.6(1)"a"** as follows:

a. Permission for embalming. The funeral director shall obtain authorization for embalming from an authorized person. ~~If permission to embalm cannot be obtained after a diligent attempt to contact from the authorized person, the funeral director may proceed with the embalming without the permission of the authorized person if necessary to comply with subrule 100.6(3).~~

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- ITEM 8. Rescind paragraph **100.6(1)“b.”**
- ITEM 9. Reletter paragraphs **100.6(1)“c”** to **“i”** as **100.6(1)“b”** to **“h.”**
- ITEM 10. Rescind subrule **100.6(2).**
- ITEM 11. Renumber subrules **100.6(3)** and **100.6(4)** as **100.6(2)** and **100.6(3).**
- ITEM 12. Amend renumbered subrule 100.6(3) as follows:
100.6(3) Care of the unembalmed human remains.
- a. ~~When death is not attributed to a reportable communicable disease, embalming~~ Embalming may be omitted provided that interment or cremation is performed within 48 72 hours after death or within 24 hours of taking custody if the human remains were previously in the custody of others, whichever is longer.
- b. ~~When death is attributed to a reportable communicable disease, embalming may be omitted provided that cremation is performed within 48 hours after death. In such cases, the human remains shall be immediately topically disinfected, placed in a container that will control odor and prevent the leakage of body fluids and shall only be transported to the crematory by the funeral director or intern. If refrigeration is utilized, embalming or final disposition may be extended up to 72 hours longer than the maximum period provided in paragraph 100.6(3)“a.” The body must be kept between 38 and 42 degrees Fahrenheit.~~
- c. If viewing of the unembalmed human remains is requested, the human remains shall be topically disinfected and all body orifices shall be packed or otherwise secured with material which will absorb and retain all secretions. ~~No public viewing will be allowed of an unembalmed decedent who has died of a reportable communicable disease, but private viewing is permissible at the discretion of the funeral director.~~
- ITEM 13. Amend paragraph **100.10(5)“a”** as follows:
- a. ~~A crematory shall cremate within 48 hours of death or human remains within 24 hours of taking custody if the human remains were previously in the custody of others, whichever is longer of issuance of the delivery receipt as defined in subrule 100.10(1).~~
- ITEM 14. Amend paragraph **101.3(1)“c”** as follows:
- c. ~~Prior to July 1, 2007, an examination covering the Iowa law and rules for mortuary science with a score of at least 75 percent, or a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed. Beginning July 1, 2007, a A college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.~~
- ITEM 15. Amend paragraph **101.3(2)“d”** as follows:
- d. ~~Prior to July 1, 2007, successfully pass an examination covering the Iowa law and rules for mortuary science with a score of at least 75 percent or a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed. Beginning July 1, 2007, successfully~~ Successfully complete a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.
- ITEM 16. Amend subrule 101.4(2) as follows:
101.4(2) ~~Prior to being registered as an intern in Iowa and prior to July 1, 2007, an applicant shall be required to pass an examination covering the Iowa law and rules for mortuary science or a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed. A 75 percent score shall be required for passing this~~

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~examination. Beginning July 1, 2007, prior~~ Prior to being registered as an intern in Iowa, an applicant shall successfully complete a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.

ITEM 17. Rescind subrule 101.5(1) and adopt the following **new** subrule in lieu thereof:

101.5(1) Internship.

a. The intern must serve a minimum of one year of internship under the direct supervision of an Iowa board-certified preceptor. The beginning and ending dates of the internship shall be indicated on the internship certificate. The intern shall engage in the practice of mortuary science only during the time indicated on the internship certificate.

b. The intern shall, during the internship, be a full-time employee with the funeral establishment at the site of internship except as provided in paragraph 101.5(2) "j."

c. No licensed funeral director shall permit any person in the funeral director's employ or under the funeral director's supervision or control to serve an internship in funeral directing unless that person has a certificate of registration as a registered intern from the department of public health. The registration shall be posted in a conspicuous place in the intern's primary place of practice.

d. No licensed funeral director or licensed funeral establishment shall have more than one intern funeral director for the first 100 human remains embalmed or funerals conducted per year, and with a maximum of two interns per funeral establishment.

e. Registered interns shall not advertise or hold themselves out as funeral directors or use the degree F.D. or any other title or abbreviation indicating that the intern is a funeral director.

f. The intern shall, during the internship, embalm not fewer than 25 human remains and direct or assist in the direction of not fewer than 25 funerals under the direct supervision of the certified preceptor and shall submit reports on forms furnished by the department of public health. Work on the first 5 embalming cases and funeral cases must be completed in the physical presence of the preceptor. The first 12 embalming cases and the first 12 funeral case reports must be completed and submitted by the completion of the sixth month of the internship.

g. Before being eligible for licensure, the intern must have filed the 25 completed embalming and funeral directing case reports and a 6-month and a 12-month evaluation form with the department of public health.

h. When, for any valid reason, the board determines that the education a registered intern is receiving under the supervision of the present preceptor might be detrimental to the intern or the profession at large, the intern may be required to serve the remainder of the internship under the supervision of a licensed funeral director who is approved by the board.

i. The length of an internship may be extended if the board determines that the intern requires additional time or supervision in order to meet the minimum proficiency in the practice of mortuary science.

j. The board views a one-year internship completed in a consecutive 12-month period as the best training option. If an internship is interrupted, the internship must be completed within 24 months of the date it started in order to be readily accepted by the board. Internships that are not completed within 24 months shall be preapproved by the board on such terms as the board deems reasonable under the circumstances. The board may require any or all of the following:

(1) Completion of a college course or continuing education course covering mortuary science laws and rules;

(2) Additional case reports;

(3) Extension of an internship up to an additional 12 months depending on such factors as the number of months completed during the internship, length of time that has lapsed since the intern was actively involved in the internship program, and the experience attained by the intern.

k. Application for change of preceptor or any other alteration must be made in writing and approval granted by the board before the status of the intern is altered.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

l. The intern shall complete on a form provided by the board a confidential evaluation of the preceptorship program at the end of the internship. This form shall be submitted before the funeral director's license is issued to the intern.

m. The intern must be approved and licensed following a successful internship before the intern may practice mortuary science.

ITEM 18. Amend paragraphs **101.5(2)“a”** to **“c”** as follows:

a. ~~A preceptor must have a valid preceptor certificate. A preceptor must have completed a training course within five years prior to accepting an intern. If the certification is older than five years, the funeral director must recertify as specified by the board. This training course shall cover Iowa law and rule content areas, including but not limited to Iowa law and rules governing licensure and the practice of mortuary science and human resource issues. The training course may be counted toward the continuing education hours required for the licensure biennium in which the training course was completed.~~

b. Any duly Iowa-licensed funeral director who has been practicing for a minimum of five years and who has not had any formal disciplinary action within the past five years with the board of mortuary science and has completed a ~~board-approved~~ preceptor training course ~~detailed in 645—paragraph 101.5(2)“a”~~ will be eligible to be a preceptor. ~~This training course is to cover mortuary science Iowa law and rule content areas including but not limited to Iowa law and rules governing licensure and the practice of mortuary science and human resource issues. The training course may be counted toward the continuing education hours required for that licensing period.~~

c. ~~Is~~ The preceptor shall be affiliated with a funeral establishment that has not had any formal disciplinary action within the past five years.

ITEM 19. Amend subrule 101.8(6) as follows:

101.8(6) ~~Prior to July 1, 2007, successfully passes an examination covering the Iowa law and rules for mortuary science with a score of at least 75 percent or a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed. Beginning July 1, 2007, an applicant must complete~~ Complete a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed;

ITEM 20. Amend subrule 101.10(2) as follows:

101.10(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The licensee will be required to complete a minimum of 24 hours of continuing education per biennium for each subsequent license renewal. ~~Effective July 1, 2007, with 2 of the 24 hours of continuing education shall be in covering current Iowa law and rules; as identified in 645—paragraph 102.3(2)“f.”~~

ITEM 21. Amend subparagraph **101.18(3)“b”(3)** as follows:

(3) ~~Prior to July 1, 2007, verification of successful passage of an examination covering the Iowa law and rules for mortuary science with a score of at least 75 percent or a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed. Beginning July 1, 2007, verification~~ Verification of completion of a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.

ITEM 22. Adopt the following new rule 645—102.5(83GA,SF2325):

645—102.5(83GA,SF2325) Automatic exemption. A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

1. Served honorably on active duty in the military service; or
2. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
3. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ARC 8938B**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 section 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 16, “State Building Code—Factory-Built Structures,” Iowa Administrative Code.

Iowa Code section 103A.9 establishes the authority of the Building Code Commissioner, with the approval of the Building Code Advisory Council, to establish standards for factory-built structures, which include manufactured homes and modular buildings of all types. Specific authority is provided to the Building Code Commissioner to establish an “insignia of approval” and to require that modular buildings bear the established insignia. The proposed amendments provide for code compliance certificates and for installation certificates for modular structures.

The rules in Chapter 16 have been in place for many years, and the requirements and procedures prescribed are complex. The proposed amendments simplify those requirements, based upon a review necessitated by a reduction in staff available to administer programs within the Building Code Bureau. The Commissioner expects no loss of accountability for ensuring code compliance or proper installation of modular buildings to result from these changes.

Any interested person may submit comments on these proposed amendments by 4:30 p.m. on August 3, 2010. Comments should be submitted by mail to the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319; by fax to (515)725-6195; or by E-mail to admrule@dps.state.ia.us.

There will be a public hearing to accept comments on these proposed amendments at 10 a.m. on August 3, 2010, in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines. Persons wishing to speak at the public hearing should notify the Agency Rules Administrator by telephone at (515)725-6185 or E-mail at admrule@dps.state.ia.us.

Provisions of the State Building Code are not subject to waiver but are subject to the provisions of Iowa Code section 103A.13, providing for “alternate materials and methods of construction.”

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8937B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 103A.9.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

USURY(cont'd)

July 1, 2009 — July 31, 2009	5.25%
August 1, 2009 — August 31, 2009	5.75%
September 1, 2009 — September 30, 2009	5.50%
October 1, 2009 — October 31, 2009	5.50%
November 1, 2009 — November 30, 2009	5.50%
December 1, 2009 — December 31, 2009	5.50%
January 1, 2010 — January 31, 2010	5.50%
February 1, 2010 — February 28, 2010	5.50%
March 1, 2010 — March 31, 2010	5.75%
April 1, 2010 — April 30, 2010	5.75%
May 1, 2010 — May 31, 2010	5.75%
June 1, 2010 — June 30, 2010	5.75%
July 1, 2010 — July 31, 2010	5.50%

ARC 8931B**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code sections 17A.4, 364.23, 476.1, 476.1A, 476.1B, and 476.62, the Utilities Board (Board) gives notice that on June 22, 2010, the Board issued an order in Docket No. RMU-2010-0002, In re: Exterior Flood Lighting, “Order Commencing Rule Making.” The Board is noticing for public comment proposed amendments to 199 IAC 35.15(3) and 36.8(3). The proposed amendments reflect advances in technology that make other forms of outdoor lighting, particularly light-emitting diode (LED) or solid-state lighting, as efficient as some types of high-pressure sodium lighting, which has been used as the standard for energy-efficient exterior flood lighting.

Iowa Code section 476.62, which was enacted in 1989, provides that “[a]ll public utility-owned exterior flood lighting, including but not limited to street and security lighting, shall be replaced . . . with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the board.” In addition, Iowa Code section 364.23 provides that

[a]ll city-owned exterior flood lighting, including but not limited to street and security lighting but not including era or period lighting which has a minimum efficiency rating of fifty-eight lumens per watt and not including stadium or ball park lighting, shall be replaced, when worn-out, exclusively with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the utilities board

The Board subsequently adopted rules (199 IAC 35.15(476) and 36.8(476)) to implement the statutes and in the rules used a schedule of lumens per watt to determine efficiency. While the rules worked well when high-pressure sodium lighting set the efficiency standard, new technology has evolved where some other forms of outdoor lighting are as efficient as or more efficient than high-pressure sodium and may produce a light quality that works better in certain areas. The advancement of new technology in outdoor lighting was highlighted by the recent approval of 15 Iowa cities for American Recovery and Reinvestment Act of 2009 funding for energy-efficient projects, which include outdoor LED lighting.

UTILITIES DIVISION[199](cont'd)

LED lighting has certain benefits other than efficiency, including less maintenance and improved light quality. In the absence of current national standards, the challenge for the Board is to develop new standards in the rules that allow energy-efficient LED or other lighting to be used instead of high-pressure sodium, but not to allow use of LEDs that are less efficient than high-pressure sodium.

The proposed amendments provide that outdoor lighting must meet one of five alternative tests to be used in place of high-pressure sodium lighting. The first three tests are a simplification of the existing requirement in the rules. The current rules reference Table 26-14 in the Twelfth Edition of the Standard Handbook for Electrical Engineers. The Twelfth Edition handbook was published in 1987 and is no longer available for purchase. Table 26-14 lists the rated initial lumens for nine different high-pressure sodium bulbs. After deducting 10 percent from these values, an efficacy rating in lumens per watt can be calculated for each bulb. (As the bulb size increases, so does the number of lumens per watt.) After examining these values, the Board concluded that several lamps of similar size could be grouped together and assigned a single rating and, therefore, the proposed rules would have the same effect as the current rules. In other words, the mercury vapor and standard efficiency metal halide bulbs that do not meet the requirements of the current rules will not meet any of the first three tests in the proposed rules.

The intent of the fourth test is to ensure that the proposed rules will not produce results that are contrary to common sense. With the recent advances in lighting technology, it is impossible to quantify every factor that will lead to a more energy-efficient lighting system. Without the fourth test, well-designed and highly efficient lighting systems may be wrongly excluded if they do not meet the first three tests. However, if instead of proposing the fourth test the Board simply lowered the requirements in the first three tests, the result would be that less efficient lighting that should not be allowed would be allowed.

The fifth test is specific to LED or solid-state luminaries. The 66 lumens-per-watt value was chosen to be representative of the efficacy of a luminary using a 70 watt high-pressure sodium lamp once ballast losses and some fixture losses are factored in. The intent of the test is to allow cities and utilities that choose not to design a lighting system for a specific installation to still use the most efficient LED luminaries.

The proposed amendments also recognize that a lumens-per-watt efficacy rating may no longer be a good indicator of every lighting system's energy efficiency. Efficacy ratings for outdoor LED lighting systems are measured differently than other lighting systems and should not be directly compared to the efficacy ratings of high-pressure sodium lamps which do not account for ballast losses or fixture losses. Other factors (such as color quality, lumen maintenance, light distribution, or glare) may also affect a lighting system's performance and ultimately its energy efficiency. Unfortunately, there are no nationally adopted standards that account for all of the potential factors that impact the efficiency of exterior flood lighting.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before August 3, 2010. The statement should be filed electronically through the Board's Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on August 24, 2010, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Board at (515)281-5256 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these amendments.

UTILITIES DIVISION[199](cont'd)

These amendments are intended to implement Iowa Code sections 364.23, 476.1, 476.1A, 476.1B, and 476.62.

The following amendments are proposed.

ITEM 1. Rescind subrule 35.15(3) and adopt the following **new** subrule in lieu thereof:

35.15(3) *Efficiency standards.* Lighting other than high-pressure sodium has equivalent or better energy efficiency if one or more of the following can be established:

- a. For lamps less than 120 watts, the lumens-per-watt lamp rating is greater than 77.1, or
- b. For lamps between 120 and 500 watts, the lumens-per-watt lamp rating is greater than 96, or
- c. For lamps greater than 500 watts, the lumens-per-watt lamp rating is greater than 126, or
- d. The new lighting is replacing high-pressure sodium lighting and uses less energy per installation than the lighting it is replacing, or
- e. The new lighting consists of solid-state lighting (SSL) luminaries that have an efficacy rating equal to or greater than 66 lumens per watt according to a Department of Energy (DOE) Lighting Facts label, testing under the DOE Commercially Available LED Product Evaluation and Reporting Program (CALiPER), or any other test that follows Illuminating Engineering Society of North America LM-79-08 test procedures.

ITEM 2. Rescind subrule 36.8(3) and adopt the following **new** subrule in lieu thereof:

36.8(3) *Efficiency standards.* Lighting other than high-pressure sodium has equivalent or better energy efficiency if one or more of the following can be established:

- a. For lamps less than 120 watts, the lumens-per-watt lamp rating is greater than 77.1, or
- b. For lamps between 120 and 500 watts, the lumens-per-watt lamp rating is greater than 96, or
- c. For lamps greater than 500 watts, the lumens-per-watt lamp rating is greater than 126, or
- d. The new lighting is replacing high-pressure sodium lighting and uses less energy per installation than the lighting it is replacing, or
- e. The new lighting consists of solid-state lighting (SSL) luminaries that have an efficacy rating equal to or greater than 66 lumens per watt according to a Department of Energy (DOE) Lighting Facts label, testing under the DOE Commercially Available LED Product Evaluation and Reporting Program (CALiPER), or any other test that follows Illuminating Engineering Society of North America LM-79-08 test procedures.

ARC 8939B

AGING, DEPARTMENT ON[17]

Adopted and Filed Emergency After Notice

Pursuant to the authority of 2010 Iowa Acts, Senate File 2263, the Department on Aging amends Chapter 8, “Long-Term Care Resident’s Advocate/Ombudsman,” Iowa Administrative Code.

These amendments update the chapter’s purpose; remove unnecessary definitions and add new definitions; remove rules on duties for the long-term care resident’s advocate/ombudsman, access requirements, and department responsibilities for confidentiality, complaint referral, and the reporting system that are now covered in 2010 Iowa Acts, Senate File 2263, section 7, or in federal law; and establish procedures for notice and appeal of penalties imposed for interference with the official duties of a long-term care resident’s advocate/ombudsman.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on May 19, 2010, as **ARC 8772B**. The Department received comments on the Notice of Intended Action from three persons.

In response to these comments, the Department made the following changes to the amendments as published under Notice of Intended Action:

- Clarified in rule 17—8.3(231) that a “trained volunteer” is a person certified as a “volunteer long-term care ombudsman” under rule 17—8.7(231).
- Revised rule 17—8.4(231) to clarify that the Director, in consultation with the state long-term care resident’s advocate/ombudsman, may impose a civil penalty.
- Added in rule 17—8.4(231) a sentence stating that if the Director imposes a penalty for a violation, under this rule, no other state agency shall impose a penalty for the same interference violation. This change reflects statutory language in 2010 Iowa Acts, Senate File 2263, section 7(7a).

The Commission on Aging adopted these amendments on June 23, 2010.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived to confer a public benefit by reflecting the requirements set forth in 2010 Iowa Acts, Senate File 2263, to ensure that an appeals process be in place at the same time as the effective date of the statute, which permits a fine to be assessed for interference with the official duties of a long-term care resident’s advocate/ombudsman.

These amendments are intended to implement 2010 Iowa Acts, Senate File 2263.

These amendments became effective on July 1, 2010.

The following amendments are adopted.

ITEM 1. Rescind rule 17—8.1(231) and adopt the following **new** rule in lieu thereof:

17—8.1(231) Purpose. This chapter establishes procedures for notice and appeal of penalties imposed for interference with the official duties of a long-term care resident’s advocate/ombudsman, which are established in 2010 Iowa Acts, Senate File 2263, section 7, and in accordance with Section 712 of the federal Older Americans Act, as codified at 42 U.S.C. Section 3058g. This chapter also establishes criteria for serving under the volunteer long-term care ombudsman program. The resident’s advocates/ombudsmen investigate complaints related to the actions or inactions of long-term care providers that may adversely affect the health, safety, welfare, or rights of residents and tenants who reside in long-term care facilities, assisted living programs, and elder group homes.

ITEM 2. Rescind rule 17—8.2(231) and adopt the following **new** rule in lieu thereof:

17—8.2(231) Definitions.

“*Access*” means the term defined in 2010 Iowa Acts, Senate File 2263, section 7.

“*Assisted living program*” means a program defined in Iowa Code section 231C.2 and certified under Iowa Code chapter 231C.

“*Civil penalty*” means a civil money penalty not to exceed the amount authorized under 2010 Iowa Acts, Senate File 2263, section 7.

AGING, DEPARTMENT ON[17](cont'd)

“Department” means the Iowa department on aging.

“Director” means the director of the department on aging.

“Elder group home” means a home defined in Iowa Code section 231B.1 and certified under Iowa Code chapter 231B.

“Long-term care facility” means a long-term care unit of a hospital or a facility licensed under Iowa Code section 135C.1 whether the facility is public or private.

“Long-term care resident’s advocate/ombudsman” means the individual employed to carry out the duties of 2010 Iowa Acts, Senate File 2263, section 7.

“Office of the state long-term care resident’s advocate” means the office established in 2010 Iowa Acts, Senate File 2263, section 7.

“Official duties” means those duties specified in 2010 Iowa Acts, Senate File 2263, section 7, and in the federal Older Americans Act.

“Volunteer long-term care ombudsman” means a volunteer who has successfully completed all requirements and received certification from a long-term care resident’s advocate/ombudsman.

ITEM 3. Rescind rule 17—8.3(231) and adopt the following **new** rule in lieu thereof:

17—8.3(231) Interference. A local long-term care resident’s advocate/ombudsman or trained volunteer long-term care ombudsman certified under rule 17—8.7(231) who is denied access to a resident or tenant in a long-term care facility, assisted living program, or elder group home, or to medical and personal records while in the course of conducting official duties or whose work is interfered with during the course of an investigation shall report such denial or interference to the office of the state long-term care resident’s advocate who will report the interference to the director of the department on aging.

ITEM 4. Rescind rule 17—8.4(231) and adopt the following **new** rule in lieu thereof:

17—8.4(231) Monetary civil penalties—basis. The director, in consultation with the state long-term care resident’s advocate/ombudsman, may impose a monetary civil penalty of \$1,500 on an officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the duties of the state or a local long-term care resident’s advocate/ombudsman. If the director imposes a penalty for a violation under this rule, no other state agency shall impose a penalty for the same interference violation.

ITEM 5. Rescind rule 17—8.5(231) and adopt the following **new** rule in lieu thereof:

17—8.5(231) Monetary civil penalties—notice of penalty. The department on aging shall notify the officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home in writing by certified mail of the intent to impose a civil penalty. The notice shall include, at a minimum, the following information:

1. The nature of the interference and the date the action occurred.
2. The statutory basis for the penalty.
3. The amount of the penalty.
4. The date the penalty is due.
5. Instructions for responding to the notice, including information on the individual’s right to appeal.

ITEM 6. Renumber rule 17—8.6(231) as 17—8.7(231).

ITEM 7. Adopt the following **new** rule 17—8.6(231):

17—8.6(231) Monetary civil penalties—appeals. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who is assessed a monetary civil penalty for interference with the official duties of a long-term care resident’s advocate/ombudsman may appeal the penalty by informing the department of the intent to appeal in writing within ten days after receiving a notice of penalty. Appeals shall follow the procedures set forth in 17—Chapter 13.

AGING, DEPARTMENT ON[17](cont'd)

ITEM 8. Amend **17—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement ~~Iowa Code chapter 231~~ 2010 Iowa Acts, Senate File 2263, section 7.

[Filed Emergency After Notice 6/23/10, effective 7/1/10]

[Published 7/14/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/14/10.

ARC 8929B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby amends Chapter 4, "Employers," Chapter 6, "Covered Wages," Chapter 9, "Refunds," Chapter 11, "Application for, Modification of, and Termination of Benefits," Chapter 13, "Disability for Regular and Special Service Members," Chapter 14, "Death Benefits and Beneficiaries," and Chapter 16, "Domestic Relations Orders and Other Assignments," Iowa Administrative Code.

The amendments implement certain provisions of 2010 Iowa Acts, House File 2518, which require immediate amendment or adoption of rules, and include: adding provisions for covered wage restorations for employees who bump into lower-paying jobs to avoid layoff, extending the sunset provision for bona fide retirement for licensed health care professionals, adding a provision to clarify presumption for disease contracted by a special service member while on duty, and clarifying that noncovered employment for National Guard members called to active state duty is not covered employment. Additional amendments implementing provisions of 2010 Iowa Acts, House File 2518, which will have deferred effective dates, will be proposed at a later date.

The amendments also accomplish the following:

- Eliminate a provision found at 495—subrule 6.5(8) that is already covered under the IPERS covered wage statute, Iowa Code section 97B.1A(26)(a)(1)(b), and other cafeteria plan rules that govern IPERS coverage for certain cafeteria plan payments referred to in the subrule as bounties (cash paid to employees in lieu of any coverage or family coverage under an employer's health care plan);
- Eliminate provisions regarding refunds to retired reemployed members' contributions that have been superseded by more beneficial statutory changes;
 - Streamline the process for distribution of death benefits to multiple beneficiaries;
 - Clarify calculations of death benefits under the required minimum distribution requirements; and
 - Clarify that certain service purchases may or may not increase the numerator and denominator of the marital portion as used to determine the service factor under a domestic relations order.

In compliance with Iowa Code section 17A.4(3), IPERS finds that notice and public participation prior to implementation of these amendments are impracticable, unnecessary, and contrary to the public interest and that these amendments should be implemented immediately because these amendments are beneficial to members and necessary to the current and ongoing administration of the system.

IPERS also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on June 21, 2010, because the amendments confer benefits or are necessary to implement the system's governing statutes, or both.

Notice of Intended Action regarding these amendments is published herein as **ARC 8928B** to give interested persons notice of the changes and an opportunity to comment.

These amendments were prepared after consultation with IPERS administration, the Benefits Advisory Committee, and the Investment, Legal, Operations, and Benefits Divisions.

These amendments are not subject to requests for waivers; however, these amendments are subject to the normal IPERS appeal process.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15 and 2010 Iowa Acts, House File 2518, sections 33, 36 and 41.

IPERS adopted these amendments on June 21, 2010.

These amendments became effective on June 21, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 495—4.8(97B), introductory paragraph, as follows:

495—4.8(97B) Additional employer contributions from employer-mandated reduction in hours or by the exercise of bumping rights to avoid a layoff. This Effective January 1, 2009, this rule applies only to the restoration of covered wages reduced by an employer-mandated reduction in hours (EMRH) or the restoration of covered wages reduced by the exercise of bumping rights to avoid a layoff. It does not apply to reductions in base wages, reduced overtime wages, reduced wages due to position changes, permanent layoffs or other termination of employment situations. EMRH references in this rule shall apply both to situations involving the loss of covered wages due to employer-mandated reductions in hours and to the loss of covered wages due to the exercise of bumping rights to avoid a layoff.

ITEM 2. Amend subrule 4.8(1) as follows:

4.8(1) A member may restore the member's three-year average covered wage to the amount that it would have been but for an EMRH by completing the IPERS EMRH application form and related payroll deduction authorization and by filing the application and payroll deduction authorization forms with the employer. By so doing, the member agrees to pay the employee and employer contributions for all EMRH wages retroactive to reduced work hours and bumping reductions between January 1, 2009, and all future EMRH wages through June 30, 2010 2011.

ITEM 3. Amend subrule 4.8(9) as follows:

4.8(9) This rule applies to reductions in wages caused by an EMRH through June 30, 2010 2011. An employer's collection of contributions from such wages shall terminate as of midnight, July 31, 2010 2011. All completed EMRH forms and contributions collected under this rule must be forwarded to IPERS by a covered employer no later than August 15, 2010 2011.

ITEM 4. Amend **495—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 97B.4, 97B.9, 97B.14, 97B.14A, 97B.38, 97B.49A to 97B.49I, 97B.65 and 97B.70 and 2009 Iowa Acts, House File 414 chapter 170, section 51, as amended by 2010 Iowa Acts, House File 2518, sections 36 and 41.

ITEM 5. Amend subrule 6.5(8) as follows:

6.5(8) Bounties.

a. ~~In~~ Effective prior to June 21, 2010, in some cases, an employer has a Section 125 plan with employer contributions, and what IPERS refers to as a bounty option. A bounty is an amount that may be elected by all employees, or by a subset of that group, such as employees with coverage under another health care plan, either in lieu of any coverage under the employer's health care plan, or in lieu of family coverage. A bounty is generally set at an amount that is less than the amount that would otherwise be available to purchase benefits under the Section 125 plan. IPERS does not treat bounties as covered wages. The uniformity and nondiscrimination principles described in subrule 6.5(4) do not apply to such benefits.

b. Paragraph "a" no longer applies effective June 21, 2010. An employer that has relied on the bounty rule to exclude bounty payments from covered wages shall have until September 1, 2010, to bring payroll processes and prospective wage coverage into compliance. No retroactive adjustment shall be required for employers that relied on paragraph "a" for periods prior to September 1, 2010.

ITEM 6. Rescind and reserve rule **495—9.3(97B)**.

ITEM 7. Amend subrule 11.5(2), introductory paragraph, as follows:

11.5(2) Bona fide retirement—licensed health care professionals. For retirees whose first month of entitlement is no earlier than July 2004 and no later than June 2010 2012, a retiree who is reemployed as a "licensed health care professional" by a "public hospital" does not have a bona fide retirement until all

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

employment with covered employers is terminated for at least one calendar month. In order to receive retirement benefits, the member must file a completed application for benefits form before returning to any employment with a covered employer.

ITEM 8. Adopt the following **new** subrule 11.5(5):

11.5(5) *Members of the national guard who are called into state active duty.* Effective May 25, 2008, members of the national guard who are called into state active duty as defined in Iowa Code section 29A.1 in noncovered positions during the required period of complete severance will not be in violation of the bona fide retirement requirements of Iowa Code section 97B.52A as amended by 2010 Iowa Acts, House File 2518, section 33.

ITEM 9. Adopt the following **new** paragraph **13.2(9)“c”**:

c. A presumption shall exist that a special service member contracted a disease while on active duty only if the disease is defined by Iowa Code section 97B.50A(2) “c” as amended by 2010 Iowa Acts, House File 2518, section 31. If a presumption exists, IPERS may, in making its determination as to whether a disability was incurred while the member was on active duty, go forward with evidence to rebut the presumption. IPERS can rebut the presumption when credible evidence exists to the contrary or when the requirements are met in Iowa Code section 97B.50A(2) “c” as amended by 2010 Iowa Acts, House File 2518, section 31. Under no circumstances shall the burden of proof shift from the special service member to IPERS.

ITEM 10. Amend subrule 14.5(2) as follows:

14.5(2) *Multiple beneficiaries.* Where multiple beneficiaries have been designated by the member, payment, including the payment of the remainder of a series of guaranteed annuity payments, shall be made in a lump sum only. The lump sum payment shall be paid to the multiple beneficiaries in equal shares ~~unless a different proportion is stipulated.~~

ITEM 11. Renumber rules **495—14.16(97B)** and **495—14.17(97B)** as **495—14.17(97B)** and **495—14.18(97B)**.

ITEM 12. Adopt the following **new** rule 495—14.16(97B):

495—14.16(97B) Required minimum distribution (RMD) basic calculation.

14.16(1) The RMD for a member who retired under an option with a lump sum death benefit and died after the member's required beginning date (RBD) is calculated as follows:

a. Step 1. Determine the number of payments remaining for the calendar year in which the member died. The current month's payment is not used in this calculation.

b. Step 2. Multiply the number of remaining payments determined in Step 1 by the gross amount of the member's last monthly payment to get the RMD amount. If the lump sum death benefit is less than the RMD, then the RMD is the lump sum death benefit amount.

c. Step 3. Determine the total non-RMD amount by subtracting the RMD as determined in Step 2 from the lump sum death benefit.

d. The eligible rollover amount is the total non-RMD amount as determined in Step 3.

14.16(2) In order to allocate nontaxable amounts between RMD and non-RMD, the calculation is performed as follows:

a. Nontaxable amounts are allocated first to the RMD portion of the lump sum death benefit.

b. If the nontaxable amounts are greater than the RMD amount, the remaining nontaxable amounts are allocated to the non-RMD portion of the lump sum amount.

c. If the nontaxable amounts are less than the RMD amount, the remaining portion of the RMD amount is composed of taxable amounts.

ITEM 13. Reletter paragraphs **16.2(3)“n”** to **“p”** as **16.2(3)“o”** to **“q.”**

ITEM 14. Adopt the following **new** paragraph **16.2(3)“n”**:

n. Service credit that is purchased during the period when the member is married to the alternate payee shall be added to the numerator and the denominator of the service fraction when calculating the service factor pursuant to a domestic relations order. Service credit that is purchased during a period

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

when the member is not married to the alternate payee shall only be added to the denominator of the service fraction when calculating the service factor pursuant to a domestic relations order. Under no circumstances shall the number of quarters in the denominator be more than the number of quarters used to calculate the member's benefit.

[Filed Emergency 6/21/10, effective 6/21/10]

[Published 7/14/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/14/10.

ARC 8937B**PUBLIC SAFETY DEPARTMENT[661]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 16, "State Building Code—Factory-Built Structures," Iowa Administrative Code.

Iowa Code section 103A.9 establishes the authority of the Building Code Commissioner, with the approval of the Building Code Advisory Council, to establish standards for factory-built structures, which include manufactured homes and modular buildings of all types. Specific authority is provided to the Building Code Commissioner to establish an "insignia of approval" and to require that modular buildings bear the established insignia. The amendments adopted herein provide for code compliance certificates and for installation certificates for modular structures.

The rules in Chapter 16 have been in place for many years, and the requirements and procedures prescribed are complex. The amendments adopted herein simplify those requirements, based upon a review necessitated by a reduction in staff available to administer programs within the Building Code Bureau. The Commissioner expects no loss of accountability for ensuring code compliance or proper installation of modular buildings to result from these changes.

Pursuant to Iowa Code section 17A.4(3), the Building Code Commissioner finds that notice and public participation are unnecessary because these amendments simplify the procedures involved with code compliance and installation seals for modular structures and impose no additional burden on persons subject to the rules.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Building Code Commissioner further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2010. Staffing changes which necessitated the review of existing procedures occurred in late June 2010, and rapid implementation of the new requirements, once announced to the industry, is likely to reduce any confusion regarding the changes.

These amendments are proposed in a Notice of Intended Action and are published herein as **ARC 8938B** to allow for public comment.

These amendments are intended to implement Iowa Code section 103A.9.

These amendments became effective July 1, 2010.

The following amendments are adopted.

ITEM 1. Rescind subrule 16.610(17) and adopt the following **new** subrule in lieu thereof:

16.610(17) Certificate of compliance. The manufacturer shall provide the building code commissioner with a certificate of compliance for each model or model group of the approved modular design. This certification shall include the following:

- a. Model or model group number which will appear on the data plate and compliance certificate.
- b. The signature of an authorized representative of the manufacturer.
- c. The name of the third-party agency certifying compliance with the code, for each of the three certifications.
- d. Evidence of code compliance certified by the third-party agencies, for the specific model or model group being submitted.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 2. Rescind subrule 16.610(19) and adopt the following **new** subrule in lieu thereof:

16.610(19) Code compliance and installation certificates. Code compliance and installation certificates approved for use are available at the Web site of the building code bureau when seals are purchased pursuant to subrule 16.610(22). The manufacturer shall complete the certificate and distribute it as follows:

- a. A copy shall be returned to:
State Building Code Bureau
Department of Public Safety
215 East Seventh St.
Des Moines, Iowa 50319
- b. A copy shall be retained for plant records and shall be used to make additional copies if necessary. An additional copy shall accompany other shipping documents carried by the transporter and be available for inspection by any authorized official or department.
- c. A copy of the compliance certificate shall be forwarded to the dealer, distributor, or any other person who is required to obtain a local building permit or to oversee installation.

ITEM 3. Rescind subrule 16.610(20) and adopt the following **new** subrule in lieu thereof:

16.610(20) Installation certificates. The installation certificate portion of the supplied combination certificate (see subrule 16.610(19)) shall be partially completed by the manufacturer at the same time the code compliance certificate is prepared and made part of the documents shipped with the unit and shall be completed by the local building official or the installer.

- a. When a building permit is required, a copy of the code compliance certificate shall be presented to the local building official at the time application for a permit is made. The building official shall sign the certificate and send a copy to the commissioner at the address designated in this rule.
- b. When a building permit is not required, the code compliance certificate shall be signed by the installer and forwarded to the commissioner at the address designated in this rule.

ITEM 4. Rescind subrule 16.610(22) and adopt the following **new** subrule in lieu thereof:

16.610(22) Seals.

a. *Seal issuance.* The state seal shall be issued by the state building code commissioner upon application and after approval of the plans and manufacturing procedures has been certified by the third-party agency evidencing compliance with this code. Applications for seals shall be made to the commissioner on the supplied form and shall include the following:

- (1) Number of seals requested.
- (2) Iowa model or system approval numbers.
- (3) Reference to approval of manufacturing procedures and third-party agency or agencies involved.
- (4) A statement by the applicant that consent is given for inspection and investigation at all reasonable hours.
- (5) Applicable seal fees.

b. *Seal reporting.* Manufacturers shall notify the commissioner monthly of the use of seals by the manufacturers' facilities. This information shall be on a form approved by the commissioner and shall contain adequate information to determine the following:

- (1) Seal number.
- (2) Serial number of the unit on which the seal was placed.
- (3) Make and model of the unit on which the seal was placed.
- (4) Number of sections that comprise the finished unit.
- (5) Location to which the unit was shipped.

ITEM 5. Rescind subrule 16.610(23) and adopt the following **new** subrule in lieu thereof:

16.610(23) Number of seals required. Each modular building shall have a seal attached to every section or unit of the building.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 6. Rescind subrule 16.610(24) and adopt the following **new** subrule in lieu thereof:

16.610(24) Seal placement on modular units. Every seal shall be assigned and securely affixed to a specific section or unit. Assigned seals are not transferable and are void when not affixed as assigned. All seals not properly affixed shall be returned to or may be confiscated by the commissioner. The seal shall remain the property of the commissioner in the event of violation of the conditions of approval. Every seal shall be placed on and affixed to each section or unit in a readily visible location within the unit.

ITEM 7. Rescind subrule 16.610(29) and adopt the following **new** subrule in lieu thereof:

16.610(29) Fees.

a. *Form of remittance.* All remittances shall be:

- (1) In the form of checks or money orders;
- (2) Made payable to Iowa Department of Public Safety; and
- (3) Addressed to:

State Building Code Bureau
 Department of Public Safety
 215 East Seventh St.
 Des Moines, Iowa 50319

b. *Seal fees.*

Modular code compliance seals	\$30 per seal
Modular installation seals	\$15 per seal

c. *Other fees.* A fee equal to the direct expense shall be charged for all other services furnished by the commissioner which are not direct administrative duties of the commissioner’s office, including but not limited to obtaining consultants for review and evaluation of applications or obtaining reviews from the national code writing organizations.

[Filed Emergency 6/23/10, effective 7/1/10]

[Published 7/14/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/14/10.

ARC 8935B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 97A.5, the Board of Trustees of the Public Safety Peace Officers’ Retirement, Accident, and Disability System hereby amends Chapter 400, “Peace Officers’ Retirement, Accident, and Disability System—Governance and Administration,” Chapter 401, “Peace Officers’ Retirement, Accident, and Disability System—Administrative Procedures,” and Chapter 402, “Peace Officers’ Retirement, Accident, and Disability System—Eligibility, Benefits, and Payments,” and rescinds Chapter 404, “Peace Officers’ Retirement, Accident, and Disability System—Temporary Incapacity,” Iowa Administrative Code.

Iowa Code chapter 97A creates the Public Safety Peace Officers’ Retirement, Accident, and Disability System, which provides for retirement and disability benefits for peace officer members of the Iowa Department of Public Safety and which establishes within the Department of Public Safety a Board of Trustees with authority to administer the system, including establishing policies for the system through administrative rule making. The rules providing such policies are found in Chapters 400 through 404. Amendments to these rules are proposed herein to respond to legislative changes made during the 2010 session of the Iowa General Assembly. Major provisions included in these amendments are the following:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

- Decisions regarding temporary incapacity of members of the system were made the province of the Commissioner of Public Safety, rather than of the Board of Trustees. Consequently, Chapter 404 regarding temporary incapacity is rescinded because the subject matter of the chapter is beyond the authority of the Board of Trustees.
- Provisions regarding the “escalator” for payments to retired members are clarified.
- Language regarding reimbursements for medical expenses of members is added, codifying practices established by the Board.
- Language is added regarding “purchase of eligible service credit” for members who previously served in agencies subject to the “411” retirement system, which covers many local law enforcement officers and firefighters, and for members who have completed active military service.

Notice of Intended Action proposing these amendments was published in the Iowa Administrative Bulletin on May 19, 2010, as **ARC 8767B**.

A public hearing to accept comments on the amendments was held on June 8, 2010. No comments were received either at the hearing or otherwise. The amendments adopted herein are identical to those published under Notice of Intended Action.

The Board finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments should be waived and the amendments made effective on July 1, 2010, as they confer a benefit by providing clarity regarding requirements and benefits available to members and, in particular, by making it clear that the statutory provisions apply as of July 1, 2010, even when in conflict with previous provisions of the rules.

Rules of the Public Safety Peace Officers’ Retirement, Accident, and Disability System are subject to the waiver provisions of rule 661—401.113(97A).

These amendments are intended to implement Iowa Code chapter 97A as amended by 2010 Iowa Acts, House File 2518 and Senate File 2318.

These amendments became effective on July 1, 2010.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amend Chs 400 to 402; rescind Ch 404] is being omitted. These amendments are identical to those published under Notice as **ARC 8767B**, IAB 5/19/10.

[Filed Emergency After Notice 6/23/10, effective 7/1/10]

[Published 7/14/10]

[For replacement pages for IAC, see IAC Supplement 7/14/10.]

ARC 8932B

**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DIVISION[605]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8(3)“c,” the Homeland Security and Emergency Management Division hereby amends Chapter 1, “Organization,” Iowa Administrative Code.

These amendments to the rules reflect the formal change in the Division’s name that has occurred in the Code of Iowa.

In compliance with Iowa Code section 17A.4(3), the Division finds that notice and public participation on these amendments are unnecessary because these amendments merely make changes in those instances where the Division’s name needs to be updated to reflect the current Code of Iowa.

These amendments are intended to implement Iowa Code chapter 29C.

These amendments will become effective on August 18, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 605—1.1(29C) as follows:

605—1.1(29C) Description. The homeland security and emergency management division is a division within the department of public defense.

1.1(1) Director. The adjutant general, as the director of the department of public defense under the direction and control of the governor, shall have supervisory direction and control of the homeland security and emergency management division and shall be responsible to the governor for the carrying out of the provisions of Iowa Code chapter 29C. In the event of disaster beyond local control, the adjutant general may assume direct operational control over all or any part of the emergency management functions within this state.

1.1(2) Administrator. The homeland security and emergency management division shall be under the management of an administrator appointed by the governor. The administrator shall be vested with the authority to administer homeland security and emergency management affairs in this state and shall be responsible for preparing and executing the homeland security and emergency management programs of this state subject to the direction of the adjutant general. The administrator, upon the direction of the governor and supervisory control of the director of the department of public defense, shall: prepare a comprehensive plan and emergency management program for homeland security, disaster preparedness, response, mitigation, recovery, emergency operation, and emergency resource management of this state; make such studies and surveys of the industries, resources and facilities in this state as may be necessary to ascertain the capabilities of the state for disaster recovery, disaster planning and operations, and emergency resource management, and to plan for the most efficient emergency use thereof; provide technical assistance to any local emergency management commission or joint commission requiring such assistance in the development of an emergency management program; implement planning and training for emergency response teams as mandated by the federal government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 42 U.S.C. § 9601 et seq.; the administrator, with the approval of the governor and upon recommendation of the adjutant general, may employ a deputy administrator and such technical, clerical, stenographic and other personnel and make such expenditures within the appropriation or from other funds made available to the department of public defense for purposes of emergency management, as may be necessary to administer the purposes of Iowa Code chapters 29C, 30, and 34A.

ITEM 2. Amend rule 605—1.2(29C), introductory paragraph, as follows:

605—1.2(29C) Definitions. The following definitions are applicable to the homeland security and emergency management division:

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

ITEM 3. Amend rule **605—1.2(29C)**, definitions of “Administrator” and “Division,” as follows:
“Administrator” means the administrator of the homeland security and emergency management division of the department of public defense.

“Division” means the homeland security and emergency management division of the department of public defense.

ITEM 4. Adopt the following **new** definition of “Homeland security” in rule **605—1.2(29C)**:
“Homeland security” means the detection, prevention, preemption, and deterrence of and protection from attacks targeted at state territory, population, and infrastructure.

[Filed Without Notice 6/23/10, effective 8/18/10]

[Published 7/14/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/14/10.

ARC 8933B

**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DIVISION[605]**

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8(3)“c,” the Homeland Security and Emergency Management Division hereby amends Chapter 2, “Petitions for Rule Making,” Iowa Administrative Code.

These amendments to Chapter 2 reflect the formal change in the Division’s name and address that has occurred in the Code of Iowa.

In compliance with Iowa Code section 17A.4(3), the Division finds that notice and public participation on these amendments are unnecessary because the amendments merely make changes in those instances where the Division’s name and address need to be updated to reflect the current Code of Iowa.

These amendments are intended to implement Iowa Code chapters 17A and 29C.

These amendments will become effective on August 18, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 605—2.1(17A), introductory paragraph, as follows:

605—2.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the division at the Homeland Security and Emergency Management Division, ~~Hoover State Office Building, Des Moines, Iowa 50319~~ 7105 NW 70th Avenue, Camp Dodge Building W4, Johnston, Iowa 50131. A petition is deemed filed when it is received by that office. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 2. Amend subrule 2.1(2) as follows:

2.1(2) The homeland security and emergency management division may deny a petition because it does not substantially conform to the required form.

ITEM 3. Amend rule 605—2.2(17A) as follows:

605—2.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The homeland security and emergency management division may request a brief from the petitioner or from any other person concerning the substance of the petition.

ITEM 4. Amend rule 605—2.3(17A) as follows:

605—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Administrator, Homeland Security and Emergency Management Division, ~~Hoover State Office~~

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

~~Building, Des Moines, Iowa 50319~~ 7105 NW 70th Avenue, Camp Dodge Building W4, Johnston, Iowa 50131.

ITEM 5. Amend rule 605—2.4(17A) as follows:

605—2.4(17A) Consideration.

2.4(1) Within 14 days after the filing of a petition, the division must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the homeland security and emergency management division must schedule a brief and informal meeting between the petitioner and the division, a member of the division, or a member of the staff of the division, to discuss the petition. The homeland security and emergency management division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the homeland security and emergency management division by any person.

2.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the homeland security and emergency management division must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to petitioner.

2.4(3) No change.

[Filed Without Notice 6/23/10, effective 8/18/10]

[Published 7/14/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/14/10.

ARC 8934B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 507B.12, the Insurance Division hereby adopts amendments to Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

The rules in Chapter 15 provide standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the times of the transactions are appropriately addressed. The amendments bring the rules into accord with a new model regulation drafted by the National Association of Insurance Commissioners (NAIC). These amendments will become effective January 1, 2011. Insurance companies and producers shall comply with the amendments beginning January 1, 2011, for policies sold in Iowa on or after January 1, 2011.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 19, 2010, as **ARC 8768B**. A public hearing was held on June 8, 2010, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. A comment was received asking why the Division did not identically copy the penalty provision of the NAIC model. It is the position of the Division that the amendments to the Iowa suitability regulation follow the amendments adopted by the NAIC in March except for one notable change relating to penalties. The penalty provision, subrule 15.73(2), refers to the penalties established in Iowa Code chapter 507B, with an additional provision that the penalty shall be reduced or eliminated if (1) corrective action for the consumer was taken promptly after a violation was discovered, and (2) the violation was not part of a pattern or practice. It has been the Division's policy to encourage a company to take corrective action promptly if the company finds a violation or violations of compliance requirements. In addition, the Division should be able to ascertain by a

INSURANCE DIVISION[191](cont'd)

company's suitability processes whether a pattern or practice of violation is occurring; that is the reason for the second requirement.

Iowa does not have the current NAIC Unfair Trade Practices Model Act in its statutes and, thus, does not have the mitigating language contained in that model relating to patterns and practices. Iowa Code subsection 507B.7(1), paragraph "a," contains a provision that states: "If the commissioner finds that a violation of this subtitle was directed, encouraged, condoned, ignored, or ratified by the employer of the person or by an insurer, the commissioner shall also assess a fine to the employer or insurer." The Division believes that the additional wording in the new regulation fits within this existing statutory provision.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 507B.

These amendments will become effective on January 1, 2011.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [15.68 to 15.75] is being omitted. These amendments are identical to those published under Notice as **ARC 8768B**, IAB 5/19/10.

[Filed 6/23/10, effective 1/1/11]

[Published 7/14/10]

[For replacement pages for IAC, see IAC Supplement 7/14/10.]

ARC 8936B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 692.10, the Department of Public Safety hereby rescinds Chapter 11, "Identification Section of the Division of Criminal Investigation," and adopts a new Chapter 82, "Criminal History and Fingerprint Records," Iowa Administrative Code.

Iowa Code chapters 690, 692, and 692B establish the responsibility and authority of the Division of Criminal Investigation of the Department of Public Safety to act as the central state repository for official criminal history data for the state of Iowa and provide that such records shall be made available to criminal justice agencies without cost and to other organizations and persons upon payment of fees to be established by the Department. The rules adopted herein update the requirements and procedures related to collection and dissemination of criminal history data to recognize various technological and statutory changes and to update the fees to reflect current operating costs. In addition, the rules regarding criminal history data are being moved to new 661—Chapter 82 as part of an ongoing effort to renumber and reorganize the administrative rules of the Department to make them more accessible and understandable to the public.

The amendments adopted herein were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on May 19, 2010, as **ARC 8769B**. A public hearing to accept comments on the proposed amendments was held on June 8, 2010. No comments regarding the proposed amendments were received either at the public hearing or otherwise. However, proposed subrule 82.301(5) now appears as rule 661—82.3(690,692). This change has been made because the provisions of the rule apply to all records covered by the rules in the chapter, not just to juvenile criminal history records. Several editorial changes to improve the clarity of the proposed amendments are reflected herein. These changes are, for the most part, editorial in nature and also provide for consistency with Iowa Code chapter 692.

Administrative rules of the Department of Public Safety are subject to the waiver provisions of rule 661—10.222(17A).

These amendments are intended to implement Iowa Code chapter 692.

These amendments will become effective on September 1, 2010.

The following amendments are adopted.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 1. Rescind and reserve **661—Chapter 11**.

ITEM 2. Adopt the following **new** 661—Chapter 82:

CHAPTER 82
CRIMINAL HISTORY AND FINGERPRINT RECORDS

661—82.1(690,692) Records and identification section. The records and identification section of the division of criminal investigation of the department of public safety maintains information necessary to identify persons with criminal histories. The section collects, files and disseminates criminal history data to authorized criminal justice agencies and to the public upon request and updates criminal history data on a continuing basis.

661—82.2(690,692) Definitions. The following definitions apply to rules 661—82.1(690,692) through 661—82.301(232):

“*Authorized agency*” means a division or office of the state of Iowa designated to report, receive, or disseminate information under Iowa state law, administrative rule or Public Law 103-209.

“*Criminal identification records*” means either of the following records, the forms for which are provided by the department to law enforcement agencies:

1. Department of public safety arrest fingerprint cards.
2. State of Iowa final disposition reports.

“*Department*” means the Iowa department of public safety.

“*Division*” means the division of criminal investigation of the department of public safety.

“*Employee*” means a person who provides services and is compensated for those services.

“*Fee*” means any cost associated with conducting a state or national criminal history record check.

“*Felony*” and “*misdemeanor*” shall have the same meanings and classifications as described in Iowa Code sections 701.7 and 701.8.

“*Fitness determination*” means an analysis of criminal history information to determine whether or not the criminal history information disqualifies an individual from holding a particular position or license either as an employee or a volunteer.

“*National record check*” means a criminal history record check from the FBI that is fingerprint-based and is transmitted through the state central repository.

“*Non-criminal justice agency*” means an agency that is authorized by law to receive criminal history data from the department; that is not a “criminal or juvenile justice agency” as defined in Iowa Code section 692.1, subsection 7; and that is not an institution which trains law enforcement officers for certification under Iowa Code chapter 80B.

“*Qualified entity*” means a business or organization, whether public, private, for-profit, not-for-profit or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies persons or entities to provide care or care placement services, treatment, education, training, instruction, supervision or recreation to children, the elderly or individuals with disabilities.

“*Taking of fingerprints*” means obtaining a fully rolled set of inked fingerprint or electronically scanned fingerprint impressions of suitable quality for fingerprint classification and identification.

“*Volunteer*” means a person who provides services without compensation.

“*Working day*” means any day except any of the following:

1. Saturday.
2. Sunday.
3. State holiday.
4. Federal holiday during which the administrative office of the submitting agency is closed.
5. Any day during which the administrative office of the submitting agency is closed or relocated due to weather or road conditions or any condition related to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—82.3(690,692) Tracking criminal history data. For audit purposes only, the division of criminal investigation shall establish an internal procedure for tracking criminal history data expunged from the files of the division.

661—82.4 to 82.100 Reserved.

DIVISION I
CRIMINAL HISTORY DATA

661—82.101(690,692) Release of information. Criminal history data maintained by the records and identification section are public records and are released to criminal justice agencies and the public as authorized by statute. Only the department of public safety may release criminal history information maintained by the department to non-criminal justice agencies or persons.

661—82.102(690,692) Right of review. Any person who has a criminal history record on file with the division of criminal investigation has the right to examine and obtain a copy of the record. This right may be exercised by an attorney acting on behalf of a person with a criminal history record only with written authorization and fingerprint identification of the person with the criminal history record. Providing a copy of a criminal history record pursuant to this rule is subject to the fee provided in rule 661—82.109(692).

661—82.103(690,692) Review of record. An individual or an individual's attorney, acting with written authorization from the individual, may obtain a copy of the individual's criminal history record during normal business hours at the headquarters of the division or by submitting a request on a form provided by the department of public safety. A copy of this request form may be obtained by writing to Division of Criminal Investigation, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by telephoning the records and identification section at (515)725-6066; or by sending a request by electronic mail to cchinfo@dps.state.ia.us. The request form may also be downloaded from the division's Web site. The completed request form must be notarized, if submitted by mail; be accompanied by a set of the fingerprints of the individual whose criminal history record is being requested; and include submission of the fee established in rule 661—82.109(692). After the record check has been completed, the fingerprints submitted for verification shall be returned, upon request, or destroyed.

NOTE: The Web site of the division of criminal investigation is www.dps.state.ia.us/dci.

661—82.104(17A,690,692) Inaccuracies in criminal history record. If an individual believes inaccuracies exist in the individual's criminal history record, notice may be filed with the division outlining the alleged inaccuracies and should be accompanied by any available supporting data. In all instances where a notice is so filed, the division shall contact the appropriate arresting agencies, courts of record or institutions to verify accuracy of the criminal history record. Any necessary changes shall be made to the individual's criminal history record. Any agency that previously received a copy of the inaccurate record shall be so notified with a corrected copy. A final report shall be made to the individual who filed a notice of correction within 20 days of said filing. If, after notice is filed and the division makes its final report, the individual is still of the opinion that inaccuracies exist within the record, an appeal of the final decision of the division to the Polk County district court may be made.

661—82.105(17A,690,692) Arresting agency portion of final disposition form. The sheriff of each county and the chief of police of each city shall complete the arresting agency portion of the final disposition forms with the arrest information for all persons whose fingerprints are taken in accordance with these rules or Iowa Code section 690.2, and thereafter forward the form to the appropriate county attorney or, at the discretion of the county attorney, to the clerk of district court, or if the case remains in juvenile court, to the juvenile court officer who received the referral.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—82.106(690,692) Final disposition form. When a preliminary information or citation is dismissed without new charges being filed or when a case is ignored by a grand jury, the county attorney or juvenile court officer who received the referral shall complete a final disposition form and submit it to the division of criminal investigation within 30 days. When an indictment is returned or a county attorney's information is filed, the final disposition form shall be forwarded by the county attorney to the clerk of the court having jurisdiction. The clerk of court shall forward a copy to the division of criminal investigation within 30 days after judgment. If a juvenile is processed through juvenile court, the juvenile court officer shall forward the disposition form to the division of criminal investigation.

661—82.107(692) Release of information to the public.

82.107(1) The department may release criminal history information to any person or public or private agency upon request by any method approved by the department. Requesters may not receive information regarding arrests older than 18 months that do not have dispositions or deferred judgments when the department has received official notice of successful completion of probation, unless a waiver has been provided to the requester from the person who is the subject of the criminal history information and the waiver is presented to the department at the time the request for the information is made.

82.107(2) Each record released to a non-criminal justice agency shall prominently display the statement: "AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF GUILT."

661—82.108(692) Scope of record checks for non-criminal justice agencies and individuals. Record checks made for non-criminal justice agencies and individuals pursuant to these rules are based upon name, including maiden name and aliases, if any, and birth date. This information may not be sufficient to effect a precise identification of a subject. A record check based solely upon name and birth date may refer to multiple subjects or may not result in positive identification of the subject of the request. The records of the department are based upon reports from other agencies. The department, therefore, cannot warrant the completeness or accuracy of the information provided. Agencies and individuals that receive criminal history information are therefore advised to verify all information received from the department to the extent possible (e.g., by contacting the reported arresting agency or court).

661—82.109(692) Fees. All individuals, their attorneys, and other non-criminal justice agencies requesting criminal history information shall be assessed a fee. The department may accept cash, money orders, checks, or credit cards. Other arrangements may be made, such as a prepaid account. The fee for receipt of criminal history information from the department shall be not more than \$15 for each name for which information is requested. The fee shall be prominently posted at the headquarters of the division of criminal investigation. Each alias or maiden name submitted shall be considered a separate name for purposes of computing this fee. The employer must pay the cost of the criminal history fee of a potential employee, if the employer requires receipt of criminal history information as a condition of employment.

661—82.110(17A,22,692) Requests for criminal history data.

82.110(1) *Requests for criminal history data.*

a. Persons or agencies requesting criminal history data should direct requests in writing using forms or methods approved by the commissioner of public safety. Forms to use in requesting criminal history information may be requested by mail to the Division of Criminal Investigation, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by electronic mail to cchinfo@dps.state.ia.us; by telephone at (515)725-6066, or from the Web site of the division.

NOTE: The Web site of the division of criminal investigation is www.dps.state.ia.us/dci.

b. The commissioner may authorize additional methods of requesting criminal history information. These other methods may include fax transmission or computer access. Authorization by the commissioner of public safety shall be based on the ability to securely, efficiently and accurately receive and disseminate criminal history information.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

82.110(2) *Public complaints.* Public complaints concerning the operation of criminal history or intelligence data systems should be directed in writing to the commissioner of public safety. Complaints should specify clearly the date, time and place of the alleged violation and any action requested of the commissioner.

82.110(3) *Required approvals.* Any agreement, arrangement or system for the transmission and exchange of criminal history data required to be approved by the commissioner shall be submitted in writing at least 30 days before its proposed effective date.

661—82.111(690) Administrative sanctions.

82.111(1) The commissioner of public safety may deny or restrict access to criminal history data maintained by the records and identification section of the division of criminal investigation to any agency that fails to comply with the requirements of Iowa Code chapters 690 and 692 for submission of fingerprints and disposition reports to the department of public safety. The commissioner shall notify the affected agency in writing prior to denying or restricting access and shall provide details of the requirements and the nature of the failure to comply.

82.111(2) Any agency that has received notification from the commissioner that the agency's access to criminal history data is to be denied or restricted may protest this action. Protests must be filed with the administrative services division within 30 days of the date of the notification from the commissioner in accordance with rule 661—10.101(17A).

661—82.112(692) Criminal history record checks for qualified entities or authorized agencies.

82.112(1) The department of public safety may process requests for national criminal history record checks for a qualified entity or authorized agency.

82.112(2) All qualified entities or authorized agencies requesting criminal history record checks shall be required to pay any applicable state and federal fees associated with noncriminal justice record checks. The qualified entity or authorized agency is responsible for such fees whether the qualified entity requests or receives the information directly or through an agency authorized to make fitness determinations as provided in subrule 82.112(3).

82.112(3) Any public entity which has been duly authorized by statute or administrative rule to conduct fitness determinations of volunteers or employees of a qualified entity may receive state criminal history record checks in order to do so. Any public entity which has been duly authorized by statute to conduct fitness examinations of volunteers or employees, including national criminal history checks, may receive national criminal history record checks in order to conduct such examinations.

82.112(4) A school district considering an applicant for a teaching position is a qualified entity pursuant to Iowa Code section 279.13. A school district may submit a request for a national criminal history record check of an applicant for employment as a teacher. The request shall be submitted on a form designated by the division of criminal investigation and shall be accompanied by completed fingerprint cards for the applicant and the applicable fee. Prior to submitting the request, the district may contact the division of criminal investigation by telephone at (515)725-6066 or by electronic mail at cchinfo@dps.state.ia.us to obtain instructions on the submission or may consult the Web site of the division for such information.

NOTE: The Web site of the division of criminal investigation is www.dps.state.ia.us/dci.

661—82.113 to 82.200 Reserved.

DIVISION II
FINGERPRINT RECORDS

661—82.201(17A,690,692) Fingerprint files and crime reports. The department maintains all fingerprint files.

661—82.202(690) Taking of fingerprints. The taking of fingerprints shall be in compliance with Iowa Code sections 232.148(2), 690.2 and 690.4. Fingerprints taken pursuant to these sections shall

PUBLIC SAFETY DEPARTMENT[661](cont'd)

be submitted to the records and identification section of the division of criminal investigation within two working days, and the department shall submit the fingerprints to the Federal Bureau of Investigation.

661—82.203 to 82.300 Reserved.

DIVISION III
JUVENILE RECORDS

661—82.301(232) Juvenile fingerprints and criminal histories.

82.301(1) Authority to fingerprint. A law enforcement agency shall fingerprint and photograph any juvenile who has been taken into custody and charged with the commission of an offense which would be a serious misdemeanor, aggravated misdemeanor or felony if committed by an adult. Fingerprints of juveniles taken pursuant to this subrule shall be submitted to the division of criminal investigation.

82.301(2) Fingerprints of juveniles waived to adult court. If jurisdiction over a juvenile suspect has been transferred from juvenile court to adult court, then fingerprints of that suspect taken pursuant to Iowa Code section 232.148 and transmitted to the division of criminal investigation shall be handled by the division in the same manner as fingerprints of adult suspects are handled, and the fingerprints are subject to the same provisions of law and these rules which govern fingerprints of adult criminal suspects.

82.301(3) Fingerprints entered into automated fingerprint identification system (AFIS). Fingerprints of juveniles shall be entered into the AFIS maintained by the department of public safety.

82.301(4) Juvenile criminal histories.

a. A fingerprint card received for a juvenile suspect shall be used to establish a criminal history record for the suspect.

b. Criminal histories of juveniles over whom jurisdiction has been transferred from juvenile court to adult court shall be handled in the same manner as criminal histories of adults.

c. Criminal histories of juveniles who remain under the jurisdiction of the juvenile court shall be maintained only if the juvenile is adjudicated delinquent based upon an offense which would be a serious or aggravated misdemeanor or felony if committed by an adult. The criminal history record established in response to the division's receiving a fingerprint card shall be expunged if the delinquency petition is dismissed. Juvenile court judges shall order that a juvenile be fingerprinted and the prints submitted to the division of criminal investigation if the juvenile has been adjudicated delinquent for an offense which would be a serious or aggravated misdemeanor or felony if committed by an adult.

d. Criminal history data of juveniles over whom jurisdiction has not been transferred from juvenile court to adult court shall be expunged when the subject reaches the age of 21 unless the subject has been convicted of a serious or aggravated misdemeanor or a felony when the subject was between the ages of 18 and 21 or unless the retention of the records is necessary for the purpose of administering Iowa Code chapter 692A. If the subject has been convicted of a serious or aggravated misdemeanor or a felony when the subject was between the ages of 18 and 21, the criminal history record shall be maintained in the same manner as adult criminal history data.

These rules are intended to implement Iowa Code chapters 690, 692, and 692B.

[Filed 6/23/10, effective 9/1/10]

[Published 7/14/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/14/10.