



# IOWA ADMINISTRATIVE BULLETIN

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NUMBER 13  
Pages 1075 to 1156

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## PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

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

STEPHANIE A. HOFF, Administrative Code Editor

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### CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

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

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

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2016

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
15	Wednesday, December 30, 2015	January 20, 2016
16	Friday, January 15, 2016	February 3, 2016
17	Friday, January 29, 2016	February 17, 2016

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

**\*\*\*Note change of filing deadline\*\*\***

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, January 8, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

**CHILD ADVOCACY BOARD[489]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Local foster care review boards, 3.1 to 3.5 Filed ARC 2322C ..... 12/23/15

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

STEM (science, technology, engineering, and mathematics) and innovative businesses

internship programs, amend ch 104; adopt ch 110 Filed ARC 2316C ..... 12/23/15

**EDUCATION DEPARTMENT[281]**

Accountability for student achievement—selected districtwide assessment, 12.8(1)"h"

Filed ARC 2312C ..... 12/9/15

School health services—school district and accredited nonpublic school stock epinephrine

auto-injector voluntary supply, ch 14 Filed ARC 2311C ..... 12/9/15

Online learning offered by a school district—open enrollment, 15.8 Filed ARC 2313C ..... 12/9/15

Gap tuition assistance program—eligibility and priority for assistance, 25.21 Filed ARC 2309C ..... 12/9/15

Categorical funding—statewide voluntary preschool program, at-risk formula weighting, returning dropout and dropout prevention program, management fund, physical plant and equipment levy, 98.13, 98.17, 98.18, 98.21, 98.62(2), 98.64(2) Filed ARC 2310C ..... 12/9/15

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Landfill alternatives financial assistance programs, ch 209 Filed ARC 2314C ..... 12/23/15

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

Organization, amendments to ch 1 Filed ARC 2292C ..... 12/9/15

Petitions for rule making, amendments to ch 2 Filed ARC 2293C ..... 12/9/15

Declaratory orders, amendments to ch 3 Filed ARC 2294C ..... 12/9/15

Agency procedure for rule making, amendments to ch 4 Filed ARC 2295C ..... 12/9/15

Fair information practices, amendments to ch 5 Filed ARC 2324C ..... 12/23/15

Contested cases, amendments to ch 6 Filed ARC 2325C ..... 12/23/15

Local emergency management, amendments to ch 7 Filed ARC 2326C ..... 12/23/15

Criteria for awards or grants, amendments to ch 8 Filed ARC 2327C ..... 12/23/15

Iowa comprehensive plan, amendments to ch 9 Filed ARC 2328C ..... 12/23/15

Repair, calibration, and maintenance of radiological monitoring, detection, and survey

equipment, amendments to ch 11 Filed ARC 2329C ..... 12/23/15

Homeland security and emergency response teams, amendments to ch 12 Filed ARC 2330C ..... 12/23/15

Mission of commission—membership, 100.1 Notice ARC 2284C ..... 12/9/15

Operations of commission, 101.2, 101.5(2), 101.7(1) Notice ARC 2283C ..... 12/9/15

Local emergency planning committee, 103.1(1), 103.2, 103.3(2), 103.4, 103.7 Notice ARC 2282C ..... 12/9/15

Required reports and records, amendments to ch 104 Notice ARC 2281C ..... 12/9/15

**HUMAN SERVICES DEPARTMENT[441]**

Family investment program (FIP) hardship exemption—removal of exclusion for families

with qualified children and a nonqualified alien adult member, 41.24(4), 41.30, 46.21

Filed ARC 2272C ..... 12/9/15

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Contested case hearings—subpoenas, 10.14 Notice ARC 2321C ..... 12/23/15

Hospital licensure and regulation, amendments to ch 51 Notice ARC 2302C ..... 12/9/15

Residential care facilities—implementation of orders for medications and treatments,

57.11(7) Filed ARC 2273C ..... 12/9/15

Nursing facilities—dietary, 58.19(1), 58.24 Notice ARC 2303C ..... 12/9/15

**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

Prompt payment of health claims—removal of exemption for long-term care insurance,

15.32, 15.83(1), 15.85 Filed ARC 2296C ..... 12/9/15

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

Contribution rates; death and disability benefits; Section 125 plans; termination of

employment; qualified domestic relations orders; alternate payees, amendments to chs 4

to 6, 8, 9, 11, 13, 14, 16, 17, 26 Notice ARC 2331C ..... 12/23/15

**IOWA PUBLIC INFORMATION BOARD[497]**

Election of vice chair, 1.1 Filed **ARC 2271C** ..... 12/9/15  
 Open meetings—closed session, 8.2 Filed **ARC 2315C** ..... 12/23/15

**MEDICINE BOARD[653]**

**PUBLIC HEALTH DEPARTMENT[641]“umbrella”**

Licensure of acupuncturists, amendments to ch 17 Notice **ARC 2298C** ..... 12/9/15

**NATURAL RESOURCE COMMISSION[571]**

**NATURAL RESOURCES DEPARTMENT[561]“umbrella”**

Special nonresident deer and turkey licenses, 15.26 Notice **ARC 2300C** ..... 12/9/15

**PHARMACY BOARD[657]**

**PUBLIC HEALTH DEPARTMENT[641]“umbrella”**

Pharmacist-intern application for registration—acceptance of individual tax identification number, 4.6(1) Notice **ARC 2301C** ..... 12/9/15  
 Authorization of registrants to administer a controlled substances collection program, amendments to chs 6 to 8, 10, 17, 23 Notice **ARC 2285C** ..... 12/9/15  
 Pharmacy practice—prescribing epinephrine auto-injectors in the name of a facility, 6.10(1), 8.19 Notice **ARC 2288C** ..... 12/9/15  
 Authorization to dispense up to 72-hour supply of prescription drugs to hospital emergency department patients, 7.12(3) Notice **ARC 2286C** ..... 12/9/15  
 Reporting of continuous quality improvement (CQI) program event, 8.26(5) Notice **ARC 2307C** ..... 12/9/15  
 Temporary designation of controlled substances, 10.38 Notice **ARC 2287C** ..... 12/9/15  
 Patient med pak record keeping, 22.5(8) Notice **ARC 2289C** ..... 12/9/15

**PROFESSIONAL LICENSURE DIVISION[645]**

**PUBLIC HEALTH DEPARTMENT[641]“umbrella”**

Polysomnographic technologists and respiratory care and polysomnography practitioners—licensure, practice, discipline, continuing education, amendments to chs 261 to 263, 265 Filed **ARC 2323C** ..... 12/23/15

**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

Negotiations and negotiability disputes, 6.1, 6.3 to 6.5 Filed **ARC 2308C** ..... 12/9/15

**PUBLIC HEALTH DEPARTMENT[641]**

Reportable diseases, poisonings and conditions; quarantine and isolation, amendments to ch 1 Filed **ARC 2291C** ..... 12/9/15  
 Early hearing detection and intervention, amendments to ch 3 Filed **ARC 2290C** ..... 12/9/15  
 Informed consent for storage and release of residual newborn screening specimens, 4.3, 4.7(6)“e,” 4.11 Notice **ARC 2305C** ..... 12/9/15  
 Immunization registry information system (IRIS)—refugee health screening, 7.1, 7.12(5) Notice **ARC 2306C** ..... 12/9/15  
 Swimming pools—use for commercial purposes, underwater lighting, 15.3(1), 15.5(13) Filed **ARC 2279C** ..... 12/9/15  
 State plumbing code—adoption by reference of 2015 edition of Uniform Plumbing Code, amendments to ch 25 Notice **ARC 2317C** ..... 12/23/15  
 State mechanical code—update of references, 61.2 Notice **ARC 2274C** ..... 12/9/15  
 Vital records—fees, access, searches and issuance of certified copies, confidentiality, amendments to ch 95 Filed **ARC 2275C** ..... 12/9/15  
 Registration of deaths—electronic statewide vital records system, 97.5, 97.8(4) Filed **ARC 2276C** ..... 12/9/15  
 Scope of practice for Iowa EMS providers—adoption by reference, 131.3(3)“b” Filed **ARC 2277C** ..... 12/9/15  
 Scope of practice for Iowa EMS providers—adoption by reference, 132.2(4)“b” Filed **ARC 2278C** ..... 12/9/15  
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 Iowa physician orders for scope of treatment, ch 145 Filed **ARC 2280C** ..... 12/9/15  
 Certificate of need review process for new or changed institutional health service—rescission of excluded and unused standards, rescind 203.1, 203.6, 203.7, 203.9 to 203.11 Filed **ARC 2297C** ..... 12/9/15

**RACING AND GAMING COMMISSION[491]**

**INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”**

Qualifying agreements; occupational licenses; licensing of jockeys; thoroughbred and quarter horse racing, 5.4, 6.8, 6.29, 10.1, 10.2(9), 10.4 to 10.7 Notice **ARC 2320C** ..... 12/23/15

**REGENTS BOARD[681]**

Resident classification of veterans, qualified military persons and other qualified individuals,  
 1.4(2)“b” Filed Emergency After Notice **ARC 2332C** ..... 12/23/15

**REVENUE DEPARTMENT[701]**

Innocent spouse relief from income tax liability, 38.15 Notice **ARC 2299C** ..... 12/9/15

**SECRETARY OF STATE[721]**

Voter registration—fees, 28.2(2) Notice of Termination **ARC 2318C** ..... 12/23/15

**TRANSPORTATION DEPARTMENT[761]**

Counties and cities—programs and funds for bridge and road construction and repair;  
 instructional memorandums; budgets, reports, highway-related services and supplies,  
 amendments to chs 160, 161, 170, 172 to 174, 178 Notice **ARC 2319C** ..... 12/23/15

**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

Senator Mark Chelgren  
 819 Hutchinson  
 Ottumwa, Iowa 52501

Representative Lisa Heddens  
 2401 Westwind Drive  
 Ames, Iowa 50010

Senator Mark Costello  
 37265 Rains Avenue  
 Imogene, Iowa 51645

Representative Megan Jones  
 4470 Highway 71  
 Sioux Rapids, Iowa 50585

Senator Thomas Courtney  
 2609 Clearview  
 Burlington, Iowa 52601

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

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

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

Senator Pam Jochum  
 2368 Jackson Street  
 Dubuque, Iowa 52001

Representative Guy Vander Linden  
 1610 Carbonado Road  
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 Governor’s Ex Officio Representative  
 Capitol, Room 18  
 Des Moines, Iowa 50319  
 Telephone (515)281-5211

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

Mission of commission— membership, 100.1 IAB 12/9/15 <b>ARC 2284C</b>	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	December 29, 2015 11 a.m.
Operations of commission, 101.2, 101.5(2), 101.7(1) IAB 12/9/15 <b>ARC 2283C</b>	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	December 29, 2015 11 a.m.
Local emergency planning committee, 103.1(1), 103.2, 103.3(2), 103.4, 103.7 IAB 12/9/15 <b>ARC 2282C</b>	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	December 29, 2015 11 a.m.
Required reports and records, amendments to ch 104 IAB 12/9/15 <b>ARC 2281C</b>	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	December 29, 2015 11 a.m.

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

Contribution rates; death and disability benefits; Section 125 plans; termination of employment; qualified domestic relations orders; alternate payees, amendments to chs 4 to 6, 8, 9, 11, 13, 14, 16, 17, 26 IAB 12/23/15 <b>ARC 2331C</b>	IPERS 7401 Register Dr. Des Moines, Iowa	January 12, 2016 9 a.m.
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**MEDICINE BOARD[653]**

Licensure of acupuncturists, amendments to ch 17 IAB 12/9/15 <b>ARC 2298C</b>	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	December 29, 2015 11 a.m.
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**NATURAL RESOURCE COMMISSION[571]**

Special nonresident deer and turkey licenses, 15.26 IAB 12/9/15 <b>ARC 2300C</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 29, 2015 12:30 to 2:30 p.m.
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**PUBLIC HEALTH DEPARTMENT[641]**

State plumbing code—adoption by reference of 2015 edition of Uniform Plumbing Code, amendments to ch 25 IAB 12/23/15 <b>ARC 2317C</b>	Conference Room 517 Lucas State Office Bldg. Des Moines, Iowa	January 12, 2016 10 a.m.
State mechanical code—update of references, 61.2 IAB 12/9/15 <b>ARC 2274C</b>	Conference Room 517 Lucas State Office Bldg. Des Moines, Iowa	December 29, 2015 10 a.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Fire code provisions—adoption by reference, amendments to chs 200 to 202, 210 IAB 11/25/15 <b>ARC 2266C</b>	First Floor Conference Room 125 Oran Pape State Office Bldg. 215 E. 7th St. Des Moines, Iowa	January 5, 2016 10 a.m.
	Iowa State Patrol Post #12 22365 20th Ave. Stockton, Iowa	January 7, 2016 11:30 a.m.



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

	Iowa State Patrol Post #3 2025 Hunt Ave. Council Bluffs, Iowa	January 8, 2016 11:30 a.m.
State building code—adoption by reference of certain provisions of 2015 International Building Code (IBC), amendments to chs 300 to 302, 315 IAB 11/25/15 <b>ARC 2250C</b>	First Floor Conference Room 125 Oran Pape State Office Bldg. 215 E. 7th St. Des Moines, Iowa	January 5, 2016 10 a.m.
	Iowa State Patrol Post #12 22365 20th Ave. Stockton, Iowa	January 7, 2016 11:30 a.m.
	Iowa State Patrol Post #3 2025 Hunt Ave. Council Bluffs, Iowa	January 8, 2016 11:30 a.m.
State historic building code—adoption of International Existing Building Code by reference, 350.1 IAB 11/25/15 <b>ARC 2265C</b>	First Floor Conference Room 125 Oran Pape State Office Bldg. 215 E. 7th St. Des Moines, Iowa	January 5, 2016 10 a.m.
	Iowa State Patrol Post #12 22365 20th Ave. Stockton, Iowa	January 7, 2016 11:30 a.m.
	Iowa State Patrol Post #3 2025 Hunt Ave. Council Bluffs, Iowa	January 8, 2016 11:30 a.m.

**RACING AND GAMING COMMISSION[491]**

Qualifying agreements; occupational licenses; licensing of jockeys; thoroughbred and quarter horse racing, 5.4, 6.8, 6.29, 10.1, 10.2(9), 10.4 to 10.7 IAB 12/23/15 <b>ARC 2320C</b>	Commission Office, Suite 100 1300 Des Moines St. Des Moines, Iowa	January 12, 2016 9 a.m.
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**SECRETARY OF STATE[721]**

Voter registration in state agencies—national voter registration Act compliance, 23.3 to 23.6, 23.10 IAB 11/25/15 <b>ARC 2262C</b>	Secretary of State Office Lucas State Office Bldg. Des Moines, Iowa	December 23, 2015 8:30 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Counties and cities—programs and funds for bridge and road construction and repair; instructional memorandums; budgets, reports, highway-related services and supplies, amendments to chs 160, 161, 170, 172 to 174, 178 IAB 12/23/15 <b>ARC 2319C</b>	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	January 14, 2016 10 a.m. (If requested)
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**VOTER REGISTRATION COMMISSION[821]**

Online voter registration,  
2.4, 2.8(2), 8.1, 11.6  
IAB 11/25/15 **ARC 2246C**  
(See **ARC 2160C**, IAB 9/30/15)

Secretary of State Office, First Floor  
Lucas State Office Bldg.  
Des Moines, Iowa

December 23, 2015  
8:30 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]  
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**ARC 2321C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**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 10A.801, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 10, “Contested Case Hearings,” Iowa Administrative Code.

The proposed amendment updates the procedures related to subpoenas in contested case proceedings before the Administrative Hearings Division. Iowa Code section 17A.13 and the existing rule require that these procedures be consistent with the Iowa Rules of Civil Procedure, but confusion has arisen as to how those court rules should be applied in the context of a subpoena in an administrative proceeding. To provide clarity to parties and those who receive a subpoena from the Division, this amendment adds the relevant requirements from Iowa Rule of Civil Procedure 1.1701, modified as necessary to reflect the distinction between court and administrative proceedings. This amendment is not intended to be a substantive change to the legal standards governing subpoenas in contested case proceedings. The amendment also makes several technical corrections arising from changes in technology and the ordinary practices of the Division in issuing subpoenas.

Any interested person may make written suggestions or comments on the proposed amendment on or before January 12, 2016. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319; faxed to (515)242-6863; or e-mailed to [david.werning@dia.iowa.gov](mailto:david.werning@dia.iowa.gov).

The Department does not believe that the proposed amendment imposes any financial hardship on any regulated entity, body, or individual.

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

This amendment is intended to implement Iowa Code sections 10A.801 and 17A.13.

The following amendment is proposed.

Amend rule 481—10.14(10A,17A) as follows:

**481—10.14(10A,17A) Subpoenas.**

**10.14(1) Issuance.**

*a.* Pursuant to Iowa Code subsection 17A.13(1), the division shall issue an agency subpoena to a party on request unless otherwise excluded pursuant to this rule. A request for a subpoena shall be in writing. The request may be made in person; or by mail, facsimile (fax), or electronic mail (e-mail), or other electronic means approved by the division. The request shall include the names of the parties, the case number, the name and address of the requested witness, and a description or list of any documents or other items requested. The request shall also note the nature of the proceeding at which the witness is requested to testify (e.g., deposition, telephone hearing, or in-person hearing), the date and time of the proceeding, whether the witness is requested to appear in person or by telephone, the location of the proceeding if it is being conducted in a location other than the Wallace State Office Building, and the method of recording any deposition. A request for a subpoena shall be received by the division at least seven calendar days before the scheduled hearing. The request shall include the name, address, e-mail address, and telephone number of the requesting party.

*b.* The division shall provide the subpoena to the requesting party by regular mail, fax, ~~or electronic mail~~ e-mail, or other electronic means or allow for pickup during the department’s regular business hours.

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

~~Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.~~

~~c. When authorized by law, an administrative law judge (ALJ) may issue a subpoena on the ALJ's own motion.~~

~~d. When there is reasonable ground to believe a subpoena is requested for the purpose of harassment, or that the subpoena requests irrelevant evidence or is untimely, the ALJ division may refuse to issue the subpoena. The ALJ may require the requesting party to provide a statement of testimony expected to be elicited from the subpoenaed witness and a showing of relevancy. If the ALJ division refuses to issue a subpoena, the ALJ division shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing before an ALJ regarding the refusal by filing with the division and serving on all parties a written request with the division for a hearing, including a statement of testimony, documents, or other items expected to be elicited from the subpoenaed witness and a showing of relevancy to the proceeding.~~

~~e. The issuance of a subpoena by the division does not constitute a ruling by the ALJ that the subpoenaed witness may testify at the hearing or that a subpoenaed document may be admitted into evidence. A party seeking to call a subpoenaed witness to testify or seeking to introduce a subpoenaed document at a hearing must comply with any applicable requirement in statute, administrative rule, or ALJ order regarding the submission of witness or exhibit lists and the disclosure of proposed exhibits to opposing parties.~~

**10.14(2) Form and contents.**

a. Requirements. Any subpoena issued after the commencement of a contested case or other proceeding conducted by the division shall be issued on a form approved by the division and must:

(1) State that the subpoena is issued by the administrative hearings division of the department of inspections and appeals;

(2) State the title of the proceeding and its case number;

(3) Command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or permit the inspection of premises; and

(4) Include a guidance document for subpoenaed persons that has been approved by the division and that shall include the text of subrules 10.14(4) and 10.14(5).

b. Command to attend a deposition; notice of the recording method. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

c. Combining or separating a command to produce or to permit inspection; specifying the form for electronically stored information. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

d. Command to produce; included obligations. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

**10.14(3) Service of subpoenas.**

a. The requesting party is responsible for arranging service of a subpoena prior to the hearing or deposition at which the testimony is commanded or the time at which the requested documents must be produced. The party is responsible for any cost associated with serving a subpoena and for the payment of witness fees and mileage expenses. If requested, pursuant to Iowa Code section 622.69, the witness fee is \$10 for a full day's attendance and is \$5 for attendance less than a full day, and mileage shall be paid for each mile actually traveled to participate in an in-person hearing at the rate established by the supreme court for witnesses in court proceedings, except that:

(1) No peace officer who receives a regular salary, or any other public official shall in any case receive fees as a witness for testifying in regard to any matter coming to the officer's or official's knowledge in the discharge of the officer's or official's official duties in a telephone hearing or an in-person hearing held in the county of the officer's or official's residence, except police officers who

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

are called as witnesses when not on duty. An officer is on duty when paid by the officer's employing agency regardless whether the officer would regularly be on duty at the time of the hearing.

(2) A volunteer fire fighter, as defined in Iowa Code section 85.61, who is subpoenaed to appear as a witness in connection with a matter regarding an event or transaction which the fire fighter perceived or investigated in the course of duty as a volunteer fire fighter shall receive a fee only as provided for under Iowa Code section 622.71A.

b. Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance and, if demanded, tendering the fees for one day's attendance and traveling fees to and from the court. If the subpoena commands the production of documents, electronically stored information, or tangible things, then before it is served, a notice must be served on each party. For purposes of this rule, an employee of a state or local governmental agency is not a party merely because the agency is a party and may serve a subpoena unless the employee is also a named party in the proceeding or otherwise ineligible to serve a subpoena.

c. Permissible place of service. A subpoena may be served any place within the state of Iowa.

d. Proof of service. Proving service, when necessary, requires filing with the division a statement showing the date and manner of service and the names of persons served. The server must certify the statement in accordance with Iowa Code section 622.1.

**10.14(2) 10.14(4) Motion to quash or modify Protecting a person subject to a subpoena.**

a. *Avoiding undue burden or expense; sanctions.* A subpoena may be quashed or modified upon motion for any lawful ground in accordance with the Iowa Rules of Civil Procedure. A party or attorney responsible for serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The administrative law judge must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

b. *Command to produce materials or permit inspection.*

(1) Appearance not required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition or hearing.

(2) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises, or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

1. At any time, on notice to the commanded person, the serving party may move for an order compelling production or inspection.

2. These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

c. *Attendance.* Any party shall be permitted to attend at the same time and place and for the same purposes specified in the subpoena. No prior notice of intent to attend is required.

d. *Quashing or modifying a subpoena.*

(1) When required. On timely motion, the administrative law judge must quash or modify a subpoena that:

1. Fails to allow a reasonable time to comply;

2. Requires a person who is neither a party nor a party's officer to travel more than 50 miles from where that person resides, is employed, or regularly transacts business in person, except that a person may be ordered to attend a hearing anywhere within the state in which the person is served with a subpoena;

3. Requires disclosure of privileged or other protected matter, if no exception or waiver applies;

or

4. Subjects a person to undue burden.

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

(2) When permitted. To protect a person subject to or affected by a subpoena, the administrative law judge may, on motion, quash or modify the subpoena if it requires:

1. Disclosing a trade secret or other confidential research, development, or commercial information;

2. Disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

3. A person who is neither a party nor a party's officer to incur substantial expense to travel more than 50 miles to attend a hearing.

(3) Specifying conditions as an alternative. In the circumstances described in subparagraph 10.14(4) "d"(2), the administrative law judge, instead of quashing or modifying a subpoena, may order appearance or production under specified conditions if the serving party:

1. Shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

2. Ensures that the subpoenaed person will be reasonably compensated.

~~b.~~ (4) A motion to quash or modify a subpoena shall be filed with the division and served on all parties of record pursuant to rule 481—10.12(17A), except that a motion filed by or on behalf of a person who is neither a party nor a party's officer may be filed with the division and served only on the agency with a request for the division to provide a copy of the motion to all non-agency parties. The division may require a person requesting the division to provide the motion to a non-agency party to provide an additional paper copy of the motion and any attached exhibits for the division to provide to the non-agency party.

e. (5) The motion may be set for argument at the discretion of the ALJ administrative law judge. The administrative law judge may limit the participation of a person who is not a party, or the representative of such a person, to the extent necessary to protect any confidential information related to the proceeding.

**10.14(5) Duties in responding to a subpoena.**

a. Producing documents or electronically stored information. These procedures apply to producing documents or electronically stored information:

(1) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(2) Form for producing electronically stored information not specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(3) Electronically stored information produced in only one form. The person responding need not produce the same electronically stored information in more than one form.

(4) Inaccessible electronically stored information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Iowa Rule of Civil Procedure 1.504(1)(b). The administrative law judge may specify conditions for the discovery.

b. Claiming privilege or protection.

(1) Information withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

1. Expressly make the claim; and

2. Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(2) Information produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any



## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

This rule is intended to implement Iowa Code sections 10A.104(6) and 17A.13.

**ARC 2331C****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 5, “Employees,” Chapter 6, “Covered Wages,” Chapter 8, “Service Purchases,” 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,” Chapter 16, “Domestic Relations Orders and Other Assignments,” Chapter 17, “Public Records and Fair Information Practices,” and Chapter 26, “Appeals and Contested Cases—Proceedings,” Iowa Administrative Code.

IPERS proposes the following amendments: to implement contribution rates for regular and special service members beginning July 1, 2016; to clarify an existing rule and adopt a new rule regarding leased employees; to require certification by employers that their Section 125 plans meet all Internal Revenue Code requirements; to clarify that members who retire under Option 1 may increase the lump sum death benefit with a service purchase, which will be balanced out by a reduced monthly benefit amount; to conform the language of a rule with the statute and remove unclear language regarding reinstatement following an involuntary termination and the taking of a refund; to include the available percentages from which a member must select to be payable to the member's contingent annuitant when a member retires under Option 4 or 6; to clarify reemployment/income monitoring and move offset language to a new rule detailing the offsets taken in the case of special service disability payments received by a member for the same illness or injury and how they are calculated; to clarify acceptable proof of death for beneficiary payments; to clarify preretirement death benefits payable to inactive members' beneficiaries for deaths occurring before June 30, 2012, and to adopt a new rule for deaths occurring after June 30, 2012; to remove language regarding opposite gender spouse from the definition of “Qualified domestic relations order”; to conform IPERS with Internal Revenue Service reporting requirements for distributions to non-spouse successor alternate payees; to clarify procedures when a post-divorce beneficiary designation is updated by a member; to clarify proof of death requirements when an alternate payee predeceases a member; to clarify procedures regarding refund payments made when a qualified domestic relations order (QDRO) is involved and the alternate payee has not returned a completed application by the deadline; to clarify that payment of an alternate payee's benefit under a QDRO will follow the payroll schedule; to remove the written signature requirement in answering an open records request; and to update terms to be consistent with IPERS' practice in appeals.

These amendments were prepared after consultation with IPERS' staff, IPERS' tax counsel and the Benefits Advisory Committee.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 12, 2016. Such written suggestions or comments should be directed to the IPERS

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

Administrative Rules Coordinator at IPERS, 7401 Register Drive, 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)281-7623. Comments may also be submitted by fax to (515)281-0045 or by e-mail to [adminrule@ipers.org](mailto:adminrule@ipers.org).

A public hearing will be held on January 12, 2016, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa. 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 matter of the amendments.

There are no waiver provisions included in the proposed amendments.

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

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15.

The following amendments are proposed.

ITEM 1. Amend paragraph **4.6(1)“b”** as follows:

b. Effective July 1, 2012, and every year thereafter, the contribution rates for regular members shall be publicly declared by IPERS staff no later than the preceding December as determined by the annual valuation of the preceding fiscal year. The public declaration of contribution rates will be followed by rule making that will include a notice and comment period and that will become effective July 1 of the next fiscal year. Contribution rates for regular members are as follows.

	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016
Combined rate	14.45%	14.88%	14.88%	14.88%	<u>14.88%</u>
Employer	8.67%	8.93%	8.93%	8.93%	<u>8.93%</u>
Employee	5.78%	5.95%	5.95%	5.95%	<u>5.95%</u>

ITEM 2. Amend subrule 4.6(2) as follows:

**4.6(2)** Contribution rates for sheriffs and deputy sheriffs are as follows.

	Effective July 1, 2011	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016
Combined rate	<del>19.66%</del>	19.80%	19.76%	19.76%	19.76%	<u>19.26%</u>
Employer	<del>9.83%</del>	9.90%	9.88%	9.88%	9.88%	<u>9.63%</u>
Employee	<del>9.83%</del>	9.90%	9.88%	9.88%	9.88%	<u>9.63%</u>

ITEM 3. Amend subrule 4.6(3) as follows:

**4.6(3)** Contribution rates for protection occupations are as follows.

	Effective July 1, 2011	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016
Combined rate	<del>16.62%</del>	17.11%	16.90%	16.90%	16.40%	<u>16.40%</u>
Employer	<del>9.97%</del>	10.27%	10.14%	10.14%	9.84%	<u>9.84%</u>
Employee	<del>6.65%</del>	6.84%	6.76%	6.76%	6.56%	<u>6.56%</u>

ITEM 4. Amend subrule 5.2(46) as follows:

**5.2(46)** Persons who are employed by professional employment organizations, temporary staffing agencies, and similar noncovered employers and are leased to covered employers shall not be covered. ~~Notwithstanding the foregoing, persons who are employed by a covered employer and leased to a noncovered employer shall be covered.~~

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

ITEM 5. Renumber subrules **5.2(47)** to **5.2(49)** as **5.2(48)** to **5.2(50)**.

ITEM 6. Adopt the following **new** subrule 5.2(47):

**5.2(47)** Persons who are employed by a covered employer and leased to a noncovered employer shall be covered.

ITEM 7. Amend subrule 6.5(1) as follows:

**6.5(1) Section 125 plans.** For purposes of this rule, a Section 125 plan means an employer-sponsored fringe benefit plan that is subject to Section 125 of the federal Internal Revenue Code (IRC). Some of the common names for this type of plan are cafeteria plan, flexible benefits plan, flex plan, and flexible spending arrangement.

*a.* Effective January 1, 2017, employers must annually certify to IPERS, on a form approved by the system, that their Section 125 plans meet all IRC requirements.

*b.* If an employer does not certify its Section 125 plan's compliance with the IRC, all employer contributions to fringe benefit plans will be excluded from IPERS coverage.

ITEM 8. Amend subparagraph **8.1(2)“g”(2)** as follows:

(2) Final service purchase cost quote at retirement. On or before the date that a member's first benefit payment is issued, a member who is vested by service may request a final service purchase cost quote by completing and submitting an application for retirement/disability benefit indicating the member's desire to receive a final service purchase cost quote. ~~Once~~ After the completed application has been submitted, IPERS shall generate a final service purchase cost quote once all of the member's wages are submitted to IPERS, which may be after the member's first month of entitlement. The final cost quote shall be calculated as follows:

1. IPERS will calculate the cost by capturing the baseline benefit attributes at the member's first month of entitlement without any service purchase quarterly credits including: average salary, years of service, the Option 2 benefit amount, current member investment amount and the calculated present-day reserve value. The present-day reserve value is a lump sum value calculated with actuarial tables provided by the system's actuary which represents the lump sum value sufficient to pay the monthly benefits over the member's expected life span. With each potential purchasable service credit, IPERS will recalculate the Option 2 benefit amount. A new present-day reserve value will also be calculated. The cost of each purchasable quarter of service credit will be the difference between the new reserve amount and the previous one.

2. The retired member will have six months from the date in which IPERS generates the final service purchase cost quote to purchase additional service.

3. If the retired member purchases service within the six-month deadline, the increase in the retirement benefit shall be made effective with the month of the service purchase payment.

4. Retired members who do not indicate their desire for a final service purchase cost quote on or before the date their first payment is issued or do not complete the purchase within the six-month deadline indicated on the final service purchase cost quote shall not be eligible to purchase additional credit.

5. Retired members who selected Option 1 upon retirement may request the lump sum death benefit to be increased to take into account the additional contributions from making a service purchase. If the member requests an increase in the death benefit, the monthly benefit will be reduced to take into account the increased death benefit.

ITEM 9. Amend rule 495—9.5(97B) as follows:

~~**495—9.5(97B) Reinstatement following an employment dispute**~~ **Termination of employment—refund option.** ~~If an involuntarily terminated employee takes a refund and is later reinstated in covered employment as a remedy for an employment dispute, the member may reinstate membership service credit for the period covered by the refund by repaying the amount of the refund plus interest within 90 days after the date of the order or agreement requiring reinstatement. If a member is involuntarily terminated from covered employment, has been issued payment for a refund, and is retroactively reinstated in covered employment as a remedy for an employment dispute, the member may receive credit for membership service for the period covered by the refund payment~~

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

upon repayment to the system, within 90 days after the date of the order or agreement requiring reinstatement, of the amount of the refund plus interest that would have accrued, as determined by the system. A reinstatement following an employment dispute shall not constitute a violation of Iowa Code section 97B.53(4), even if the reinstatement occurs less than 30 days after the date of termination. ~~Accordingly, the reinstatement described above or, if later, a buy-back, shall be permitted but is not required. However, if the employee is retroactively reinstated and the previously reported termination is expunged, the reemployment shall be treated as falling within the scope of Iowa Code section 97B.53(4) and a previously paid refund shall be repaid with interest.~~

ITEM 10. Amend paragraph **11.1(1)“b”** as follows:

*b.* Option selected, and

(1) If Option 1 is selected, the death benefit amount.

(2) If Option 4 or 6 is selected, the contingent annuitant's name, social security number, proof of date of birth, and relationship to member. The member must designate the survivor benefit percentage, which shall be limited to one of the following:

1. One hundred percent of the member's benefit amount.

2. Seventy-five percent of the member's benefit amount.

3. Fifty percent of the member's benefit amount.

4. Twenty-five percent of the member's benefit amount.

(3) If Option 1, 2, or 5 is selected, a list of beneficiaries.

ITEM 11. Amend subrule 13.2(13) as follows:

**13.2(13) *Reemployment/income monitoring.*** A member who retires under Iowa Code section 97B.50A and this rule shall be required to supply a copy of a complete set of the member's state and federal income tax returns, including all supporting schedules, by June 30 of each calendar year. IPERS may suspend the benefits of any such member if such records are not timely provided.

Only wages and self-employment income shall be counted in determining a member's reemployment comparison amount, as adjusted for health care coverage for the member and member's dependents.

~~For purposes of calculating the income offsets required under Iowa Code section 97B.50A, IPERS shall convert any lump sum workers' compensation award, disability insurance payments, or similar lump sum awards for the same illnesses or injuries to an actuarial equivalent, as determined by IPERS.~~

ITEM 12. Adopt the following **new** subrule 13.2(14):

**13.2(14) *Offset to allowance.*** A member who retires under Iowa Code section 97B.50A shall have benefits reduced by other disability-related payments the member receives for the same disability, including, but not limited to benefits from:

*a.* Social security.

*b.* Long-term disability insurance.

*c.* Workers' compensation.

*d.* Unemployment insurance.

*e.* Employer-paid disability plans, programs, or policies.

*f.* Other laws.

For purposes of calculating the income offsets required under Iowa Code section 97B.50A, IPERS shall convert any lump sum workers' compensation award, disability insurance payments, or similar lump sum awards for the same illnesses or injuries to an actuarial equivalent, as determined by IPERS. IPERS shall convert any monthly, weekly, or other stated period workers' compensation award, disability insurance payments, or other awards for the same illnesses or injuries, dollar-for-dollar, to the same monthly, weekly, or other stated period, as determined by IPERS.

ITEM 13. Amend rule 495—14.4(97B) as follows:

**495—14.4(97B) Applications for death benefits.** Before death benefit payments can be made, application in writing must be submitted to IPERS with a copy of the member's death certificate, or if a death certificate cannot be obtained, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, bureau of health statistics, IPERS' own

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

internal records, or reports derived from other public records, and other departmental or governmental records to which IPERS may have access together with information establishing the claimant's right to payment. A named beneficiary must complete an IPERS application for death benefits based on the deceased member's account. If the claimant's claim is based on dissolution of marriage that revoked the IPERS beneficiary designation, the claim must be processed pursuant to rule 495—14.17(97B).

ITEM 14. Amend paragraph **14.12(2)“k”** as follows:

*k.* Inactive members with less than 16 quarters of service credit. For deaths occurring after June 30, 2004, and before July 1, 2012, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)“a,” and shall only be payable in lump sum amounts for inactive members who have less than 16 quarters of service credit. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

ITEM 15. Adopt the following new paragraph **14.12(2)“l”**:

*l.* Inactive members not vested by service. For deaths occurring after June 30, 2012, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)“a,” and shall only be payable in lump sum amounts for inactive members who are not vested by service. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

ITEM 16. Amend subrule **16.2(1)**, definition of “Qualified domestic relations order,” as follows:

“Qualified domestic relations order” or “QDRO” means a domestic relations order that divides the marital property of opposite gender former spouses and assigns to an opposite gender a former spouse alternate payee the right to receive all or a portion of the benefits payable with respect to a member under IPERS and meets the requirements of this rule.

ITEM 17. Amend paragraph **16.2(2)“a”** as follows:

*a. Mandatory provisions.* A domestic relations order is a QDRO if such order:

(1) Clearly specifies the member's name and last-known mailing address, member identification number or social security number, and the names and last-known mailing addresses and social security numbers of alternate payees. This information shall be provided to IPERS on IPERS' Confidential Information form;

(2) Clearly specifies a fixed dollar amount or a percentage, but not both, of the member's benefits to be paid by IPERS to the alternate payee or the manner in which the fixed dollar amount or percentage is to be determined, provided that no such method shall require IPERS to perform present value calculations of the member's accrued benefit;

(3) Clearly specifies the period to which such order applies;

(4) Clearly specifies that the order applies to IPERS;

(5) Clearly specifies that the order is for purposes of making a property division; ~~and~~

~~(6) Is clearly signed by the judge and filed with the clerk of court. IPERS will consider an order duly signed if it carries an original signature, a stamp bearing the judge's signature, electronic clerk of court stamp and judge's signature page via the electronic data management system (EDMS), or is conformed in accordance with local court rules. Conforms IPERS with IRS reporting requirements for distributions to non-spouse successor alternate payees. The taxable portion and basis will be prorated to each respective recipient if the payee is the alternate payee. If the payee is a successor alternate payee, the taxable portion and basis will be borne by the member, pursuant to IRC Pub. L. 99-514, 100 Stat. 2085, enacted October 22, 1986; and~~

(7) Is clearly signed by the judge and filed with the clerk of court. IPERS will consider an order duly signed if it carries an original signature, a stamp bearing the judge's signature, an electronic clerk-of-court stamp and judge's signature page via the electronic data management system (EDMS), or is conformed in accordance with local court rules.

ITEM 18. Amend paragraph **16.2(3)“c”** as follows:

~~*c.* If a QDRO directs the member to name the alternate payee under the order as a designated beneficiary, and the member fails to do so Upon acceptable proof from a member that a preretirement divorce is final, a member may submit a new enrollment/beneficiary designation form to IPERS. IPERS~~

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

will place the new designation in the member's record. However, if a domestic relations order is later received and qualified by IPERS, the provisions of the QDRO ~~awarding the alternate payee a share of the member's death benefits~~ shall be deemed, except as revoked or modified in a subsequent QDRO, to operate as a beneficiary designation, and shall be given first priority by IPERS in the determination and payment of such member's death benefits. Death benefits remaining after payments are made as required by the QDRO, to the extent possible, shall then be made according to the terms of the member's most recent beneficiary designation. If a QDRO does not ~~require~~ contain a form of benefit paragraph requiring the member to select an a specific IPERS option at retirement, the member is allowed to select any option at retirement, including an option that does not provide for payment of postretirement death benefits. Once a divorce is final post-retirement, a member may submit a new enrollment/beneficiary designation form to IPERS if the member has retired under Option 1, 2 or 5, unless otherwise specified in a QDRO.

ITEM 19. Amend paragraph **16.2(3)"d"** as follows:

*d.* If an alternate payee has been awarded a share of the member's benefits and dies before the member, ~~the alternate payee's entire account value share~~ shall be restored to the member unless otherwise specified in the order and in the manner required under this rule. In order for the alternate payee's entire share to be restored to the member, IPERS requires proof of death of the alternate payee in the form of a death certificate. If a death certificate cannot be obtained, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, bureau of health statistics, IPERS' own internal records, or reports derived from other public records, and other departmental or governmental records to which IPERS may have access.

ITEM 20. Amend paragraph **16.2(3)"j"** as follows:

*j.* IPERS has no duty or responsibility to search for alternate payees. Alternate payees must notify IPERS of any change in their mailing addresses. IPERS shall mail the alternate payee an application once an application for a distribution has been received from the member and considered a complete application by IPERS. The application mailed by IPERS to the alternate payee states that, if the alternate payee does not return the application to IPERS within 60 days after the application is mailed by IPERS, the amounts otherwise payable to the alternate payee shall be paid to the member or the member's beneficiary(ies). If the member applied for a refund, and the alternate payee's application is not received within the 60 days, the alternate payee's share of the member's lump sum refund shall be paid to the member. The alternate payee's only recourse shall be with the member. IPERS shall have no liability to the alternate payee or the member with respect to payment of the alternate payee's share to the member. If the member applies for a monthly pension payment, unless and until a valid application for the alternate payee's share of the monthly pension payments is received and accepted by IPERS, IPERS shall have no liability to the alternate payee with respect to payment of monthly amounts, nor will any retroactive payment be made if and when an application is received and accepted. All monthly payments in this case shall be prospective.

ITEM 21. Adopt the following **new** paragraph **16.2(3)"r"**:

*r.* If an alternate payee's completed application is received and processed before the payroll has been processed in any given month, the alternate payee will receive a payment for that current month. If an alternate payee's completed application is received and processed in the current month, but after the payroll has been processed, the alternate payee's payment will commence with the payroll in the following month.

ITEM 22. Amend subrule 17.4(4) as follows:

**17.4(4) Request denied.** When the custodian denies a request for access to a confidential record, in whole or in part, the custodian shall notify the requester in writing. The denial shall ~~be signed by the custodian of the record and shall~~ include:

- a.* The name and title of the person responsible for the denial; and
- b.* A citation to the statute or other provision of law which prohibits disclosure of the record; or

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

c. A citation to the statute vesting discretion in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

ITEM 23. Amend subrule 26.3(1) as follows:

**26.3(1)** A party who wishes to appeal a decision by IPERS, other than a disability claim pursuant to Iowa Code section 97B.50A, shall, within 30 days after notification was mailed to the party's last-known address, file with IPERS a notice of appeal in writing setting forth:

- a. The name, address, and ~~social security~~ member identification number of the ~~applicant~~ appellant;
- b. to e. No change.

**ARC 2317C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 105.4, the Plumbing and Mechanical Systems Board of the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 25, “State Plumbing Code,” Iowa Administrative Code.

The proposed amendments update the state plumbing code from the 2012 edition of the Uniform Plumbing Code (UPC) to the 2015 edition of the Uniform Plumbing Code as required by the Iowa Code to adopt the most current version. The Plumbing and Mechanical Systems Board proposes to keep all existing amendments to the Uniform Plumbing Code as well as to adopt additional amendments to the 2015 UPC.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 12, 2016. Written materials should be directed to Jennifer Hart, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail [jennifer.hart@idph.iowa.gov](mailto:jennifer.hart@idph.iowa.gov).

Also, there will be a public hearing on January 12, 2016, at 10 a.m. in Conference Room 517, Lucas State Office Building, 321 E. 12th Street, 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 amendments.

These rules are subject to waiver under the Board's general waiver provisions contained in 641—Chapter 31.

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

These amendments are intended to implement Iowa Code section 105.4.

The following amendments are proposed.

ITEM 1. Amend rule 641—25.1(105) as follows:

**641—25.1(105) Adoption.** Section 101 and Chapters 2 to 17 of the Uniform Plumbing Code, ~~2012~~ 2015 Edition, as published by the International Association of Plumbing and Mechanical Officials, 4755 E. Philadelphia Street, Ontario, California 91761-2816, are hereby adopted by reference with amendments as the state plumbing code authorized by Iowa Code section 105.4 ~~as amended by 2013 Iowa Acts, Senate File 427, section 5.~~ Portions of this chapter reproduce excerpts from the ~~2012~~ 2015 International Plumbing Code, International Code Council, Inc., Washington, D.C. Such excerpts are reproduced with permission, all rights reserved.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 2. Amend rule 641—25.3(105) as follows:

**641—25.3(105) Fuel gas piping.** Fuel gas piping shall comply with the requirements of Chapter 12 of the Uniform Plumbing Code, ~~2012~~ 2015 Edition, unless the provisions conflict with 661—Chapter 226, Liquefied Petroleum Gas, Iowa Administrative Code. Where Chapter 12 conflicts with 661—Chapter 226, the provisions of 661—Chapter 226 shall be followed.

ITEM 3. Amend subrule 25.4(2) as follows:

**25.4(2)** The following ~~amendment~~ amendments shall apply to UPC Chapter 3:

a. Subsection 301.4.1 Permit Application. Delete the subsection.

b. Subsection 314.4.1 Installation of Thermoplastic Pipe and Fittings. Trench width for thermoplastic pipe shall be limited to six times the outside diameter of the piping at the base. Thermoplastic piping shall be bedded in not less than 4 inches (102 mm) of aggregate bedding material supporting the pipe. Initial backfill shall encompass the pipe. Aggregate material shall be three-eighths (3/8) inch p-gravel or 1-inch clean class one bedding.

ITEM 4. Reletter paragraphs **25.4(3)“a”** to **“e”** as **25.4(3)“g”** to **“k.”**

ITEM 5. Adopt the following **new** paragraphs **25.4(3)“a”** to **“f”**:

a. Section 407.3 Limitation of Hot Water Temperature for Public Lavatories. Modify the section by adding the following sentence to the end of the section: “These devices shall be installed at or as close as possible to the point of use.”

b. Section 408.4 Waste Outlet. Modify the section by adding the following exception to the end of the section: “Exception: In a residential dwelling unit where a 2-inch waste is not readily available and approval of the Authority Having Jurisdiction has been granted, the waste outlet, fixture tailpiece, trap and trap arm may be 1½ inch when an existing tub is being replaced by a shower sized per Section 408.6(2). This exception only applies where one shower head rated at 2.5 gpm is installed.”

c. Section 409.4 Limitation of Hot Water in Bathtubs and Whirlpool Bathtubs. Modify the section by adding the following sentence to the end of the section: “These devices shall be installed at or as close as possible to the point of use.”

d. Section 410.3 Limitation of Water Temperature in Bidets. Modify the section by adding the following sentence to the end of the section: “These devices shall be installed at or as close as possible to the point of use.”

e. Section 416.5 Drain. Modify the section by deleting the last sentence, which states: “Where a drain is provided, the discharge shall be in accordance with Section 811.0.”

f. Section 418.3 Location of Floor Drains. Modify the section by adding the following to the end of the section: “(5) Rooms equipped with a water heater.”

ITEM 6. Amend relettered paragraph **25.4(3)“g”** as follows:

g. Subsection 421.1 General. Modify the subsection by deleting “Table 1401.1 of this code” and inserting the following in lieu thereof: “Chapter 11 of the ~~2012~~ 2015 International Building Code.”

ITEM 7. Amend relettered paragraph **25.4(3)“j,”** Table 422.1, by striking “2012” in the heading and endnote and inserting “2015” in lieu thereof.

ITEM 8. Amend relettered paragraph **25.4(3)“k”** as follows:

k. Insert the following text at the end of Chapter 4, reprinted with permission from the ~~2012~~ 2015 International Plumbing Code:

“422.6 Pay Facilities. Where pay facilities are installed and permissible under Iowa law, such facilities shall be in excess of the required minimum facilities. Required facilities shall be free of charge. (Reprinted from IPC 403.3.5)

“422.7 Substitution for Water Closets. In each bathroom or toilet room, urinals shall not be substituted for more than 67 percent of the required water closets in assembly and educational occupancies. Urinals shall not be substituted for more than 50 percent of the required water closets in all other occupancies. (Reprinted from IPC 419.2)”



PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 9. Renumber subrules **25.4(5)** to **25.4(13)** as **25.4(6)** to **25.4(14)**.

ITEM 10. Adopt the following **new** subrule 25.4(5):

**25.4(5)** The following amendments shall apply to UPC Chapter 6:

a. Section 603.4.8 Drain Lines. Modify the section by adding the following language to the end of the section: “or in accordance with the manufacturer’s drain-sizing chart for installation.”

b. Section 609.11 Pipe Insulation. Delete sections 609.11 through 609.11.2 and insert the following in lieu thereof:

Section 609.11 Pipe Insulation. Insulation of domestic hot water piping shall be in accordance with the applicable energy conservation code.

c. Section 611.4 Sizing of Residential Softeners. Modify the section by adding the following to the end of the last sentence in the section: “or as specified in the manufacturer’s installation instructions.”

d. Section 612 Residential Fire Sprinkler Systems. Delete sections 612.0 through 612.7.2.

ITEM 11. Amend renumbered subrules 25.4(8) and 25.4(9) as follows:

**25.4(8)** The following amendment shall apply to UPC Chapter 9:

a. Section 906.7 Frost or Snow Closure. Modify the section by deleting “two (2) inches (50.8 mm)” in the first sentence and inserting “three (3) inches (76.2 mm)” in lieu thereof.

b. Section 908.2.2 Size. Delete the second sentence in this section and insert the following new sentence in lieu thereof: “The wet vent shall be not less than 2 inches (50 mm) in diameter for 6 drainage fixture units (dfu) or less, and not less than 3 inches (80 mm) in diameter for 7 dfu or more.”

**25.4(9)** The following amendment shall apply to UPC Chapter 10:

a. Table 1002.2 Horizontal Lengths of Trap Arms. Delete the table and insert the following table in lieu thereof:

**TABLE 1002.2**  
**Horizontal Lengths of Trap Arms**  
**(Except for Water Closets and Similar Features)<sup>1,2</sup>**

Trap Arm Diameter (inches)	Distance Trap to Vent Minimum (inches)	Length Maximum (feet)
1¼	2½	5
1½	3	6
2	4	8
3	6	12
4	8	12
Exceeding 4	2 × Diameter	12

For SI units: 1 inch = 25.4 mm

Notes:

<sup>1</sup>Maintain ¼ inch per foot slope (20.8 mm/m).

<sup>2</sup>The developed length between the trap of a water closet or similar fixture (measured from the top of the closet flange to the inner edge of the vent) and its vent shall not exceed 6 feet (1829 mm).

b. Section 1014.1.3 Food Waste Disposers and Dishwashers. Modify the section by deleting the second sentence and inserting the following in lieu thereof: “Commercial food waste disposers shall discharge into the building’s drainage system in accordance with the requirements of the Authority Having Jurisdiction.”

**ARC 2320C****RACING AND GAMING COMMISSION[491]****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 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 5, “Track and Excursion Boat Licensees’ Responsibilities,” Chapter 6, “Occupational and Vendor Licensing,” and Chapter 10, “Thoroughbred and Quarter Horse Racing,” Iowa Administrative Code.

Item 1 clarifies the qualified agreements that must be submitted to the Commission for approval.

Item 2 extends the duration of occupational licenses to three years.

Item 3 requires jockeys to be licensed prior to the first post time of the race card for the day in which the horse is entered.

Item 4 amends the definitions of “overnight race,” “post time,” “purse race” and “stakes race.”

Item 5 requires that any person on horseback on facility grounds must wear a helmet and safety vest.

Item 6 clarifies instances in which stewards’ decisions cannot be appealed.

Item 7 clarifies when stall positions will be given.

Item 8 clarifies how and when horses on a veterinarian’s list are removed.

Item 9 clarifies the proper recording of a horse’s sex.

Item 10 provides clarification of what is required for a jockey’s safety vest.

Item 11 provides clarification of a horse’s eligibility when the horse appears on any other jurisdiction’s list.

Item 12 clarifies an instance where a horse is excused by the stewards.

Item 13 clarifies instances of coupling.

Item 14 provides clarifications for entries in split or divided races.

Item 15 provides clarification concerning the naming and engaging of riders.

Item 16 provides clarification regarding limitations on scratches.

Item 17 provides clarification pertaining to required workouts.

Item 18 provides clarification on equipment changes.

Item 19 provides clarification regarding a valid open claim certificate.

Item 20 changes the number of claims allowed.

Item 21 provides clarification pertaining to transfers after claims.

Item 22 provides clarification concerning an instance in which stewards may disallow a claim.

Item 23 provides limitations on compounded medications.

Item 24 provides clarifications with regard to use of approved NSAIDs.

Any person may make written suggestions or comments on the proposed amendments on or before January 12, 2016. Written material should be directed to the Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on January 12, 2016, at 9 a.m. in the office of the Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

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

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

## RACING AND GAMING COMMISSION[491](cont'd)

ITEM 1. Amend subrule 5.4(8) as follows:

**5.4(8) Commission approval of contracts and business arrangements.**

*a. Qualifying agreements.*

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 regardless of payment method are agreements that qualify for submission to and approval by the commission. Contracts and business arrangements with entities licensed pursuant to rule 491—11.13(99F) are exempt from submission and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

1. Any obligation that expends, encumbers, or loans facility assets to anyone other than a not-for-profit entity, ~~or~~ a unit of government for the payment of taxes, ~~or utilities~~ an entity that provides water, sewer, gas or electric utility services to the facility.

2. No change.

3. A previously approved qualifying agreement, if consideration exceeds the approved amount in a calendar year by the greater of \$100,000 or 25 percent or if the commission approval date of an ongoing contract is more than five years old.

4. No change.

(2) No change.

(3) A qualifying agreement must be submitted within 30 days of execution. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval. Qualifying agreements ~~that are ongoing or open-ended~~ need only be submitted on initiation, unless there is a material change in terms or noncompliance with 5.4(8) "*b*"(4) or to comply with 5.4(8) "*a*"(1)"3."

*b. Purpose of review.* The commission conducts reviews to serve the public interest to ensure that:

(1) to (3) No change.

(4) Iowa resources, goods and services are utilized. Resources, goods, and services shall be considered to be made in Iowa, be provided by Iowans, or emanate from Iowa if one or more of the following apply:

1. to 7. No change.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code sections 99D.9 and 99F.7(4) ~~as amended by 2004 Iowa Acts, House File 2302, section 11 and section 43, respectively,~~ if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

*c. and d.* No change.

ITEM 2. Amend rule 491—6.8(99D,99F) as follows:

**491—6.8(99D,99F) Duration of license.** A license issued by the commission is valid for ~~two~~ three calendar years. The license shall expire at the end of the ~~second~~ third calendar year, unless an extension is granted by the administrator.

ITEM 3. Amend rule 491—6.29(99D) as follows:

**491—6.29(99D) Time by which owner, jockey and trainer must be licensed.** The owner (includes stable names, partnerships, and corporations), the jockey and the trainer of a horse entered to race must ~~both~~ be licensed by the first post time of the race card for the day in which the horse is entered.

ITEM 4. Amend the following definitions in rule **491—10.1(99D)**:

"Overnight race," also known as a purse race, means a race for which entries close 96 hours, or less, before the time set for the first race of the day on which the race is to be run contest for which entries close at a time set by the racing secretary.

"Post time" means the scheduled starting time for horses to arrive at the starting gate for a contest.

## RACING AND GAMING COMMISSION[491](cont'd)

*“Purse race”* means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse ~~and for which entries close less than 96 hours prior to its running.~~

*“Stakes race”* means a contest in which nomination (if applicable), entry, and starting fees contribute to the purse. No overnight race shall be considered a stakes race. Special designations or classifications for stakes races such as “graded stakes” or “black type” shall be determined by the appropriate breed registries or recognized authorities.

ITEM 5. Amend subrule 10.2(9) as follows:

**10.2(9) Helmets and vests.** ~~A facility shall not allow any~~ Any person on horseback on facility grounds ~~unless that person is wearing shall wear~~ a protective helmet and safety vest ~~of a type approved by the commission.~~

ITEM 6. Amend subparagraph **10.4(4)“a”(6)** as follows:

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of the commission. The laws of Iowa and the rules of racing apply equally during periods of racing. They supersede the conditions of a race and the regulations of a racing meet and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the facility. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final ~~for purposes of distribution of the pari-mutuel pool. The administrative standard of review for a disqualification decision is abuse of discretion.~~ A decision by the stewards regarding a disqualification of a horse due to a foul, interference, or a riding infraction may not be appealed.

ITEM 7. Amend subparagraph **10.4(8)“a”(3)** as follows:

(3) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions ~~more than ten minutes~~ on race day before post time for the each race;

ITEM 8. Amend paragraph **10.4(17)“g,”** introductory paragraph, as follows:

g. A horse placed on the veterinarian’s list in Iowa, bleeders exempt, may be allowed to enter only after it has been ~~removed from the list~~ approved by the commission veterinarian. Any horse placed on the veterinarian’s list will be removed from any future race in which the horse has been entered. Requests for the removal of any horse from the veterinarian’s list will be accepted only after a minimum of three calendar days have elapsed from the placing of the horse on the veterinarian’s list ~~have elapsed~~. Removal from the list will be at the discretion of the commission veterinarian, who may require satisfactory workouts or examinations to adequately demonstrate that the problem that caused the horse to be placed on the list has been rectified. Horses that are entered to race and then placed on the veterinarian’s list for any reason will not be allowed to enter a race for a minimum of three calendar days beginning the day after the horse was scheduled to race.

ITEM 9. Amend subparagraph **10.5(1)“a”(14)** as follows:

(14) ~~Immediately~~ Properly recording the sex of the horses in the trainer’s care with the horse identifier and the racing secretary and immediately reporting the alteration of the sex of a horse in the trainer’s care to the horse identifier and the racing secretary.

ITEM 10. Amend subparagraph **10.5(2)“q”(2)** as follows:

(2) A jockey’s weight shall include the jockey’s clothing, boots, saddle and its attachments. A safety vest shall be mandatory, shall weigh no more than two pounds, and shall be designed to provide shock-absorbing protection to the upper body of ~~at least a rating of five as defined by the British Equestrian Trade Association.~~

ITEM 11. Amend subparagraph **10.6(1)“a”(10)** as follows:

(10) A horse appears on the ~~starter’s list, stewards’ list, paddock list, or Iowa~~ veterinarian’s list, notwithstanding a horse appearing on the veterinarian’s list as a “bleeder.” In addition, a horse appearing on any starter’s, stewards’, or paddock judge’s list, or the veterinarian’s list in another jurisdiction, is ineligible unless the horse is removed from the list by the day of the race and approved by the board of stewards to enter.

## RACING AND GAMING COMMISSION[491](cont'd)

ITEM 12. Amend subparagraph **10.6(1)“b”(4)** as follows:

(4) A horse is brought to the paddock and is not in the care of and saddled by a currently licensed trainer or assistant trainer unless excused by the stewards.

ITEM 13. Amend paragraph **10.6(2)“c”** as follows:

c. Coupling. There will be no coupled entries in any race. In races, excluding stakes races, that overflow, trainers must declare preference of runners with identical ownership at time of entry. Same-owner, second-choice horses will be least preferred. A trainer or owner may not enter more than three horses in a race unless the race is split or divided.

ITEM 14. Adopt the following new subparagraphs **10.6(2)“d”(3)** and **(4)**:

(3) A trainer shall be allowed to enter more than the maximum number of entries allowed under paragraph 10.6(2)“c” if the entries are declared at time of entry as “split entry only” and preference is given by the trainer for the trainer’s first three entries.

(4) The racing secretary shall split an overnight race so that common ownership, identical ownership, or common trainer will divide as equally as possible between two or more races.

ITEM 15. Rescind paragraph **10.6(2)“l”** and adopt the following new paragraph in lieu thereof:

l. Naming/engaging of riders. Riders must be named at the time of entry. If, at the conclusion of the draw of a race, a trainer does not have a rider, all riders who are available shall be made known to the trainer at that time via telephone or in person by the stewards or their designee. A trainer who does not name a rider prior to the conclusion of the draw of a race, and reasonable attempts have been employed to contact the trainer with no response, shall have an available rider engaged at the facility placed on the horse, determination of which shall be drawn by lot. Riders properly engaged as a first or second call in a race must fulfill their engagements as required in paragraph 10.5(2)“l.”

ITEM 16. Amend paragraph **10.6(8)“c”** as follows:

c. *Limitation on scratches.* No horse shall be permitted to be scratched from a race if the horses remaining in the race number fewer than seven betting interests, unless the stewards permit a lesser number. When the number of requests to scratch would, if granted, leave a field of fewer than seven, the stewards shall determine by lot which entrants may be scratched and permitted to withdraw from the race. Veterinarian scratches will be preferred and accepted without regard to the number of entries.

ITEM 17. Amend paragraph **10.6(9)“a”** as follows:

a. *When required.* No horse shall be allowed to start unless the horse has raced in an official race or has an approved official timed workout satisfactory to the stewards. A horse that has not started for a period of 60 days or more shall be ineligible to race until it has completed a published workout satisfactory to the stewards prior to the day of the race in which the horse is entered. The workout must have occurred within the previous 30 days for a thoroughbred or within the previous 60 days for a quarter horse. Horses that have not started for a period of six months or more must have two published workouts, one of which must have occurred within the previous 30 days for thoroughbreds or within the previous 60 days for quarter horses. First-time starters must have at least two published workouts and with one having occurred within the previous 30 days for thoroughbreds or within the previous 60 days for quarter horses, be approved from the gate by the starter, and have a published workout from the starting gate.

ITEM 18. Amend paragraph **10.6(10)“b”** as follows:

b. *Equipment change.* No licensee may change the equipment used on a horse from that used in the horse’s last race, unless with permission of the stewards. No licensee may add blinkers or cheek pieces to a horse’s equipment or discontinue their use without the prior approval of the starter ~~and the stewards~~. First-time starters must race with or without blinkers or cheek pieces in accordance with the gate approval card issued by the starter. In the paddock prior to a race, a horse’s tongue may be tied down with clean bandages, clean gauze, or with a tongue strap.

ITEM 19. Amend paragraph **10.6(18)“a”(1)“3”** as follows:

3. Has a valid open claim certificate. Any person not licensed as an owner, or a licensed authorized agent for the account of the same, or a licensed owner not having foal paper(s) registered

## RACING AND GAMING COMMISSION[491](cont'd)

with the racing secretary's office or who has not started a horse at the current meeting may request an open claim certificate from the commission. The person must submit a completed application for a prospective owner's license to the commission. The applicant must have the name of the trainer licensed by the commission who will be responsible for the claimed horse. A nonrefundable fee must accompany the application along with any financial information requested by the commission. The names of the prospective owners shall be prominently displayed in the offices of the commission and the racing secretary. The application will be processed by the commission; and when the open claim certificate is exercised, an owner's license will be issued.

ITEM 20. Rescind subparagraph **10.6(18)“a”(2)** and adopt the following new subparagraph in lieu thereof:

(2) Number of claims. An ownership entity (sole owner, partnership, racing stable, corporation or owner/trainer acting as an owner) shall not claim more than one horse in a race. An authorized agent or trainer acting on behalf of an ownership entity shall not submit more than one claim in a race with or without commonality of ownership.

ITEM 21. Rescind paragraph **10.6(18)“g”** and adopt the following new paragraph in lieu thereof:  
*g. Transfer after claim.*

(1) Forms. Upon a successful claim, the stewards shall issue in triplicate, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the commission, the stewards, and the racing secretary.

(2) No claimed horse shall be delivered by the original owner to the successful claimant until the claim is approved by the stewards. Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant from the time the horse becomes a starter; and said successful claimant becomes the owner of the horse unless the claim is voided by the stewards under the provisions of this paragraph. Only a horse which is officially a starter in the race may be claimed. A subsequent disqualification of the horse by order of the stewards shall have no effect upon the claim.

(3) The stewards shall void the claim and return the horse to the original owner if:

1. The claimed horse suffers a fatality during the running of the race, dies, or is euthanized before leaving the track.

2. The commission veterinarian, during the veterinarian's observation of the horse coming off the track or upon its arrival to the test barn, determines the horse will be placed on the veterinarian's list as unsound or lame. The stewards shall not void the claim if, prior to the race in which the horse is claimed, the claimant elects to claim the horse regardless of whether the commission veterinarian determines the horse will be placed on the veterinarian's list as unsound or lame. An election made under this rule shall be entered on the claim form.

3. The race is called off, canceled, or declared no contest.

(4) Other-jurisdiction rules. The commission will recognize and be governed by the rules of any other jurisdiction regulating title and claiming races when ownership of a horse is transferred or affected by a claiming race conducted in that other jurisdiction.

(5) Determination of sex and age. The claimant, within 48 hours, shall be responsible for determining the age and sex of the horse claimed notwithstanding any designation of sex and age appearing in the program or in any racing publication. Horses that are spayed or gelded shall be properly identified as such in the program. If the claimant finds that a mare is in fact spayed or that the status of a male horse is inaccurate as stated by the program, the claimant may return the horse for full refund of the claiming price.

(6) Affidavit by claimant. The stewards may, if they determine it necessary, require any claimant to execute a sworn statement that the claimant is claiming the horse for the claimant's own account or as an authorized agent for a principal and not for any other person.

(7) Delivery required. No person shall refuse to deliver a properly claimed horse to the successful claimant. The claimed horse shall be disqualified from entering any race until delivery is made to the claimant.

## RACING AND GAMING COMMISSION[491](cont'd)

(8) Obstructing the rules of claiming. No person or licensee shall obstruct or interfere with another person or licensee in claiming any horse, enter into any agreement with another to subvert or defeat the object and procedures of a claiming race, or attempt to prevent any horse entered from being claimed.

ITEM 22. Amend paragraph **10.6(18)“i”** as follows:

*i. Deceptive Disallowance of claim.* The stewards may cancel and disallow any claim within 24 hours after a race if they determine that a claim was made upon the basis of a lease, sale, or entry of a horse made for the purpose of fraudulently obtaining the privilege of making a claim; or if an eligible claimant improperly obtains information or access to horses by being present in the paddock during the claiming race unless the claimant has a horse in that claiming race, as determined solely by the stewards. In the event of a disallowance, the stewards may further order the return of a horse to its original owner and the return of all claim moneys.

ITEM 23. Adopt the following **new** subparagraph **10.7(1)“d”(6)**:

(6) No person shall possess, use, or distribute a compounded medication within the premises of the facility if there is a Federal Drug Administration-approved equivalent of that substance available for purchase unless approved by the commission veterinarian. Veterinary drugs shall be compounded in accordance with all applicable state and federal laws. Compounded medication shall be dispensed only by prescription issued by a licensed veterinarian to meet the medical needs of a specific horse and for use only in that specific horse. All compound medications must be labeled as required by law.

ITEM 24. Amend paragraph **10.7(1)“k”** as follows:

*k. Non-steroidal anti-inflammatory drugs (NSAIDs).*

(1) The use of one of three approved NSAIDs shall be permitted under the following conditions:

1. The level does not exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection at least 24 hours before the post time for the race in which the horse is entered:

- Phenylbutazone (or its metabolite oxyphenylbutazone) – 5 micrograms per milliliter;
- Flunixin – 20 nanograms per milliliter;
- Ketoprofen – ~~10~~ 2 nanograms per milliliter.

2. No change.

3. The presence of more than one of the three approved NSAIDs, with the exception of phenylbutazone in a concentration below 1 microgram per milliliter, flunixin in a concentration below 3 nanograms per milliliter, or ketoprofen in a concentration below 1 nanogram per milliliter of serum or plasma, or the presence of any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(2) No change.

**ARC 2318C**

**SECRETARY OF STATE[721]**

**Notice of Termination**

Pursuant to the authority of Iowa Code sections 48A.38 and 17A.4, the Secretary of State terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on November 25, 2015, as **ARC 2269C** proposing to amend Chapter 28, “Voter Registration File (I-Voters) Management,” Iowa Administrative Code.

The Notice of Intended Action was proposed to allow the Secretary of State’s office to retain fees generated by voter registration list requests within the office to be used toward ensuring that the program would become self-sustaining.

The Secretary of State is terminating the Notice after further review determined that the proposed action was an insufficient way to accomplish the intended effect.

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

**ARC 2319C****TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code section 307.12 and section 307A.2 as amended by 2015 Iowa Acts, House File 635, section 20, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 160, "County and City Bridge Construction Funds," Chapter 161, "Federal-Aid Highway Bridge Replacement and Rehabilitation Program," Chapter 170, "Allocation of Farm-to-Market Road Funds," Chapter 172, "Availability of Instructional Memorandums to County Engineers," Chapter 173, "Preparation of Secondary Road Construction Programs, Budgets, and County Engineers' Annual Reports," Chapter 174, "Reimbursable Services and Supplies," and Chapter 178, "Project Cost Reporting Requirements for Cities and Counties," Iowa Administrative Code.

The proposed amendments to Chapter 160 add new rules concerning the purpose of the chapter and contact information, remove the requirement that city bridge construction funds cannot be spent on primary road extensions, and make a clarifying change concerning the county and city bridge construction eligibility lists.

The proposed amendments to Chapter 161 change the title of the chapter to reflect the state's current program title. The Federal-Aid Highway Bridge Replacement and Rehabilitation Program was replaced with the Highway Bridge Program under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. Subsequently, the Highway Bridge Program was eliminated under the Moving Ahead for Progress in the 21st Century Act. Iowa's associations representing cities and counties requested, and the Iowa Transportation Commission approved, the Department's continuing to administer a program similar to the Highway Bridge Program using a portion of the "50 percent available to any area of the state" Federal-Aid Surface Transportation Program funding. Amendments to this chapter reflect the continuation of a bridge program administered by the Department as determined by the cities' and counties' associations. Other proposed amendments add new rules concerning the purpose of the chapter and contact information.

The proposed amendments to Chapter 170 add new rules concerning the purpose of the chapter and contact information, update the chapter's implementation sentence, and require a county wanting to receive a temporary, advance allocation to include the request in its final plan submittal to the Department.

The proposed amendments to Chapter 172 change the title of the chapter and make corresponding amendments to reflect that the Department is providing instructional memorandums to local public agencies and not just county engineers. The instructional memorandums are available at no cost on the Department's Web site. Other proposed amendments add new rules concerning the purpose of the chapter and contact information and update the implementation sentence.

The proposed amendments to Chapter 173 change the title of the chapter, make corresponding amendments to reflect the correct name of the annual report, update the chapter's implementation sentence, and add new rules concerning the purpose of the chapter and contact information.

The proposed amendments to Chapter 174 add a new rule concerning the purpose of the chapter, update the implementation sentence, and make changes to the Department's list of highway-related services and supplies that counties and cities may request from the Department.

The proposed amendments to Chapter 178 correct Iowa Code citations, update the chapter's implementation sentence and remove the requirement that the Department publish a paper copy of the instructions for cities and counties to report project cost information. Also, the definition of "city" is amended to clarify the requirement that the Amana Colonies complete the project cost report when completing its annual Street Financial Report, and "highway" was changed to "roadway" so that roadway, not just highway, lighting projects are included in the report.



## TRANSPORTATION DEPARTMENT[761](cont'd)

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; e-mail: [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).
5. Be received by the Office of Policy and Legislative Services no later than January 12, 2016.

A meeting to hear requested oral presentations is scheduled for Thursday, January 14, 2016, at 10 a.m. in the Administration Building, First Floor South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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

These amendments are intended to implement Iowa Code section 307.24 as amended by 2015 Iowa Acts, House File 635, section 10, and Iowa Code sections 307.12, 307.44, 309.22, 309.93, 310.27, 312.2, 312.14, 314.1 and 314.1A.

The following amendments are proposed.

ITEM 1. Renumber rules **761—160.1(312)** and **761—160.2(312)** as **761—160.3(312)** and **761—160.4(312)**.

ITEM 2. Adopt the following **new** rule 761—160.1(312):

**761—160.1(312) Purpose.** The purpose of these rules is to establish requirements for the counties' and cities' bridge construction funds, in accordance with Iowa Code section 312.2.

ITEM 3. Adopt the following **new** rule 761—160.2(312):

**761—160.2(312) Contact information.** Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 4. Amend renumbered rule 761—160.4(312) as follows:

**761—160.4(312) Administration of funds.** The department shall allocate the funds to counties and cities for bridge construction and reconstruction projects based on needs. The funds shall be administered by the department's office of local systems.

**160.4(1)** No change.

**160.4(2)** The city bridge construction fund shall be allocated for projects on city streets as determined by the department after consultation with city officials through their representative organizations. ~~City streets do not include primary road extensions.~~

**160.4(3)** To be considered for funding, a proposed project must be on the appropriate eligibility list maintained by the department.

a. No change.

b. A local jurisdiction may propose a project by submitting a project application to the ~~following address: Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010~~ office of local systems.

c. Unless otherwise agreed to by the city and county, a proposed project for a bridge located on the line dividing incorporated and unincorporated areas shall be placed on the eligibility list that corresponds to the jurisdiction submitting the application.

## TRANSPORTATION DEPARTMENT[761](cont'd)

**160.4(4)** Prior to allocation, the department shall rank the proposed projects within each eligibility list by a priority system based on needs, as developed under subrules ~~160.2(1)~~ 160.4(1) and ~~160.2(2)~~ 160.4(2). The priority system will include various items such as, but not limited to, structural condition, traffic, and detour length. For each list, the department shall allocate funds, within the limits of funding availability, to those projects ranked as having the greatest needs.

ITEM 5. Amend **761—Chapter 161**, title, as follows:

**FEDERAL-AID HIGHWAY BRIDGE REPLACEMENT  
AND REHABILITATION PROGRAM**

ITEM 6. Renumber rules **761—161.1(307)** and **761—161.2(307)** as **761—161.3(307)** and **761—161.4(307)**.

ITEM 7. Adopt the following new rule 761—161.1(307):

**761—161.1(307) Purpose.** The purpose of these rules is to establish requirements for the counties' and cities' federal-aid highway bridge program, in accordance with Iowa Code section 307.44.

ITEM 8. Adopt the following new rule 761—161.2(307):

**761—161.2(307) Contact information.** Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 9. Amend renumbered rule 761—161.3(307) as follows:

**761—161.3(307) Source of funds.** The Surface Transportation Program established in Section 144 133 of Title 23 of the United States Code provides for the use of federal funds to replace or rehabilitate public road bridges that are unsafe because of structural deficiencies, physical deterioration, or functional obsolescence. At least 15 percent, but not more than 35 percent, of the funds apportioned to the state shall be expended to replace or rehabilitate bridges on public roads which are not a part of a federal-aid system. The department, in consultation with county and city officials through their representative organizations, has dedicated a portion of these funds for replacement and rehabilitation of city and county bridges.

ITEM 10. Amend renumbered rule 761—161.4(307) as follows:

**761—161.4(307) Administration of funds.** The Highway Bridge Program funds apportioned to the state shall be made available for obligation throughout the state on a fair and equitable basis. The department shall administer the program by dividing each fiscal year Highway Bridge Program apportionment into ~~three~~ two separate funds: ~~one for the state~~; one for the counties; and one for the incorporated cities. The amount allocated to each of the ~~three~~ two funds shall be determined by the department after consultation with county and city officials through their representative organizations. This consultation shall precede any change in allocation.

~~**161.4(1)** The state share shall be administered and obligated by the department.~~

~~**161.4(2)**~~ **161.4(1)** The counties' share shall be administered by the department's office of local systems and shall be divided among the counties as determined by the department after consultation with county officials through their representative organizations.

~~**161.4(3)**~~ **161.4(2)** The cities' share shall be administered by the department's office of local systems and shall be divided among the cities as determined by the department after consultation with city officials through their representative organizations.

~~**161.4(4)** To be eligible, the bridge must have a completed structural inventory and appraisal (SI & A) report on file with the department in accordance with National Bridge Inspection Standards, be structurally deficient or functionally obsolete, and have a sufficiency rating that complies with federal requirements.~~

## TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 11. Renumber rule **761—170.1(310)** as **761—170.3(310)**.

ITEM 12. Adopt the following new rule 761—170.1(310):

**761—170.1(310) Purpose.** The purpose of these rules is to establish requirements for the counties' allocation of farm-to-market funds, in accordance with Iowa Code section 310.27.

ITEM 13. Adopt the following new rule 761—170.2(310):

**761—170.2(310) Contact information.** Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 14. Amend renumbered rule 761—170.3(310) as follows:

**761—170.3(310) Temporary allocation.** Temporary, advance allocation of farm-to-market road funds to counties is permitted under this rule up to an amount equal to the current fiscal year's anticipated receipts plus the four succeeding fiscal years' anticipated receipts to the requesting county's farm-to-market road fund.

**170.3(1) Requesting an advance allocation.** A county wishing to receive a temporary, advance allocation shall include its request as part of ~~the secondary road budget and program documents~~ its final plan submittal to the department.

**170.3(2) Limitations on advancements.** In making the determination to advance allocations to any requesting county, and in determining the priority that each county shall have in the request for funds, the department shall consider the following factors:

a. to c. No change.

d. The county must have met the local effort requirements of funds raised under Iowa Code subsection ~~312.2(8)~~ 312.2(5).

e. to h. No change.

~~**170.3(3) Contact information.** Questions regarding this rule may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.~~

~~This rule is intended to implement Iowa Code section 310.27.~~

ITEM 15. Adopt the following new implementation sentence in **761—Chapter 170**:  
These rules are intended to implement Iowa Code section 310.27.

ITEM 16. Amend **761—Chapter 172**, title, as follows:

AVAILABILITY OF INSTRUCTIONAL MEMORANDUMS  
TO COUNTY ENGINEERS LOCAL PUBLIC AGENCIES

ITEM 17. Renumber rule **761—172.1(307A)** as **761—172.3(307A)**.

ITEM 18. Adopt the following new rule 761—172.1(307):

**761—172.1(307) Purpose.** The purpose of these rules is to establish requirements for instructional memorandums, in accordance with Iowa Code section 307.24 as amended by 2015 Iowa Acts, House File 635, section 10.

ITEM 19. Adopt the following new rule 761—172.2(307):

**761—172.2(307) Contact information.** Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 20. Amend renumbered rule 761—172.3(307A) as follows:

~~**761—172.3(307A 307) Instructional memorandums to county engineers local public agencies.** The department shall produce a manual of instructional memorandums to county engineers regarding secondary and farm-to-market roads. The manual shall communicate instructions, requirements and guidance information to the counties. The department shall produce instructional memorandums that communicate instructions, requirements, and guidance information on a variety of transportation-~~

## TRANSPORTATION DEPARTMENT[761](cont'd)

related topics to local public agencies. The instructional memorandums and updates shall be available electronically, at no cost, to all local public agencies on the department's Web site, [www.iowadot.gov](http://www.iowadot.gov).

~~172.3(1) The manual of instructional memorandums and updates shall be available to all county engineers free of charge from the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.~~

~~172.3(2) Reserved.~~

~~This rule is intended to implement Iowa Code section 307A.2.~~

ITEM 21. Adopt the following new implementation sentence in **761—Chapter 172**:

These rules are intended to implement Iowa Code section 17A.3 and section 307.24 as amended by 2015 Iowa Acts, House File 635, section 10.

ITEM 22. Amend **761—Chapter 173**, title, as follows:

PREPARATION OF SECONDARY ROAD CONSTRUCTION PROGRAMS,  
BUDGETS, AND COUNTY ENGINEERS' ANNUAL REPORTS

ITEM 23. Renumber rules **761—173.1(309)** to **761—173.3(309)** as **761—173.3(309)** to **761—173.5(309)**.

ITEM 24. Rescind rule **761—173.4(309)**.

ITEM 25. Adopt the following new rule 761—173.1(309):

**761—173.1(309) Purpose.** The purpose of these rules is to establish requirements for preparation of secondary road construction programs, budgets, and county annual reports, in accordance with Iowa Code sections 309.22 and 309.93.

ITEM 26. Adopt the following new rule 761—173.2(309):

**761—173.2(309) Contact information.** Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 27. Amend renumbered rule 761—173.3(309) as follows:

**761—173.3(309) County Secondary road construction program.** Each year the department shall distribute to the counties a set of detailed instructions for the preparation of the county secondary road construction program required by Iowa Code section 309.22. The instructions shall constitute the form, content and method of preparation acceptable to the department.

~~This rule is intended to implement Iowa Code section 309.22.~~

ITEM 28. Amend renumbered rule 761—173.4(309) as follows:

**761—173.4(309) County secondary road budget.** Each year the department shall distribute to the counties a set of detailed instructions for the preparation of the county secondary road budget required by Iowa Code section 309.93. The instructions shall constitute the form, content and method of preparation acceptable to the department.

~~This rule is intended to implement Iowa Code section 309.93.~~

ITEM 29. Amend renumbered rule 761—173.5(309) as follows:

**761—173.5(309) County engineer's annual report.** Each year the department shall distribute to the counties a set of detailed instructions for the preparation of the county engineer's county annual report required by Iowa Code section 309.22. The instructions shall constitute the standard requirements which must be followed and the forms to be completed.

~~This rule is intended to implement Iowa Code section 309.22.~~

ITEM 30. Adopt the following new implementation sentence in **761—Chapter 173**:

These rules are intended to implement Iowa Code sections 309.22 and 309.93.

## TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 31. Renumber rules **761—174.1(307)** and **761—174.2(307)** as **761—174.2(307)** and **761—174.3(307)**.

ITEM 32. Adopt the following new rule 761—174.1(307):

**761—174.1(307) Purpose.** The purpose of these rules is to list highway-related services and supplies that counties and cities may typically request from the department, in accordance with Iowa Code sections 17A.3 and 307.12.

ITEM 33. Amend renumbered rule 761—174.3(307) as follows:

**761—174.3(307) Reimbursable services and supplies.**

**174.3(1)** ~~The purpose of this rule is to list highway-related services and supplies that counties and cities may typically request from the department. The list is not exhaustive. The department may require reimbursement for the services and supplies furnished. If an item to be reimbursed is for a farm-to-market project, the cost of the item will be charged to the county's farm-to-market road fund. The following list is not exhaustive:~~

~~a. Structural analysis: A~~ The department will provide standards, a detailed field or office study inspection of an existing or proposed structure to determine condition or load-carrying capacity and advise on capacity calculations.

~~b. Hydraulic analysis: An in-depth field or office review of hydraulic functioning and adequacy of a proposed or existing drainage complex. The department will review structures in a detailed flood insurance study area, when a culvert will replace a bridge, and when a proposed structure is smaller than the existing structure.~~

~~c. Shop inspection: Inspection~~ The department will assist with arranging inspection of steel fabrication at the assembly point to determine compliance with plans, specifications and approved shop drawings.

~~d. Physical testing: Inspection, laboratory or field testing, and documentation of results to a county or city on any material samples for any purpose obtained by the department, county, city or consultant. The department will provide specialized materials inspection, sampling, and testing when a project has federal funding or when requested for a project that has state assistance and involves work on a primary road. When requested for farm-to-market projects, limited specialized materials inspection, sampling, and testing will be provided.~~

~~e. Inspection supplies and equipment repairs: All inspection equipment furnished by the laboratory will be on loan to a county or city and shall be returned upon completion of the project or the season. All inspection supplies furnished from warehouse stock shall be paid for by the receiving county or city and shall not be returned for credit. The cost of all equipment repairs performed for a county or city shall be charged to that county or city.~~

~~f. Manuals and publications: The department will provide each county with a single copy of each publication required to be used by the county (e.g., standard specifications). Any additional copies requested by a county will require reimbursement from the county. All other publications requested by a county or city will be at the county's or city's expense~~ manuals and publications on its Web site, [www.iowadot.gov](http://www.iowadot.gov).

~~g. Office supplies.~~

~~h. Printing services: Preparation and printing of plans, offset prints, photo processes, and other printing performed for a county or city.~~

~~i. Schools Training: Extended instruction~~ The department will provide training on various road subjects, attended by for county or and city personnel on an application basis.

~~j. Pile bearing tests: Test loading of piles to determine pile load-bearing capacity.~~

~~k. i. Tabulation of bids: All lettings; by subscription. The department will publish the tabulation of bids for projects let through the department on its Web site, [www.iowadot.gov](http://www.iowadot.gov).~~

~~l. Lease of department equipment to a county or city. See paragraph "e" of this subrule for inspection equipment.~~

## TRANSPORTATION DEPARTMENT[761](cont'd)

~~##. j.~~ Special traffic counts requested by a county or city.

**174.3(2)** Reserved.

ITEM 34. Amend **761—Chapter 174**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter 307 and section~~ sections 17A.3 and 307.12.

ITEM 35. Amend rule 761—178.1(314) as follows:

**761—178.1(314) Purpose.** The purpose of these rules is to establish requirements for the reporting by cities and counties of project cost information to the department, in accordance with ~~2001 Iowa Acts, chapter 32, sections 4 and 5~~ Iowa Code section 314.1A.

ITEM 36. Amend rule **761—178.3(314)**, definition of “City,” as follows:

“City” means a municipal corporation as defined in Iowa Code section 312.8 or 362.2.

ITEM 37. Amend subrule 178.4(1), introductory paragraph, as follows:

**178.4(1)** Each year the department shall ~~distribute~~ provide to cities and counties a set of detailed instructions for reporting the following information:

ITEM 38. Amend rule 761—178.5(314) as follows:

**761—178.5(314) Project reporting.** Reporting under ~~2001 Iowa Acts, chapter 32, sections 4 and 5,~~ Iowa Code section 314.1A of projects accomplished by day labor or contract is required for any construction, reconstruction or improvement project that has a total cost of 90 percent or more of the applicable bid threshold (~~see 2001 Iowa Acts, chapter 32, sections 7 and 9, for an explanation of bid thresholds~~). Other reporting requirements set out in the Iowa Code still apply.

**178.5(1) Types of projects.** Project type shall be identified. The project types are:

*a. Bridge.* The definition of “bridge” in Iowa Code section ~~309.75~~ 309.1 applies. This project type includes removal of existing structures and all new construction, reconstruction and improvement of bridges.

*b. Culvert.* The definition of “culvert” in Iowa Code section ~~309.75~~ 309.1 applies. This project type includes new construction or installation of an individual box or pipe culvert with a span or diameter that is greater than four feet but no greater than 20 feet.

*c. to e.* No change.

*f. Traffic control.* This project type includes, but is not limited to, installation of major signs, traffic signals, railroad crossing signals, guardrail, highway roadway lighting, construction signing, and pavement markings on newly paved roads and streets.

*g.* No change.

**178.5(2) and 178.5(3)** No change.

ITEM 39. Amend **761—Chapter 178**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 309.22, 309.93, 312.14, ~~and~~ 314.1<sub>2</sub> and ~~2001 Iowa Acts, chapter 32, sections 4, 5, 7, 8, 9, and 12~~ 314.1A.

## TREASURER OF STATE

### Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for December is 4.00%.

TREASURER OF STATE(cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective December 10, 2015, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days .....	Minimum .05%
32-89 days .....	Minimum .05%
90-179 days .....	Minimum .05%
180-364 days .....	Minimum .05%
One year to 397 days .....	Minimum .05%
More than 397 days .....	Minimum .30%

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

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

## ARC 2332C

## REGENTS BOARD[681]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby amends Chapter 1, "Admission Rules Common to the Three State Universities," Iowa Administrative Code.

This amendment revises paragraph 1.4(2)"b" to bring the public universities into compliance with the Home Base Iowa Initiative as well as with the federal Veterans Access, Choice, and Accountability Act of 2014 (Choice Act).

Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin as **ARC 2176C** on September 30, 2015. No public comment was received. One change has been made to the amendment published under Notice of Intended Action. The words "or certificate" were added to the first sentence of subparagraph 1.4(2)"b"(1) to be consistent with the introductory paragraph of 1.4(2)"b."

The Board of Regents adopted this amendment on December 2, 2015.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Board finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective December 23, 2015. This amendment confers a benefit on the public by bringing language into full compliance with all federal laws, including Section 702 of the Veterans Access, Choice, and Accountability Act of 2014 (Choice Act).

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

After analysis and review of this rule making, a positive impact on jobs could exist. This rule making allows qualifying veterans, their spouses/domestic partners, and their dependents to be classified as residents for the purpose of receiving in-state tuition. This rule making provides that veterans will be allowed to receive veterans' benefits; therefore, veterans may be attracted to the state for their postsecondary education and decide to remain in the state after graduation. This rule making reduces tuition costs for veterans and their spouses and dependents and thereby provides them opportunities for postsecondary education allowing them the opportunity to obtain better paying jobs.

This amendment is intended to implement Iowa Code section 262.9(3).

This amendment became effective December 23, 2015.

The following amendment is adopted.

Amend paragraph **1.4(2)"b"** as follows:

*b.* Additional guidelines are used in determining the resident classification of a veteran, qualified military person, and ~~children and spouses of a veteran or qualified military person~~ other qualified individuals for purposes of ~~admission and~~ undergraduate, graduate, ~~or professional,~~ or certificate tuition and mandatory fees:

(1) A person who is stationed on active duty at the Rock Island arsenal as a result of military orders, or the child or spouse/domestic partner of such person, is entitled to resident status for purposes of undergraduate, graduate, ~~or professional,~~ or certificate tuition and mandatory fees. The child or spouse/domestic partner may be required to submit appropriate documentation to the university.

(2) ~~A veteran who is eligible for benefits or has exhausted benefits under any federal program authorizing veteran educational benefits is entitled to resident status for purposes of undergraduate, graduate, or professional tuition and mandatory fees. The child or spouse/domestic partner of a veteran who meets these requirements is entitled to resident status for undergraduate, graduate, or professional tuition.~~ The rules for classification of veterans and qualified individuals shall be in full compliance with all federal laws, including Section 702 of the Veterans Access, Choice, and Accountability Act of 2014 (Choice Act). The child or spouse/domestic partner qualified individual may be required to submit appropriate documentation to the university.

(3) A person who is moved into the state as the result of military or civil orders from the government for other than educational purposes, or the child or spouse/domestic partner of such a



REGENTS BOARD[681](cont'd)

person, is entitled to resident status. The child or spouse/domestic partner may be required to submit appropriate documentation to the university. Legislation, effective July 1, 1977, requires that military personnel who claim residency in Iowa (home of record) will be required to file Iowa resident income tax returns.

[Filed Emergency After Notice 12/2/15, effective 12/23/15]

[Published 12/23/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/23/15.

## ARC 2322C

## CHILD ADVOCACY BOARD[489]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 237.18, the Child Advocacy Board hereby amends Chapter 3, "Local Foster Care Review Boards," Iowa Administrative Code.

The amendments delineate the process for selecting, appointing, and reappointing members of local foster care review boards and change the length of the term of appointment from two years to three years. This change in length of term is necessary to accommodate the time it takes for a new board member to become fully acquainted with the board member's duties.

The amendments also make technical changes throughout the chapter by changing references to the State Foster Care Review Board to the Child Advocacy Board. These changes are consistent with statutory language references to the Board contained in Iowa Code chapter 237.

The Board does not believe that the amendments pose a financial hardship on any regulated entity or individual.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 28, 2015, as **ARC 2223C**. The Board received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action, except for the addition of a comma to set off a prepositional phrase in subrule 3.1(3).

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

These amendments are intended to implement Iowa Code section 237.18.

These amendments will become effective January 27, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 489—3.1(237) as follows:

**489—3.1(237) Local boards.** The ~~state child advocacy~~ board shall establish local foster care boards in judicial districts as funding is made available for that purpose. The number of local boards needed and established shall be determined by the ~~state child advocacy~~ board. A sufficient number of boards will be established to ensure that no board shall carry a caseload larger than 100 cases.

**3.1(1)** The ~~state child advocacy~~ board is responsible under the statute for establishment of policy and procedures which must be consistent with the provisions of the statute. Local boards are required to comply with policies and procedures. If a local board does not agree with a policy ~~and~~ or procedure, the local board may bring that issue to the ~~state child advocacy~~ board for discussion and request a change ~~of policy~~ by the board. If the ~~state child advocacy~~ board upholds the policy, local boards must comply.

**3.1(2)** Day-to-day implementation of policy is delegated by the ~~state child advocacy~~ board to administrative staff. Staff is responsible for bringing questions about policy issues to the ~~state child advocacy~~ board for clarification or changes of policy.

**3.1(3)** Any written communication from a local review board or local board member, in ~~their~~ the member's capacity as a board member, to state officials or media shall be sent to the ~~foster care review~~ child advocacy board office and reviewed by the ~~director~~ administrator prior to its release.

This rule is intended to implement Iowa Code sections 17A.3 and 237.19.

ITEM 2. Rescind rule 489—3.2(237) and adopt the following **new** rule in lieu thereof:

**489—3.2(237) Membership.**

**3.2(1)** The child advocacy board delegates responsibility to the administrator to develop and for local board coordinators to implement an application, recruitment, screening and training process for appointments to vacated local board positions:

*a.* The process will culminate in the coordinator's preparation of a written selection rationale statement about the prospective appointee to the child advocacy board.

*b.* The process will include consultation with the chief judge for the court district served by the local board.

## CHILD ADVOCACY BOARD[489](cont'd)

c. The administrator will submit each written selection rationale statement electronically to all child advocacy board members no later than 30 calendar days prior to the beginning date of the local board member's prospective term. If a board member vacates the position mid-term, the selection process and resulting written selection rationale statement shall be submitted to the child advocacy board as soon as practicable.

d. Within 15 calendar days after receipt of the written selection rationale statement, any child advocacy board member may request a telephonic child advocacy board meeting to review a prospective appointment. During the meeting, child advocacy board members may raise questions and then vote for the approval or disapproval of the prospective appointment.

e. If no meeting is requested, the prospective local board member is deemed approved by the child advocacy board.

**3.2(2)** A person employed by the department of inspections and appeals, the department of human services, the judicial department, an employee of an agency with which the department of human services contracts for services for children under foster care, a foster parent providing foster care, or a child-placing agency shall not serve on a local board. The child advocacy board shall provide the names of the members of the local boards to the department of human services.

**3.2(3)** Vacancies on a local board shall be filled in the same manner as original appointments are made.

**3.2(4)** The term of a local board member's appointment shall not exceed three years. The child advocacy board shall fix the tenure of individual appointments so that no more than one-third of the membership's terms expire in a given year.

**3.2(5)** The administrator shall develop a local board member evaluation process. The local board coordinator shall complete the evaluation process at least once for each local board member during the member's three-year term. The local board coordinator shall consider the results of the evaluation when determining whether to seek appointment of the local board member to a successive term. When submitting a written selection rationale statement to the child advocacy board for a local board member to serve a successive term, the local board coordinator shall include a summary of the evaluation results for that member.

**3.2(6)** A local board member may serve continuous successive terms when selected and approved in accordance with this rule.

**3.2(7)** A quorum consists of at least three local review board members or alternates. A quorum shall be present before cases can be reviewed and recommendations can be voted on. At least two members must be present during questioning of interested parties.

This rule is intended to implement Iowa Code sections 17A.3 and 237.19.

ITEM 3. Amend rule 489—3.3(237) as follows:

**489—3.3(237) Removal of a local board member.**

**3.3(1)** Grounds for removal are:

a. Not attending mandatory training sessions.

b. Missing two consecutive board meetings or four board meetings in a year's period, without justifiable cause as determined by the ~~director~~ administrator.

c. Releasing confidential information pursuant to Iowa Code sections 600.16, 217.30, 235A.15, and 237.21, chapters 21 and 22, and other statutory provisions requiring confidentiality.

d. Any action or behavior that is inconsistent with the purpose and objectives of Iowa Code sections 237.15 to 237.22, the board, and these rules.

**3.3(2)** The ~~director~~ administrator shall write a letter requesting the ~~state~~ child advocacy board to take action with specific cause and nature of the cause for removal of local board members. Copies of this request will be given to all ~~state~~ child advocacy board members and the person in question at least 15 days in advance of the ~~state~~ child advocacy board meeting where a decision will be made.

**3.3(3)** The person in question may enter written or oral testimony to the ~~state~~ child advocacy board ten days in advance of the board meeting for the ~~state~~ child advocacy board's consideration.

## CHILD ADVOCACY BOARD[489](cont'd)

**3.3(4)** The ~~state~~ child advocacy board shall make the final decision, with no further appeal available, when a quorum is present by an affirmative majority vote. Written notice of the decision will be given to the local board member and will be reflected in the board minutes.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18(2)“f.”

ITEM 4. Amend subrule 3.4(1), introductory paragraph, as follows:

**3.4(1)** Local board reviews. Every six months the local board shall review the case of each child receiving foster care assigned to the local board by the ~~state~~ child advocacy board to determine whether satisfactory progress is being made towards the goals of the case permanency plan pursuant to Iowa Code section 237.2. ~~As much as~~ Whenever possible, reviews shall be conducted prior to court review of the cases.

ITEM 5. Adopt the following new paragraphs **3.4(3)“h”** and **“i”**:

*h.* The person providing services to the child.

*i.* The child’s attorney.

ITEM 6. Amend rule 489—3.5(237), introductory paragraph, as follows:

**489—3.5(237) Local board coordinator.** The local board coordinators are employees of the ~~foster care review~~ child advocacy board. They provide a full range of administrative support services to the local boards. As funds permit, the administrator may delegate some of the services and duties of the local board coordinators to administrative support staff or to contracted board facilitators.

ITEM 7. Amend subrule 3.5(1), introductory paragraph, as follows:

**3.5(1)** Duties of the local board coordinators or other personnel assigned by the administrator include:

ITEM 8. Amend paragraph **3.5(1)“b”** as follows:

*b.* Ensuring conformance with standards, official policies and procedures promulgated by the ~~state~~ child advocacy board to ensure uniform implementation across the state, and reporting to the ~~director~~ administrator and ~~state~~ child advocacy board on policy questions and procedural matters that local board members may have.

[Filed 12/2/15, effective 1/27/16]

[Published 12/23/15]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/23/15.

**ARC 2316C**

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 15.106A, 2014 Iowa Acts, chapter 1132, section 12, and 2015 Iowa Acts, Senate File 510, division XI, the Economic Development Authority amends Chapter 104, “Innovative Businesses Internship Program,” and adopts new Chapter 110, “STEM Internship Program,” Iowa Administrative Code.

The Legislature, in 2014 Iowa Acts, chapter 1132, directed the Authority to establish a STEM internship component as part of the previously established Innovative Businesses Internship Program. The Legislature, in 2015 Iowa Acts, Senate File 510, amended both the STEM internship component and the innovative businesses component. The rules in Chapter 110 establish the program to provide STEM internship assistance to Iowa employers and describe the manner in which the Authority intends to implement and administer the program. The amendments to Chapter 104 make changes to the Innovative Businesses Internship Program in conformance with the legislative amendments.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2098C** on August 19, 2015. The amendments were also Adopted and Filed Emergency and published as **ARC**

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

**2099C** on the same date and became effective on July 20, 2015. The Authority received no comments. One change has been made to the amendments published under Notice of Intended Action and Adopted and Filed Emergency. In the second sentence of subrule 104.4(4), the word “for” was changed to “from” for consistency with subrule 110.4(4).

The Economic Development Authority Board adopted these amendments on November 20, 2015.

After analysis and review of this rule making, no negative impact on jobs has been found, and the Authority finds that providing financial assistance for STEM internships will have a positive effect on job creation and economic growth.

These amendments are intended to implement 2014 Iowa Acts, chapter 1132, section 12, and Iowa Code section 15.411 as amended by 2015 Iowa Acts, Senate File 510, division XI.

These amendments will become effective January 27, 2016, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 104.4(4) as follows:

**104.4(4)** A business may receive financial assistance ~~in an amount of one dollar for every two dollars paid by the business to the intern~~ on a matching basis for a portion of the wages paid to an intern. If providing financial assistance, the authority shall provide the assistance on a reimbursement basis such that for every two dollars of wages earned by the student, one dollar paid by the business is matched by one dollar from the authority.

ITEM 2. Amend subrule 104.9(2) as follows:

**104.9(2)** The application will be reviewed and scored by authority staff, ~~the committee and the board.~~ The committee will make a recommendation to the board regarding an application ~~director of the authority will make final funding decisions after considering the recommendations of staff.~~ The board director has final decision-making authority on requests for financial assistance for this program. ~~The board director may approve, defer or deny an application.~~

ITEM 3. Amend rule 261—104.11(15) as follows:

**261—104.11(15) Selection process.** Applications will be reviewed in the order received by the authority. ~~The board director may approve, defer or deny each application for financial assistance, based on the availability of funds. The authority and the committee will score applications according to the criteria specified in rule 261—104.12(15). To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.~~

ITEM 4. Adopt the following new 261—Chapter 110:

#### CHAPTER 110 STEM INTERNSHIP PROGRAM

**261—110.1(15,85GA,ch1132,86GA,SF510) Authority.** The authority for adopting rules establishing a STEM internship program is provided in Iowa Code section 15.411(3) as amended by 2015 Iowa Acts, Senate File 510, division XI, and in Iowa Code section 15.106A.

**261—110.2(15,85GA,ch1132,86GA,SF510) Purpose.** The purpose of the STEM internship program is to assist in placing Iowa students studying in the fields of science, technology, engineering, and mathematics into internships that lead to permanent positions with Iowa employers.

**261—110.3(15,85GA,ch1132,86GA,SF510) Definitions.**

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Business*” means any enterprise located in this state which is operated for profit and under a single management.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“*Committee*” means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

“*Community college*” means a community college established under Iowa Code chapter 260C.

“*Designated internship period*” means the summer or semester internship during which a student is employed in an internship.

“*Director*” means the director of the economic development authority.

“*Internship*” means temporary employment of a student that focuses on providing the student with work experience in the student’s field of study.

“*Program*” means the STEM internship program established in this chapter.

“*STEM field*” means a major course of study within the fields of science, technology, engineering, or mathematics or a related field. For purposes of this chapter, STEM field includes all majors and academic or degree programs listed on the ACT-defined STEM majors and occupations by area list. The ACT-defined STEM majors and occupations by area list may be found at <http://www.act.org>. If a student has declared a major or enrolled in an academic or degree program not listed on the ACT-defined STEM majors and occupations by area list, the student may still be found eligible for participation in the program if, in the authority’s sole discretion, the student’s major is substantially similar to a major that is listed on the ACT-defined STEM majors and occupations by area list.

“*Student*” means a student of one of the Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or a student who graduated from high school in Iowa but now attends an institution of higher learning outside the state of Iowa.

**261—110.4(15,85GA,ch1132,86GA,SF510) Program funding and disbursement.**

**110.4(1)** The maximum amount awarded to an employer for any one internship shall not exceed \$5,000. The maximum amount that may be awarded to any one employer in any one fiscal year shall not exceed \$100,000.

**110.4(2)** Funds shall only be used for reimbursement of wages paid during the designated internship period. An employer must pay students hired as interns an hourly wage that is at least twice the minimum wage. An employer may apply for program funding for an internship beginning prior to July 1, 2014, but the authority will only reimburse the employer for wages paid on or after July 1, 2014.

**110.4(3)** The authority will disburse funds to an employer only after approval of a completed application and execution of a contract between the employer and the authority. The authority shall have sole discretion in determining whether an application is fully complete.

**110.4(4)** An Iowa employer may qualify for financial assistance under the program on a matching basis for a portion of the wages paid to an intern during the designated internship period. If providing financial assistance, the authority shall provide the assistance on a reimbursement basis such that for every two dollars of wages earned by the student, one dollar paid by the employer is matched by one dollar from the authority. Funds will be disbursed on a reimbursement basis.

**261—110.5(15,85GA,ch1132,86GA,SF510) Eligible employers.** Eligible employers may apply to the authority for assistance under the program. The program is available to employers that meet all of the following criteria:

**110.5(1)** The employer must be an Iowa-based business and have a significant portion of its employees located within the state of Iowa.

**110.5(2)** The employer must be employing students who have either declared a major in a STEM field or enrolled in a STEM-related academic or degree program at a community college. The students must be employed as interns at a location in Iowa.

**110.5(3)** The employer must offer the internship to students of Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or to students who graduated from high school in Iowa but attend an institution of higher learning outside the state of Iowa.

**110.5(4)** The employer must offer either summer or semester-based internships. The summer internships must have a minimum duration of 8 weeks (averaging no less than 30 hours per week), and

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

the employer's semester internships must have a minimum duration of 14 weeks (averaging no less than 10 hours per week).

**261—110.6(15,85GA,ch1132,86GA,SF510) Ineligible employers.** The following employers are not eligible for the program:

**110.6(1)** An employer that is a business engaged in retail sales is ineligible.

**110.6(2)** An employer which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operations to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

**110.6(3)** An employer that has applied or will apply during the same state fiscal year to the innovative businesses internship under 261—Chapter 104 is ineligible to receive funding under the STEM internship program.

**261—110.7(15,85GA,ch1132,86GA,SF510) Eligible students.** To be eligible, a person shall meet the requirements of a student as defined in rule 261—110.3(15,85GA,ch1132,86GA,SF510), must be within one to two years of graduation, shall have declared a major in a STEM field or enrolled in a STEM-related academic or degree program at a community college, and shall be selected for an internship at an Iowa employer during a designated internship period.

**261—110.8(15,85GA,ch1132,86GA,SF510) Ineligible students.** Students who are more than two years from graduation are ineligible. Students who have not declared a major, have not declared a major in a STEM field, or are not enrolled in a STEM-related academic or degree program at a community college are ineligible. Students who are immediate family members of management employees or board members of the applicant employer are ineligible. Students who do not otherwise meet the eligibility requirements described in rule 261—110.7(15,85GA,ch1132,86GA,SF510) are ineligible.

**261—110.9(15,85GA,ch1132,86GA,SF510) Application submittal and review process.**

**110.9(1)** The authority shall develop a standardized application and make the application available to eligible employers. To apply for assistance under the program, an employer shall submit an application to the authority. Required forms and instructions are available by contacting the authority or from the authority's Internet site at [www.iowaeconomicdevelopment.com](http://www.iowaeconomicdevelopment.com).

**110.9(2)** Applications will be reviewed and scored by the staff of the authority. The director of the authority will make final funding decisions after considering the recommendations of staff. The director has final decision-making authority on requests for financial assistance for this program. The director may approve, defer or deny an application.

**261—110.10(15,85GA,ch1132,86GA,SF510) Application content and other requirements.**

**110.10(1)** An employer seeking assistance under the program must complete an application for internship assistance and submit it to the authority.

**110.10(2)** If an award is made, the employer shall secure an intern within the time period stated in the contract between the authority and the employer.

**110.10(3)** The application shall include, but not be limited to, all of the following:

*a.* The dates and location of the internship.

*b.* A statement of duties the student will be performing at the internship site. The student shall be involved in a substantive experience in an area closely related to the student's STEM field. The application shall also include information regarding the student's work space (i.e., access to telephone, computer, and other necessary items).

*c.* The name of the employer's representative who will train and supervise the student.

*d.* A statement of the anticipated workforce needs at the internship site. The statement shall include an explanation of the current workforce shortage and identify the student's potential for prospective employment with the employer following graduation.

**110.10(4)** In accepting applications from employers, the authority may require additional information reasonably related to the program.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

**261—110.11(15,85GA,ch1132,86GA,SF510) Award process.** Applications will be reviewed in the order received by the authority. The authority will attempt to award as many eligible internships as funding allows. However, the authority may deny applications for incompleteness or because of insufficient funds. The authority will score applications according to the criteria specified in rule 261—110.12(15,85GA,ch1132,86GA,SF510). To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.

**261—110.12(15,85GA,ch1132,86GA,SF510) Application scoring criteria.** When applications for financial assistance under the program are reviewed, the following criteria will be considered and scored as described below:

**110.12(1)** The extent to which the student is involved in a substantive experience closely related to the student's STEM field of study. 30 points.

**110.12(2)** The quality and sufficiency of the explanation of the employer's anticipated workforce needs and of the student's potential for prospective employment with the employer or another Iowa employer following graduation. 30 points.

**110.12(3)** The extent to which the internship duties require independent judgment, creativity, and intelligence to complete and contribute to the employer's goals or processes. 10 points.

**110.12(4)** The extent to which the internship will have a positive impact on the student's skills, knowledge and abilities. 10 points.

**110.12(5)** The extent to which the internship pays more than twice the minimum wage. 10 points.

**110.12(6)** Whether applications will be accepted by the employer from more than one private college, university or community college. 5 points.

**110.12(7)** Whether the application establishes that all relevant internship considerations, including necessary funding, have been addressed by the employer in advance. 5 points.

**261—110.13(15,85GA,ch1132,86GA,SF510) Contract and reporting.**

**110.13(1) Notice of award.** Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

**110.13(2) Contract required.** An employer receiving an award under the program shall execute a standard contract prepared by the authority. The contract may include, but is not limited to, a description of the internship to be completed, the conditions for disbursement, any required reports, the applicable events of default, the repayment requirements imposed in the event of default, and any other specific provisions that may be established from time to time on a case-by-case basis.

**110.13(3) Reporting.** An employer receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

**110.13(4) Contract amendments and terminations.** Contract amendments or termination may be approved by the director without board approval.

These rules are intended to implement 2014 Iowa Acts, chapter 1132, section 12, and Iowa Code section 15.411(3) as amended by 2015 Iowa Acts, Senate File 510, division XI.

[Filed 11/24/15, effective 1/27/16]

[Published 12/23/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/23/15.



**ARC 2314C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455E.9(1), the Environmental Protection Commission hereby rescinds Chapter 209, “Solid Waste Alternatives Program,” and adopts new Chapter 209, “Landfill Alternatives Financial Assistance Programs,” Iowa Administrative Code.

This rule making reorders the content of existing Chapter 209 and formalizes rules pertaining to the awarding of grants to Iowa communities through the Derelict Building Grant Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2140C** on September 16, 2015. A public hearing was held on October 6, 2015. No public comments were received at the hearing or during the comment period. These rules are identical to those published under Notice.

The Environmental Protection Commission adopted this amendment on November 17, 2015.

After analysis and review of this rule making, it was determined that the rule making has a positive impact on jobs. Jobs are positively impacted by the financial incentives contained within the Derelict Building Grant Program and the Solid Waste Alternatives Program. This positive impact includes opportunities that result from the awarding of financial assistance to Iowa communities and private sector interests for the deconstruction and renovation of abandoned buildings, the recycling of the resulting building materials, and recycling and reuse projects in general. While funding for these programs is set out in statute and both programs are currently being implemented, new Chapter 209 facilitates the awarding of funds under the Derelict Building Grant Program.

These rules are intended to implement Iowa Code sections 455B.301A and 455E.11.

These rules will become effective January 27, 2016.

The following amendment is adopted.

Rescind 567—Chapter 209 and adopt the following new chapter in lieu thereof:

CHAPTER 209

LANDFILL ALTERNATIVES FINANCIAL ASSISTANCE PROGRAMS

**567—209.1(455B,455E) Goal.** The goal of landfill alternatives financial assistance programs is to reduce through implementation of solid waste management projects the amount of solid waste being generated and the amount of solid waste being landfilled.

**567—209.2(455B,455E) Purpose.** The purpose of these programs is to provide financial assistance to applicants implementing projects and programs leading to the diversion of solid waste from sanitary landfills.

**567—209.3(455B,455E) Definitions.**

“*Abandoned*” means that the building has been unoccupied for a minimum of six continuous months.

“*Asbestos-containing material*” or “*ACM*” means any material that contains more than 1 percent of asbestos.

“*Building renovation*” means repairs that stabilize or improve the structural integrity of the building, including but not limited to roof repair or replacement, building stabilization, and the tuck-pointing of exterior walls.

“*Cost share*” means the applicant’s share of the eligible costs of the proposed project.

“*Deconstruction*” means the selective dismantlement of a building for the purpose of maximizing reuse and recycling opportunities through source separation while minimizing disposal costs.

“*Demonstration project*” means a project that is innovative or new to the state of Iowa.

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

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

*“Derelict building grant eligibility”* means any county or municipal government with a population of 5,000 or fewer is eligible to apply for a derelict building grant. An applicant may partner with a local nonprofit organization on a project.

*“Eligible costs”* means costs directly related to the project and for which financial assistance moneys may be used.

*“Financial assistance”* means monetary assistance in the form of grants, loans, or forgivable loans that is awarded under these rules to an applicant.

*“Forgivable loan”* means financial assistance that does not require repayment to the department.

*“Indirect costs”* means costs not directly arising from a specific product, function, or activity.

*“Landfill diversion rate”* means the weight of materials diverted from a sanitary landfill, divided by the total weight of the building and its contents, expressed as a percentage. Materials diverted from a sanitary landfill do not include material combusted without energy recovery or material dumped or discarded in violation of Iowa Code sections 455B.307 and 455B.307A.

*“Loan”* means an award of financial assistance with the requirement that the award be repaid including interest as applicable.

*“Overhead costs”* means expenses not chargeable to a particular part of the work or product, including but not limited to utilities, insurance, and rent.

*“Phase I environmental assessment”* means review of known environmental records and land use information about the site and vicinity.

*“Phase II environmental assessment”* means actual soil, groundwater and structural material sampling and testing to confirm or deny the presence of contamination.

*“Recipient”* means any applicant selected to receive financial assistance under these rules.

*“Sanitary landfill”* means a permitted disposal site where solid waste is buried between layers of earth.

*“Solid waste alternatives program eligibility”* means any unit of local government, public or private group, individual or business that has an interest in or has responsibility for solid waste management in Iowa and is currently in compliance with all applicable state statutes and regulations is eligible to apply for the solid waste alternatives program (SWAP).

*“Waste reduction”* means practices which reduce, avoid, or eliminate the generation of solid waste at the source. Waste reduction is not merely the shifting of a waste stream from one medium to another medium.

**567—209.4(455B,455E) Role of the department.** The department is responsible for the administration of funds for projects receiving financial assistance under these rules. The department will ensure that funds disbursed meet guidelines established by Iowa Code sections 455E.11(2)“a”(1)(e) and 455E.11(2)“a”(1)(f).

**567—209.5(455B,455E) Funding sources.** The department will use moneys that are appropriated by the legislature and that may be obtained from other sources for the purpose of achieving the goals outlined in these rules. The department will ensure that moneys appropriated meet both federal and state guidelines pertaining to their use.

**567—209.6(455B,455E) Reduced award.** The department reserves the right to offer financial assistance in an amount less than that requested by the applicant. In the event that financial assistance offered is less than the amount requested by an applicant, the applicant may be asked to document the impact on the proposed project. Reduced awards shall be offered when the department determines that:

1. Program resources are insufficient to provide the level of financial assistance requested to all applicants to which the department intends to offer financial assistance.
2. The applicant could implement the project at a reduced level of financial assistance and achieve the project objectives and the goals of the program.

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

**567—209.7(455B,455E) Fund disbursement limitations.** No funds shall be disbursed until the department has:

1. Determined the total estimated cost of the project;
2. Determined that financing for the cost-share amount is ensured by the recipient;
3. Received final design plans from the recipient, if applicable;
4. Received confirmation that all permits or permit amendments have been obtained by the recipient;
5. Received commitments from the recipient to implement the project;
6. Executed a written agreement with the recipient; and
7. Determined that the recipient is currently in compliance with all applicable state statutes and regulations.

**567—209.8(455B,455E) Minimum cost share.** An applicant shall provide a minimum cash match for the purchase of each good and service for which department-awarded financial assistance will be used. The applicant's minimum cost share shall be in accordance with subrule 209.16(3) for the derelict building grant program.

**567—209.9(455B,455E) Denial of financial assistance.** An applicant may be denied financial assistance for any of the following reasons:

1. Funds are insufficient to award financial assistance to all qualified applicants.
2. An applicant does not meet eligibility requirements pursuant to provisions of subrule 209.15(1) for the solid waste alternatives program or subrule 209.16(1) for the derelict building grant program.
3. An applicant does not provide sufficient requested information on forms provided by the department pursuant to rule 567—209.12(455B,455E).
4. An applicant has previously received financial assistance under these rules and is determined by the department to be delinquent in repaying the loan or delinquent in submitting required documentation.
5. The goals or scope of the project is not consistent with rules 567—209.1(455B,455E) and 567—209.2(455B,455E).
6. The project does not meet the criteria of an eligible project in subrule 209.15(2) for the solid waste alternatives program or subrule 209.16(2) for the derelict building grant program.

**567—209.10(455B,455E) Eligible costs.** Applicants may request, for the implementation and operation of a project, financial assistance which includes, but is not limited to, funds for the purpose of:

1. Purchase and installation of waste reduction equipment;
2. Purchase and installation of collection, processing, or hauling equipment;
3. Development, printing and distribution of educational materials;
4. Planning and implementation of educational forums, including but not limited to workshops;
5. Materials and labor for construction, deconstruction, or renovation of buildings;
6. Salaries directly related to implementation and operation of the project;
7. Laboratory analysis costs; and
8. Engineering or consulting fees.

**567—209.11(455B,455E) Ineligible costs.** Financial assistance shall not be provided or used for costs including, but not limited to, the following:

1. Taxes;
2. Vehicle registration;
3. Overhead expenses;
4. Indirect costs;
5. Legal costs;
6. Contingency funds;
7. Proposal preparation;
8. Contractual project administration;

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

9. Land acquisition;
10. Office furniture, office computers, fax machines and other office furnishings and equipment;
11. Costs for which payment has been or will be received under another federal, state or private financial assistance program;
12. Costs incurred before a written agreement has been executed between the applicant and the department; and
13. Insurance premiums or other costs associated with insuring items purchased using program funds.

**567—209.12(455B,455E) Applications.** Applicants shall submit applications on forms provided by the department. Applications are considered part of the public record. Unless otherwise designated in the solid waste alternatives program application forms or the derelict building grant program application guideline forms, applications will be accepted by the department during normal business hours throughout the year.

**567—209.13(455B,455E) Selection.**

**209.13(1)** To receive consideration under these rules, applications for financial assistance submitted to the department must be provided to the agency responsible for submitting an approved solid waste comprehensive plan or a subsequent solid waste comprehensive plan or by solid waste agencies participating in the environmental management system for agency review and comment. Applications shall be provided to the agency in the area in which the proposed project is located or the area or areas in which the proposed project will be implemented.

**209.13(2)** The department shall coordinate evaluation of applications, and applicants will be awarded financial assistance based on review committee recommendations.

**567—209.14(455B,455E) Written agreement.** Recipients shall enter into a contract with the department for the purposes of implementing the project for which financial assistance has been awarded. The agreement shall be signed by the appropriate department signatory and the recipient's authorized signatory. Conditions to successfully implement and manage agreements shall be expressed in the signed agreement. The department may terminate agreements and seek the return of funds released under the agreement for failure by the recipient to perform under the terms and conditions of the agreement. Amendments to agreements may be adopted by mutual written consent of the department and the recipient.

**567—209.15(455B,455E) Solid waste alternatives program.** Financial assistance awarded under the solid waste alternatives program shall be used to implement activities that support the practical and beneficial use of solid waste materials and for activities leading to a reduction in the reliance on sanitary landfills for disposal of solid waste.

**209.15(1) Eligible applicants.** Any unit of local government, public or private group, individual or business that has an interest in or has responsibility for solid waste management in Iowa and is currently in compliance with all applicable state statutes and regulations is eligible to apply for the solid waste alternatives program.

**209.15(2) Eligible projects.** The department may provide financial assistance to applicants for the following types of projects that are consistent with the goal and purpose of this program:

- a. Best practices — practices and programs that will move Iowa toward long-term pollution prevention, waste reduction and recycling sustainability;
- b. Education — practices and programs that are consistent with a coordinated statewide message on pollution prevention, waste reduction, and recycling to ensure ongoing support of these integrated solid waste management activities; and
- c. Market development — practices and programs that develop a demand for value-added recyclables sufficient to provide increased and stable commodity markets.

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

**209.15(3) *Type of financial assistance.*** The type of financial assistance (forgivable loan, zero interest loan, low-interest loan) offered to an applicant is dependent upon factors such as, but not limited to, the amount of program funds awarded, level of new landfill diversion, profit generation and project uniqueness. The department reserves the right to offer any combination of types of financial assistance to any selected project.

**209.15(4) *Loans.*** The term of all loans executed under these rules shall be determined on a case-by-case basis and shall be based on the specific capital costs financed, as well as the terms of other financing provided for the project. The written agreement between the department and the recipient will establish other conditions or terms needed to manage or implement the project.

**567—209.16(455B,455E) *Derelict building grant program.*** Financial assistance awarded under the derelict building grant program is available to communities of 5,000 or fewer to help improve the attractiveness and appearance of their jurisdictions by providing financial assistance for eligible projects. Each project must have a landfill diversion component.

**209.16(1) *Eligible applicants.*** Any county or municipal government with a population of 5,000 or fewer is eligible to apply for a derelict building grant. An applicant may partner with a local nonprofit organization on a project.

**209.16(2) *Eligible projects.*** A community's building is eligible for the program if the building meets the following criteria:

*a.* The building is an abandoned commercial or public building of which a local government has ownership or an intent to own.

*b.* The building is not on the National Register of Historic Places.

**209.16(3) *Eligible activities and amount of financial assistance.*** The eligible activities and amount of financial assistance for each are:

*a.* Asbestos-containing material inspections: 100 percent reimbursement for inspection costs conducted by a state of Iowa-licensed asbestos contractor.

*b.* Abatement of asbestos-containing material: 100 percent reimbursement, not to exceed \$10,000, for abatement of ACM performed by a state of Iowa-licensed asbestos contractor. A 50 percent cost share is required for those costs exceeding \$10,000.

*c.* Structural engineering analysis: 100 percent reimbursement not to exceed \$1,500 for a structural engineering analysis conducted by a licensed structural engineer or architectural historian to determine the ability to renovate the building. The recipient is responsible for all costs exceeding \$1,500.

*d.* Phase I environmental assessment: 100 percent reimbursement not to exceed \$3,000 for conducting a Phase I environmental assessment. The recipient is responsible for all costs exceeding \$3,000.

*e.* Phase II environmental assessment: 50 percent reimbursement not to exceed \$2,500 for conducting a Phase II environmental assessment. The recipient is responsible for all costs exceeding \$5,000. The need for this assessment is determined by the results of the Phase I environmental assessment and involves the sampling of structure components, soil, and groundwater to confirm or deny the presence of contamination.

*f.* Building renovation: 50 percent reimbursement not to exceed \$50,000 for renovation costs, including but not limited to:

(1) Restoration or removal of materials for reuse, either at the site or off site, or for recycling.

(2) Roof repair or replacement.

(3) Building stabilization.

(4) Tuck-pointing of exterior walls.

*g.* Deconstruction: 50 percent reimbursement not to exceed \$50,000 for costs related to deconstruction. All deconstruction projects must achieve a minimum landfill diversion rate of 30 percent of the structure by weight to receive reimbursement for deconstruction costs.

**209.16(4) *Deconstruction cost-share incentive.*** For every additional 10 percent above 30 percent of landfill diversion by weight that is documented upon completion of the project, the applicant's cost

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

share is reduced by 5 percent and the grant award amount will increase by 5 percent. The maximum grant award for deconstruction projects shall not exceed \$75,000.

These rules are intended to implement Iowa Code sections 455B.301A and 455E.11.

[Filed 11/19/15, effective 1/27/16]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/23/15.

**ARC 2324C**

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

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Homeland Security and Emergency Management Department hereby amends Chapter 5, "Fair Information Practices," Iowa Administrative Code.

These amendments implement changes that have been made in Iowa Code chapter 29C that transformed the Homeland Security and Emergency Management Division of the Department of Public Defense to a stand-alone department and to update the physical address of the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2216C** on October 28, 2015. A public hearing was held on November 17, 2015. No public comment was received during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on December 2, 2015.

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

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

These amendments will become effective January 27, 2016.

The following amendment is adopted.

Amend **605—Chapter 5** as follows:

CHAPTER 5  
FAIR INFORMATION PRACTICES

**605—5.1(17A) Adoption by reference.** The homeland security and emergency management division department hereby adopts the fair information practices segment of the Uniform Rules on Agency Procedure, which are found on the general assembly's Web site at <https://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf> and which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(official or body issuing these rules)" insert "Homeland Security and Emergency Management Division Department".

2. In lieu of the words "(insert agency head)" insert "administrator director".

3. In lieu of the words "(insert agency name and address)" insert "Homeland Security and Emergency Management Division Department, Hoover State Office Building 7900 Hickman Road, Suite 500, Des Moines Windsor Heights, Iowa 50319 50324".

4. and 5. No change.

6. In lieu of the words "(designate office)" insert the words "Homeland Security and Emergency Management Division Department, Hoover State Office Building 7900 Hickman Road, Suite 500, Des Moines Windsor Heights, Iowa 50319 50324".

7. and 8. No change.

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

9. Insert at the end of rule 605—5.7(17A,22) the following new sentence: “For federal records maintained by the homeland security and emergency management ~~division~~ department, a subject will provide a Privacy Act release in accordance with the requirements of Title 5 United States Code, Section 552, in writing, and signed by the subject of the record.”

10. and 11. No change.

12. Insert the following new rule:

**605—5.9(17A,22) Federal records.** Pursuant to Iowa Code section 22.9, the division department finds that maintenance, use, or disclosure of federal records described in this rule, except as allowed by federal law and regulation, would result in denial of United States government funds, services and essential information that would otherwise definitely be available and that have been available to the division department in the past. The division department has authority to enter into agreements and contracts to obtain funds pursuant to Iowa Code chapter 29C. The division department makes such agreements and contracts with the Federal Emergency Management Agency (FEMA) under the authority of Public Law 93-288 (the Robert T. Stafford Disaster Relief and Emergency Assistance Act) and an Emergency Management Performance Grant Agreement which specify categories of records and information that must be kept confidential. In addition, 44 CFR 5.71 specifies categories of records that are exempt from disclosure under 5 U.S.C. 552. These records include those containing personally identifiable information concerning applicants to individual assistance and mitigation assistance programs that are administered by the state under a presidentially declared disaster. Nuclear Regulatory Commission Title 10 CFR 73.21 relates to the physical protection of nuclear power plants and materials. This regulation requires that certain information contained in plans and documents on file with the division department be kept confidential and include information concerning the physical protection at fixed sites; physical protection in transit; inspections, audits and evaluations; and correspondence insofar as it contains safeguards information.

[Filed 12/2/15, effective 1/27/16]

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**ARC 2325C**

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

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Homeland Security and Emergency Management Department hereby amends Chapter 6, “Contested Cases,” Iowa Administrative Code.

These amendments implement changes that have been made in Iowa Code chapter 29C that transformed the Homeland Security and Emergency Management Division of the Department of Public Defense to a stand-alone department and to update the physical address of the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2215C** on October 28, 2015. A public hearing was held on November 17, 2015. No public comment was received during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on December 2, 2015.

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

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

These amendments will become effective January 27, 2016.

The following amendments are adopted.

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

ITEM 1. Amend rule 605—6.1(17A) as follows:

**605—6.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the homeland security and emergency management ~~division~~ department.

ITEM 2. Amend rule **605—6.2(17A)**, definition of “Presiding officer,” as follows:

“*Presiding officer*” means the ~~administrator~~ director of the homeland security and emergency management ~~division~~ department or the ~~administrator’s~~ director’s designee.

ITEM 3. Amend subrule 6.12(3) as follows:

**6.12(3) Filing—when required.** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer as identified in the notice of hearing. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the Homeland Security and Emergency Management ~~Division~~ Department, Hoover State Office Building 7900 Hickman Road, Suite 500, Des Moines Windsor Heights, Iowa ~~50319~~ 50324.

ITEM 4. Amend subrule 6.23(10) as follows:

**6.23(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the ~~administrator~~ director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

ITEM 5. Amend rule 605—6.24(17A) as follows:

**605—6.24(17A) Recording costs.** Upon request, the homeland security and emergency management ~~division~~ department shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

ITEM 6. Amend rule 605—6.25(17A) as follows:

**605—6.25(17A) Interlocutory appeals.** Upon written request of a party or on the ~~administrator’s~~ director’s own motion, the ~~administrator~~ director may review an interlocutory order of the presiding officer. In determining whether to do so, the ~~administrator~~ director shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

ITEM 7. Amend rule 605—6.26(17A) as follows:

**605—6.26(17A) Final decision.**

**6.26(1)** When the ~~emergency management division~~ ~~administrator~~ director presides over the reception of evidence at the hearing, the ~~administrator’s~~ director’s decision is a final decision.

**6.26(2)** When the ~~emergency management division~~ ~~administrator~~ director does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the ~~emergency management division~~ ~~administrator~~ director within the time provided in rule 605—6.27(17A).



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

ITEM 8. Amend rule 605—6.27(17A) as follows:

**605—6.27(17A) Appeals and review.**

**6.27(1) Appeal by party.** Any adversely affected party may appeal a proposed decision to the ~~emergency management division administrator~~ director within 30 days after issuance of the proposed decision.

**6.27(2) Review.** The ~~administrator~~ director may initiate review of a proposed decision on the ~~administrator's~~ director's own motion at any time within 30 days following the issuance of such a decision.

**6.27(3) Notice of appeal.** An appeal of a proposed decision is initiated by filing a timely notice of appeal with the ~~emergency management division administrator~~ director. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

*a. to e.* No change.

**6.27(4) Requests to present additional evidence.** A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The ~~administrator~~ director may remand a case to the presiding officer for further hearing, or the ~~administrator~~ director may preside at the taking of additional evidence.

**6.27(5) Scheduling.** The ~~emergency management division administrator~~ director shall issue a schedule for consideration of the appeal.

**6.27(6) Briefs and arguments.** Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

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

ITEM 9. Amend subrules 6.28(3) and 6.28(4) as follows:

**6.28(3) Time of filing.** The application shall be filed with the ~~emergency management division administrator~~ director within 20 days after issuance of the final decision.

**6.28(4) Notice to other parties.** A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the homeland security and emergency management division department shall serve copies on all parties.

ITEM 10. Amend rule 605—6.29(17A) as follows:

**605—6.29(17A) Stays of agency actions.**

**6.29(1) When available.**

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

*b.* Any party to a contested case proceeding may petition the ~~emergency management division administrator~~ director for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

**6.29(2) When granted.** In determining whether to grant a stay, the presiding officer or ~~administrator~~ director shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

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

**6.29(3) Vacation.** A stay may be vacated by the issuing authority upon application of the homeland security and emergency management ~~division~~ department or any other party.

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**ARC 2326C**

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

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Homeland Security and Emergency Management Department hereby amends Chapter 7, "Local Emergency Management," Iowa Administrative Code.

These amendments implement changes that have been made in Iowa Code chapter 29C that transformed the Homeland Security and Emergency Management Division of the Department of Public Defense to a stand-alone department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2214C** on October 28, 2015. A public hearing was held on November 17, 2015. No public comment was received during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on December 2, 2015.

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

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

These amendments will become effective January 27, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 7.3(1) as follows:

**7.3(1)** The county board of supervisors, city councils, and sheriff in each county shall cooperate with the homeland security and emergency management ~~division~~ department to establish a local emergency management commission to carry out the provisions of ~~2011 Iowa Code Supplement~~ chapter 29C.

*a. to c.* No change.

*d.* A commission member may designate an alternate to represent the designated entity. For any activity relating to ~~2011 Iowa Code Supplement~~ section 29C.17, subsection 2, or Iowa Code chapter 24, participation shall only be by a commission member or a designated alternate that is an elected official for the same designated entity.

ITEM 2. Amend subrule 7.3(2) as follows:

**7.3(2)** Local commission bylaws. The commission shall develop bylaws to specify, at a minimum, the following information:

*a. to l.* No change.

The bylaws, as adopted, shall be signed by each member of the commission. The commission shall record the signed bylaws with the county recorder and shall forward a copy of the bylaws to the ~~administrator~~ director of the homeland security and emergency management ~~division~~ department.

ITEM 3. Amend subparagraphs **7.3(4)"d"(3)** and **(4)** as follows:

(3) Plans shall be regularly reviewed and amended as appropriate in accordance with a five-year schedule established by the commission, which shall include at a minimum:

1. A complete review, and amendment as appropriate, at a minimum of every five years. However, a review, and amendment as appropriate, of the hazardous materials portion and of a minimum of 20 percent of the remaining annexes or portions of the plan shall be conducted on a yearly basis. The

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

complete operations plan must be reviewed entirely, and amended as appropriate, every five years. A copy of the portions of the plan that are reviewed, regardless of amendment, must be certified and submitted to the ~~division~~ department for approval by August 1 of each year.

2. Recovery and mitigation plans must also be reviewed, and amended as appropriate, certified and submitted to the ~~division~~ department for approval within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster.

(4) To be certified, the plan must be adopted by the members of the commission and attested to by the chairperson and the local emergency management coordinator on a signature document as specified by the ~~division~~ department.

ITEM 4. Amend subparagraphs **7.3(4)“d”(9)** to **(11)** as follows:

(9) Within 60 calendar days from the receipt of the plan, the ~~division~~ department shall review plans or portions of plans submitted by a commission for approval. The ~~division~~ department shall notify the local emergency management agency in writing of the approval or nonapproval of the plan. If the plan is not approved, the ~~division~~ department shall state the specific standard or standards that are not being met and offer guidance on how the plan may be brought into compliance.

(10) A comprehensive emergency plan shall not be considered approved by the homeland security and emergency management ~~division~~ department as required in ~~2011~~ Iowa Code ~~Supplement~~ subsection 29C.9(8) unless such plan adheres to and meets the minimum standards as established in paragraph 7.3(4)“d.”

(11) ~~2011~~ Iowa Code ~~Supplement~~ section 29C.6 provides that state participation in funding financial assistance in a presidentially declared disaster is contingent upon the commission's having on file a state-approved, comprehensive emergency plan as provided in ~~2011~~ Iowa Code ~~Supplement~~ subsection 29C.9(8). Plans must be received by the ~~division~~ department within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster for the affected jurisdiction and must be approved by the ~~division~~ department within 240 days of the formal closing of the disaster incident period for public or private nonprofit entities within the county to be eligible to receive state financial assistance.

ITEM 5. Amend subparagraph **7.3(4)“f”(2)** as follows:

(2) Individuals identified by the commission to perform the function of damage assessment shall be trained through a course of instruction approved by the ~~division~~ department.

ITEM 6. Amend subrule 7.3(5) as follows:

**7.3(5)** Two or more commissions. Two or more commissions may, upon review by the ~~state administrator~~ director and with the approval of their respective boards of supervisors, cities, and sheriffs, enter into agreements pursuant to Iowa Code chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

ITEM 7. Amend subrule 7.4(1) as follows:

**7.4(1)** Each commission shall appoint a local emergency management coordinator who shall serve at the pleasure of the commission. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission's and coordinator's duties as provided in ~~2011~~ Iowa Code ~~Supplement~~ sections 29C.9 and 29C.10, as further described in subrule 7.3(4), and as otherwise assigned and authorized by the commission.

ITEM 8. Amend subrule 7.4(4), introductory paragraph, as follows:

**7.4(4)** Local emergency management coordinator continuing education requirements. Each local emergency management coordinator shall meet the following educational development requirements. The ~~administrator~~ director may extend the time frame for meeting these continuing education requirements upon request from the commission.

ITEM 9. Amend paragraph **7.4(4)“e”** as follows:

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

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

ITEM 10. Amend rule 605—7.6(29C), introductory paragraph, as follows:

**605—7.6(29C) Damage assessment and financial assistance for disaster recovery.** Disaster-related expenditures and damages incurred by local governments, private nonprofit entities, individuals, and businesses may be reimbursable and covered under certain state and federal disaster assistance programs. Preliminary damage assessments shall be provided to the homeland security and emergency management ~~division~~ department prior to the governor's making a determination that the magnitude and impact are sufficient to warrant a request for a presidential disaster declaration.

ITEM 11. Amend subrule 7.6(2) as follows:

**7.6(2) Damage assessment guidance and forms to be provided.** The homeland security and emergency management ~~division~~ department will provide guidance regarding the methodologies to be used in collecting damage assessment and impact statement information and shall provide the forms and format by which this information shall be recorded.

ITEM 12. Amend subrules 7.7(2) and 7.7(3) as follows:

**7.7(2) Application for funding.** Commissions may apply for funding under the emergency management performance grant program by entering into an agreement with the ~~division~~ department and by completing the necessary application and forms, as published and distributed yearly to each commission by the ~~division~~ department.

**7.7(3) Allocation and distribution of funds.**

*a.* The ~~homeland security and emergency management division~~ department shall allocate funds to eligible commissions within 45 days of receipt of notice from the federal Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, that such funds are available. The ~~division~~ homeland security and emergency management department shall use a formula for the allocation of funds based upon the number of eligible applicants, the part-time or full-time status of the coordinator, 50 percent equal-share base, and 50 percent population base. The total allocation of funds for an applicant may not exceed the lesser of \$39,000 or the amount requested by the applicant.

*b.* and *c.* No change.

ITEM 13. Amend subrule 7.7(4) as follows:

**7.7(4) Compliance.** The ~~administrator~~ director may withhold or recover emergency management performance grant funds from any commission for its failure or its coordinator's failure to meet any of the following conditions:

*a.* to *f.* No change.

*g.* Enter into and file a cooperative agreement with the ~~division~~ department by the stipulated filing date.

*h.* to *l.* No change.

ITEM 14. Amend subrules 7.7(5) to 7.7(7) as follows:

**7.7(5) Serious nonperformance problems.** If a commission cannot demonstrate achievement of agreed-upon work products, the ~~division~~ department is empowered to withhold reimbursement or to recover funds from the commission. Corrective action procedures are designed to focus the commission's attention on nonperformance problems and to bring about compliance with the cooperative agreement. Corrective action procedures, which could lead to sanction, may be enacted as soon as the ~~administrator~~ director becomes aware of serious nonperformance or noncompliance. This realization may arise from staff visits or other contacts with the local emergency management agency or commission, from indications in the commission's or coordinator's quarterly report that indicate a significant shortfall from planned accomplishments, or from the commission's or coordinator's failure to report. Financial sanctions are to be applied only after corrective action remedies fail to result in accomplishment of agreed-upon work product.

**7.7(6) Corrective actions.**

*a.* *Informal corrective action.* As a first and basic step to correcting nonperformance, a designated member of the homeland security and emergency management ~~division~~ department staff will visit, call

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

or write the local emergency management coordinator to determine the reason for nonperformance and seek an agreeable resolution.

*b. Formal corrective action.* On those occasions when there is considerable discrepancy between agreed-upon and actual performance and response to informal corrective action is not sufficient or agreeable, the ~~division~~ department will take the following steps:

(1) Homeland security and emergency management ~~division~~ department staff will review the scope of work, as agreed to in the cooperative agreement, to determine the extent of nonperformance. To focus attention on the total nonperformance issue, all instances of nonperformance will be addressed together in a single correspondence to the commission.

(2) The ~~administrator~~ director will prepare a letter to the commission which will contain, at a minimum, the following information:

1. The reasons why the ~~division~~ department believes the commission may be in noncompliance, including the specified provisions in question.

2. A description of the efforts made by the ~~division~~ department to resolve the matter and the reasons these efforts were unsuccessful.

3. to 5. No change.

*7.7(7) Financial sanctions.* If the corrective actions heretofore described fail to produce a satisfactory resolution to cases of serious nonperformance, the ~~administrator~~ director may invoke the following financial sanction procedures:

*a.* Send a Notice of Intention to Withhold Payment to the chairperson of the commission. This notice shall also contain notice of a reasonable time and place for a hearing, should the commission request a hearing before the ~~administrator~~ director.

*b.* Any request by a commission for a hearing must be made in writing, to the ~~division~~ department, within 15 days of receipt of the Notice of Intention to Withhold Payment.

*c.* Any hearing under the Notice of Intention to Withhold Payment shall be held before the ~~administrator~~ director. However, the ~~administrator~~ director may designate an administrative law judge to take evidence and certify to the ~~administrator~~ director the entire record, including findings and recommended actions.

*d.* No change.

*e.* If, after a hearing, the ~~administrator~~ director finds sufficient evidence that the commission has violated established rules and regulations or the terms and conditions of the cooperative agreement, the ~~administrator~~ director may withhold such contributions and payments as may be considered advisable, until the failure to expend funds in accordance with said rules, regulations, terms and conditions has been corrected or the ~~administrator~~ director is satisfied that there will no longer be any such failure.

*f.* If upon the expiration of the 15-day period stated for a hearing, a hearing has not been requested, the ~~administrator~~ director may issue the findings and take appropriate action as described in paragraph 7.7(7) "e."

*g.* If the ~~administrator~~ director finds there is serious nonperformance by the commission or its coordinator and issues an order to withhold payments to the commission as described in this rule, the commission shall not receive funds under the emergency management performance grant program for the remainder of the federal fiscal year in which the order is issued and one additional year or until such time that all issues of nonperformance have been agreeably addressed by the ~~division~~ department and the commission.

*h.* No change.

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**ARC 2327C****HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DEPARTMENT[605]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Homeland Security and Emergency Management Department hereby amends Chapter 8, "Criteria for Awards or Grants," Iowa Administrative Code.

These amendments implement changes that have been made in Iowa Code chapter 29C that transformed the Homeland Security and Emergency Management Division of the Department of Public Defense to a stand-alone department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2213C** on October 28, 2015. A public hearing was held on November 17, 2015. No public comment was received during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on December 2, 2015.

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

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

These amendments will become effective January 27, 2016.

The following amendment is adopted.

Amend **605—Chapter 8** as follows:

CHAPTER 8  
CRITERIA FOR AWARDS OR GRANTS

**605—8.1(29C,17A) Purpose.** The homeland security and emergency management division department receives and distributes funds to a variety of entities throughout the state for support of emergency management planning, training, and other initiatives. Unless otherwise prohibited by state or federal law, rule or regulation, the administrator director may make such funds subject to competition. Where such funds are designated by the administrator director to be competitive, the division department shall ensure equal access, objective evaluation of applications for these funds, and that grant application material shall contain, at a minimum, specific content.

**605—8.2(29C,17A) Definitions.** For the purpose of these rules, the following definitions shall apply:

"Administrator Director" means the administrator director of the homeland security and emergency management division within the Iowa department of public defense.

"Competitive grant" means the competitive grant application process to determine the grant award for a specified project period.

"Division Department" means the homeland security and emergency management division of the Iowa department of public defense.

"Project" means the activity(ies) or program(s) funded by the division department.

"Project period" means the period of time for which the division department intends to support the project without requiring the recompetition of funds.

"Service delivery area" means the defined geographic area for delivery of project services.

**605—8.3(29C,17A) Exceptions.** The division department considers funds subject to competition except in those cases where:

1. and 2. No change.
3. There is mutual agreement among the division department and contract organizations.
4. The administrator director designates such funds to be noncompetitive.

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

**605—8.4(29C,17A) Public notice of available competitive grants.** When making funds available through a competitive grant application process, the ~~division~~ department shall, at least 60 days prior to the application due date, issue a public notice in the Iowa Administrative Bulletin that identifies the availability of funds and states how interested parties may request an application packet. A written request for the packet shall serve as the letter of intent. Services, delivery areas, and eligible applicants shall be described in the public notice.

If the receipt of a grantor's official notice of award to the ~~division~~ department precludes a full 60-day notice in the Iowa Administrative Bulletin, the ~~division~~ department shall nonetheless issue the public notice in the Iowa Administrative Bulletin at the earliest publication date.

In the event the publication date would not allow at least 30 days for interested parties to request and submit an application packet, the ~~division~~ department shall notify current contractors and other interested parties of the availability of funds through press releases and other announcements.

**605—8.5(29C,17A) Requirements.** Where funds are designated as competitive, the following shall be included in all grant application materials made available by the ~~division~~ department:

1. to 17. No change.

**605—8.6(29C,17A) Review process (competitive applications only).** The review process to be followed in determining the amount of funds to be approved for award of a contract shall be described in the application material. The review criteria and point allocation for each element shall also be described in the grant application material.

The competitive grant application review committee shall be determined by the ~~division~~ bureau chief administrator administering the grant or award, with oversight from the ~~administrator~~ director. The review committee members shall apply points according to the established review criteria in conducting the review.

In the event competitive applications for a project receive an equal number of points, a second review shall be conducted by the ~~administrator~~ director and the ~~bureau chief~~ division administrator administering the grant or award.

**605—8.7(29C,17A) Opportunity for review and comment.** Program advisory committees or related task forces of the program may be provided with an opportunity to review and comment on the criteria and point allocation prior to implementation. Exceptions may occur when the funding source to the ~~division~~ department has already included such criteria and point allocation within the award or the time frame allowed is insufficient for such review and comment.

**605—8.8(29C,17A) Awards.** Once applications have been scored and ranked, the ~~division~~ department shall award all available funds to eligible applicants based on the ranking of their applications. Should there be more eligible applications than funds available, those remaining eligible applications shall be kept on file by the ~~division~~ department.

In those cases in which applicants have received an award but actual project costs are less than anticipated or established in the application, remaining funds shall become deobligated funds. The ~~division~~ department shall award deobligated funds to remaining eligible applications on file with the ~~division~~ department. Should deobligated funds remain after satisfying all eligible applications, the ~~division~~ department shall republish the availability of funds.

These rules are intended to implement Iowa Code chapter 17A and section 29C.13.

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**ARC 2328C****HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DEPARTMENT[605]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Homeland Security and Emergency Management Department hereby amends Chapter 9, “Iowa Comprehensive Plan,” Iowa Administrative Code.

These amendments implement changes that have been made in Iowa Code chapter 29C that transformed the Homeland Security and Emergency Management Division of the Department of Public Defense to a stand-alone department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2212C** on October 28, 2015. A public hearing was held on November 17, 2015. No public comment was received during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on December 2, 2015.

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

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

These amendments will become effective January 27, 2016.

The following amendment is adopted.

Amend **605—Chapter 9** as follows:

CHAPTER 9  
IOWA COMPREHENSIVE PLAN

**605—9.1(29C) Description.** Iowa Code section 29C.8 requires the ~~administrator~~ director of the homeland security and emergency management ~~division~~ department to prepare a comprehensive plan for homeland security, disaster response, recovery, mitigation, and emergency resource management for the state. This comprehensive plan is comprised of the following parts:

Part A: Iowa Emergency Response Plan

Part B: Iowa Hazard Mitigation Plan

Part C: Iowa Disaster Recovery Plan

Part D: Iowa Critical Asset Protection Plan (confidential per Iowa Code section 22.7, Confidential records)

**605—9.2(29C) Part A: Iowa Emergency Response Plan.** The Part A: Iowa Emergency Response Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted, published, and maintained by the ~~division~~ department. Part A details the state government response to a wide range of natural, technological or human-caused disasters.

1. No change.
2. Part A shall be distributed to state agencies and departments that have been assigned emergency functions and to all ~~county~~ local emergency management agencies.
3. No change.
4. The ~~division~~ department updates the plan by amendments promulgated by rule in accordance with Iowa Code chapter 17A and distributes amendments to all plan holders on the ~~division~~ department distribution list.
5. Part A shall be available for public view at the Homeland Security and Emergency Management ~~Division~~ Department, ~~Hoover State Office Building~~ 7900 Hickman Road, Level A Suite 500, Des Moines Windsor Heights, Iowa.



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

**605—9.3(29C) Part B: Iowa Hazard Mitigation Plan.** The Part B: Iowa Hazard Mitigation Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted on September 17, 2013, published, and maintained by the ~~division~~ department. Part B details the state government goals, objectives, and strategies to mitigate a wide range of natural, technological or human-caused disasters in accordance with Section 322 of the Stafford Act, 42 U.S.C. 5165.

1. No change.
2. Part B shall be distributed to state agencies and departments that have participated in the writing of the plan or are assigned hazard mitigation functions and to all ~~county~~ local emergency management agencies.
3. No change.
4. The ~~division~~ department updates the plan by amendments promulgated by rule in accordance with Iowa Code chapter 17A and distributes amendments to all plan holders on the ~~division~~ department distribution list. Part B shall be reviewed and amended as appropriate at a minimum of every three years.
5. Part B shall be available for public view at the Homeland Security and Emergency Management ~~Division Department, Hoover State Office Building 7900 Hickman Road, Level A Suite 500, Des Moines Windsor Heights, Iowa.~~

**605—9.4(29C) Part C: Iowa Disaster Recovery Plan.** The Part C: Iowa Disaster Recovery Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted on March 20, 2008, published, and maintained by the ~~division~~ department. Part C details the state government goals, objectives, and strategies to recover from a wide range of natural, technological, or human-caused disasters.

1. No change.
2. Part C shall be distributed to state agencies and departments that have been assigned recovery functions and to all ~~county~~ local emergency management agencies.
3. No change.
4. The ~~division~~ department updates the plan by amendments promulgated by rule in accordance with Iowa Code chapter 17A and distributes amendments to all plan holders on the ~~division~~ department distribution list. Part C shall be reviewed and amended as appropriate at a minimum of every three years.
5. Part C shall be available for public view at the Homeland Security and Emergency Management ~~Division Department, Hoover State Office Building 7900 Hickman Road, Level A Suite 500, Des Moines Windsor Heights, Iowa.~~

These rules are intended to implement Iowa Code section 29C.8.

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**ARC 2329C**

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

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Homeland Security and Emergency Management Department hereby amends Chapter 11, "Repair, Calibration, and Maintenance of Radiological Monitoring, Detection, and Survey Equipment," Iowa Administrative Code.

These amendments implement changes that have been made in Iowa Code chapter 29C that transformed the Homeland Security and Emergency Management Division of the Department of Public Defense to a stand-alone department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2211C** on October 28, 2015. A public hearing was held on November 17, 2015. No public comment was received

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

during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on December 2, 2015.

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

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

These amendments will become effective January 27, 2016.

The following amendment is adopted.

Amend **605—Chapter 11** as follows:

## CHAPTER 11

REPAIR, CALIBRATION, AND MAINTENANCE OF RADIOLOGICAL MONITORING,  
DETECTION, AND SURVEY EQUIPMENT

The homeland security and emergency management ~~division~~ department operates a licensed radiological maintenance facility for the purpose of calibrating, repairing and performing the routine maintenance of radiological detection equipment. Iowa Code sections 23A.2 and 29C.8 provide that the ~~division~~ department may enter into contracts and charge fees for performance of these services.

**605—11.1(29C) Purpose.** The homeland security and emergency management ~~division~~ department shall establish fees to be charged for the performance of the calibration, repair and maintenance of radiological detection equipment.

**605—11.2(29C)** No change.

**605—11.3(29C)** No change.

**605—11.4(29C) Contracts for services.** The ~~division~~ department may enter into contracts with public and private entities for the purposes of providing radiological detection equipment, calibration, repair, and maintenance services. Such contracts will specify, at a minimum:

1. to 5. No change.

**605—11.5(29C) Application of fees.** In instances where the ~~division~~ department has not previously entered into a contract with a public or private entity, the ~~division~~ department will assess a fee for the performance of calibration, repair, and maintenance services it provides for radiological detection equipment and instruments not owned by the ~~division~~ department or owned by the ~~division~~ department but used for other than the ~~division's~~ department's specified purpose.

The ~~division~~ department will not assess a fee for the performance of calibration, repair, and maintenance services for radiological detection equipment and instruments:

1. Used in the administration and operation of the ~~division's~~ department's radiological emergency preparedness program.
2. Used by hazardous materials response teams recognized by the ~~division~~ department.
3. Otherwise owned by the ~~division~~ department and used for its express purposes.

**605—11.6(29C) Fees.** Unless otherwise specified by contract, the ~~division~~ department will charge the following fees for the performance of its services:

Calibration Fees:

One radiation instrument and one radiation detector	\$70
Each additional radiation detector	\$20
Each dosimeter	\$10

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

Repair Fees:

Hourly rate	\$70
Parts	Cost plus 15 percent

The ~~division~~ department will also assess a fee to recover actual shipping expenses, to include insurance coverage for the equipment being shipped.

Estimates will be given for instruments that are in need of repair. The customer will have the option of having the instrument repaired at the established rates or may have the instrument returned, at which time shipping expenses will be charged.

The ~~division~~ department may offer to replace equipment with like equipment that is fully functional and that has been properly calibrated, in lieu of making calibrations or the necessary repairs. If the customer accepts this offer, the fee charged is the fee that would normally be charged for the calibration or repair of the instrument or dosimeter.

**605—11.7(29C) Returned check and late fees.** Applicable fees are due to the ~~division~~ department within 30 days from the date of invoice. Persons who fail to pay required fees to the ~~division~~ department are subject to the following penalties:

1. Fifteen dollars for each payment received by the ~~division~~ department in accordance with these rules, for which insufficient funds are available to fulfill the obligation of such payment to the ~~division~~ department.

2. Fifteen dollars for each month for which a payment is overdue, or for each additional month for which insufficient funds are available to fulfill the obligation of such payment to the ~~division~~ department.

**605—11.8(29C) Records and reports.** The ~~division~~ department will maintain records and file reports regarding the calibration, maintenance, and repair of radiological detection equipment, in accordance with the requirements set forth in 641—Chapter 40.

These rules are intended to implement Iowa Code section 23A.2, subsection 10, and Iowa Code section 29C.8.

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**ARC 2330C**

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

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Homeland Security and Emergency Management Department hereby amends Chapter 12, “Homeland Security and Emergency Response Teams,” Iowa Administrative Code.

These amendments implement changes that have been made in Iowa Code chapter 29C that transformed the Homeland Security and Emergency Management Division of the Department of Public Defense to a stand-alone department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2210C** on October 28, 2015. A public hearing was held on November 17, 2015. No public comment was received during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on December 2, 2015.

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

After analysis and review of this rule making, no impact on jobs has been found.  
These amendments are intended to implement Iowa Code chapter 29C.  
These amendments will become effective January 27, 2016.  
The following amendments are adopted.

ITEM 1. Amend rule 605—12.1(29C) as follows:

**605—12.1(29C) Purpose.** The duties of the ~~administrator~~ director of the homeland security and emergency management ~~division~~ department include the development and ongoing operation of homeland security and emergency response teams to be deployed by the state to supplement and enhance local resources during times of disaster and emergency. These rules are intended to specify how teams and team members will be designated, minimum standards that shall be maintained, and the use of the teams.

ITEM 2. Amend rule **605—12.2(29C)**, definitions of “Administrator” and “First responder advisory committee,” as follows:

“~~Administrator~~ Director” means the ~~administrator~~ director of the homeland security and emergency management ~~division~~ of the department of public defense.

“~~First responder advisory committee~~ Homeland security advisory committee” means the advisory committee created by the ~~administrator~~ director for the purpose of providing advice on public safety response issues within Iowa.

ITEM 3. Amend rules 605—12.3(29C) to 605—12.6(29C) as follows:

**605—12.3(29C) Homeland security and emergency response teams.**

**12.3(1)** The ~~administrator~~ director shall issue requests to create homeland security and emergency response teams based on identified needs, on recommendations from the ~~first responder~~ homeland security advisory committee, and at the request of the governor.

**12.3(2)** Each team shall be designated by the ~~administrator~~ director. To be eligible for designation, a team shall provide a written application to the ~~administrator~~ director that details the following information:

*a. to e.* No change.

*f.* An estimate of the time required to assemble the team members and assets and deploy upon the request of the ~~administrator~~ director or governor.

**12.3(3)** Upon receipt of the written application from the team, the ~~administrator~~ director shall review the application. The ~~administrator~~ director may seek additional information from the team. The team shall provide the requested information in a timely fashion.

**12.3(4)** Following approval of the application, the ~~administrator~~ director shall issue a letter formally designating the team as an “Iowa homeland security and emergency response team” in accordance with Iowa Code section 29C.8. The ~~administrator~~ director may enter into an agreement with the team in accordance with Iowa Code chapter 28E.

**12.3(5)** No change.

**605—12.4(29C) Use of homeland security and emergency response teams.**

**12.4(1)** A designated team shall be deployed as a state asset only by a directive from the ~~administrator~~ director or pursuant to a governor’s disaster proclamation, unless the sponsoring agency’s response team is needed to perform emergency services within its own jurisdiction.

**12.4(2)** No change.

**605—12.5(29C) Homeland security and emergency response team compensation.**

**12.5(1)** A homeland security and emergency response team shall be compensated for its expenses while it is deployed as a state asset in accordance with rule 605—12.4(29C), subject to availability of funds. The application for compensation shall be in a manner as specified by the ~~administrator~~ director. Compensation shall be made to the team or the team’s governing jurisdiction.

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

**12.5(2)** A member of a homeland security and emergency response team listed on the team roster filed pursuant to subrule 12.3(5), while acting under the directive of the ~~administrator~~ director or pursuant to a governor's disaster proclamation, shall be considered an employee of the state under Iowa Code section 669.21. Disability, workers' compensation, and death benefits for designated team members participating in a response or recovery operation initiated by the ~~administrator~~ director or governor pursuant to rule 605—12.4(29C) or participating in a training or exercise activity approved by the ~~administrator~~ director shall be paid by the state in a manner consistent with the provisions of Iowa Code chapter 85, 410, or 411 as appropriate. The department of administrative services shall process claims for compensable losses of deployed team members.

**12.5(3)** No change.

**12.5(4)** The ~~administrator~~ director shall request funds from the executive council to address any obligations under rule 605—12.5(29C).

**605—12.6(29C) Alternate deployment of homeland security and emergency response teams.**

**12.6(1)** At its discretion, a homeland security and emergency response team may deploy at the direct request of a political subdivision of the state without a directive from the ~~administrator~~ director or without a governor's disaster proclamation.

**12.6(2)** No change.

**12.6(3)** If, during a team deployment, a governor's disaster proclamation is issued, the ~~administrator~~ director shall specify the date and time when the team may be deployed under rules 605—12.4(29C) and 605—12.5(29C).

[Filed 12/2/15, effective 1/27/16]

[Published 12/23/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/23/15.

**ARC 2315C**

**IOWA PUBLIC INFORMATION BOARD[497]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 23.6, the Iowa Public Information Board hereby amends Chapter 8, "Open Meetings," Iowa Administrative Code.

This amendment reflects the March 25, 2015, decision of the Iowa Court of Appeals in James W. Olinger and Larry C. Meyer vs. Robert Smith, Walter Utman and Gaylord Pitt, Harrison County, Iowa and Utman Drainage District in which the Court opined that when a governmental body holds a closed session under Iowa Code section 21.5(1)"c," the legal counsel for the governmental body is required to be present.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on September 30, 2015, as **ARC 2159C**. The Board received no public comment on the amendment. No changes were made to the amendment as published under Notice of Intended Action.

The Iowa Public Information Board adopted this amendment on November 19, 2015.

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

This amendment is intended to implement Iowa Code section 21.5.

This amendment will become effective on January 27, 2016.

The following amendment is adopted.

Adopt the following **new** rule 497—8.2(21,23):

**497—8.2(21,23) Closed session.**

**8.2(1) Who may attend.** A governmental body has the discretion as to who it may invite to attend a closed session. However, if the governmental body holds a closed session under Iowa Code section

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

21.5(1) “c” to discuss strategy with counsel, the legal counsel for the governmental body shall be in attendance at the closed session either in person or by electronic means.

**8.2(2)** Reserved.

This rule is intended to implement Iowa Code section 21.5.

[Filed 11/19/15, effective 1/27/16]

[Published 12/23/15]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/23/15.

## **ARC 2323C**

### **PROFESSIONAL LICENSURE DIVISION[645]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 152B.6 and 2015 Iowa Acts, House File 203, section 11, the Board of Respiratory Care and Polysomnography hereby amends Chapter 261, “Licensure of Respiratory Care Practitioners,” Chapter 262, “Continuing Education for Respiratory Care Practitioners,” Chapter 263, “Discipline for Respiratory Care Practitioners,” and Chapter 265, “Practice of Respiratory Care Practitioners,” Iowa Administrative Code.

These amendments update the Board’s administrative rules pursuant to 2015 Iowa Acts, House File 203, which establishes polysomnography as an independent licensed profession within the Board of Respiratory Care and Polysomnography.

The amendments to Chapter 261 change the title of the chapter to include two new licensure types related to polysomnography, set the requirements for obtaining the new license types as outlined in 2015 Iowa Acts, House File 203, set the requirements for reactivation of an expired license, and rescind rule 645—261.4(152B) regarding supervision of respiratory care students and rule 645—261.6(152B) regarding licensure by endorsement. However, the content of rule 645—261.4(152B) is relocated to Chapter 265, and the content of rule 645—261.6(152B) is incorporated in rule 645—261.2(152B).

The amendments to Chapter 262 change the title of the chapter to include polysomnography, set the required hours for renewal for the two new license types (polysomnographic technologist, respiratory care and polysomnography practitioner), update what is not considered to be independent study when continuing education is obtained through electronic means, and clarify the number of hours earned for completion of a new professional certification or recertification.

The amendments to Chapter 263 change the title of the chapter to include polysomnography and add polysomnographic technologists to the types of practitioners covered by the discipline rules.

The amendments to Chapter 265 change the title of the chapter to include polysomnography, add polysomnography licensees under the ethics rule, add a new rule that defines the practice of polysomnography (the wording is taken directly from 2015 Iowa Acts, House File 203), include polysomnographic and electroneurodiagnostic students within the rule related to supervision of students engaged in a training program, and define where polysomnography services can be performed.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2224C** on October 28, 2015. A public hearing was held on November 17, 2015.

During public comment, a request was made to change the required continuing education hours for all three licensure types to 24 hours. A technical change regarding an e-mail address was also noted.

After discussion, the decision of the Board was to change the required number of continuing education hours for respiratory care and polysomnography practitioner license renewal from 30 hours every two years to 24 hours every two years and to change the required number of continuing education hours for polysomnographic technologist license renewal from 20 hours every two years to 24 hours every two years. The required number of continuing education hours for respiratory care practitioner license renewal remains the same at 24 hours every two years. The only other change from the noticed amendments is an update of the Web address for the Board’s Web site in Item 3.

Waiver provisions pertaining to these administrative rules are contained in 645—Chapter 18.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The Iowa Board of Respiratory Care and Polysomnography adopted these amendments on December 2, 2015.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code sections 147.10, 147.11, 147.49, 147.55, 152B.2, 152B.3, 152B.4, 152B.5, 152B.6, 152B.11, 272C.2, 272C.3, 272C.4, and 272C.10 and 2015 Iowa Acts, House File 203, sections 7 to 9, 11 and 12 [Iowa Code sections 148G.1, 148G.2, 148G.3, 148G.5, and 148G.6].

These amendments will become effective January 27, 2016.

The following amendments are adopted.

ITEM 1. Amend **645—Chapter 261**, title, as follows:

LICENSURE OF RESPIRATORY CARE PRACTITIONERS, POLYSOMNOGRAPHIC TECHNOLOGISTS, AND RESPIRATORY CARE AND POLYSOMNOGRAPHY PRACTITIONERS

ITEM 2. Amend rule 645—261.1(152B) as follows:

**645—261.1(148G,152B) Definitions.** For purposes of these rules, the following definitions shall apply:

*“Active license”* means a license that is current and has not expired.

*“Board”* means the board of respiratory care and polysomnography.

*“BRPT”* means the Board of Registered Polysomnographic Technologists.

*“CAAHEP”* means the Commission on Accreditation of Allied Health Education Programs.

*“CoARC”* means the Commission on Accreditation for Respiratory Care.

*“Grace period”* means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

*“Licensee”* means any person licensed to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner in the state of Iowa.

*“License expiration date”* means March 31 of even-numbered years.

*“Licensure by endorsement”* means the issuance of an Iowa license to practice respiratory care to an applicant who is or has been licensed in another state.

*“NBRC”* means the National Board of Respiratory Care.

*“Polysomnographic technologist”* means a person licensed by the board to engage in the practice of polysomnography under the general supervision of a physician or a qualified health care professional prescriber.

*“Reactivate”* or *“reactivation”* means the process as outlined in rule 645—261.14(17A,147,272C) by which an inactive license is restored to active status.

*“Reciprocal license”* means the issuance of an Iowa license to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of respiratory care and polysomnography to license persons who have the same or similar qualifications to those required in Iowa.

*“Reinstatement”* means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

ITEM 3. Amend rule 645—261.2(152B) as follows:

**645—261.2(148G,152B) Requirements General requirements for licensure.**

**261.2(1)** The following general criteria shall apply to all applications for licensure:

a. The applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure> <http://idph.iowa.gov/Licensing>) or directly from the board office or may be submitted electronically at

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

<https://IBPLicense.iowa.gov>. All Paper applications shall be sent to Board of Respiratory Care and Polysomnography, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

*b. to d.* No change.

*e.* ~~The applicant has satisfactorily completed the certification or registration examination for respiratory therapists administered by the NBRC~~ The applicant shall submit a release authorizing the background check.

*f.* No change.

*g.* An applicant who has been a licensed respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner under the laws of another jurisdiction shall provide verification of license(s) from every jurisdiction in which the applicant has been licensed. Verification shall be sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) All disciplinary action taken against the license.

**261.2(2)** No change.

ITEM 4. Amend rule 645—261.3(152B) as follows:

**645—261.3(152B) Educational qualifications Additional requirements for respiratory care practitioner licensure.** The following are additional specific criteria for licensure as a respiratory care practitioner:

**261.3(1)** The applicant shall have successfully completed a respiratory care education program accredited by, or under a letter of review from, the Commission on Accreditation for Respiratory Care (CoARC) or CAAHEP.

**261.3(2)** No change.

**261.3(3)** The examination required by the board shall be the Therapist Multiple-Choice Examination or the Certified Respiratory Therapist Examination administered by the NBRC. The applicant shall have achieved a score on the examination which meets or exceeds the minimum passing score established by the NBRC.

**261.3(4)** The applicant shall apply directly to the NBRC to attempt the examination.

**261.3(5)** Results of the examination must be received by the board of respiratory care and polysomnography by one of the following methods:

*a.* Scores are sent directly from the examination service to the board;

*b.* A notarized copy of a certificate showing proof of the successful achievement of the certified respiratory therapist (CRT) or registered respiratory therapist (RRT) credential awarded by the NBRC is submitted to the board; or

*c.* A notarized copy of the score report or an electronic Web-based confirmation by the NBRC showing proof of successful completion is submitted to the board.

ITEM 5. Rescind rule 645—261.4(152B) and adopt the following **new** rule in lieu thereof:

**645—261.4(148G,152B) Additional requirements for polysomnographic technologist licensure.** The following are additional specific criteria for licensure as a polysomnographic technologist:

**261.4(1)** Graduation from a polysomnographic educational program accredited by CAAHEP. A transcript shall be submitted to the board office directly from the college or university; or

**261.4(2)** Graduation from a respiratory care program accredited by CoARC and completion of the sleep add-on program accredited by CoARC. A transcript shall be submitted to the board office directly from the college or university; or



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**261.4(3)** Graduation from an electroneurodiagnostic technologist program with a polysomnographic technology track that is accredited by CAAHEP. A transcript shall be submitted to the board office directly from the college or university; or

**261.4(4)** Requirements for current Iowa licensees holding a license in a profession other than polysomnography. An individual who holds an active license under Iowa Code section 147.2 in a profession other than polysomnography and whose license is in good standing with the board for that profession may receive licensure upon verification from the medical director of the individual's current employer or the medical director's designee that the individual has completed on-the-job training in the field of polysomnography and is competent to perform polysomnography.

**261.4(5)** Persons practicing sleep medicine on January 1, 2017.

*a.* A person who is working in the field of sleep medicine on January 1, 2017, may receive a license to perform polysomnography upon verification of the following:

(1) Verification that the person has completed 500 hours of clinical polysomnographic work experience within the three years immediately prior to January 1, 2017; and

(2) Verification from the medical director of the person's current employer or the medical director's designee that the person is competent to perform polysomnography.

*b.* A person who is not otherwise eligible to obtain a license pursuant to this subrule shall have until January 1, 2018, to:

(1) Achieve a passing score on the Registered Polysomnographic Technologist Examination administered by the BRPT. The passing score shall be the recommended passing score set by the BRPT; or

(2) Achieve a passing score on the Sleep Disorders Specialist Examination (SDS) administered by the NBRC. The passing score shall be the minimum passing score established by the NBRC.

**261.4(6)** Foreign-trained polysomnographic technologists shall:

*a.* Provide an equivalency evaluation of their educational credentials by either of the following:

(1) International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone (310)258-9451; Web site [www.ierf.org](http://www.ierf.org) or e-mail at [info@ierf.org](mailto:info@ierf.org); or

(2) International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777; telephone (727)549-8555.

The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

*b.* Provide a notarized copy of the certificate or diploma awarded to the applicant from a respiratory care program in the country in which the applicant was educated.

*c.* Receive a final determination from the board regarding the application for licensure.

ITEM 6. Rescind rule 645—261.5(152B) and adopt the following **new** rule in lieu thereof:

**645—261.5(148G,152B) Requirements for dual licensure.** The following are additional specific criteria for licensure as a respiratory care and polysomnography practitioner. An applicant for licensure as a respiratory care and polysomnography practitioner shall meet the requirements of 261.5(1) and 261.5(2).

**261.5(1)** The applicant shall have successfully completed a respiratory care education program accredited by, or under a letter of review from, CoARC or CAAHEP.

*a.* Foreign-trained practitioners shall:

(1) Provide an equivalency evaluation of their educational credentials by either of the following:

1. International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone (310)258-9451; Web site [www.ierf.org](http://www.ierf.org) or e-mail at [info@ierf.org](mailto:info@ierf.org); or

2. International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777; telephone (727)549-8555.

The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

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(2) Provide a notarized copy of the certificate or diploma awarded to the applicant from the program in the country in which the applicant was educated.

(3) Receive a final determination from the board regarding the application for licensure.

*b.* Examination requirements. The examinations required by the board shall be the Therapist Multiple-Choice Examination administered by the NBRC and either the Sleep Disorders Specialist Examination (SDS) administered by the NBRC or the Registered Polysomnographic Technologist Examination administered by the BRPT. The passing score shall be the minimum passing score established by the NBRC or BRPT.

(1) The applicant shall apply directly to the examination service to attempt the examination.

(2) Results of the examinations must be received by the board of respiratory care and polysomnography by one of the following methods:

1. Scores are sent directly from the examination service to the board;

2. A notarized copy of a certificate showing proof of the successful achievement of the certified respiratory therapist (CRT) or registered respiratory therapist (RRT) credential awarded by the NBRC is submitted to the board; or

3. A notarized copy of the score report or an electronic Web-based confirmation by the NBRC showing proof of successful completion of the Therapist Multiple-Choice Examination, State Clinical Examination, or Certified Respiratory Therapist Examination administered by the NBRC is submitted to the board.

**261.5(2)** The applicant must also meet one of the following requirements:

*a.* Graduation from a polysomnographic educational program accredited by CAAHEP. A transcript shall be submitted to the board office directly from the college or university; or

*b.* Completion of a sleep add-on program accredited by CoARC. A transcript shall be submitted to the board office directly from the college or university; or

*c.* Graduation from an electroneurodiagnostic technologist program with a polysomnographic technology track that is accredited by CAAHEP. A transcript shall be submitted to the board office directly from the college or university; or

*d.* Hold an active license under Iowa Code section 147.2 in a profession other than polysomnography that is in good standing with the board for that profession and provide verification from the medical director of the applicant's current employer or the medical director's designee that the applicant has completed on-the-job training in the field of polysomnography and is competent to perform polysomnography; or

*e.* Persons practicing sleep medicine on January 1, 2017.

(1) A person who is working in the field of sleep medicine on January 1, 2017, may receive a license upon verification of the following:

1. Verification that the person has completed 500 hours of clinical or nonclinical polysomnographic work experience within the three years immediately prior to January 1, 2017, and

2. Verification from the medical director of the person's current employer or the medical director's designee that the person is competent to perform polysomnography.

(2) A person who is not otherwise eligible to obtain a license pursuant to this subrule shall have until January 1, 2018, to achieve a passing score on the Registered Polysomnographic Technologist Examination administered by the BRPT or achieve a passing score on the Sleep Disorders Specialist Examination (SDS) administered by the NBRC. The passing score for the Registered Polysomnographic Technologist Examination shall be the recommended passing score set by the BRPT. The passing score for the SDS shall be the minimum passing score established by the NBRC.

ITEM 7. Rescind and reserve rule **645—261.6(152B)**.

ITEM 8. Amend rule 645—261.8(152B) as follows:

**645—261.8(148G,152B) License renewal.**

**261.8(1)** The biennial license renewal period for a license to practice respiratory care shall begin on April 1 of an even-numbered year and end on March 31 of the next even-numbered year. The licensee is

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice does not relieve the licensee of the responsibility for renewing the license.

**261.8(2)** No change.

**261.8(3)** A licensee seeking renewal shall:

*a.* Meet the continuing education requirements of rule 645—262.2(148G,152B,272C) and the mandatory reporting requirements of subrule 261.8(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

*b.* Submit the completed renewal application and renewal fee before the license expiration date.

**261.8(4)** and **261.8(5)** No change.

**261.8(6)** A person licensed to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner shall keep the person's license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

**261.8(7)** and **261.8(8)** No change.

ITEM 9. Amend subrule 261.14(4) as follows:

**261.14(4)** Provide verification of current competence to practice ~~respiratory care~~ by satisfying one of the following criteria:

*a.* If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) No change.

(2) Verification of completion of ~~24 hours~~ of continuing education that conforms to standards defined in 645—262.3(148G,152B,272C) within 24 months immediately preceding submission of the application for reactivation.

1. For respiratory care practitioners: 24 hours of continuing education.

2. For polysomnographic technologists: 24 hours of continuing education.

3. For respiratory care and polysomnography practitioners: 24 hours of continuing education of which at least 8 hours but no more than 12 hours shall be on sleep-related topics.

*b.* If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) No change.

(2) Verification of completion of ~~48 hours~~ of continuing education that conforms to standards defined in 645—262.3(148G,152B,272C) within 24 months immediately preceding submission of the application for reactivation.

1. For respiratory care practitioners: 48 hours of continuing education.

2. For polysomnographic technologists: 48 hours of continuing education.

3. For respiratory care and polysomnography practitioners: 48 hours of continuing education of which at least 16 hours but no more than 24 hours shall be on sleep-related topics.

ITEM 10. Amend rule 645—261.15(17A,147,272C) as follows:

**645—261.15(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 645—261.14(17A,147,272C) prior to practicing ~~respiratory care~~ in this state.

ITEM 11. Amend **645—Chapter 261**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 147, 152B and 272C and 2015 Iowa Acts, House File 203, sections 7 to 14 [Iowa Code chapter 148G].

ITEM 12. Amend **645—Chapter 262**, title, as follows:

**CONTINUING EDUCATION FOR RESPIRATORY CARE PRACTITIONERS AND  
POLYSOMNOGRAPHIC TECHNOLOGISTS**

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 13. Amend rule 645—262.1(152B,272C), parenthetical implementation statute, as follows:

**645—262.1(148G,152B,272C) Definitions.**

ITEM 14. Amend rule **645—262.1(152B,272C)**, definitions of “Board” and “Licensee,” as follows:

“*Board*” means the board of respiratory care and polysomnography.

“*Licensee*” means any person licensed to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner in the state of Iowa.

ITEM 15. Amend rule 645—262.2(152B,272C) as follows:

**645—262.2(148G,152B,272C) Continuing education requirements.**

**262.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on April 1 of each even-numbered year and ending on March 31 of the next even-numbered year. Each biennium, the licensee shall be required to complete ~~a minimum of 24 hours of~~ continuing education that ~~meet~~ meets the requirements specified in rule 645—262.3(148G,152B,272C).

*a.* ~~For respiratory care practitioner licensees: complete a minimum of 24 hours of continuing education. Fourteen of the 24 hours of continuing education shall be earned by completing a program in which the instructor conducts the class employing in-person or live, real-time interactive media or by employing an archived audio or video presentation which permits the licensee a means to communicate with the presenter in real time by employing an electronic technology that allows for real-time communication between the instructor and licensee.~~

*b.* ~~For respiratory care and polysomnography practitioner licensees: complete a minimum of 24 hours of continuing education. Eighteen of the 24 hours of continuing education shall be earned by completing a program in which the instructor conducts the class in person or by employing an electronic technology that allows for real-time communication between the instructor and licensee. At least 8 hours but not more than 12 hours shall be on sleep-related topics.~~

*c.* ~~For polysomnographic technologist licensees: complete a minimum of 24 hours of continuing education. Fourteen of the 24 hours of continuing education shall be earned by completing a program in which the instructor conducts the class in person or by employing an electronic technology that allows for real-time communication between the instructor and licensee.~~

**262.2(2)** Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. ~~The~~ For each subsequent license renewal, the new licensee will be required to complete a ~~minimum of 24 hours of continuing education per biennium for each subsequent license renewal.~~

**262.2(3) to 262.2(5)** No change.

ITEM 16. Amend rule 645—262.3(152B,272C) as follows:

**645—262.3(148G,152B,272C) Standards.**

**262.3(1)** No change.

**262.3(2) Specific criteria.** Continuing education hours of credit may be obtained by:

*a.* Programs/activities that shall be of a clinical nature related to the practice of respiratory care or polysomnography.

*b.* and *c.* No change.

*d.* ~~All courses offered by the American Association of Respiratory Care (AARC) continuing education programs/activities.~~

*e.* ~~Maximums per biennium are as follows:~~

~~(1) No more than ten hours of approved independent study for continuing education requirements in a given continuing education compliance period.~~

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~(2)~~ d. The following are approved for continuing education credit on a one-time basis per biennium and require a certificate of attendance or verification:

## CERTIFICATIONS :

Advanced Cardiac Life Support	<del>up to</del> 12 hours
Basic Cardiac Life Support—Instructor	<del>up to</del> 8 hours
Basic Cardiac Life Support	<del>up to</del> 6 hours
Neonatal Resuscitation	<del>up to</del> 9 hours
Pediatric Advanced Life Support	<del>up to</del> 14 hours
Mandatory Reporting	<del>up to</del> 4 hours
Certified Pulmonary Function Technologist	<del>up to</del> 8 hours
Registered Pulmonary Function Technologist	<del>up to</del> 12 hours
Neonatal Pediatric Specialist	<del>up to</del> 12 hours
Sleep Disorders Specialist	<del>up to</del> 12 hours
Adult Critical Care Specialist	<del>up to</del> 12 hours

## RECERTIFICATIONS :

Advanced Cardiac Life Support	<del>up to</del> 4 hours
Basic Cardiac Life Support	<del>up to</del> 2 hours
Neonatal Resuscitation	<del>up to</del> 3 hours
Pediatric Advanced Life Support	<del>up to</del> 3 hours
Registered Respiratory Therapist	<del>up to</del> 24 hours
Certified Pulmonary Function Technologist	<del>up to</del> 8 hours
Registered Pulmonary Function Technologist	<del>up to</del> 12 hours
Neonatal Pediatric Specialist	<del>up to</del> 12 hours
Sleep Disorders Specialist	<del>up to</del> 12 hours
Adult Critical Care Specialist	<del>up to</del> 12 hours
Certified Respiratory Therapist	<del>up to</del> 24 hours

f. e. Unacceptable subject matter includes marketing, personal development, time management, human relations, collective bargaining and tours.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 17. Amend rule 645—262.5(152B,272C), parenthetical implementation statute, as follows:

**645—262.5(148G,152B,272C) Automatic exemption.**

ITEM 18. Amend rule 645—262.6(152B,272C), parenthetical implementation statute, as follows:

**645—262.6(148G,152B,272C) Grounds for disciplinary action.**

ITEM 19. Amend rule 645—262.7(152B,272C), parenthetical implementation statute, as follows:

**645—262.7(148G,152B,272C) Continuing education exemption for disability or illness.**

ITEM 20. Amend **645—Chapter 262**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 272C.2 and chapter 152B and 2015 Iowa Acts, House File 203, sections 7 to 14 [Iowa Code chapter 148G].

ITEM 21. Amend **645—Chapter 263**, title, as follows:

**DISCIPLINE FOR RESPIRATORY CARE PRACTITIONERS AND POLYSOMNOGRAPHIC TECHNOLOGISTS**

ITEM 22. Amend rule 645—263.1(152B) as follows:

**645—263.1(148G,152B) Definitions.**

“*Board*” means the board of respiratory care and polysomnography.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means a person licensed to practice as a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner in Iowa.

ITEM 23. Amend rule 645—263.2(152B,272C) as follows:

**645—263.2(148G,152B,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645—263.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

**263.2(1)** No change.

**263.2(2)** Professional incompetency. Professional incompetency includes, but is not limited to:

a. No change.

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

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

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a respiratory care practitioner or polysomnographic technologist in this state.

e. and f. No change.

**263.2(3)** and **263.2(4)** No change.

**263.2(5)** Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to:

a. and b. No change.

c. Self-laudatory claims that imply that the respiratory care practitioner or polysomnographic technologist is skilled in a field or specialty of practice for which the practitioner or technologist is not qualified.

d. Extravagant claims or proclaiming extraordinary skills not recognized by the respiratory care or polysomnography profession.

**263.2(6)** to **263.2(24)** No change.

**263.2(25)** Representing oneself as a respiratory care practitioner or polysomnographic technologist when one’s license has been suspended or revoked, or when one’s license is on inactive status.

**263.2(26)** to **263.2(30)** No change.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 24. Amend **645—Chapter 263**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 147, 152B and 272C and 2015 Iowa Acts, House File 203, sections 7 to 14 [Iowa Code chapter 148G].

ITEM 25. Amend **645—Chapter 265**, title, as follows:

**PRACTICE OF RESPIRATORY CARE PRACTITIONERS AND POLYSOMNOGRAPHIC TECHNOLOGISTS**

ITEM 26. Renumber rules **645—265.1(152B,272C)** and **645—265.2(152B,272C)** as **645—265.2(152B,272C)** and **645—265.3(152B,272C)**.

ITEM 27. Adopt the following new rule 645—265.1(148G,152B,272C):

**645—265.1(148G,152B,272C) Definitions.**

*“Board”* means the board of respiratory care and polysomnography.

*“Direct supervision”* means that the respiratory care and polysomnography practitioner or the polysomnographic technologist providing supervision must be present where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure.

*“General supervision”* means that the polysomnographic procedure is provided under a physician’s or qualified health care professional prescriber’s overall direction and control, but the physician’s or qualified health care professional prescriber’s presence is not required during the performance of the procedure.

*“Physician”* means a person who is currently licensed in Iowa to practice medicine and surgery or osteopathic medicine and surgery and who is board certified and who is actively involved in the sleep medicine center or laboratory.

*“Polysomnographic student”* means a person who is enrolled in a program approved by the board and who may provide sleep-related services under the direct supervision of a respiratory care and polysomnography practitioner or a polysomnographic technologist as part of the person’s education program.

*“Polysomnographic technician”* means a person who has graduated from a program approved by the board, but has not yet received an accepted national credential awarded from an examination program approved by the board and who may provide sleep-related services under the direct supervision of a licensed respiratory care and polysomnography practitioner or a licensed polysomnographic technologist for a period of up to 30 days following graduation while awaiting credentialing examination scheduling and results.

ITEM 28. Amend renumbered rule 645—265.2(152B,272C) as follows:

**645—265.2(148G,152B,272C) Code of ethics.**

**265.2(1)** The respiratory care practitioner or polysomnographic technologist shall practice acceptable methods of treatment and shall not practice beyond the competence or exceed the authority vested in the practitioner or technologist by physicians.

**265.2(2)** The respiratory care practitioner or polysomnographic technologist shall continually strive to increase and improve knowledge and skill and shall render to each patient the full measure of the practitioner’s or technologist’s ability. All services shall be provided with respect for the dignity of the patient, regardless of the patient’s social or economic status or personal attributes or the nature of the patient’s health problems.

**265.2(3)** The respiratory care practitioner or polysomnographic technologist shall be responsible for the competent and efficient performance of assigned duties and shall expose incompetent, illegal or unethical conduct of members of the profession.

**265.2(4)** The respiratory care practitioner or polysomnographic technologist shall hold in confidence all privileged information concerning the patient and refer all inquiries regarding the patient to the patient’s physician.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**265.2(5)** The respiratory care practitioner or polysomnographic technologist shall not accept gratuities and shall guard against conflict of interest.

**265.2(6)** The respiratory care practitioner or polysomnographic technologist shall uphold the dignity and honor of the profession and abide by its ethical principles.

**265.2(7)** The respiratory care practitioner or polysomnographic technologist shall have knowledge of existing state and federal laws governing the practice of respiratory therapy or polysomnography and shall comply with those laws.

**265.2(8)** The respiratory care practitioner or polysomnographic technologist shall cooperate with other health care professionals and participate in activities to promote community, state, and national efforts to meet the health needs of the public.

ITEM 29. Adopt the following new rules 645—265.6(148G,272C) to 645—265.8(148G,272C):

**645—265.6(148G,272C) Practice of polysomnography.**

**265.6(1)** The practice of polysomnography consists of but is not limited to the following tasks as performed for the purpose of polysomnography, under the general supervision of a licensed physician or qualified health care professional prescriber:

*a.* Monitoring, recording, and evaluating physiologic data during polysomnographic testing and review during the evaluation of sleep-related disorders, including sleep-related respiratory disturbances, by applying any of the following techniques, equipment, or procedures:

(1) Noninvasive continuous, bilevel positive airway pressure, or adaptive servo-ventilation titration on spontaneously breathing patients using a mask or oral appliance; provided, however, that the mask or oral appliance does not extend into the trachea or attach to an artificial airway.

(2) Supplemental low-flow oxygen therapy of less than six liters per minute, utilizing a nasal cannula or incorporated into a positive airway pressure device during a polysomnogram.

(3) Capnography during a polysomnogram.

(4) Cardiopulmonary resuscitation.

(5) Pulse oximetry.

(6) Gastroesophageal pH monitoring.

(7) Esophageal pressure monitoring.

(8) Sleep stage recording using surface electroencephalography, surface electrooculography, and surface submental electromyography.

(9) Surface electromyography.

(10) Electrocardiography.

(11) Respiratory effort monitoring, including thoracic and abdominal movement.

(12) Plethysmography blood flow monitoring.

(13) Snore monitoring.

(14) Audio and video monitoring.

(15) Body movement monitoring.

(16) Nocturnal penile tumescence monitoring.

(17) Nasal and oral airflow monitoring.

(18) Body temperature monitoring.

*b.* Monitoring the effects that a mask or oral appliance used to treat sleep disorders has on sleep patterns; provided, however, that the mask or oral appliance shall not extend into the trachea or attach to an artificial airway.

*c.* Observing and monitoring physical signs and symptoms, general behavior, and general physical response to polysomnographic evaluation and determining whether initiation, modification, or discontinuation of a treatment regimen is warranted.

*d.* Analyzing and scoring data collected during the monitoring described in this subrule for the purpose of assisting a physician in the diagnosis and treatment of sleep and wake disorders that result from developmental defects, the aging process, physical injury, disease, or actual or anticipated somatic dysfunction.



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

*e.* Implementation of a written or verbal order from a physician or qualified health care professional prescriber to perform polysomnography.

*f.* Education of a patient regarding the treatment regimen that assists the patient in improving the patient's sleep.

*g.* Use of any oral appliance used to treat sleep-disordered breathing while under the care of a licensed polysomnographic technologist during the performance of a sleep study, as directed by a licensed dentist.

**265.6(2)** Before providing any sleep-related services, a polysomnographic technician or polysomnographic student who is obtaining clinical experience shall give notice to the board that the person is working under the direct supervision of a respiratory care and polysomnography practitioner or a polysomnographic technologist in order to gain the experience to be eligible to sit for a national certification examination. The person shall wear a badge that appropriately identifies the person while providing such services.

**645—265.7(148G,152B,272C) Students.**

**265.7(1)** A student who is enrolled in an approved respiratory care, sleep add-on, polysomnography training program, or electroneurodiagnostic program and is employed in an organized health care system may render services defined in Iowa Code sections 152B.2 and 152B.3 and 2015 Iowa Acts, House File 203, sections 7 to 14 [Iowa Code chapter 148G], under the direct and immediate supervision of a respiratory care practitioner, polysomnographic technologist, or respiratory care and polysomnography practitioner for the duration of the program, but not to exceed the duration of the program.

**265.7(2)** Direct and immediate supervision of a respiratory care or polysomnographic student means that the licensed respiratory care practitioner or polysomnographic technologist shall:

- a.* Be continuously on site and present in the department or facility where the student is performing care;
- b.* Be immediately available to assist the person being supervised in the care being performed; and
- c.* Be responsible for care provided by students.

**645—265.8(148G,272C) Location of polysomnography services.** The practice of polysomnography shall take place only in a facility that is accredited by a nationally recognized sleep medicine laboratory or center accrediting agency, in a facility operated by a hospital or a hospital licensed under Iowa Code chapter 135B, or in a patient's home pursuant to rules adopted by the board; provided, however, that the scoring of data and the education of patients may take place in another setting.

ITEM 30. Amend **645—Chapter 265**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 147, 152B, and 272C and 2015 Iowa Acts, House File 203, sections 7 to 14 [Iowa Code chapter 148G].

[Filed 12/2/15, effective 1/27/16]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/23/15.

AGENCY	RULE	DELAY
Educational Examiners Board[282]	12.1 to 12.6, 12.8 [IAB 11/11/15, <b>ARC 2229C</b> ]	Effective date of December 16, 2015, delayed until the adjournment of the 2016 General Assembly by the Administrative Rules Review Committee at its meeting held December 8, 2015. [Pursuant to §17A.8(9)]