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# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

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**CITATION of Administrative Rules**

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

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

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## Schedule for Rule Making 2000

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 24 '99	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7	Jan. 26	Feb. 15	Mar. 1	Mar. 3	Mar. 22	Apr. 26	July 24
Jan. 21	Feb. 9	Feb. 29	Mar. 15	Mar. 17	Apr. 5	May 10	Aug. 7
Feb. 4	Feb. 23	Mar. 14	Mar. 29	Mar. 31	Apr. 19	May 24	Aug. 21
Feb. 18	Mar. 8	Mar. 28	Apr. 12	Apr. 14	May 3	June 7	Sept. 4
Mar. 3	Mar. 22	Apr. 11	Apr. 26	Apr. 28	May 17	June 21	Sept. 18
Mar. 17	Apr. 5	Apr. 25	May 10	May 12	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	May 26	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 9	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	June 23	July 12	Aug. 16	Nov. 13
May 12	May 31	June 20	July 5	July 7	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	July 21	Aug. 9	Sept. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 4	Aug. 23	Sept. 27	Dec. 25
June 23	July 12	Aug. 1	Aug. 16	Aug. 18	Sept. 6	Oct. 11	Jan. 8 '01
July 7	July 26	Aug. 15	Aug. 30	Sept. 1	Sept. 20	Oct. 25	Jan. 22 '01
July 21	Aug. 9	Aug. 29	Sept. 13	Sept. 15	Oct. 4	Nov. 8	Feb. 5 '01
Aug. 4	Aug. 23	Sept. 12	Sept. 27	Sept. 29	Oct. 18	Nov. 22	Feb. 19 '01
Aug. 18	Sept. 6	Sept. 26	Oct. 11	Oct. 13	Nov. 1	Dec. 6	Mar. 5 '01
Sept. 1	Sept. 20	Oct. 10	Oct. 25	Oct. 27	Nov. 15	Dec. 20	Mar. 19 '01
Sept. 15	Oct. 4	Oct. 24	Nov. 8	Nov. 10	Nov. 29	Jan. 3 '01	Apr. 2 '01
Sept. 29	Oct. 18	Nov. 7	Nov. 22	Nov. 24	Dec. 13	Jan. 17 '01	Apr. 16 '01
Oct. 13	Nov. 1	Nov. 21	Dec. 6	Dec. 8	Dec. 27	Jan. 31 '01	Apr. 30 '01
Oct. 27	Nov. 15	Dec. 5	Dec. 20	Dec. 22	Jan. 10 '01	Feb. 14 '01	May 14 '01
Nov. 10	Nov. 29	Dec. 19	Jan. 3 '01	Jan. 5 '01	Jan. 24 '01	Feb. 28 '01	May 28 '01
Nov. 24	Dec. 13	Jan. 2 '01	Jan. 17 '01	Jan. 19 '01	Feb. 7 '01	Mar. 14 '01	June 11 '01
Dec. 8	Dec. 27	Jan. 16 '01	Jan. 31 '01	Feb. 2 '01	Feb. 21 '01	Mar. 28 '01	June 25 '01
Dec. 22	Jan. 10 '01	Jan. 30 '01	Feb. 14 '01	Feb. 16 '01	Mar. 7 '01	Apr. 11 '01	July 9 '01
Jan. 5 '01	Jan. 24 '01	Feb. 13 '01	Feb. 28 '01	Mar. 2 '01	Mar. 21 '01	Apr. 25 '01	July 23 '01

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
10	Friday, October 27, 2000	November 15, 2000
11	Friday, November 10, 2000	November 29, 2000
12	Friday, November 24, 2000	December 13, 2000

**PLEASE NOTE:**

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

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

## PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
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The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the processing of rule-making documents, we request a 3.5" High Density (not Double Density) IBM PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, First Floor South, Grimes State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

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*Guide to Rule Making, June 1995 Edition*, available upon request to the Iowa Administrative Code Division, Grimes State Office Building, First Floor South, Des Moines, Iowa 50319.

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 14, 2000, at 9 a.m. in the Ronald Reagan Conference Room (G19), State Capitol, Des Moines, Iowa. The following rules will be reviewed:

**NOTE: See also Supplemental Agenda to be published in the November 1, 2000, Iowa Administrative Bulletin.**

**BANKING DIVISION[187]**

COMMERCE DEPARTMENT[181]"umbrella"

- Assistants to the superintendent of banking, 1.3(1)"b," Notice **ARC 0159B** ..... 10/4/00
- Examinations, ch 3, Notice **ARC 0200B** ..... 10/18/00

**COLLEGE STUDENT AID COMMISSION[283]**

EDUCATION DEPARTMENT[281]"umbrella"

- Uniform rules for waivers, ch 7, Notice **ARC 0225B** ..... 10/18/00
- Accelerated career education grant program, ch 19, Filed **ARC 0223B** ..... 10/18/00
- Approval of postsecondary schools, ch 21, Filed **ARC 0224B** ..... 10/18/00

**CORRECTIONS DEPARTMENT[201]**

- Offender telephone commissions, 20.20, Filed **ARC 0199B** ..... 10/18/00

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

- Housing fund, 25.2, 25.4(1)"c," 25.6(2), 25.7(1)"a," 25.7(2)"a," 25.7(3)"a," 25.8(9), 25.8(10), Notice **ARC 0196B** ..... 10/18/00
- Rural resource coordination programs for fire services, ch 42, Filed **ARC 0197B** ..... 10/18/00
- Value-added agricultural products and processes financial assistance program (VAAPFAP), 57.2, 57.6(2), 57.6(3), Filed **ARC 0193B** ..... 10/18/00
- Assistive device tax credit, ch 66, Notice **ARC 0194B** ..... 10/18/00
- Life science enterprises, ch 67, Notice **ARC 0195B** ..... 10/18/00

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- Policy required regarding health services, media services programs and guidance programs, 12.3(11), Notice **ARC 0185B** ..... 10/4/00
- Standards for paraeducator preparation programs, ch 80, Filed Emergency After Notice **ARC 0186B** ..... 10/4/00

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PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

- Emergency management performance grants—nonperformance and noncompliance, 7.7(5), Filed Without Notice **ARC 0176B** ..... 10/4/00

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NATURAL RESOURCES DEPARTMENT[561]"umbrella"

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- Water quality standards, 61.2(4)"a" and "b," 61.2(4)"b"(1), 61.2(4)"c," 61.2(4)"d"(4), 61.2(4)"e," 61.2(4)"e"(1), 61.2(4)"f," 61.2(4)"g"(4), 61.2(5), 61.3(3)"b"(3)"2," 61.3(3)"b"(6), 61.3(3) table 1, 61.3(3) tables 3a to 3c, 61.3(5)"e," Filed **ARC 0215B** ..... 10/18/00
- MTBE analysis, 135.19(3)"c" and "d," Notice **ARC 0217B**, also Filed Emergency **ARC 0216B** ..... 10/18/00

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- Public records and fair information practices, 2.13, 2.14(5), Filed **ARC 0149B** ..... 10/4/00

**HUMAN SERVICES DEPARTMENT[441]**

- Waivers of administrative rules, 1.8, Filed **ARC 0151B** ..... 10/4/00
- FIP, Medicaid and SSA recipients; PROMISE JOBS, 7.7(2)"k," 9.4(6)"c," 9.10(4)"e," 9.10(15), 9.12(2)"c"(4), 40.21, 40.22, 40.22(5)"c," 40.23, 40.24(2), 40.24(3), 40.27(1), 40.27(1)"b," 40.27(3), 40.27(4)"b," 40.29, 41.21(5)"c"(1) and (2), 41.22(9)"a" and "c," 41.23(4), 41.23(5), 41.23(5)"a," 41.24(1)"c," 41.24(2)"f," 41.24(3)"a" and "b," 41.24(6), 41.25(6), 41.25(7), 41.25(8)"f," 41.26(1)"e," 41.26(2)"f" and "g," 41.26(9), 41.27(1)"i," 41.27(8)"a"(1) and (2), 41.27(10), 43.23(4), 46.21, 46.24(5), 46.25, 46.25(4), 46.27(5), ch 93 preamble, 93.104(1), 93.104(2), 93.111(5), 93.122, 93.133(2)"a," Filed **ARC 0152B** ..... 10/4/00

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**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

Use of credit history in underwriting and making of rates for personal automobile and homeowners policies, 20.12, <u>Notice</u> <b>ARC 0188B</b> .....	10/18/00
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**LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Elevators—safety standards, 71.1, 71.2(1)"a," 71.2(2), 71.2(3), 71.2(6), 71.2(7), 71.5(2), 71.5(5), 72.1 to 72.23, 73.1, 73.2(10), 73.3(3), 73.3(4), 73.4(2), 73.8, 73.9(7), 73.10(4), 73.13(2), 73.13(12), 73.14(4), 73.15, 73.16(5), 73.17(1), 73.17(8), 73.17(13), 73.18(7), 73.19(4) to 73.19(7), 73.19(10) to 73.19(13), 73.20 to 73.23, 73.23(12), 73.24, 74.1 to 74.3, 76.1, 76.6, 76.7, 77.7, <u>Notice</u> <b>ARC 0198B</b> .....	10/18/00
Asbestos removal and encapsulation, rescind chs 81 and 82, adopt ch 155, <u>Filed</u> <b>ARC 0190B</b> .....	10/18/00

**MEDICAL EXAMINERS BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Administrative and regulatory authority; agency procedures, chs 1, 2, 10, 14, and 17, <u>Notice</u> <b>ARC 0210B</b> .....	10/18/00
Waivers and variances, ch 3, 11.9(3), 11.36, 12.4, 13.12, 14.4(6), 14.5(10), 14.11, 14.30, <u>Notice</u> <b>ARC 0212B</b> .....	10/18/00
Selling of goods or services by members of the board or impaired physician review committee, 10.11, <u>Filed</u> <b>ARC 0211B</b> ...	10/18/00
License to practice as a resident physician; fees for verification of licensure status, 11.6, 11.31(4)"a"(3), <u>Notice</u> <b>ARC 0214B</b> .....	10/18/00
Physician eligibility to supervise a physician assistant, ch 21, <u>Filed</u> <b>ARC 0213B</b> .....	10/18/00

**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

State parks and recreation areas, ch 61, <u>Notice</u> <b>ARC 0166B</b> .....	10/4/00
Wild turkey spring hunting, 98.1(1), 98.3, 98.5, 98.14, 98.16, <u>Notice</u> <b>ARC 0165B</b> .....	10/4/00

**NURSING BOARD[655]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Nurse licensure compact, 2.3(2)"a," 2.6(2)"a," 3.1, 3.2(1), 3.2(2)"a" to "e," 3.5(2)"b"(5) and (6), 3.6(1), 6.1, 6.5(5), 7.1, ch 16, <u>Filed</u> <b>ARC 0175B</b> .....	10/4/00
Academic qualifications for faculty teaching in master's programs, 2.6(2)"c"(3), <u>Filed</u> <b>ARC 0172B</b> .....	10/4/00
Issuance of investigatory or contested case subpoenas, 4.3, 4.25, <u>Filed</u> <b>ARC 0173B</b> .....	10/4/00
Identification of nurses, 6.2(5)"f," 6.3(9)"d," <u>Filed</u> <b>ARC 0174B</b> .....	10/4/00
Waiver and variance rules, ch 15, <u>Notice</u> <b>ARC 0171B</b> .....	10/4/00

**PAROLE BOARD[205]**

CORRECTIONS DEPARTMENT[201]"umbrella"

Commutation procedures for class "A" felons, 14.2, 14.5(1), 14.6, <u>Filed</u> <b>ARC 0160B</b> .....	10/4/00
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**PERSONNEL DEPARTMENT[581]**

IPERS, 21.1(3), 21.1(5)"c," 21.4(3)"a," 21.5(1)"a"(19), (49) and (50), 21.6(2), 21.6(9)"b" and "c," 21.6(9)"d"(5), 21.6(9)"e," 21.7, 21.8(4)"e," 21.8(9), 21.8(10), 21.9(1)"a" and "c," 21.10(16), 21.10(18), 21.11(2), 21.11(6), 21.11(9), 21.12, 21.13(2)"e," 21.13(6)"c" and "d," 21.13(7)"a" and "b," 21.13(10)"a"(3)"3," 21.13(10)"e"(2) and (3), 21.13(12), 21.16(5), 21.16(6), 21.19(1), 21.22, 21.24(2)"f," 21.24(3), 21.24(5)"f," 21.24(6)"d," 21.24(11) to 21.24(16), 21.30(3) to 21.30(5), 21.31, 21.32, <u>Filed</u> <b>ARC 0170B</b> .....	10/4/00
Peace officers' retirement, accident and disability system, 24.1 to 24.13, 24.18 to 24.21, 24.27 to 24.31, <u>Notice</u> <b>ARC 0150B</b> .....	10/4/00

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]**

Board meeting schedule, 1.3, <u>Notice</u> <b>ARC 0204B</b> .....	10/18/00
Address correction, 1.4, 2.1, 2.3, 3.1, 3.3, 4.11(1), <u>Notice</u> <b>ARC 0203B</b> .....	10/18/00
Liens on tank sites, 11.9, <u>Notice</u> <b>ARC 0201B</b> .....	10/18/00
Fraud disqualification, 11.10, <u>Notice</u> <b>ARC 0202B</b> .....	10/18/00

**PHARMACY EXAMINERS BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Waivers and variances, 1.3, 3.4, 4.6(1), 6.3, 6.4, 6.5(3), 7.3, 7.4, 15.2 to 15.4, 16.5, 16.6, 19.6, ch 34, <u>Notice</u> <b>ARC 0192B</b> .....	10/18/00
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**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Behavioral science examiners, 30.1, 30.3(2)"d," 30.4(2)"e," 30.5(10), 30.8 to 30.10, ch 31 title, 31.1, 31.2, 31.2(2)"b," 31.3 to 31.10, ch 32, <u>Notice</u> <b>ARC 0220B</b> .....	10/18/00
Chiropractic examiners, 40.1, 40.8 to 40.24, 40.36 to 40.41, 40.51, 40.52, 40.62 to 40.67, 40.69 to 40.73, chs 43 and 44, <u>Notice</u> <b>ARC 0219B</b> .....	10/18/00
Massage therapy examiners, 130.1 to 130.4, 130.7 to 130.10, ch 131 title, 131.1, 131.1(2)"k," 131.2 to 131.5, 131.17 to 131.19, ch 132, <u>Filed</u> <b>ARC 0168B</b> .....	10/4/00
Nursing home administrators, 141.10, 141.12, ch 143, <u>Filed</u> <b>ARC 0222B</b> .....	10/18/00
Respiratory care examiners, 260.1, 260.9 to 260.17, 260.28, 260.29, ch 261, <u>Notice</u> <b>ARC 0169B</b> .....	10/4/00
Athletic trainer examiners, 350.13 to 350.21, 350.26, 350.31, ch 351, <u>Notice</u> <b>ARC 0221B</b> .....	10/18/00

**PUBLIC HEALTH DEPARTMENT[641]**

Lead professional certification, ch 70, <u>Filed Emergency After Notice</u> <b>ARC 0163B</b> .....	10/4/00
Child death review team—cases expanded to include those of children under age 18, 90.1, <u>Notice</u> <b>ARC 0161B</b> .....	10/4/00
Emergency medical services, 131.1, 131.4(1)"a"(1), 132.1, 132.16(1) to 132.16(3), 139.1, 139.6, <u>Notice</u> <b>ARC 0187B</b> , also <u>Filed Emergency</u> <b>ARC 0162B</b> .....	10/4/00

**PUBLIC SAFETY DEPARTMENT[661]**

Small group homes required to have operating sprinkler systems, 5.620(7)"b," <u>Notice</u> <b>ARC 9429A Terminated</b> , also <u>Notice</u> <b>ARC 0148B</b> .....	10/4/00
Fees for plan reviews by building code bureau, 16.131(2)"c" and "d," <u>Notice</u> <b>ARC 0164B</b> .....	10/4/00

**RACING AND GAMING COMMISSION[491]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Thoroughbred and quarter horse racing, 8.3(12)"h," ch 10, <u>Filed</u> <b>ARC 0189B</b> .....	10/18/00
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**REVENUE AND FINANCE DEPARTMENT[701]**

Voluntary disclosure program, ch 3, <u>Filed</u> <b>ARC 0179B</b> .....	10/4/00
Multilevel marketer agreements, ch 4, <u>Filed</u> <b>ARC 0180B</b> .....	10/4/00
Freight, other transportation charges, and exclusions from the exemption applicable to these services, 15.13, <u>Filed</u> <b>ARC 0181B</b> .....	10/4/00



**REVENUE AND FINANCE DEPARTMENT[701] (Cont'd)**

- Tax exemption for sale or rental of information services, 17.35, Notice **ARC 0178B** ..... 10/4/00
- Residential and commercial real estate; property tax exemption for barns and one-room schoolhouses,  
71.1(4), 71.1(5), 74.6, 80.15, Filed **ARC 0183B** ..... 10/4/00
- Cigarettes and tobacco—retail permits, 81.12(1), 82.1(7)“a,” Filed **ARC 0182B** ..... 10/4/00

**SECRETARY OF STATE[721]**

- “Vote here” signs, 21.8, Filed **ARC 0167B** ..... 10/4/00

**UTILITIES DIVISION[199]**

- COMMERCE DEPARTMENT[181]“umbrella”
- Individual meter measurement, 19.3(1)“b” to “e,” 20.3(1)“b” to “e,”  
Notice **ARC 9716A**, Terminated **ARC 0184B** ..... 10/4/00

**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.  
**EDITOR'S NOTE: Terms ending April 30, 2003.**

Senator H. Kay Hedge  
 3208 335th Street  
 Fremont, Iowa 52561

Senator Merlin E. Bartz  
 2081 410th Street  
 Grafton, Iowa 50440

Senator Patricia M. Harper  
 3336 Santa Maria Drive  
 Waterloo, Iowa 50702

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

Senator Sheldon Rittmer  
 3539 230th Street  
 DeWitt, Iowa 52742

Joseph A. Royce  
**Legal Counsel**  
 Capitol, Room 116A  
 Des Moines, Iowa 50319  
 Telephone (515)281-3084  
 Fax (515)281-5995

Representative Janet Metcalf  
 12954 Oak Brook Drive  
 Urbandale, Iowa 50323

Representative Clyde Bradley  
 835 Blackhawk Lane  
 Camanche, Iowa 52730

Representative Danny Carroll  
 244 400th Avenue  
 Grinnell, Iowa 50112

Representative Minnette Doderer  
 2008 Dunlap Court  
 Iowa City, Iowa 52245

Representative Geri Huser  
 213 7th Street NW  
 Altoona, Iowa 50009

Brian Gentry  
**Administrative Rules Coordinator**  
 Governor’s Ex Officio Representative  
 Capitol, Room 11  
 Des Moines, Iowa 50319

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>BANKING DIVISION[187]</b>		
Assistants to the superintendent, 1.3(1) IAB 10/4/00 <b>ARC 0159B</b>	Division Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 24, 2000 10 a.m.
Examinations, ch 3 IAB 10/18/00 <b>ARC 0200B</b>	Division Conference Room 200 E. Grand Ave. Des Moines, Iowa	November 7, 2000 10 a.m.
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>		
Housing fund, 25.2, 25.4(1), 25.6(2), 25.7, 25.8 IAB 10/18/00 <b>ARC 0196B</b>	Northeast Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	November 8, 2000 1:30 p.m.
Assistive device tax credit, ch 66 IAB 10/18/00 <b>ARC 0194B</b>	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	November 7, 2000 1 p.m.
Life science enterprises, ch 67 IAB 10/18/00 <b>ARC 0195B</b>	Marketing South Conference Room First Floor 200 E. Grand Ave. Des Moines, Iowa	November 7, 2000 2 p.m.
<b>EDUCATION DEPARTMENT[281]</b>		
Policy required relating to health services, media services programs and guidance programs, 12.3(11) IAB 10/4/00 <b>ARC 0185B</b> (ICN Network)	ICN Room, 2nd Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2000 4 to 6 p.m.
	Room 2 Indian Hills Community College 525 Grandview Ottumwa, Iowa	October 24, 2000 4 to 6 p.m.
	Arrowhead AEA 1235 5th Ave. South Fort Dodge, Iowa	October 24, 2000 4 to 6 p.m.
	Green Valley AEA 1405 N. Lincoln Creston, Iowa	October 24, 2000 4 to 6 p.m.
	Cedar Falls High School 1002 W. First St. Cedar Falls, Iowa	October 24, 2000 4 to 6 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Onsite wastewater treatment system assistance program, ch 93 IAB 9/20/00 <b>ARC 0136B</b>	Community Center 530 West Bluff St. Cherokee, Iowa	October 18, 2000 10 a.m.
	Conference Room Atlantic Municipal Utilities 15 W. Third St. Atlantic, Iowa	October 19, 2000 10 a.m.

**INFORMATION TECHNOLOGY DEPARTMENT[471]**

Organization and operation, ch 1 IAB 10/18/00 <b>ARC 0205B</b>	Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa	November 7, 2000 2 to 4 p.m.
Fair information practices, ch 2 IAB 10/18/00 <b>ARC 0206B</b>	Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa	November 7, 2000 2 to 4 p.m.
Petitions for rule making, ch 3 IAB 10/18/00 <b>ARC 0208B</b>	Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa	November 7, 2000 2 to 4 p.m.
Agency procedure for rule making, ch 4 IAB 10/18/00 <b>ARC 0209B</b>	Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa	November 7, 2000 2 to 4 p.m.
Declaratory orders, ch 5 IAB 10/18/00 <b>ARC 0207B</b>	Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa	November 7, 2000 2 to 4 p.m.

**INSURANCE DIVISION[191]**

Use of credit history for underwriting or rate-making purposes, 20.12 IAB 10/18/00 <b>ARC 0188B</b>	Hearing Room 330 Maple St. Des Moines, Iowa	November 8, 2000 10 a.m.
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**LABOR SERVICES DIVISION[875]**

Elevators, amendments to chs 71 to 74, 76, 77 IAB 10/18/00 <b>ARC 0198B</b>	1000 E. Grand Ave. Des Moines, Iowa	November 7, 2000 1:30 p.m. (If requested)
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**MEDICAL EXAMINERS BOARD[653]**

Reorganization of rules, amendments to chs 1, 2, 10, 14, 17 IAB 10/18/00 <b>ARC 0210B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	November 8, 2000 2 p.m.
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**MEDICAL EXAMINERS BOARD[653] (Cont'd)**

Uniform waiver and variance rule, ch 3, 11.9(3), 11.36, 12.4, 13.12, 14.4(6), 14.5(10), 14.11, 14.30 IAB 10/18/00 <b>ARC 0212B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	November 8, 2000 3 p.m.
License to practice as a resident physician; fees, 11.6, 11.31(4) IAB 10/18/00 <b>ARC 0214B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	November 8, 2000 2:30 p.m.

**NATURAL RESOURCE COMMISSION[571]**

State parks and recreation areas, ch 61 IAB 10/4/00 <b>ARC 0166B</b>	Conference Room—5th Floor East Wallace State Office Bldg. Des Moines, Iowa	October 24, 2000 11 a.m.
Wild turkey spring hunting, 98.1(1), 98.3, 98.5, 98.14, 98.16 IAB 10/4/00 <b>ARC 0165B</b>	Conference Room—5th Floor East Wallace State Office Bldg. Des Moines, Iowa	October 25, 2000 10 a.m.

**PERSONNEL DEPARTMENT[581]**

Peace officers' retirement, accident and disability system, 24.1 to 24.13, 24.18 to 24.21, 24.27 to 24.31 IAB 10/4/00 <b>ARC 0150B</b>	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	October 27, 2000 9:30 a.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Behavioral science examiners, 30.1, 30.3(2), 30.4(2), 30.5(10), 30.8 to 30.10, 31.1 to 31.6, 31.8 to 31.10, ch 32 IAB 10/18/00 <b>ARC 0220B</b>	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	November 9, 2000 9 to 11 a.m.
Chiropractic examiners, 40.1, 40.8 to 40.24, 40.51, 40.52, 40.62 to 40.67, 40.69 to 40.73, chs 43 and 44 IAB 10/18/00 <b>ARC 0219B</b>	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	November 14, 2000 1 to 3 p.m.
Respiratory care examiners, 260.1, 260.9 to 260.17, 260.28, 260.29, ch 261 IAB 10/4/00 <b>ARC 0169B</b>	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	October 24, 2000 9 to 11 a.m.
Speech pathology and audiology examiners, 300.8 to 300.11, 301.1 to 301.7, 301.112, ch 303 IAB 9/20/00 <b>ARC 0144B</b>	Room E—5th Floor Room 524 Lucas State Office Bldg. Des Moines, Iowa	October 19, 2000 9 to 11 a.m.
Athletic training examiners, 350.13 to 350.21, 350.26, 350.31, ch 351 IAB 10/18/00 <b>ARC 0221B</b>	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	November 14, 2000 9 to 11 a.m.

**PUBLIC HEALTH DEPARTMENT[641]**

AED use training; placement of AEDs in public places, 131.1, 131.4(1), 132.1, 132.16, 139.1, 139.6 IAB 10/4/00 <b>ARC 0187B</b> (See also <b>ARC 0162B</b> ) <b>(ICN Network)</b>	National Guard Armory 11 E. 23rd St. Spencer, Iowa	October 24, 2000 1 to 2 p.m.
	Carroll-Kemper High School 109 S. Clark Carroll, Iowa	October 24, 2000 1 to 2 p.m.
	National Guard Armory 315 12th Ave. NW Hampton, Iowa	October 24, 2000 1 to 2 p.m.
	ICN Room, 6th Floor Lucas State Office Bldg. Des Moines, Iowa	October 24, 2000 1 to 2 p.m.
	National Guard Armory 195 Radford Rd. Dubuque, Iowa	October 24, 2000 1 to 2 p.m.
	National Guard Armory 501 Hwy 1 S. Washington, Iowa	October 24, 2000 1 to 2 p.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Operating sprinkler systems required in specialized licensed facilities, 5.620(7) IAB 10/4/00 <b>ARC 0148B</b>	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	October 27, 2000 10 a.m.
Fees for building code plan reviews, 16.131(2) IAB 10/4/00 <b>ARC 0164B</b>	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	October 27, 2000 10:30 a.m.

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

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

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

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

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

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College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

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EXECUTIVE COUNCIL[361]

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  Foster Care Review Board[489]  
  Racing and Gaming Commission[491]  
  State Public Defender[493]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
MANAGEMENT DEPARTMENT[541]  
  Appeal Board, State[543]  
  City Finance Committee[545]  
  County Finance Committee[547]  
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]  
NATURAL RESOURCES DEPARTMENT[561]  
  Energy and Geological Resources Division[565]  
  Environmental Protection Commission[567]  
  Natural Resource Commission[571]  
  Preserves, State Advisory Board[575]  
PERSONNEL DEPARTMENT[581]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
  BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
  Emergency Management Division[605]  
  Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
  Substance Abuse Commission[643]  
  Professional Licensure Division[645]  
  Dental Examiners Board[650]  
  Medical Examiners Board[653]  
  Nursing Board[655]  
  Pharmacy Examiners Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
  Archaeologist[685]  
REVENUE AND FINANCE DEPARTMENT[701]  
  Lottery Division[705]  
SECRETARY OF STATE[721]  
SEED CAPITAL CORPORATION, IOWA[727]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
  Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS COMMISSION[801]  
VETERINARY MEDICINE BOARD[811]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
  Labor Services Division[875]  
  Workers' Compensation Division[876]  
  Workforce Development Board and  
    Workforce Development Center Administration Division[877]

## ARC 0200B

## BANKING DIVISION[187]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Banking Division of the Commerce Department hereby gives Notice of Intended Action to adopt Chapter 3, “Examinations,” Iowa Administrative Code.

The new chapter clarifies which examination reports may satisfy the statutory examination requirements for state chartered banks set forth in Iowa Code section 524.217(1)“a.”

Interested persons may make written comments on the proposed new chapter on or before November 7, 2000. Such written material should be directed to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Banking, Department of Commerce, at (515)281-4014 or at 200 East Grand Avenue, Suite 300.

Also, a public hearing will be held on Tuesday, November 7, 2000, at 10 a.m. in the Banking Division Conference Room at 200 East Grand Avenue. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Superintendent of Banking at least one day prior to the date of the public hearing.

This amendment is intended to implement Iowa Code section 524.217.

The following new chapter is proposed.

CHAPTER 3  
EXAMINATIONS

## 187—3.1(524) Satisfaction of examination requirements.

The requirement for an examination of state chartered banks at least once during each two-year period set forth in Iowa Code section 524.217(1)“a” may be satisfied by an examination conducted by the Banking Division, the Federal Deposit Insurance Corporation, or the Federal Reserve System when such examinations address the statutory requirements of Iowa Code section 524.217(1)“a.”

## ARC 0225B

COLLEGE STUDENT AID  
COMMISSION[283]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 261.3 and 261.37(5), the College Student Aid Commission proposes to

adopt new Chapter 7, “Uniform Rules for Waivers,” Iowa Administrative Code.

The new chapter provides uniform rules governing petitions for waiver from provisions in Commission rules as required by Executive Order Number 11. Executive Order Number 11 directs state rule-making authorities to adopt uniform rules governing waivers from published rules.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309, telephone (515)281-3501, by 4:30 p.m., November 7, 2000.

This amendment is intended to implement Executive Order Number 11 and 2000 Iowa Acts, House File 2206.

The following new chapter is proposed.

CHAPTER 7  
UNIFORM RULES FOR WAIVERS

283—7.1(261,ExecOrd11,78GA,HF2206) Waiver process. This chapter outlines a uniform process for granting waivers from rules adopted by the commission.

7.1(1) Commission authority. A waiver from rules adopted by the commission may be granted in accordance with this chapter if:

a. The commission has exclusive rule-making authority to promulgate the rule from which a waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and

b. No statute or rule otherwise controls the granting of a waiver from the rule from which a waiver is requested.

7.1(2) Interpretive rules. These uniform waiver rules shall not apply to rules defining a statute or other provisions of law or precedent if the commission does not have delegated authority to bind the courts with its definition.

7.1(3) Compliance with statute. No waiver shall be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

283—7.2(261,ExecOrd11,78GA,HF2206) Definition. For purposes of this chapter, a waiver means action by the commission which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

283—7.3(261,ExecOrd11,78GA,HF2206) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the commission in situations where no other more specific applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

283—7.4(261,ExecOrd11,78GA,HF2206) Applicability of chapter. The commission may grant a waiver from a rule only if the commission has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The commission may not waive requirements created or duties imposed by statute.

283—7.5(261,ExecOrd11,78GA,HF2206) Criteria for waiver. The commission may issue an order, in response to a completed petition or on its own motion, granting a waiver from a rule adopted by the commission, in whole or in part, as applied to the circumstances of a specified person if the commission finds, based on clear and convincing evidence, that:



## COLLEGE STUDENT AID COMMISSION[283](cont'd)

7.5(1) Application of the rule would impose an undue hardship or injustice on the person for whom the waiver is requested; and

7.5(2) A waiver of the rule on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

7.5(3) A waiver of the rule in the specific case would not prejudice the substantial legal rights of any person.

**283—7.6(261,ExecOrd11,78GA,HF2206) Mandatory waivers.** In response to the timely filing of a completed petition requesting a waiver, the commission shall grant a waiver from a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the commission finds that the application of all or a portion of the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.

**283—7.7(261,ExecOrd11,78GA,HF2206) Burden of persuasion.** The petitioner shall assume the burden of persuasion to demonstrate clear and convincing evidence when a petition is filed for a waiver from a commission rule.

**283—7.8(261,ExecOrd11,78GA,HF2206) Special waiver rule not precluded.** This uniform waiver rule shall not preclude the commission from granting waivers in other contexts or on the basis of other standards if a statute or other commission rule authorizes the commission to do so and the commission deems it appropriate to do so.

**283—7.9(261,ExecOrd11,78GA,HF2206) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons participating in a particular program offered by the commission.

**283—7.10(261,ExecOrd11,78GA,HF2206) Filing of petition.** A petition for a waiver must be submitted in writing to the commission's Executive Director, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309.

**283—7.11(261,ExecOrd11,78GA,HF2206) Contested case.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

**283—7.12(261,ExecOrd11,78GA,HF2206) Contents of petition.** A petition for waiver shall include the following information where applicable and known to the petitioner:

7.12(1) The name, address, telephone number, and social security number of the person or entity for whom a waiver is being requested and the case number of any related contested case, whether pending or closed.

7.12(2) A description and citation of the specific rule from which a waiver is requested.

7.12(3) The specific waiver requested, including the precise scope and duration.

7.12(4) The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

7.12(5) A history of any prior contacts between the commission and the petitioner. The historical summary shall include:

a. A list of all of the programs, contracts, allocations, bond issues, loans, grants, or other activities in which the petitioner has participated or from which the petitioner has re-

ceived a benefit and which are affected by the proposed waiver.

b. A description of each instance when the petitioner has participated in or benefited from any of the commission's programs or contracts, including but not limited to allocations, grants, or loans held by the petitioner, any notices of noncompliance, other administrative events, whether federal or state, contested case hearings, or investigative reports relating to the program, allocation, grant, or loan.

7.12(6) Any information known to the petitioner about the commission's treatment of similar cases.

7.12(7) The name, address, and telephone number of any person or entity, inside or outside state government, who would be adversely affected by the granting of a petition.

7.12(8) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

7.12(9) Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information pertaining to the waiver.

**283—7.13(261,ExecOrd11,78GA,HF2206) Additional information.** If the petition for waiver is not filed in a contested case and prior to issuing an order granting or denying a waiver, the executive director may request additional information from the petitioner relative to the petition and circumstances relating to the request for waiver. The request may be in the form of written questions or oral interview. The executive director may interview or direct written questions to other persons in connection with the waiver requested. If the petition was not filed in a contested case, the commission, or its executive director, may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the commission's executive director, a committee of the commission's staff, or a quorum or committee of the commission's board to consider the petition for waiver.

**283—7.14(261,ExecOrd11,78GA,HF2206) Notice.** The commission shall acknowledge a petition upon receipt. The commission shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the commission may give notice to other persons. To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required and provide a written statement that notice has been provided.

**283—7.15(261,ExecOrd11,78GA,HF2206) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to commission proceedings for a waiver of a rule only when the commission so provides by rule or order or is required by statute to do so.

**283—7.16(261,ExecOrd11,78GA,HF2206) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to that particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**283—7.17(261,ExecOrd11,78GA,HF2206) Board discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

the commission, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

**283—7.18(261,ExecOrd11,78GA,HF2206) Narrowly tailored exception.** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**283—7.19(261,ExecOrd11,78GA,HF2206) Conditions.** The commission may condition the granting of a waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**283—7.20(261,ExecOrd11,78GA,HF2206) Time period of waiver.** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for a waiver continue to exist.

**283—7.21(261,ExecOrd11,78GA,HF2206) Timing for ruling.** The commission shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case proceeding, the commission shall grant or deny the petition no later than the time at which the final decision in the contested case is issued.

**283—7.22(261,ExecOrd11,78GA,HF2206) When deemed denied.** Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission. However, the commission shall remain responsible for issuing an order denying a waiver.

**283—7.23(261,ExecOrd11,78GA,HF2206) Service of order.** Within seven days of its issuance, any order issued under these uniform rules shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**283—7.24(261,ExecOrd11,78GA,HF2206) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)"e," the commission shall maintain a record of all orders granting and denying waivers under these uniform rules. All records pertaining to waivers shall be indexed and available to members of the public at the commission's office. Some petitions may contain information the commission is authorized or required to keep confidential. The commission may accordingly edit confidential information from petitions or orders prior to public inspection.

**283—7.25(261,ExecOrd11,78GA,HF2206) Voiding or cancellation.** A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The commission may, at any time, cancel a waiver upon appropriate notice and hearing if the commission finds that the facts as stated in the petition are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute or rule, or the petitioner has failed to comply with the conditions of the order.

**283—7.26(261,ExecOrd11,78GA,HF2206) Violations.** Violation of conditions in a waiver shall be treated as a viola-

tion of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

**283—7.27(261,ExecOrd11,78GA,HF2206) Defense.** After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked. The order is not assignable, and it shall not inure to the benefit of the heirs or successors in interest of the person first obtaining the waiver.

**283—7.28(261,ExecOrd11,78GA,HF2206) Judicial review.** Judicial review of a commission decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapter 17A, Executive Order Number 11, and 2000 Iowa Acts, House File 2206.

## ARC 0196B

ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]

## 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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 25, "Housing Fund," Iowa Administrative Code.

The proposed amendments add requirements related to lead hazard reduction and clarify program requirements related to housing rehabilitation projects.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on November 8, 2000. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Division of Community and Rural Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on November 8, 2000, at 1:30 p.m. at the above address in the Second Floor Northeast Conference Room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on November 7, 2000, to be placed on the agenda.

These amendments are intended to implement Iowa Code section 15.108(1)"a."

The following amendments are proposed.

ITEM 1. Amend rule 261—25.2(15) by adopting the following new definitions in alphabetical sequence:

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.

"Lead-based paint activities" means, in the case of target housing and child-occupied facilities, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, lead abatement, visual risk assessment, clear-

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ance testing conducted after lead abatement, and clearance testing conducted after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint that is deteriorated or present in accessible surfaces, friction surfaces, and impact surfaces that would result in adverse human health effects.

"Lead hazard reduction" means the reduction or abatement of lead-based paint hazards which include deteriorated lead-based paint; lead-based paint on friction surfaces, impact surfaces and accessible surfaces; and dust and soil that are contaminated with lead above a specified standard.

"Lead professional" means a person who conducts lead abatement, lead inspections, elevated blood level (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after lead abatement, or clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340.

ITEM 2. Amend paragraph 25.4(1)"c" as follows:

c. ~~IDED reserves the right to establish rehabilitation standards for projects.~~ All rehabilitation must be done in compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999), and all applicable state and local codes, rehabilitation standards and ordinances, and shall, at a minimum, meet HUD Section 8 Housing Quality Standards, 24 CFR 882 (April 1, 1997). New units must be constructed pursuant to standards specified at 24 CFR 92.251(a)(1) (April 1, 1997).

ITEM 3. Amend subrule 25.6(2) as follows:

**25.6(2)** The application shall document the applicant's capacity to administer the proposed activity. Such documentation may include evidence of successful administration of prior housing activities ~~or a statement that the applicant intends to contract with another entity for administrative services.~~ *Documentation of the availability of certified lead professionals and contractors trained in safe work practices may also be required.* IDEED reserves the right to deny funding to an applicant that has failed to comply with federal and state requirements in the administration of a previous project funded by IDEED.

ITEM 4. Amend paragraph 25.7(1)"a" as follows:

- a. General criteria:
  1. to 12. No change.
  13. ~~Rehabilitation standards to be used. Assurance of compliance with HUD lead-based paint hazard regulations.~~
  14. ~~Project time line. Compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999) and standards, codes, and ordinances described in 25.4(1)"c."~~
  15. Project time line.

ITEM 5. Amend paragraph 25.7(2)"a" as follows:

- a. General criteria.
  1. Project objectives.
  2. Area of benefit and reason for applicant selection.
  3. Condition of infrastructure in the project area.
  4. Form of assistance to homeowners (grants, loans, and amounts).
  5. Homeowner contribution methodology.
  6. Selection criteria for participants.
  7. Method to determine that the property is the homeowner's principle residence.

~~8. Proposed standards for rehabilitation. Compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999).~~

~~9. Assurance of compliance with HUD lead-based paint hazard regulations.~~

~~9~~ 10. Plan for properties infeasible to rehabilitate.

~~10~~ 11. If relocation is included, estimate of available suitable replacement housing.

~~11~~ 12. Documentation of local lender participation and lender's underwriting criteria.

~~12. Method to determine after rehabilitation value.~~

~~13. Terms of affordability.~~

~~14~~ 13. Use Intended use of program income.

~~15~~ 14. Project time line.

ITEM 6. Amend paragraph 25.7(3)"a" as follows:

a. General criteria.

1. to 10. No change.

~~11. Rehabilitation standards or construction codes to be used. Assurance of compliance with HUD lead-based paint hazard regulations.~~

~~12. Project time line. Compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999) and standards and ordinances described in paragraph 25.4(1)"c."~~

13. Project time line.

ITEM 7. Amend subrule 25.8(9) as follows:

**25.8(9)** The maximum per unit housing fund subsidy for all project types is \$24,999. *Additional funds may be used to pay the direct administration carrying costs and the cost of lead hazard reduction.*

ITEM 8. Amend subrule 25.8(10) as follows:

**25.8(10)** Recipients shall justify administrative costs in the housing fund application. IDEED reserves the right to negotiate the amount of funds provided for administration, but in no case shall the amount exceed ~~15~~ 10 percent of the total housing fund award.

**ARC 0194B**

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

### 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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt Chapter 66, "Assistive Device Tax Credit," Iowa Administrative Code.

The proposed new rules implement the assistive device tax credit for small businesses as authorized by 2000 Iowa Acts, House File 2560, section 11. The rules establish program guidelines, criteria for eligibility, certification requirements, and application procedures for the issuance of Certificates of Entitlement for the assistive device tax credit.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on November 7, 2000. Inter-

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ested persons may submit written or oral comments by contacting Brice Nelson, Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4874.

A public hearing to receive comments about the proposed new chapter will be held on November 7, 2000, at 1 p.m. at the above address in the IDED Northwest Conference Room on the second floor. Individuals interested in providing comments at the hearing should contact Brice Nelson by 4 p.m. November 6, 2000, to be placed on the hearing agenda.

These rules are intended to implement 2000 Iowa Acts, House File 2560, section 11.

The following chapter is proposed.

Adopt the following new chapter:

CHAPTER 66  
ASSISTIVE DEVICE TAX CREDIT

**261—66.1(78GA,HF2560) Purpose.** The departments of economic development and revenue and finance administer the assistive device tax credit jointly to encourage small businesses to purchase, rent or modify assistive devices and to make workplace modifications for an individual with a disability who is employed or will be employed by the business. The Iowa department of economic development administers the assistive device tax credit certification process. The department of revenue and finance administers the distribution of tax credits to eligible small businesses that have been issued certificates of entitlement.

**261—66.2(78GA,HF2560) Definitions.** For the purpose of these rules, the following definitions apply:

“Assistive device” means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. “Assistive device” does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. “Assistive device” does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of “assistive device” that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

“Department” or “IDED” means the Iowa department of economic development.

“Disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. “Disability” does not include any of the following: homosexuality or bisexuality; transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; compulsive gambling, kleptomania, or pyromania; psychoactive substance abuse disorders resulting from current illegal use of drugs; alcoholism.

“Employee” or “employed” also includes and refers to an individual with a disability who is self-employed and whose business qualifies as a small business.

“Small business” means a business that either had gross receipts for its preceding tax year of \$3 million or less or

employed not more than 14 full-time employees during its preceding tax year.

“Workplace modifications” means physical alterations to the work environment.

**261—66.3(78GA,HF2560) Eligibility criteria.** In order to be eligible to receive the assistive device tax credit, a small business must:

1. Be located in the state of Iowa.
2. Employ not more than 14 full-time employees or have gross receipts of no more than \$3 million during its preceding tax year.
3. Purchase, rent or modify an assistive device or make workplace modifications for an individual with a disability who is employed or will be employed by the business.

**261—66.4(78GA,HF2560) Application process.**

**66.4(1)** To receive a certificate of entitlement for the assistive device tax credit, the eligible small business must submit an application to the Iowa department of economic development. Applications and related materials shall be submitted on forms as prescribed by the department. Applications for certification must be submitted to the Assistive Device Tax Credit Program, Division of Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

**66.4(2)** Applicant businesses must provide the following information to the IDED:

- a. Proof of disability status of disabled person(s) employed or to be employed by the small business. Proof may take the form of written verification from the department of education, division of vocational rehabilitation, or the department for the blind, or a completed verification of disability/physician’s statement.
- b. Business tax forms for the previous year or personal income tax forms if business tax forms are not available.
- c. Written documentation verifying the existence, organizational structure, and good standing of the business. The IDED assistive device tax credit small business documentation list describes acceptable forms of proof.

**261—66.5(78GA,HF2560) Review, decision and award process.**

**66.5(1)** Review. Applications will first be reviewed for completeness. If additional information is required, the program staff shall send the applicant notice to submit the additional needed information. The applicant shall submit the requested information within a reasonable time period in order to ensure further actions on the request. The applications will then be reviewed for content. The following items will be reviewed and evaluated:

- a. Eligibility of the small business.
- b. Nature, scope, purpose and cost of the assistive device or workplace modification and the manner in which it enables the employer to hire or retain the employee or prospective employee, or accommodate the disability of the employee or prospective employee.

**66.5(2)** Decision. The small business liaison for the Iowa department of economic development will make the final decision on all awards under the assistive device tax credit program. Within a reasonable period after the decision has been made, the department will transmit to the applicant a letter that either provides the basic reasons for denial, or provides the certificate of entitlement.

**261—66.6(78GA,HF2560) Certification.** The certificate of entitlement shall be numbered and shall contain the tax-

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

payer's name, address, tax identification number, the amount of credit, and tax year for which the certificate is claimed.

**261—66.7(78GA, HF2560) Monitoring and misuse of funds.**

**66.7(1) Monitoring.** The IDED reserves the right to monitor the recipient's records to ensure compliance with all program requirements. IDED staff will contact the recipient to arrange such visits at a mutually agreeable time.

**66.7(2) Misuse of funds.** Any person receiving tax credits under the assistive device tax credit program is subject to criminal penalties under Iowa Code section 15A.3 if it is determined that the person knowingly made false statements to procure tax credits from the state or if it is determined that funds were used for purposes other than those stated in the application.

**261—66.8(78GA, HF2560) Tax credit.**

**66.8(1)** In a single tax year, a small business is eligible to receive a tax credit equal to 50 percent of the total cost to purchase, rent or modify an assistive device(s) or make workplace modifications. The tax credit shall not exceed \$2,500.

**66.8(2)** The taxpayer must file the certificate of entitlement with the taxpayer's income tax return in order to claim the tax credit.

**66.8(3)** The tax year for which the assistive device tax credit may be allowed shall be determined by the date of project completion.

These rules are intended to implement 2000 Iowa Acts, House File 2560.

**ARC 0195B****ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]****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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt Chapter 67, "Life Science Enterprises," Iowa Administrative Code.

The proposed chapter implements a new program authorized by 2000 Iowa Acts, House File 2491. The rules describe the purpose of the program, establish eligibility requirements, and describe the procedures by which life science enterprise plans are submitted and approved.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on November 7, 2000. Interested persons may submit written or oral comments by contacting Allen Williams, Division of Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515) 242-4771.

A public hearing to receive comments about the proposed new chapter will be held on November 7, 2000, at 2 p.m. at the above address in the Marketing South Conference Room on the first floor.

These rules are intended to implement 2000 Iowa Acts, House File 2491.

The following chapter is proposed.

Adopt the following new chapter:

**CHAPTER 67****LIFE SCIENCE ENTERPRISES**

**261—67.1(78GA, HF2491) Purpose.** The purpose of this program is to promote economic growth in this state during this period of revolutionary technological advancement in animal and human health sciences by providing for the development of industries unrelated to traditional farming, but devoted to the production of life science products derived from animals.

**261—67.2(78GA, HF2491) Definitions.** When used in this chapter, the following definitions apply unless the context otherwise requires:

"Actively engaged in farming" means the same as defined in Iowa Code section 10.1.

"Agricultural commodity" means the same as defined in Iowa Code section 190C.1.

"Agricultural land" means land suitable for use in farming as defined in Iowa Code section 9H.1.

"Animal" means a creature belonging to the bovine, caprine, equine, ovine, or porcine species.

"Corporation" means a domestic or foreign corporation subject to Iowa Code chapter 490, a nonprofit corporation, or a cooperative.

"Department" means the Iowa department of economic development as defined in Iowa Code chapter 15.

"Economic development board" or "board" means the economic development board established by Iowa Code section 15.103.

"Family farm entity" means the same as defined in Iowa Code section 10.1.

"Life science by-product" means a commodity, other than a life science product, if the commodity derives from the production of a life science product and the commodity is not intended or used for human consumption.

"Life science enterprise" or "enterprise" means a corporation or limited liability company organized for the purpose of using biotechnological systems or techniques for the production of life science products.

"Life science product" or "product" means a product derived from an animal by using biotechnological systems or techniques and which includes any of the following:

1. Embryos or oocytes for use in animal implantation.
2. Blood, milk, or urine for use in the manufacture of pharmaceuticals or nutraceuticals.
3. Cells, tissue, or organs for use in animal or human transplantation.

"Limited liability company" means a limited liability company as defined in Iowa Code section 490A.102.

"Person" means an individual, group of individuals, corporation or limited liability corporation.

"Successor enterprise" means a corporation, person or limited liability company that is the transferee or successor in interest of all or a part of a particular life science activity of a life science enterprise, acquired on or after July 1, 2004, through sale, lease, license or other transfer.

**261—67.3(78GA, HF2491) Filing of notice of intent.** Any corporation or limited liability company which intends to file a plan to qualify as a life science enterprise under 2000 Iowa Acts, House File 2491, shall first file a written notice of intent

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

indicating its intent to file such a plan. The notice of intent shall be filed with the Iowa department of economic development no later than June 30, 2001. The notice of intent shall contain a short and concise statement that the corporation or limited liability company may file a plan no later than June 30, 2004, and shall contain the name of the principal officer, main office address and place of incorporation of the corporation or limited liability company.

**261—67.4(78GA,HF2491) Filing of life science enterprise plan.**

**67.4(1)** Any corporation or limited liability company desiring to qualify as a life science enterprise under 2000 Iowa Acts, House File 2491, shall file with the department a written life science enterprise plan no later than June 30, 2004. Only those corporations or limited liability companies that have timely filed a notice of intent pursuant to these rules shall be eligible to file a life science enterprise plan.

**67.4(2)** A life science enterprise plan shall contain at least the following:

a. A description of the particular life science product or products to be developed by the enterprise.

b. The estimated time frame for the development of the life science product or products to be developed by the enterprise.

c. The estimated amount or range of capital investment required by the enterprise in order to develop the life science product or products.

d. The estimated number of acres of agricultural land required to produce the life science product or products.

e. The type and extent of anticipated participation in the life science enterprise or the production of life science products by persons who are individual or family farm entities. In the event the plan does not provide for minimal participation by such persons, the plan shall provide an explanation of the reasonable efforts made by the enterprise to provide for such participation.

f. The name and address of the life science enterprise, its officers and directors, its place of business and place of incorporation.

**261—67.5(78GA,HF2491) Review by board.** Upon receipt of a life science enterprise plan that is timely filed with the department with the appropriate number of copies, the director shall promptly provide a copy of the plan to the department of agriculture and land stewardship for review and comment. The board shall consider any comments of the department of agriculture and land stewardship, review and approve or disapprove the life science enterprise plan in a public meeting to be held no later than 90 days after the date of filing of the plan with the department. The board may invite the life science enterprise to make an oral presentation to the board.

**261—67.6(78GA,HF2491) Life science enterprise land ownership exemption.** A life science enterprise, upon approval of a life science enterprise plan by the board, may hold an ownership or leasehold interest in up to 320 acres of agricultural land. A life science enterprise is allowed, before a life science enterprise plan is approved by the board, to take out a purchase option or a lease option on land the life science enterprise intends to acquire or lease. The exercise of any purchase or lease option shall be contingent upon the board's approval of the life science enterprise plan.

**261—67.7(78GA,HF2491) Amendment of plan.** A life science enterprise plan may be amended as allowed by 2000 Iowa Acts, House File 2491, by the filing of an amendment with the department in the same manner as the filing of a plan

under these rules. Amendments shall be reviewed and approved or disapproved within the same time deadlines and under the same process as provided for a plan.

**261—67.8(78GA,HF2491) Successor enterprise.** A corporation, person or limited liability company, which is the successor or transferee of the interests in an approved life science enterprise, shall provide notice thereof to the board by filing such notice with the division of business development pursuant to rule 261—67.9(78GA,HF2491). The notice shall be filed within 30 days of the acquisition of the interest in a life science enterprise. A successor enterprise shall acquire or hold any agricultural land consistent with the terms of the approved life science enterprise plan, including any amendments to such plan, that is applicable to the particular life science activity.

**261—67.9(78GA,HF2491) Filing.** For the purposes of these rules and 2000 Iowa Acts, House File 2491, a notice of intent, life science enterprise plan, amendment or notice of succession shall be considered filed with the department when such plan is received, with three additional copies, by the department's division of business development. Documents shall be filed with the Division of Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Attn: Life Science Enterprises.

These rules are intended to implement 2000 Iowa Acts, House File 2491.

**ARC 0217B**

## ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission proposes to amend Chapter 135, "Technical Standards and Corrective Action Requirements of Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

Subrule 135.19(3) provides for when sampling for methyl tertiary-butyl ether (MTBE) is not required. This amendment adds new conditions under which owners and operators can stop analyzing for MTBE. MTBE analysis would no longer be required after it is not found in soil and groundwater samples during RBCA Tier 1, Tier 2 or Tier 3 assessments and ongoing monitoring.

The Department is providing an opportunity for public comment on the proposed amendment. Any interested person may submit written comments on the proposed amendment on or before November 7, 2000. Written comments should be sent to the Iowa Department of Natural Resources, Attn: Jim Humeston, Wallace State Office Building, Des Moines, Iowa 50319, fax (515)281-8895, or E-mail [Jim.Humeston@dnr.state.ia.us](mailto:Jim.Humeston@dnr.state.ia.us).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 0216B**. The content of that

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

submission is incorporated by reference.

This amendment may have an impact on small businesses as provided in Iowa Code section 17A.4A.

This amendment is intended to implement Iowa Code section 455B.474.

**ARC 0191B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 514I.5(8), the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," appearing in the Iowa Administrative Code.

These amendments revise policy governing the HAWK-I program to:

- Remove a definition that is no longer used. The term "administrative contractor" has been replaced with "third-party administrator."

- Clarify that terminated income is not used to project future income when establishing eligibility for the program. HAWK-I eligibility is based on projected income. If income received in the past 30 days is from a terminated source, it should not be used to project future income.

- Provide greater flexibility for verifying income. Since the Medicaid program verifies income to make an eligibility determination, policy is being amended so that income does not have to be reverified. The income used to make the Medicaid determination will be used to establish HAWK-I eligibility.

- Remove references to referrals to county Department offices. Applications are no longer referred to county Department offices since workers are now co-located with HAWK-I staff and applications are processed centrally.

- Clarify that eligible children can move between the Medicaid and the HAWK-I programs without a break in coverage. Current policy does not allow a child to move from Medicaid to HAWK-I without a break in coverage in some circumstances.

- Allow families to select a health plan verbally instead of only in writing. This will make the enrollment process faster.

- Eliminate retroactive cancellations of HAWK-I coverage. Under current policy, if a child is approved retroactively for Medicaid or is found to have other health insurance, the child is retroactively disenrolled from HAWK-I. This results in the recovery of the premium from the health plan and adjustments to provider payments. Under these amendments, health plans and providers can be assured of payment for children who are determined eligible for the HAWK-I program even if it is established at a later date that they were not eligible because of administrative error or misrepresentation on the part of the family. These amendments will require participating health plans to coordinate benefits with Medicaid or the other insurers.

- Specify that a family will not be assessed a premium for months of coverage prior to being notified of their eligibility in the program. Currently a family must pay premiums for all months in which eligibility is established. In some cases this means that the family must pay for past months of coverage for periods of time when they did not know they were eligible and may not have received services.

- Clarify the review process and notice requirements.

These amendments do not provide for waivers in specified situations because the amendments either confer a client benefit or add administrative simplicity to the program.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before November 8, 2000.

These amendments are intended to implement Iowa Code chapter 514I.

The following amendments are proposed.

ITEM 1. Amend rule **441—86.1(514I)** by rescinding the definition of "administrative contractor."

ITEM 2. Amend subrule **86.2(2)** as follows:

Amend paragraph "b" by adopting the following **new** subparagraph (42):

(42) Income that has ended as of the date of application.

Amend paragraph "c" as follows:

c. Verification of income. *Income shall be verified using the best information available. Earnings For example, earnings from the past 30 days prior to the date of application may be used to verify earned income if it is representative of the income expected in future months. Pay stubs, tip records, tax records and of employers' statements are acceptable forms of verification of earned income. Unearned income shall be verified through data matches when possible, award letters, warrant copies, or other acceptable means of verification. Self-employment income shall be verified using business records or income tax returns from the previous year if they are representative of anticipated earnings. The third-party administrator may use the income calculation on the Medicaid notice of decision as verification of income for the HAWK-I program when a referral is made to HAWK-I from the Medicaid program.*

ITEM 3. Amend subrule 86.3(8) as follows:

**86.3(8)** Time limit for decision. The third-party administrator shall make a decision regarding the applicant's eligibility to participate in the HAWK-I program within ten working days from the date of receiving the completed application and all necessary information and verification unless the application cannot be processed within the period for a reason that is beyond the control of the third-party administrator.

EXCEPTION: When the application is referred to ~~the county office of the department~~ for a Medicaid eligibility determination and the application is denied, the third-party administrator shall determine HAWK-I eligibility no later than ten working days from the date of the notice of Medicaid denial.

ITEM 4. Amend subrule 86.4(1) as follows:

**86.4(1)** HAWK-I applicant appears eligible for Medicaid. At the time of initial application, if it appears the child may be eligible for Medicaid in accordance with the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), a referral shall be made by the third-



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

party administrator to the county department office for a determination of Medicaid eligibility as follows:

a. The original Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, and copies of any accompanying information and verification shall be forwarded to the county department office within 24 hours, or the next working day, whichever is sooner. The third-party administrator shall maintain a copy of all documentation sent to the department and a log to track the disposition of all referrals.

b. The third-party administrator shall notify the family that the referral has been made. ~~The notice of the referral to the family shall be accompanied by a Medicaid Supplement to the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3564, and the third-party administrator shall return to the family any original verification and information that was submitted with the application and retain a copy in the file record.~~

c. No change.

ITEM 5. Amend rule 441—86.5(514I) as follows:

**441—86.5(514I) Effective date of coverage.**

**86.5(1) Initial application.** Coverage for children who are determined eligible for the HAWK-I program on the basis of an initial application for either HAWK-I or Medicaid shall be effective the first day of the month following the month in which the application is filed, regardless of the day of the month the application is filed, or when a plan becomes available in the applicant's county of residence.

**86.5(2) Referrals from Medicaid.** Coverage for children who are determined eligible for the HAWK-I program on the basis of a referral from Medicaid shall be effective the first day of the month after Medicaid eligibility is lost, regardless of the date of the referral, in order to ensure that there is no break in coverage.

ITEM 6. Amend rule 441—86.6(514I), introductory paragraph, as follows:

**441—86.6(514I) Selection of a plan.** At the time of initial application, if there is more than one participating plan available in the child's county of residence, the applicant shall select the plan in which the applicant wishes to enroll as part of the eligibility process. The enrollee may change plans only at the time of the annual review unless the provisions of subrule 86.7(1) apply. The applicant shall may designate the plan choice verbally or in writing, by completing Form 470-3574, Selection of Plan, may be used for this purpose but is not required.

ITEM 7. Amend subrules 86.7(5) and 86.7(6) as follows:

**86.7(5) Eligible for Medicaid.** The child shall be disenrolled from the plan and canceled from the program as of the first day of the month following the month in which the third-party administrator is notified of Medicaid eligibility is established. ~~If there are months during which the child is covered by both the Medicaid and HAWK-I programs, the HAWK-I program shall be the primary payor and Medicaid shall be the payor of last resort.~~

**86.7(6) Enrolled in other health insurance coverage.** The child shall be disenrolled from the plan as of the first day of the month following the month in which the third-party administrator is notified that the child ~~attained~~ has other health insurance coverage. ~~If there are months during which the child is covered by both another insurance plan and the HAWK-I program, the other insurance plan shall be the primary payor and HAWK-I shall be the payor of last resort.~~

ITEM 8. Amend subrule 86.8(3) as follows:

**86.8(3) Due date.** When the third-party administrator notifies the applicant that the applicant is eligible to participate in the program, the applicant shall pay any premiums due within ten working days for the initial month of coverage. ~~No premiums shall be assessed for months of coverage prior to, and including, the month of decision.~~ When the premium is received, the third-party administrator shall notify the plan of the enrollment. After the initial month of coverage, premiums shall be received no later than the last day of the month prior to the month of coverage. Failure to pay the premium by the last day of the month before the month of coverage shall result in disenrollment from the plan. At the request of the family, premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

ITEM 9. Amend subrules 86.9(1) and 86.9(3) as follows:  
**86.9(1) Review form.** The family third-party administrator shall complete send the family Form 470-3526, Healthy and Well Kids in Iowa (HAWK-I) Application, and on which the answers, except for income, have been completed based on the information on file. The family shall review the completed information for accuracy and fill in the income section of the form. The family shall be required to provide information and verification of current income and sign and date the form attesting to its accuracy as part of the review process.

**86.9(3) Change in plan.** At the time of the annual review of eligibility, if more than one plan is available, the family shall designate whether the child is to remain enrolled in the current plan or is to may be enrolled in another plan. The plan choice shall may be designated verbally or in writing, by completing Form 470-3574, Healthy and Well Kids in Iowa (HAWK-I) Selection of Plan, may be used for this purpose. The child shall remain enrolled in the current plan if the family does not notify the third-party administrator, either verbally or in writing, of a new plan choice by the end of the current 12-month enrollment period.

ITEM 10. Amend rule 441—86.11(514I) as follows:

**441—86.11(514I) Notice requirements.** The applicant or enrollee shall be notified in writing provided an adequate written notice of the decision of the third-party administrator regarding the applicant or enrollee's applicant's eligibility for the HAWK-I program. ~~If the applicant or The enrollee has been determined to be ineligible, an explanation of the reason shall be provided notified in writing of any decision that adversely affects the enrollee's eligibility or the amount of benefits. The notice shall be timely and adequate as provided in 441—subrule 7.7(1).~~

**ARC 0205B**

## INFORMATION TECHNOLOGY DEPARTMENT[471]

### 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 2000 Iowa Acts, Senate File 2395, the Information Technology Department hereby gives



## INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

Notice of Intended Action to adopt Chapter 1, "Organization and Operation," Iowa Administrative Code.

This chapter sets forth a description of the Information Technology Department's mission, general information, and administration.

Any interested person may make written or electronic suggestions or comments on the proposed rules on or before November 7, 2000. Such material should be directed to the Information Technology Department, Hoover State Office Building, Des Moines, Iowa 50319; fax (515)281-6137.

Also, there will be a public hearing on November 7, 2000, from 2 to 4 p.m. in the Director's Conference Room, Information Technology Department, Level B, Hoover State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rules. Persons with special needs should contact the Information Technology Department prior to the hearing if accommodations need to be made.

These rules are intended to implement 2000 Iowa Acts, Senate File 2395, and Iowa Code section 17A.

The following **new** chapter is proposed.

CHAPTER 1  
ORGANIZATION AND OPERATION

**471—1.1(78GA,SF2395,17A) General.**

**1.1(1) Mission.** The information technology department is established by 2000 Iowa Acts, Senate File 2395. The mission of the department is to foster the development and application of information technology to improve the lives of Iowans.

**1.1(2) Location.** The information technology department is located in the Hoover State Office Building, Level B, Des Moines, Iowa 50319. The general office telephone number is (515)281-5503. Hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday. The Department Web site is located at [www.state.ia.us/government/its](http://www.state.ia.us/government/its). Electronic mail regarding administrative rules may be submitted to [ITD.Rules@its.state.ia.us](mailto:ITD.Rules@its.state.ia.us).

**1.1(3) Information.** Complaints, inquiries and requests for information (under Iowa Code chapter 22) may be submitted in writing, in person, by mail, or by electronic mail to the information technology department.

**471—1.2(78GA,SF2395,17A) Administration.**

**1.2(1) Director.** The chief information officer for the state is the director of the information technology department and is appointed by the governor and subject to confirmation by two-thirds of the members of the senate. The director serves at the pleasure of the governor.

**1.2(2) Information technology council.** The information technology council is granted authority to oversee the department and information technology activities of participating agencies. The information technology council shall annually elect its own chairperson from among the voting members of the council. The director of the information technology department may not serve as chairperson.

**1.2(3) Divisions of the information technology department.** The following divisions, created by 2000 Iowa Acts, Senate File 2395, make up the information technology department. Each division is managed by an administrator appointed by the governor and subject to confirmation by two-thirds of the members of the senate.

a. Policy and planning division. This division is responsible for the integration of information technology into all business aspects of state government.

b. Operations division. This division is responsible for providing server systems, including mainframe and other server operations, desktop support, and applications integration.

c. Customer liaison division. This division is responsible for support and promotion of departmental services and information technology; providing applications development, support, and training; and providing advice and assistance in developing and supporting business applications throughout state government.

d. Administration division. This division is responsible for the financial, personnel, and other administrative functions of the department. The administration division is also responsible for all information technology purchasing and contract administration for the information technology department.

**1.2(4) Subunits of the information technology department.**

a. Digital government bureau. The digital government bureau is responsible for initiating and supporting the development of electronic commerce, electronic government, and Internet applications across participating agencies and in cooperation with other governmental entities. The administrator of the digital government bureau is appointed by the governor and subject to confirmation by two-thirds of the members of the senate.

b. IOWAccess advisory council. The IOWAccess advisory council is established within the information technology department for the purpose of creating and providing a service to the citizens of this state that is the gateway for one-stop electronic access to government information and transactions, whether federal, state, or local.

These rules are intended to implement 2000 Iowa Acts, Senate File 2395.

**ARC 0206B**

**INFORMATION TECHNOLOGY  
DEPARTMENT[471]**

**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 2000 Iowa Acts, Senate File 2395, the Information Technology Department hereby gives Notice of Intended Action to adopt Chapter 2, "Fair Information Practices," Iowa Administrative Code.

This chapter facilitates both broad public access to open records and sound agency determinations regarding the handling of confidential records and the implementation of the Fair Information Practices Act. This chapter defines specific terms used by the Department regarding information practices, and it specifies which records are confidential and may be withheld from public inspection under Iowa law.

The chapter also lays out the manner in which open and confidential records held within the Department can be accessed, the approach taken in treating records as confidential, and the procedures by which additions, dissents, or objections may be entered into particular records. In addition, the chapter explains the procedure by which a person who is the subject of a confidential record can consent to the disclo-

## INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

sure of such record and the procedure by which the Department shall notify suppliers of information as to the use of such information.

Any interested person may make written or electronic suggestions or comments on the proposed adoption on or before November 7, 2000. Such material should be directed to the Information Technology Department, Level B, Hoover State Office Building, Des Moines, Iowa 50319; fax (515) 281-6137.

Also, there will be a public hearing on November 7, 2000, from 2 to 4 p.m. in the Director's Conference Room, Information Technology Department, Level B, Hoover State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs may contact the Information Technology Department prior to the hearing if accommodations need to be made.

These rules are intended to implement 2000 Iowa Acts, Senate File 2395, and Iowa Code chapter 17A.

The following new chapter is proposed.

CHAPTER 2  
FAIR INFORMATION PRACTICES

**471—2.1(17A,22) Definitions.** As used in this chapter:

“Agency” in these rules means the information technology department.

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the information technology department is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” means the agency, or a person lawfully delegated authority by the agency to act for the agency, in implementing Iowa Code chapter 22.

“Open record” means a record other than a confidential record.

“Personally identifiable information” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

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

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

**471—2.2(17A,22) Statement of policy.** The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22;

agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

**471—2.3(17A,22) Requests for access to records.**

**2.3(1)** Location of record. A request for access to a record should be directed to the chief information officer or the particular agency office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

**2.3(2)** Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

**2.3(3)** Requests for access. Requests for access to open records may be made in writing, in person, electronically, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

**2.3(4)** Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 2.4(17A,22) and other applicable provisions of law.

**2.3(5)** Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

**2.3(6)** Copying. A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

**2.3(7) Fees.**

a. When charged. The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices.

## INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. **Supervisory fee.** An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. **Search fees.** If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged when appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. **Advance deposits.**

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

**471—2.4(17A,22) Access to confidential records.** Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 2.3(17A,22).

**2.4(1) Proof of identity.** A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

**2.4(2) Requests.** The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**2.4(3) Notice to subject of record and opportunity to obtain injunction.** After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**2.4(4) Request denied.** When the custodian denies a request for access to a confidential record, the custodian shall

promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

**2.4(5) Request granted.** When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

**471—2.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.** The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

**2.5(1) Persons who may request.** Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

**2.5(2) Request.** A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question in which portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

**2.5(3) Failure to request.** Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

**2.5(4) Timing of decision.** A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

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**2.5(5) Request granted or deferred.** If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record in which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

**2.5(6) Request denied and opportunity to seek injunction.** If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

**471—2.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.**

Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the chief information officer. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

**471—2.7(17A,22) Consent to disclosure by the subject of a confidential record.** To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be nec-

essary for special classes of records. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

**471—2.8(17A,22) Notice to suppliers of information.**

When the agency requests a person to supply information about that person, that agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

**471—2.9(17A,22) Confidential records.** The following records may be withheld from public inspection under Iowa law.

1. Records which are exempt from disclosure under Iowa Code section 22.7.
2. Minutes of closed meetings of a government body. (See Iowa Code section 21.5(4).)
3. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. (See Iowa Code section 22.7(4), 622.10 and 622.11.)
4. Reports to governmental agencies which, if released, would give an advantage to competitors and serve no public purpose. (See Iowa Code section 22.7.)
5. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors, and school districts.
6. Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making communications to that government body if the communications were available for general public examination. (See Iowa Code section 22.7.)
7. Information contained in records of the centralized employee registry created in Iowa Code chapter 252G, except to the extent that disclosure is authorized pursuant to Iowa Code chapter 252G. (See Iowa Code section 22.7.)
8. Data processing software, as defined in Iowa Code section 22.3A, which is developed by a government body.
9. Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to the disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.
10. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

These rules are intended to implement Iowa Code chapter 17A and 2000 Iowa Acts, Senate File 2395.

ARC 0208B

INFORMATION TECHNOLOGY DEPARTMENT[471]

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 2000 Iowa Acts, Senate File 2395, the Information Technology Department hereby gives Notice of Intended Action to adopt Chapter 3, “Petitions for Rule Making,” Iowa Administrative Code.

This chapter creates a policy in which any person or agency may file a petition for rule making with the Information Technology Department. The chapter details how such a person or agency is to file the petition and what must be included in the submitted petition. The chapter explains how briefs in support of an action may be attached to the petition and how persons or agencies may inquire into the status of a submitted petition. In addition, the chapter specifies what considerations the Department must take into account regarding such submitted petitions.

Any interested person may make written or electronic suggestions or comments on the proposed adoption on or before November 7, 2000. Such material should be directed to the Information Technology Department, Level B, Hoover State Office Building, Des Moines, Iowa 50319; fax (515) 281-6137.

Also, there will be a public hearing on November 7, 2000, from 2 to 4 p.m. in the Director’s Conference Room, Information Technology Department, Level B, Hoover State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs may contact the Information Technology Department prior to the hearing if accommodations need to be made.

These rules are intended to implement 2000 Iowa Acts, Senate File 2395, and Iowa Code section 17A.

The following new chapter is proposed.

CHAPTER 3 PETITIONS FOR RULE MAKING

471—3.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the Information Technology Department at Hoover State Office Building, Level B, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the department. The department must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

INFORMATION TECHNOLOGY DEPARTMENT

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state the subject matter).

PETITION FOR RULE MAKING

The petition must provide the following information:

- 1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the council’s authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner’s arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 3.4(17A).

3.1(1) The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

3.1(2) The council may deny a petition because it does not substantially conform to the required form.

471—3.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The council may request a brief from the petitioner or from any other person concerning the substance of the petition.

471—3.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Chief Information Officer, Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319.

471—3.4(17A) Department consideration.

3.4(1) Within 14 days after the filing of a petition, the department must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the department must schedule a brief and informal meeting between the petitioner and the council, a member of the council, or a member of the staff of the department or council, to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. Also, any person may submit comments on the substance of the petition to the department.

3.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the council must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or grant of

## INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

the petition on the date when the required notification to petitioner is mailed or delivered.

**3.4(3)** Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the department's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A and 2000 Iowa Acts, Senate File 2395.

**ARC 0209B****INFORMATION TECHNOLOGY  
DEPARTMENT[471]****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 2000 Iowa Acts, Senate File 2395, the Information Technology Department hereby gives Notice of Intended Action to adopt Chapter 4, "Agency Procedure for Rule Making," Iowa Administrative Code.

This chapter creates measures that the Information Technology Department is to follow when making rules. It provides that the Department shall give notice to the public and solicit comments from the public on a subject matter of possible rule making, and that the Department shall maintain a current public rule-making docket and explains what should be included in the docket. In addition, the chapter sets forth the procedures by which the public may participate in the department's rule making.

The chapter explains the procedures by which the Department is to register small businesses or organizations on the Department's small business impact list, and it supplies the Department with guidelines concerning the issuing of fiscal impact statements.

The chapter also describes policies concerning the time and manner of rule adoption, the variance between the adopted rule and the published notice of proposed rule adoption, the exemptions from the public rule-making procedures, and the contents, style, and form of rules.

The chapter gives details about the Department maintaining an official rule-making record for each rule it proposes, about the Department's filing of rules, and about the effectiveness of rules prior to publication. In addition, the chapter provides for a general statement of policy and how the Department is to review rules.

Any interested person may make written or electronic suggestions or comments on the proposed rules on or before November 7, 2000. Such material should be directed to the Information Technology Department, Level B, Hoover State Office Building, Des Moines, Iowa 50319; fax (515) 281-6137.

Also, there will be a public hearing on November 7, 2000, from 2 to 4 p.m. in the Director's Conference Room, Information Technology Department, Level B, Hoover State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rules. Persons with special needs should contact the Information Technolo-

gy Department prior to the hearing if accommodations need to be made.

These rules are intended to implement 2000 Iowa Acts, Senate File 2395, and Iowa Code chapter 17A.

The following **new** chapter is proposed.

**CHAPTER 4****AGENCY PROCEDURE FOR RULE MAKING**

**471—4.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**471—4.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)"a," solicit comments from the public on a subject matter of possible rule making by the council by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**471—4.3(17A) Public rule-making docket.**

**4.3(1)** Docket maintained. The department shall maintain a current public rule-making docket.

**4.3(2)** Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the department. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the council for subsequent proposal under the provisions of Iowa Code section 17A.4(1)"a," the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

**4.3(3)** Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)"a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule's becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;



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- g. The current status of the proposed rule and any council determination with respect thereto;
- h. Any known timetable for council decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The date of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

**471—4.4(17A) Notice of proposed rule making.**

**4.4(1)** Contents. At least 35 days before the adoption of a rule the department shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

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

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

**4.4(2)** Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 4.12(2) of this chapter.

**4.4(3)** Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the department a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the Administrative Rules Coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year. Inquiries regarding the subscription price should be directed to the administrative assistant to the chief information officer.

**471—4.5(17A) Public participation.**

**4.5(1)** Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Information Technology Department, Level B, Hoover State Office Building, Des Moines, Iowa 50319, or to the person designated in the Notice of Intended Action.

**4.5(2)** Oral proceedings. The department may, at any time, schedule an oral proceeding on a proposed rule. The

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

1. A request by at least 25 persons must be signed by each of them and include the address and telephone number of each person making the request.

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

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

**4.5(3) Conduct of oral proceedings.**

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

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

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

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the council at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

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

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sent the views of other individuals as well as their own views.

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

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

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

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

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

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

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

**4.5(4) Additional information.** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**4.5(5) Accessibility.** The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the information technology department at (515)281-5503 in advance to arrange access or other needed services.

#### **471—4.6(17A) Regulatory analysis.**

**4.6(1) Definition of small business.** A "small business" is defined in Iowa Code section 17A.4A(7).

**4.6(2) Mailing list.** Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the rules administrator. The application for registration shall state:

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

The department may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The department may periodically

send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

**4.6(3) Time of mailing.** Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

**4.6(4) Qualified requesters for regulatory analysis—economic impact.** The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)"a" after a proper request from:

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

**4.6(5) Qualified requesters for regulatory analysis—business impact.** The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)"b" after a proper request from:

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

**4.6(6) Time period for analysis.** Upon receipt of a timely request for a regulatory analysis the department shall adhere to the time lines described in Iowa Code section 17A.4A(4).

**4.6(7) Contents of request.** A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

**4.6(8) Contents of concise summary.** The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4) and (5).

**4.6(9) Publication of a concise summary.** The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

**4.6(10) Regulatory analysis contents—rules review committee or rules coordinator.** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)"a," unless a written request expressly waives one or more of the items listed in the section.

**4.6(11) Regulatory analysis contents—substantial impact on small business.** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, or



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least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“b.”

**471—4.7(17A,25B) Fiscal impact statement.**

**4.7(1)** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

**4.7(2)** If the council determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the council shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**471—4.8(17A) Time and manner of rule adoption.**

**4.8(1)** Time of adoption. The council shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the council shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**4.8(2)** Consideration of public comment. Before the adoption of a rule, the council shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**4.8(3)** Reliance on agency expertise. Except as otherwise provided by law, the council may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**471—4.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**4.9(1)** The council shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

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

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

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

**4.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the council shall consider the following factors:

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

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

**4.9(3)** The council shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended

Action upon which the rule is based, unless the council finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

**4.9(4)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the council to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**471—4.10(17A) Exemptions from public rule-making procedures.**

**4.10(1)** Omission of notice and comment. To the extent the council for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the council may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The council shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**4.10(2)** Categories exempt. The following narrowly tailored categories of rules are exempt from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by either state or federal law.

**4.10(3)** Public proceedings on rules adopted without them. The council may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 4.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 4.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the council may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 4.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**471—4.11(17A) Concise statement of reasons.**

**4.11(1)** General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the council shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Rules Coordinator, Information Technology Department, Level B, Hoover State Office Building, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

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**4.11(2) Contents.** The concise statement of reasons shall contain:

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

**4.11(3) Time of issuance.** After a proper request, the council shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

**471—4.12(17A) Contents, style, and form of rule.**

**4.12(1) Contents.** Each rule adopted by the council shall contain the text of the rule and, in addition:

- a. The date the council adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1)“b,” or the council in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adopting of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1)“b,” or the council in its discretion decides to include such reasons; and
- g. The effective date of the rule.

**4.12(2) Incorporation by reference.** The council may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the council finds that the incorporation of its text in the council proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the council proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The council may incorporate such matter by reference in a proposed or adopted rule only if the council makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the information technology department, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The council shall retain permanently a copy of any materials incorporated by reference in a rule of the information technology department.

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

**4.12(3) References to materials not published in full.** When the administrative code editor decides to omit the full

text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the council shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the information technology department. The information technology department will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

**4.12(4) Style and form.** In preparing its rules, the council shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

**471—4.13(17A) Department rule-making record.**

**4.13(1) Requirement.** The department shall maintain an official rule-making record for each rule it proposes or adopts by publication in the Iowa Administrative Bulletin of a Notice of Intended Action. The rule-making record and materials incorporated by reference must be available for public inspection.

**4.13(2) Contents.** The agency rule-making record shall contain:

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

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

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

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

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

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

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

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

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

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

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

**4.13(3) Effect of record.** Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

**4.13(4) Maintenance of record.** The department shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 4.13(2) "g," "h," "i," or "j."

**471—4.14(17A) Filing of rules.** The council shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the council shall use the standard form prescribed by the administrative rules coordinator.

**471—4.15(17A) Effectiveness of rules prior to publication.**

**4.15(1) Grounds.** The council may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The council shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**4.15(2) Special notice.** When the council makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3), the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that are justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication.

The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notices or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 4.15(2).

**471—4.16(17A) General statements of policy.**

**4.16(1) Compilation, indexing, public inspection.** The department shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11)"a," "c," "f," "g," "h," "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11)"f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**4.16(2) Enforcement of requirements.** A general statement of policy subject to the requirements of this subsection shall not be relied on by the department to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 4.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

**471—4.17(17A) Review by council of rules.**

**4.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the council to conduct a formal review of a specified rule.** Upon approval of that request by the administrative rules coordinator, the council shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or whether the rule should be amended or repealed. The council may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**4.17(2) In conducting the formal review, the council shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action.** The report must include a concise statement of the council's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the council or granted by the council. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the council's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A and 2000 Iowa Acts, Senate File 2395.

**ARC 0207B**

**INFORMATION TECHNOLOGY DEPARTMENT[471]**

**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 2000 Iowa Acts, Senate File 2395, the Information Technology Department hereby gives Notice of Intended Action to adopt Chapter 5, “Declaratory Orders,” Iowa Administrative Code.

This chapter creates a policy in which any person may file a petition with the Information Technology Department for declaratory orders. The chapter details how such a person is to file the petition and what must be included in the submitted petition. In addition, the chapter specifies what considerations the department must take regarding such submitted petitions.

The chapter creates a policy in which qualified persons shall be allowed to intervene in a proceeding for a declaratory order. The chapter details how such a person is to file the petition and what must be included in the submitted petition.

The chapter allows for either the petitioner or any intervenor to file a brief in support of the position urged, and it allows for inquiries to be made concerning the status of a declaratory order proceeding. The chapter also explains the procedures for the service and filing of petitions and other papers.

The chapter sets forth procedures by which the department is to consider the petitions filed, act on petitions, and refuse declaratory orders. In addition, the chapter explains the policies to be followed by the Department regarding the contents of declaratory orders, copies of orders, and the effects of declaratory orders.

Any interested person may make written or electronic suggestions or comments on the proposed adoption on or before November 7, 2000. Such material should be directed to the Information Technology Department, Level B, Hoover State Office Building, Des Moines, Iowa 50319; fax (515) 281-6137.

Also, there will be a public hearing on November 7, 2000, from 2 to 4 p.m. in the Director’s Conference Room, Information Technology Department, Level B, Hoover State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs may contact the Information Technology Department prior to the hearing if accommodations need to be made.

These rules are intended to implement 2000 Iowa Acts, Senate File 2395, and Iowa Code chapter 17A.

The following new chapter is proposed.

**CHAPTER 5  
DECLARATORY ORDERS**

**471—5.1(17A) Petition for declaratory order.** Any person may file a petition with the information technology department for a declaratory order as to the applicability to speci-

fied circumstances of a statute, rule, or order within the primary jurisdiction of the Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The information technology department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

**BEFORE THE  
INFORMATION TECHNOLOGY DEPARTMENT**

Petition by (Name of  
Petitioner) for a Declaratory  
Order on (Cite the provisions  
of law involved).



**PETITION FOR  
DECLARATORY  
ORDER**

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 5.7(17A).

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

**471—5.2(17A) Notice of petition.** Within seven business days after receipt of a petition for a declaratory order, the information technology department shall give notice of the petition to all persons not served by the petitioner pursuant to 5.6(17A) to whom notice is required by any provision of law. The information technology department may also give notice to any other persons deemed appropriate.

**471—5.3(17A) Intervention.**

**5.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 working days of the filing of a petition for declaratory order and before the 30-day time for department action under rule 5.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

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5.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the information technology department.

5.3(3) A petition for intervention shall be filed with the office of the information technology department. Such a petition is deemed filed when received by the department. The information technology department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE  
INFORMATION TECHNOLOGY DEPARTMENT

Petition by (Name of Original  
Petitioner) for a Declaratory  
Order on (Cite the provisions of  
law cited in original petition). } PETITION FOR  
INTERVENTION

The petition for intervention must provide the following information:

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

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

471—5.4(17A) **Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The information technology department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

471—5.5(17A) **Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the legal counsel for the Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319.

471—5.6(17A) **Service and filing of petitions and other papers.**

5.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons

identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

5.6(2) **Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director's Office, Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the information technology department.

5.6(3) **Method of service, time of filing, and proof of mailing.** Method of service, time of filing, and proof of mailing shall be as provided by 471—6.12(17A).

471—5.7(17A) **Consideration.** Upon request by petitioner, the information technology department shall schedule a brief and informal meeting between the original petitioner, all intervenors, and the information technology department or a member of the information technology department to discuss the questions raised. The information technology department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the information technology department by any person.

471—5.8(17A) **Action on petition.**

5.8(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the chief information officer or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

5.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 471—6.2(17A).

471—5.9(17A) **Refusal to issue order.**

5.9(1) The information technology department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the information technology department to issue an order.
3. The information technology department does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities

identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

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ties of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the question presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the information technology department to determine whether a statute is unconstitutional on its face.

**5.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**5.9(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

**471—5.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of the issuance.

**471—5.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**471—5.12(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the information technology department, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the information technology department. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A and 2000 Iowa Acts, Senate File 2395.

**ARC 0188B****INSURANCE DIVISION[191]****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 515F.5, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 20, “Property and Casualty Insurance Rate and Form Filing Procedures,” Iowa Administrative Code.

The proposed rule sets forth requirements for insurers using credit reports or credit scores for underwriting or tier placement, with respect to personal automobile and homeowners insurance, to provide the Insurance Commissioner with the necessary information to ensure that the use of credit reports or credit scores is in accordance with Iowa statutes and regulations.

Any person may make written comments on the proposed rule on or before November 8, 2000. Comments should be

directed to Angela Burke Boston, Assistant Commissioner, Iowa Insurance Division, 330 Maple, Des Moines, Iowa 50319. Comments may also be transmitted by E-mail to [angela.burke.boston@comm6.state.ia.us](mailto:angela.burke.boston@comm6.state.ia.us) or may be transmitted via facsimile to (515)281-3059.

A public hearing will be held at 10 a.m. on November 8, 2000, in the Utilities Division Hearing Room, 330 Maple, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Angela Burke Boston no later than November 7, 2000, to be placed on the agenda.

This rule is intended to implement Iowa Code chapters 515 and 515F.

The following rule is proposed.

Adopt the following **new** rule:

**191—20.12(515,515F) Use of credit history in underwriting and making of rates for personal automobile and homeowners policies.**

**20.12(1) Purpose.** The purpose of this rule is to require insurers that use credit reports or credit scores for underwriting or rate-making purposes, with respect to the lines of personal automobile and homeowners insurance, to provide the insurance commissioner with the underlying information needed to ensure that the insurers use the credit reports or credit scores in accordance with Iowa statutes and regulations.

**20.12(2) Definitions.**

“Credit report” means any written, oral, or other communication of any information by a consumer reporting agency that:

1. Bears on a consumer’s credit worthiness, credit standing, or credit capacity; and
2. Is used or collected or expected to be used or collected wholly or partly to serve as a factor in establishing the consumer’s eligibility or pricing for personal lines of automobile and homeowners insurance.

“Credit score” means a score that is derived by utilizing data from a person’s credit report in an algorithm, computer program, model or other process that reduces the data to a number or rating.

“Insurance” means personal lines of property and casualty insurance.

“Insurers” means property and casualty insurers using credit reports or credit scores for:

1. Underwriting purposes, including declinations and placement with a particular insurer within a group of affiliated insurers; and
2. Tier placement within an insurer or applying surcharges or discounts.

“Tier” means a category within a single insurer into which insureds with similar risk characteristics are placed for purposes of determining a premium rate.

**20.12(3) Notice to the consumer of the use of credit history in an insurance transaction.**

- a. Disclosure. The insurer shall disclose on its insurance application that it may or will gather credit information.
- b. Notification. The insurer shall notify the consumer when adverse action is taken following the requirements of the Federal Credit Reporting Act 624(b).

**20.12(4) Prohibited uses.** The decision to obtain a credit report or credit score must be reasonably related to the insurer’s economic and business purposes. An insurer shall not:

- a. Cancel a policy, refuse to renew a policy, or reject an application based solely on information contained in a credit report.



## INSURANCE DIVISION[191](cont'd)

b. Cancel a policy, refuse to renew a policy, or reject an application based on information contained in a credit report that the insurer or qualified agent knows is inaccurate or incomplete.

c. Obtain a credit report or credit score for any arbitrary, capricious, or unfairly discriminatory reason.

d. Use credit criteria or credit scoring based wholly or partly on age, residence, sex, race, color, creed or occupation of an applicant or insured.

**20.12(5) Filing information with the commissioner.**

a. An insurer shall have specific, written criteria on how credit information affects underwriting and rate making. At the request of the commissioner, an insurer shall file with the commissioner:

(1) The characteristics or factors from a credit report that are used as credit criteria or used in determining a credit score; and

(2) In the case of credit scoring, the algorithm, computer program, model, or other process that is used in determining a credit score, along with the underlying support, including statistical validation, for the development of the algorithm, computer program, model, or other process that is used in determining a credit score; and

(3) Any underwriting guidelines relating to the use of the credit criteria or credit scores, along with all appropriate supporting material for the use of the guidelines.

b. At the request of the commissioner, an interested party such as a scoring modeler shall file or discuss under confidentiality protection, with the commissioner: the algorithm, computer program, model, or other process that is used in determining a credit score, along with the underlying support, including statistical validation, for the development of the algorithm, computer program, model, or other process that is used in determining a credit score. Such documentation or discussion can be referenced by an insurer in the insurer's filings.

c. Information filed with the commissioner pursuant to paragraphs "a" and "b" of this subrule shall be considered a confidential record and recognized and protected as a trade secret in accordance with Iowa Code section 22.7(3) and Iowa Administrative Code 191—paragraph 1.3(11)"a."

lations; clarifying procedures and policies tested for special inspector license; disallowing special inspectors to perform initial inspections; adopting rules for the installation of limited-use/limited application elevators, rack and pinion elevators, inclined elevators, screw columns elevators, and permanent elevators used for construction; rescinding rules relating to new installations of handicapped restricted use elevators and adopting rules for existing handicapped restricted use elevators; requiring all existing facilities to maintain conformance to safety standards applicable when installed; updating standards for maintenance, repair, and alterations; rescinding Chapter 74 relating to existing escalators, moving walks, and dumbwaiters and moving those rules into Chapter 73; reiterating that owners are responsible for payment of fees; restricting temporary permits to those for elevators for construction purposes; clarifying safety standards for existing facilities and modifications of existing facilities; adopting appeal procedure and deadline for variances; and minor clarifying and technical corrections.

If requested no later than October 25, 2000, by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having not less than 25 members, a public hearing will be held on November 7, 2000, at 1:30 p.m. at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than November 7, 2000, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.

The Division of Labor Services will issue a regulatory analysis as provided by Iowa Code section 17A.4A if a written request is submitted no later than November 20, 2000, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons who each qualify as a small business, or an organization representing at least 25 small businesses. The organization shall list the names, addresses and telephone numbers of not less than 25 small businesses it represents.

These amendments will not necessitate combined expenditures exceeding \$100,000 by all political subdivisions or agencies and entities that contract with political subdivisions to provide services.

These amendments are intended to implement Iowa Code section 89A.3.

The following amendments are proposed.

ITEM 1. Amend rule 875—71.1(89A), introductory paragraph and definition of "working pressure," as follows:

**875—71.1(89A) Definitions.** The definitions contained in this rule shall apply to chapters 875—Chapters 72, 73, and 74 75, 76 and 77, except as otherwise expressly provided and used in these chapters.

"Working pressure." The pressure measured at the cylinder of a hydraulic elevator when lifting *the* car and its rated load at rated speed, or with class C2 loading when leveling up with maximum static load.

ITEM 2. Amend 71.2(1) as follows:

**ARC 0198B****LABOR SERVICES DIVISION[875]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 89A.3, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 71, "Administration," Chapter 72, "New Installations," Chapter 73, "Existing Facilities," Chapter 76, "Permits," and Chapter 77, "Variances," and to rescind Chapter 74, "Existing Escalators, Moving Walks and Dumbwaiters," Iowa Administrative Code.

The proposed amendments relate to changing the safety standards reference dates to match updated and current standards; clarifying the subrule relating to safety testing; requiring dormant facilities to meet safety standards of new instal-

## LABOR SERVICES DIVISION[875](cont'd)

Amend paragraph "a" as follows:

a. All new registered facilities ~~will~~ shall be inspected before being placed in service.

Rescind the last unnumbered paragraph.

ITEM 3. Amend subrule 71.2(2) as follows:

**71.2(2) Safety tests.**

a. Complete safety tests shall be made on all inspected existing facilities within the first year following initial inspection. Complete safety tests shall be performed on new installations before they are placed in service. The owner is responsible for having these tests performed.

b. When installing a new facility or performing major alterations, the owner shall notify the commissioner in writing not less than two weeks before the safety tests are to be performed on the facility. A division of labor services elevator inspector shall be present to check and witness all safety tests.

c. Safety tests shall be performed by a qualified person who is employed by a recognized elevator company or persons certified by the commissioner for the purpose of performing safety tests on their own facilities. All tests shall be in accordance with ~~ANSI A17.1 1981~~ ASME A17.1 1999, part X, except for rules ~~1001.1a, 1001.1c and 1001.6a 1000.1, 1000.1a, 1000.1b, and all of rule 1001.~~ Forms Safety test forms shall be provided in a format approved by the commissioner. The firm or person conducting the tests shall:

a. (1) Submit to the commissioner on approved forms provided a statement certifying the results of conducted tests.

b. (2) On cable elevators, ~~Attach~~ attach to the safety-releasing carrier a tag marked to show the date of the test, and the name of the firm or person conducting the test, and whether it is a five-year or annual test.

(3) On hydraulic elevators, attach to the disconnect or the controller a tag marked to show the date of the test and the name of the firm or person conducting the test.

ITEM 4. Rescind and reserve subrule 71.2(3).

ITEM 5. Amend subrule 71.2(6) as follows:

**71.2(6)** All dormant facilities shall be inspected and meet requirements of 875—Chapter 72 before being placed in service. ~~The inspection shall and conform to ANSI ASME A17.1, 1981, rule 1001.8 1000.3.~~

ITEM 6. Amend subrule 71.2(7) as follows:

**71.2(7)** The commissioner shall assign identification numbers to all facilities which shall be on a metal tag permanently attached to the controller or electrical disconnect in the machine room.

ITEM 7. Amend subrule 71.5(2), unnumbered paragraph, as follows:

Proof of passage will be satisfied by submission of the examination card by any one of the above organizations. Additionally, each applicant shall satisfactorily pass a division of labor services examination on Iowa procedures and policies including Iowa Code chapter 89A, 875—Chapters 71 to 77, and the ASME A17.1 codes.

ITEM 8. Amend subrule 71.5(5) as follows:

**71.5(5)** Permitted inspections. While a special inspector may conduct various types of inspections, the commissioner will shall only accept special inspector reports for initial inspections, annual inspections and recheck inspections. The commissioner will shall not accept special inspector reports for initial inspections, acceptance inspections or accident investigation reports.

ITEM 9. Amend rule 875—72.1(89A) as follows:

**875—72.1(89A) Purpose and scope.** This chapter contains rules of safety standards covering the design, construction, installation, operation, inspection, testing, maintenance, alteration and repair of facilities.

**72.1(1)** As used in this chapter, ANSI A17.1 and ANSI C1 shall mean ANSI A17.1 (1971) and ANSI C1-1975 for all facilities installed from January 1, 1975, through December 31, 1982, and ANSI A17.1 (1981) and ANSI C1-1981 for all facilities installed from January 1, 1983, through December 31, 1992, and ANSI ASME A17.1 (1990) and ANSI/NFPA 70 (1990) for all facilities installed after January 1, 1993.

**72.1(2)** As used in this chapter, ASME A17.1 shall mean the American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.1 (1999) for all facilities installed after January 1, 2001.

**72.1(3)** As used in this chapter and referred to in ASME A17.1, ASME A18.1 shall mean the Safety Standard for Platform Lifts and Stairway Chairlifts ASME A18.1 (1999), except chapters 4, 5, 6, and 7, and ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1999), article 620, for all facilities installed after January 1, 2001.

**72.1(4)** As used in this chapter, ANSI A117.1 shall mean the Accessible and Usable Buildings and Facilities ANSI A117.1 (1980) for facilities installed prior to January 1, 2001, and ANSI A117.1 Accessible and Usable Buildings and Facilities (1998) for all facilities installed January 1, 2001, and after.

**72.1(5)** Any installation which is in compliance with the latest supplements to ANSI ASME A17.1 shall be considered to be in compliance with this chapter. As used in this rule, the word "installed" refers to the date of written contractual agreement to install a facility.

ITEM 10. Amend rule 875—72.2(89A) as follows:

**875—72.2(89A) Definitions.** The definitions and interpretations contained in section 3 of the introduction and subsequent interpretations of the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI A17.1 ASME A17.1 and ANSI/NFPA 70, article 100, shall be applicable as used in this chapter to the extent that they do not conflict with the definitions contained in Iowa Code chapter 89A.

ITEM 11. Amend rule 875—72.3(89A) as follows:

**875—72.3(89A) Hoistways, hoistway enclosures and related construction for electric elevators.** The provisions contained in American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part I, sections 100-112, are adopted by reference. ~~When ANSI C1 (NFPA 70) is used in part 11 it shall be changed to the ANSI C1 (NFPA 70) required by rule 875—72.1(89A).~~

ITEM 12. Amend rule 875—72.4(89A) as follows:

**875—72.4(89A) Machinery and equipment for electric elevators.** The provisions contained in American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part II, sections 200-212, are adopted by reference. ~~When ANSI C1 (NFPA 70) is used in part II it shall be changed to the ANSI C1 (NFPA 70) required by rule 875—72.1(89A).~~

ITEM 13. Amend rule 875—72.5(89A) as follows:



## LABOR SERVICES DIVISION[875](cont'd)

**875—72.5(89A) Hydraulic elevators.** The provisions contained in ~~American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part III, sections 300-307,~~ are adopted by reference. On hydraulic elevator installations, a scavenger pump or other acceptable means shall be provided, designed to carry excess oil from the cylinder packing gland back to the oil storage tank of the elevator. ~~When ANSI C1 (NFPA 70) is used in part III it shall be changed to the ANSI C1 (NFPA 70) required by rule 875—72.1(89A).~~

ITEM 14. Amend rule 875—72.6(89A) as follows:

**875—72.6(89A) Power sidewalk elevators.** The provisions contained in ~~American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part IV, sections 400-402,~~ are adopted by reference. ~~When ANSI C1 (NFPA 70) is used in part IV it shall be changed to the ANSI C1 (NFPA 70) required by rule 875—72.1(89A).~~

ITEM 15. Rescind and reserve rule **875—72.7(89A)**.

ITEM 16. Amend rule 875—72.8(89A) as follows:

**875—72.8(89A) Hand and power dumbwaiters.** The provisions contained in ~~American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part VII, sections 700-709,~~ are adopted by reference. ~~When ANSI C1 (NFPA 70) is used in part VII it shall be changed to the ANSI C1 (NFPA 70) required by rule 875—72.1(89A).~~

ITEM 17. Amend rule 875—72.9(89A) as follows:

**875—72.9(89A) Elevators, Escalators.** The provisions contained in ~~American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part VIII, sections 800-806,~~ are adopted by reference. ~~When ANSI C1 (NFPA 70) is used in part VIII it shall be changed to the ANSI C1 (NFPA 70) required by rule 875—72.1(89A).~~

ITEM 18. Amend rule 875—72.10(89A) as follows:

**875—72.10(89A) Moving walks.** The provisions contained in ~~American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part IX, sections 900-903,~~ are adopted by reference. ~~When ANSI C1 (NFPA 70) is used in part IX it shall be changed to the ANSI C1 (NFPA 70) required by rule 875—72.1(89A).~~

ITEM 19. Amend rule 875—72.11(89A) as follows:

**875—72.11(89A) Acceptance and periodic tests and inspections of elevators, dumbwaiters, escalators and moving walks.** The provisions contained in ~~the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part X, sections 1000-1002 except rules 1000.1, 1000.1a, 1000.1b, and all of rule 1001,~~ are adopted by reference.

ITEM 20. Amend rule 875—72.12(89A) as follows:

**875—72.12(89A) Engineering and type tests.** The provisions contained in ~~American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part XI, sections 1100-1103,~~ are adopted by reference.

ITEM 21. Amend rule 875—72.13(89A) as follows:

**875—72.13(89A) Alterations, repairs, and replacements and maintenance.** The provisions contained in ~~American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part XII, sections 1200-1202,~~ thereto are adopted by reference.

ITEM 22. Amend rule 875—72.14(89A) as follows:

**875—72.14(89A) Design data and formulas.** The provisions contained in ~~American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, part XIII, sections 1300-1308,~~ are adopted by reference.

ITEM 23. Amend rule 875—72.15(89A) as follows:

**875—72.15(89A) Power-operated special purpose elevators.** The provisions contained in ~~American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI ASME A17.1, (1981), part XV, sections 1500-1502,~~ are adopted by reference for all power-operated special purpose elevators installed after January 1, 1983.

ITEM 24. Amend rule 875—72.16(89A) as follows:

**875—72.16(89A) Inclined and vertical wheelchair lifts.** The provisions contained in ~~American National Standard Safety Code for Inclined Stairway Chair Lifts and Inclined and Vertical Wheelchair Lifts, ANSI A17.1 (1990), part XX, sections 2000 and 2001 and ANSI/NFPA 70 (1990), ASME Safety Standard for Platform Lifts and Stairway Chairlifts A18.1, sections 1, 2, 3, 8, 9, and 10,~~ are adopted by reference for all inclined and vertical wheelchair lifts installed after January 1, 1993.

ITEM 25. Amend rule 875—72.17(89A) as follows:

**875—72.17(89A) Hand-powered special purpose elevators.** Hand-powered special purpose elevators shall not be installed after January 1, 1983.

ITEM 26. Amend rule 875—72.18(89A) as follows:

**875—72.18(89A) Handicapped applications Accommodating the physically disabled.** All passenger elevators installed between January 1, 1975, and December 31, 1982, which are available and intended for public use shall be usable by the physically ~~handicapped~~ *disabled*. All passenger elevators shall have control buttons with identifying features for the benefit of the blind and shall allow for wheelchair traffic. All passenger elevators installed on or after January 1, 1983, which are accessible to the general public shall comply with *Accessible and Usable Buildings and Facilities* ANSI A117.1—1980, ~~section~~ *sections* 4.10.1-4.10.14.

ITEM 27. Rescind rule **875—72.19(89A)**.

ITEM 28. Amend 875—Chapter 72 by adopting the following **new** rules:

**875—72.19(89A) Limited-use/limited application elevators.** The provisions contained in ASME A17.1, part XXV, are adopted by reference.

**875—72.20(89A) Rack and pinion elevators.** The provisions contained in ASME A17.1, part XVI, are adopted by reference.

## LABOR SERVICES DIVISION[875](cont'd)

**875—72.21(89A) Inclined elevators.** The provisions contained in ASME A17.1, part XVII, are adopted by reference.

**875—72.22(89A) Screw columns elevators.** The provisions contained in ASME A17.1, part XVIII, are adopted by reference.

**875—72.23(89A) Elevators used for construction.** The provisions contained in ASME A17.1, part XIX, are adopted by reference only as they pertain to elevators utilizing permanent equipment in a permanent location.

ITEM 29. Amend rule 875—73.1(89A) as follows:

**875—73.1(89A) Purpose and scope.** This chapter establishes minimum safety standards for all existing elevators, dumbwaiters, escalators, moving walks and inclined and vertical wheelchair lifts (facilities not covered by 875—Chapter 72). This chapter shall apply to all facilities unless specifically stated otherwise.

**73.1(1)** All existing facilities installed after December 31, 1974, shall conform with the safety standards (ASME) applicable at the time of installation.

**73.1(2)** Any facility which is in compliance with the latest applicable supplements to ANSI ASME A17.1, ASME A18.1, ANSI A117.1 or 875—Chapter 72 shall be considered to be in compliance with this chapter.

ITEM 30. Amend subrule 73.2(10) as follows:

**73.2(10)** Emergency keys for hoistway doors and service keys shall be kept readily accessible to authorized persons and elevator safety inspectors.

ITEM 31. Amend subrule 73.3(3) as follows:

**73.3(3)** Passenger car enclosure tops shall have an emergency exit with cover. Opening size shall be as set forth in ANSI A17.1, 1971, rule 204.1E, or later editions of the ASME A17.1 code. EXCEPTION: Hydraulic elevators provided with a manual lowering valve.

ITEM 32. Amend subrule 73.3(4) as follows:

**73.3(4)** Each passenger car shall have a door or gate at each entrance. Doors or gates shall be of the horizontally sliding type. Doors shall be of solid construction. Gates shall be of the collapsible type. Gates and doors shall conform to ANSI A17.1, 1971, rule 204.4, or later editions of the ASME A17.1 code.

ITEM 33. Amend subrule 73.4(2) as follows:

**73.4(2)** Each freight car enclosure shall have doors or gates at each entrance and shall be not less than 6 feet high. Each door or gate shall be constructed in accordance with ANSI A17.1, 1971, rule 204.4, or later editions of the ASME A17.1 code.

ITEM 34. Amend rule 875—73.8(89A) as follows:

**875—73.8(89A) Maintenance, repair and alterations.**

**73.8(1)** All maintenance, repair, and alterations shall comply with ANSI A17.1, 1971, section 1002 ASME A17.1 1999 code, part XII.

**73.8(2)** All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A17.1, 1971, section 12 A117.1 (1998).

ITEM 35. Amend subrule 73.9(7) as follows:

**73.9(7)** All electrical equipment in the machine room shall be grounded which and shall conform to ANSI C1-1975 (NFPA 70-1975), or later editions of the NFPA 70 code.

ITEM 36. Amend subrule 73.10(4) as follows:

**73.10(4)** Buffers shall be installed where elevator pits are not provided with buffers and where the pit depth will permit. Buffers shall comply with ANSI A17.1, 1971, section 201, or later editions of the ASME A17.1 code.

ITEM 37. Amend subrule 73.13(2) as follows:

**73.13(2)** Wire ropes on drum-type machines shall be re-socketed in compliance with ANSI A17.1, 1971, rule 1002.3 ASME A17.1, 1999, code.

ITEM 38. Amend subrule 73.13(12) as follows:

**73.13(12)** Rope (cable) replacement. Hoisting, governor and tiller ropes shall be replaced when the American National Standards Practice for the Inspection of Elevators, Escalators and Moving Walks, Section A17.2-1979, Division 103, Item 103.4 ASME Inspection Manual for Electric Elevators A17.2.1 (1993), adopted here by reference, or later editions of the ASME A17.2.1 code, dictates they shall be changed.

ITEM 39. Amend subrule 73.14(4) as follows:

**73.14(4)** All safeties shall be adjusted so that clearances from the rail shall be in accordance with ANSI A17.1, 1971, rule 1001.2, or later editions of the ASME A17.1 code.

ITEM 40. Amend rule 875—73.15(89A) as follows:

**875—73.15(89A) Guide rails.**

**73.15(1)** All guide rails and brackets whether of wood or steel shall be firmly and securely anchored or bolted in place. Where T rail is used all fish-plate bolts shall be tight. This shall comply with ANSI A17.1, 1981, section 200, or later editions of the ASME A17.1 code.

**73.15(2)** Where guide rails which are worn to such a point that proper clearance of safety jaws cannot be maintained, the worn sections shall be replaced to achieve clearances as specified in ANSI A17.1, 1971, rule 1001.2, or later editions of the ASME A17.1 code.

ITEM 41. Rescind subrule 73.16(5).

ITEM 42. Amend subrules 73.17(1) and 73.17(8) as follows:

**73.17(1)** Hoistways shall be permanently enclosed. The enclosures shall conform to ANSI A17.1, 1971, rule 401.1, or later editions of the ASME A17.1 code.

**73.17(8)** Operating devices and control equipment shall comply with ANSI A17.1, 1971, rule 402.4, or later editions of the ASME A17.1 code.

ITEM 43. Rescind subrule 73.17(13).

ITEM 44. Rescind subrule 73.18(7).

ITEM 45. Amend subrules 73.19(4) to 73.19(7) and 73.19(10) to 73.19(13) as follows:

**73.19(4)** Wiring shall comply with the requirements of the National Electrical Code, ANSI C1-1975 (NFPA 70-1975) or newer NFPA 70 codes.

**73.19(5)** Counterweights shall comply with rule 875—73.11(89A), or later editions of the ASME A17.1 code.

**73.19(6)** Hoistway doors shall comply with subrules 73.2(1), 73.2(7) and 73.2(11), or later editions of the ASME A17.1 code.

**73.19(7)** Cars shall be solidly constructed in accordance with subrules 73.12(1) and 73.12(2), or later editions of the ASME A17.1 code.

**73.19(10) Guiderrails** Guide rails shall comply with rule 875—73.15(89A), or later editions of the ASME A17.1 code.

**73.19(11)** The means and methods of suspension shall comply with subrules 73.13(1), 73.13(2), 73.13(3), 73.13(7),

## LABOR SERVICES DIVISION[875](cont'd)

73.13(8), 73.13(9), 73.13(10), 73.13(11), 73.13(12) and 73.13(13), or later editions of the ASME A17.1 code.

**73.19(12)** Electrical switches shall comply with subrules 73.7(2) and 73.7(9), or later editions of NFPA 70.

**73.19(13)** Brakes shall comply with rule 875—73.5(89A), or later editions of the ASME A17.1 code.

ITEM 46. Amend rule 875—73.20(89A) as follows:

**875—73.20(89A) Inclined and vertical wheelchair lifts.** All vertical and inclined wheelchair lifts shall conform to ANSI A17.1 (1983) (1981), part XX, sections 2000 and 2001.

ITEM 47. Amend 875—Chapter 73 by adopting the following new rule:

**875—73.21(89A) Handicapped restricted use elevators.** All handicapped restricted use elevators must meet ANSI A17.1 (1981), part V, or later editions of the ASME code. Permits will be reissued only for locations where other elevators do not exist and where the absence of the elevator would deprive a known group of physically disabled individuals use of the building. Additionally, the elevators shall comply with the following limitations:

1. The elevator shall be used only by a maximum of one disabled person and one attendant at a time. Where a disabled individual cannot operate the elevator in a manner which will ensure access to all operating controls and safety features, an attendant shall accompany the disabled individual.

2. The elevator shall be key-operated and shall not be capable of being called by buttons or switches but may be called by a key operator.

3. Keys to operate the elevator shall be in the control of the disabled person, the attendant or persons in positions of responsibility at the location.

4. A list shall be maintained at the location indicating the persons holding keys for the operation of the elevator.

5. Each landing and the elevator car shall be posted to indicate that the elevator is only for the use of disabled persons.

6. The travel distance of the elevator shall not exceed 50 feet.

ITEM 48. Renumber rule 875—74.1(89A) as 875—73.22(89A).

ITEM 49. Renumber rule 875—74.2(89A) as 875—73.23(89A).

ITEM 50. Rescind renumbered subrule 73.23(12).

ITEM 51. Renumber rule 875—74.3(89A) as 875—73.24(89A) and reserve 875—Chapter 74.

ITEM 52. Amend rule 875—76.1(89A) as follows:

**875—76.1(89A) Owner's responsibility.** The procuring of new installation, major alteration *permits*, and operating permits, and the payment of all fees shall be the responsibility of the owner. No installation or alteration shall begin until approved and the permit has been issued.

ITEM 53. Amend rule 875—76.6(89A) as follows:

**875—76.6(89A) Temporary permits Elevator construction permit (temporary operating).**

**76.6(1)** The commissioner may permit the temporary use of any *facility elevator* for passenger or freight service during installation, alteration or during the construction period, *only for materials and those persons performing construction work on the elevator or building being constructed*, by

issuing a ~~temporary~~ *construction* permit for each class of service upon the application of the owner. *Elevators used for construction shall not be accessible to the general public unless the elevators comply with ASME A17.1, parts I, II, and III, and are issued an operating permit.*

**76.6(2)** ~~In the case of elevators, such~~ *Such temporary construction* permits shall not be issued until the elevator has been tested under rated load, and the car safety and terminal stopping equipment have been tested, in order to determine the safety of the equipment for construction purposes, and until permanent or temporary guards or enclosures are placed on the car and around the hoistway at the landing entrance on each floor.

**76.6(3)** Landing entrance guards shall be provided with locks which can be released from the hoistway side only.

**76.6(4)** Automatic or continuous pressure elevators shall not be placed in temporary operation from the landing push buttons unless door-locking devices or interlocks required by ~~ANSI A17.1, 1981, ASME A17.1~~ are installed and operative.

**76.6(5)** Where a ~~temporary~~ *construction* permit is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted on, near, or visible from each entrance to such elevator, ~~dumb-waiter, escalator or moving walk.~~

**76.6(6)** Such permits shall be issued for a period of 90 days and may be extended upon application to the commissioner.

ITEM 54. Amend rule 875—76.7(89A) as follows:

**875—76.7(89A) Alterations.** When any combination of alterations or changes is made constituting more than 50 percent of the elevator or hoistway construction as determined by the commissioner, the entire facility shall be brought into compliance with ~~ANSI A17.1, 1981, ASME A17.1~~ (1999) and shall be deemed a new facility.

ITEM 55. Amend 875—Chapter 77 by adopting the following new rule:

**875—77.7(89A) Appeals.** Appeal from a decision granting or denying a variance shall be in accordance with the procedures provided in Iowa Code chapter 17A. An appeal shall be taken within 30 days of the ruling of the labor commissioner.

**ARC 0210B**

## MEDICAL EXAMINERS BOARD[653]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76, 148.13, 148E.7 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 1, "Public Records and Fair Information Practices"; Chapter 2, "Impaired Physician Review Committee"; Chapter 10, "Medical Examiners—Administrative Regulatory Authority"; and Chapter 14, "Licensure of Acupuncturists," Iowa Administrative Code.

## MEDICAL EXAMINERS BOARD[653](cont'd)

The Board approved these amendments to Chapters 1, 2, 10, and 14 during its regularly held meeting on September 21, 2000. The proposed amendments renumber current Chapter 1, "Public Records and Fair Information Practices," as Chapter 2; current Chapter 2, "Impaired Physician Review Committee," as Chapter 14; current Chapter 10, "Medical Examiners—Administrative Regulatory Authority," as Chapter 1, "Administrative and Regulatory Authority"; and current Chapter 14, "Licensure of Acupuncturists," as Chapter 17.

Amendments to proposed Chapter 1 include the following:

- The title is changed to reflect the content of the chapter.
- The chapter shows compliance with more current laws, e.g., statutes that address student loan default, default on child support payment, acupuncture practice, and the sale of goods and services by board members and members of the Impaired Physician Review Committee.
- Registered peer review now includes a peer review consultant as well as a peer review committee.
- Unnecessary repetition of the law is eliminated.
- Committee work is described in terms of committees' current duties.
- Robert's Rules of Order, Revised, does not govern the Board's proceedings and is no longer recognized for doing so.
- The Board's address is updated.
- References are updated.
- The chairperson, rather than the Board, may appoint a presiding officer at public hearings.

Any interested person may present written comments on these proposed amendments not later than 4 p.m. on November 8, 2000. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686.

There will be a public hearing on November 8, 2000, at 2 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code sections 147.76, 148.13, 148E.7 and 272C.3.

The following amendments are proposed.

**ITEM 1. Renumber 653—Chapter 1 as 653—Chapter 2; 653—Chapter 2 as 653—Chapter 14; and 653—Chapter 14 as 653—Chapter 17.**

**ITEM 2. Amend and renumber 653—Chapter 10 as follows:**

#### CHAPTER 10 I

#### MEDICAL EXAMINERS—

#### ADMINISTRATIVE AND REGULATORY AUTHORITY

**653—10.11.1(17A,147) Definitions.** The following definitions shall be applicable to the rules of the Iowa state board of medical examiners:

*"Acupuncture" means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.*

*"Acupuncturist" shall mean a person licensed to practice acupuncture in this state.*

~~*"Advanced emergency medical care provider" shall mean any person trained to provide advanced emergency medical*~~

~~*care, and who has been issued an advanced emergency medical care provider certificate by the department of public health.*~~

*"Board" shall mean the board of medical examiners of the state of Iowa.*

*"Department" shall mean the Iowa department of public health.*

~~*"Director" shall mean the director of public health the department.*~~

*"Disciplinary proceeding" shall mean any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.*

~~*"License" shall mean a certificate issued to a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy or certified as a paramedic or advanced emergency medical technician acupuncture under the laws of the state of Iowa.*~~

*"Licensee" shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, or acupuncture under the laws of the state of Iowa.*

*"Licensee discipline" or "discipline" shall mean any sanction the board may impose upon its licensees for conduct which threatens or denies citizens of this state a high standard of professional care.*

*"Malpractice" shall mean any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a physician in the practice of the physician's profession.*

*"Medical practice Acts" shall refer to Iowa Code chapters 147, 148, 150 and 150A.*

*"Order" shall mean a requirement, procedure or standard of specific or limited application adopted by the board relating to any matter the board is authorized to act upon, including the professional conduct of licensees and the examination for licensure and licensure of any person under the laws of this state.*

*"Peer review" shall mean evaluation of professional services rendered by a professional practitioner.*

~~*"Peer review committee reviewer(s)" shall mean one or more persons acting in a peer review capacity who have been appointed by the board for such purpose.*~~

*"Physician" shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy under the laws of this state.*

~~*"The practice of acupuncture" shall mean promoting, maintaining, or restoring health based on traditional oriental medical concepts of treating specific areas of the human body, known as acupuncture points or meridians, by performing any of the following practices:*~~

~~1. Inserting acupuncture needles.~~

~~2. Moxibustion.~~

~~3. Applying manual, conductive thermal, or electrical stimulation through the use of acupuncture needles or any other secondary therapeutic technique except for the use of electromagnetic or ultrasound energy sources.~~

*"Practice of acupuncture" means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medical concepts.*

*"The practice of medicine and surgery" shall mean holding one's self out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or*

## MEDICAL EXAMINERS BOARD[653](cont'd)

physical or mental condition and who shall either offer or undertake, by any means or methods, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition. This rule shall not apply to licensed podiatrists, chiropractors, physical therapists, nurses, dentists, optometrists, *acupuncturists*, and pharmacists, and other licensed health professionals who are exclusively engaged in the practice of their respective professions.

"Prescription drugs" means drugs, medicine and controlled substances which by law can only be prescribed for human use by persons authorized by law.

"Profession" shall mean medicine and surgery, osteopathic medicine and surgery or osteopathy, or *acupuncture*.

~~"Registered acupuncturist" or "Registrant" shall mean a person holding a certificate of registration to practice acupuncture granted by the board pursuant to Iowa Code chapter 148E.~~

"Respondent" shall mean a licensee charged by the board in a complaint and statement of charges with violations of statutes or rules relating to the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, ~~paramedics or advanced emergency medical technicians or acupuncture.~~

"Rule" shall mean a regulation, requirement, procedure, or standard of general application prescribed by the board relating to either the administration or enforcement of Iowa Code chapters 147, 147A, 148, 148C, 148E, 150 and 150A.

~~This rule is intended to implement Iowa Code sections 147.76 and 148.6.~~

**653—10.2 1.2(17A) Description Purpose of board.** The purpose of the board of ~~medical examiners~~ is to administer and enforce the provisions of Iowa Code chapters 68B, 147, 148, 148E, 150, and 150A, 252J, 261 and 272C with regard to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and acupuncture, including, but not limited to, the examination of applicants; determining the eligibility of applicants for licensure by examination or endorsement; the granting of permanent, temporary, resident or special licenses to physicians; determining the ineligibility of physicians to provide supervision to physician assistants; ~~the registration of nonphysician acupuncturists; the investigation of violations or alleged violations of statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and acupuncture, and the standard of care provided by advanced emergency medical care providers; and the imposition of discipline upon licensees and registrants as provided by statute or rule.~~

**653—10.3 1.3(17A) Organization of board.** ~~The board is comprised of a total of ten members. Five members are persons licensed to practice medicine and surgery; two are persons licensed to practice osteopathic medicine and surgery; and three from the general public, who are not licensed to practice medicine and surgery or osteopathic medicine and surgery. All board members are appointed by the governor and confirmed by the Iowa senate. A board member's term of office is three years and a member may not serve more than three terms or nine years. The board:~~

~~10.3(1) 1.3(1) Makes policy relative to matters involving medical and acupuncture education, licensure, practice, and discipline.~~

~~10.3(2) 1.3(2) Conducts business according to established board-approved policy as approved by the members.~~

~~10.3(3) 1.3(3) Organizes annually and elects Elects a chairperson, vice-chairperson and a secretary from its membership at the last regular board meeting prior to May 1.~~

~~10.3(4) 1.3(4) Governs its proceedings by Robert's Rules of Order, Revised. A majority of the members of the board shall constitute a quorum. Official action requires a majority vote of members present.~~

~~10.3(5) 1.3(5) Has the authority to:~~

~~a. Administer the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and the practice of acupuncture by registrants acupuncturists.~~

~~b. Review or investigate, upon receipt of a complaint or upon its own initiation, based upon information or evidence received, alleged violations of statutes or rules which relate to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and the practice of acupuncture by registrants licensed acupuncturists.~~

~~c. Determine in any case whether an investigation or a disciplinary action is warranted.~~

~~d. Initiate and prosecute disciplinary proceedings.~~

~~e. Impose licensee discipline.~~

~~f. Request that the attorney general file appropriate court action for enforcement of the board's authority relating to licensees or other persons who are charged with violating statutes or rules the board administers or enforces.~~

~~g. Establish and register peer review committees reviewers.~~

~~h. Refer to a one or more registered peer review committee reviewers for investigation, review, and report to the board any complaint or other evidence of an act or omission which the board has reasonable grounds to believe may constitute cause for licensee discipline. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction.~~

~~i. Determine and administer the renewal of licenses.~~

~~j. Establish and administer rules for continuing education requirements as a condition of license renewal.~~

~~k. Establish fees for examination, fees for the issuance of licenses and fees for other services provided by the board.~~

~~l. Establish committees of the board, the members of which, except for the executive committee, shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons. Committees of the board may include, but not be limited to:~~

~~(1) Executive committee. The membership shall be composed of the elected officers of the board and an at-large member appointed by the chairperson. Its duties may include, but are not limited to:~~

- ~~• Guidance and supervision of the executive director.~~
- ~~• Budgetary review and recommendations to the board.~~
- ~~• Review and recommendations to the board on rules and legislative proposals.~~

~~(2) Disciplinary committee committees. The membership shall be composed of board members appointed by the chairperson. Its Their duties may include, but not be limited to:~~

~~• Consider Considering complaints in which preliminary investigation has shown further review or investigation is needed.~~

~~• Conduct Conducting interviews as needed with licensees under investigation or who are on disciplinary or consent agreement probation with licensees with restricted licenses, except for final appearances.~~

~~• Refer Referring matters requiring peer review to the appropriate a peer review consultant or committee.~~

## MEDICAL EXAMINERS BOARD[653](cont'd)

• ~~Recommend Reviewing cases and recommending appropriate action to the board for appropriate action.~~

(3) Intake and screening committee. ~~The membership shall be composed of board members appointed by the chairperson. Its duties may include, but are not limited to:~~

~~The review of complaints not related to professional liability matters and the recommendation for appropriate action including preliminary investigation; referral to the disciplinary committee for further review and consideration; or referral to the board for consideration of closure.~~

• ~~Reviewing complaints and recommending appropriate action including further investigation, referral to a disciplinary committee; or referral to the board for closure.~~

(4) License and examination committee. ~~The membership shall be composed of board members appointed by the chairperson. Its duties may include, but are not limited to:~~

• ~~The recommendation for Recommending appropriate action on completed applications for licensure.~~

• ~~Conduct Conducting interviews with applicants when appropriate.~~

• ~~Review Reviewing licensure examination matters.~~

• ~~To review and recommend Reviewing and recommending to the board appropriate changes in licensure application forms.~~

(5) Professional liability claims review committee. ~~The membership shall be composed of board members appointed by the chairperson. Its duties may include, but are not limited to:~~

• ~~Review of professional liability claims cases.~~

• ~~Recommendations for preliminary investigation.~~

• ~~Referral to the disciplinary committee for further review and consideration; or referral to the board for consideration of closure.~~

(6) Allied health and monitoring committee. The committee oversees all matters relating to the allied health professions under the board's jurisdiction *and to the monitoring of physicians with board orders*. The committee's responsibilities include ~~but are not limited to:~~

• ~~Review of cases referred by the department of public health involving EMT quality of care issues for possible disciplinary action.~~

• ~~Evaluate applications and make recommendations to the full board on approval of a licensee to serve as a supervising or alternate supervising physician for licensed PAs.~~

• ~~Serve Serving as a liaison between the board and the board of physician assistant examiners where appropriate.~~

• ~~Review Reviewing and make making recommendations to the full board on all matters relating to the registration of acupuncturists.~~

• ~~Monitoring physicians whose licenses are restricted by a board order, e.g., probation, and making recommendations to the full board on these matters.~~

• ~~Reviewing and making recommendations to the full board on volunteer physician applicants who are under investigation or who have had disciplinary action against a license in the past or present.~~

~~10.3(6) 1.3(6)~~ Appoints a full-time executive director, who:

a. Is not a member of the board.

b. Under the guidance or direction of the board performs administrative duties of the board including, but not limited to: staff supervision and delegation; the administration and enforcement of the statutes and rules relating to the practice of medicine and surgery, ~~osteopathic medicine and surgery, osteopathy, and registered acupuncturists and the practice of acupuncture~~; issuance of subpoenas on behalf of the board or

a committee of the board during the investigation of possible violations; ~~enunciate enunciation of policy on behalf of the board; and in addition, performs all other duties as provided by statute or rule or as delegated by the board.~~

~~653—10.4 1.4(17A) Official communications.~~ All official communications, including submissions and requests, should be addressed to the Executive Director, Iowa State Board of Medical Examiners, ~~Executive Hills West, Capitol Complex 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50319-0180 50309-4686.~~

~~653—10.5 1.5(17A) Office hours.~~ The office of the board is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

~~653—10.6 1.6(17A) Meetings and examinations.~~ The board shall meet at least six times per year. Dates and location of board meetings may be obtained from the board's office.

Except as otherwise provided by statute, all board meetings shall be open and the public shall be permitted to attend the meetings.

~~653—10.8 1.7(17A,147) Petition to promulgate, amend or repeal a rule.~~

~~10.8(1) 1.7(1)~~ An interested person or other legal entity may petition the board requesting the promulgation, amendment or repeal of a rule.

~~10.8(2) 1.7(2)~~ The petition shall be in writing, signed by or on behalf of the petitioner and contain a detailed statement of:

a. The rule that the petitioner is requesting the board to promulgate, amend or repeal. ~~Where amendment of an existing rule is sought, the rule shall be set forth in full with the matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or boldface. The petitioner shall indicate deletions to the current rule with brackets and additions to the current rule with underlining.~~

b. Facts in sufficient detail to show the reasons for the proposed action.

c. All propositions of law to be asserted by petitioner.

~~10.8(3) 1.7(3)~~ The petition shall be in typewritten or printed form, captioned BEFORE THE IOWA STATE BOARD OF MEDICAL EXAMINERS and shall be deemed filed when received by the executive director.

~~10.8(4) 1.7(4)~~ Upon receipt of the petition the executive director shall:

a. ~~Within ten days mail a copy of the petition to any parties named therein. Mail within ten days a copy of the petition to any parties named in it. Such~~ The petition shall be deemed served on the date of mailing to the last-known address of the party being served.

b. ~~Shall advise~~ Advise petitioner that petitioner has 30 days within which to submit written views.

c. ~~May schedule~~ Schedule oral presentation of petitioner's view if the board so directs.

d. ~~Shall, within~~ Within 60 days after date of submission of the petition, either deny the petition or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

~~10.8(5) 1.7(5)~~ In the case of a denial of a petition to promulgate, amend or repeal a rule, the board or its executive director shall issue an order setting forth the reasons in detail for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.



## MEDICAL EXAMINERS BOARD[653](cont'd)

**653—10.9 1.8(17A) Public hearings prior to the adoption, amendment or repeal of any rule.** Prior to adoption, amendment or repeal of any rule, the board shall give notice of intended action by causing said notice to be published in the Iowa Administrative Code. Written comments relating to the proposed action by the board may be submitted to the board at its official address no later than 20 days after the notice has been published. The administrative rules review committee may, under the provisions of Iowa Code section 17A.8(6), on its own motion or on written request by any individual or group, review this proposed action at a regular or special meeting where the public or interested persons may be heard. A public hearing shall be scheduled prior to the adoption, amendment or repeal of any rule(s) provided the request for hearing is in writing, received no later than 20 days after the notice has been published and the request for hearing is made by: 25 interested persons, a governmental subdivision, an agency, an association of 25 persons, or upon the discretion of the board.

**1.8(1) Scheduling a public hearing.** The board may at its discretion hold a public hearing, or it shall hold a public hearing upon the written request of at least 25 interested persons, a governmental subdivision, an agency, or an association of 25 persons.

a. If the board chooses to hold a public hearing, it will announce the date, time, and location in the Iowa Administrative Bulletin.

b. If the board has not scheduled a public hearing and a person or organization wishes to request one, a written request for a public hearing shall be received by the executive director within 20 days after the notice has been published.

(1) The executive director shall schedule a public hearing if the request(s) meets the requirements of this rule.

(2) The executive director shall set the date, time and location of the public hearing.

(3) The individual or organization requesting the public hearing shall be notified of the date, time and location of the public hearing by certified mail.

**10.9(1) 1.8(2) Proceedings at the public hearing.** The chairperson of the board or a presiding officer appointed by the board shall preside over the public hearing shall serve as the presiding officer or appoint a presiding officer over the public hearing.

a. The date, time and location of the public hearing shall be set by the board. The appropriate individuals, governmental subdivisions, agencies or associations making the request shall be notified of said date, time and location of hearing by certified mail.

b. Any individual(s) may present either written or oral comments pertinent to the rule(s) for which the public hearing has been scheduled.

(1) Any individual(s) desiring to make written comments in advance of the hearing shall submit these comments to the presiding officer executive director prior to the hearing date. The presiding officer shall accept written comment at the hearing.

(2) Any individual(s) desiring to make an oral presentation shall be present at the hearing and ask to speak submit a written request to the board prior to the hearing date.

c. The authority of the chairperson of the board or presiding hearing officer during the public hearing includes:

(1) Setting a ten-minute time limit on oral presentations if necessary.

(2) Excluding any individual(s) who may be either disruptive or obstructive to the hearing; and

(3) Ruling that the oral presentation or discussion is not pertinent to the hearing; and

(4) Accepting any written testimony.

d. The conduct of the chairperson of the board or presiding officer during the public hearing shall include but need not be limited to:

(1) Open the hearing and receive appearances.

(2) Enter the notice of hearing into the public record.

(3) Review rule(s) under adoption, amendment or repeal and provide rationale for the proposed action by the board.

(4) Receive written and oral presentations.

(5) Read into the official public record written comments which have been submitted.

(6) Inform those individuals present that within 30 days of the date of hearing, the board shall issue a written statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons either for accepting or overruling considerations urged against the rule.

(7) Adjourn the hearing.

Rules 10.1(17A,147) to 10.9(17A) are intended to implement Iowa Code sections 17A.3, 17A.4, 17A.7, 21.3 and 21.5.

### 653—10.10 1.9(17A) Declaratory orders.

**10.10(1) 1.9(1) Petition for declaratory order.** Any person may file a petition with the board of medical examiners for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Board of Medical Examiners, at 1209 East Court, Executive Hills West, Des Moines, Iowa 50319 board. A petition is deemed filed when it is received by that the board office. The board of medical examiners shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency board office with an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

#### BOARD OF MEDICAL EXAMINERS

Petition by (Name of  
Petitioner) for a Declaratory  
Order on (Cite provisions of  
law involved).



PETITION FOR  
DECLARATORY  
ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.

2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.

3. The questions petitioner wants answered, stated clearly and concisely.

4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

MEDICAL EXAMINERS BOARD[653](cont'd)

8. Any request by petitioner for a meeting provided for by 10.10(7) 1.9(7).

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

10.10(2) 1.9(2) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board of medical examiners shall give notice of the petition to all persons not served by the petitioner pursuant to 10.10(6) "c" 1.9(6) "c" to whom notice is required by any provision of law. The board of medical examiners may also give notice to any other persons.

10.10(3) 1.9(3) Intervention.

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

b. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board of medical examiners.

c. A petition for intervention shall be filed with the executive director at the board office at 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The board of medical examiners will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF MEDICAL EXAMINERS

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition). } PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

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

2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

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

nor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

10.10(4) 1.9(4) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board of medical examiners may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

10.10(5) 1.9(5) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director, Board of Medical Examiners, 1209 East Court, Executive Hills West, Des Moines, Iowa 50319 executive director at the board office.

10.10(6) 1.9(6) Service and filing of petitions and other papers.

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

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Board of Medical Examiners, 1209 East Court, Executive Hills West, Des Moines, Iowa 50319 executive director at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board of medical examiners.

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by 653—12.19(17A).

10.10(7) 1.9(7) Consideration. Upon request by petitioner, the board of medical examiners must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board of medical examiners, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

10.10(8) 1.9(8) Action on petition.

a. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5) Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board of medical examiners or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5) Iowa Code section 17A.9(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in 653—subrule 12.11(1).

10.10(9) 1.9(9) Refusal to issue order.

a. The board of medical examiners shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

(1) The petition does not substantially comply with the required form.

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

(3) The board does not have jurisdiction over the questions presented in the petition.



## MEDICAL EXAMINERS BOARD[653](cont'd)

(4) The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

(6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

(9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

(10) The petitioner requests the board to determine whether a statute is unconstitutional on its face.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

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

~~10.10(10)~~ **1.9(10)** Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

~~10.10(11)~~ **1.9(11)** Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

~~10.10(12)~~ **1.9(12)** Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board of medical examiners, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board of medical examiners. The issuance of a declaratory order constitutes final agency action on the petition.

~~This rule is intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.~~

~~These rules are intended to implement Iowa Code chapters 17A, 21, 68B, 148, 148E, 150, 150A, 252J, 261, and 272C.~~

ARC 0212B

## MEDICAL EXAMINERS BOARD[653]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to adopt Chapter 3, “Waivers and Variances,” and to amend Chapter 11, “Licensure Requirements”; Chapter 12, “Mandatory Reporting and Grounds for Discipline”; Chapter 13, “Standards of Practice and Professional Ethics”; and Chapter 14\*, “Licensure of Acupuncturists,” Iowa Administrative Code.

The Board proposes to rescind a subrule regarding waivers that apply only to licensure applications. This subrule will be replaced by the proposed new chapter on waivers and variances.

Proposed Chapter 3 adopts uniform rules regarding petitions for waiver or variance from provisions of Board rules. Executive Order Number 11 directs state rule-making authorities to adopt uniform rules regarding waivers and variances from rules of the authority.

The Board proposes not to allow waivers or variances of the grounds for discipline for physicians; the grounds for discipline for acupuncturists; the standards of professional practice and ethics for physicians; fees; and eligibility and application requirements for acupuncturists.

The Board approved the proposed changes at its regular meeting on September 21, 2000.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4 p.m. on November 8, 2000. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686.

There will be a public hearing on November 8, 2000, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code sections 17A.22, 147.76, 272C.3, and 272C.4.

The following amendments are proposed.

ITEM 1. Adopt the following new chapter:

#### CHAPTER 3 WAIVERS AND VARIANCES

**653—3.1(17A,147,148,150,150A) Definition.** For purposes of this chapter, a “waiver or variance” means an action by the board which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

\*To be renumbered as Chapter 17 pursuant to Notice ARC 0210B, page 647 herein.

## MEDICAL EXAMINERS BOARD[653](cont'd)

**653—3.2(17A,147,148,150,150A) Scope of chapter.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

**653—3.3(17A,147,148,150,150A) Applicability of chapter.** The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

**653—3.4(17A,147,148,150,150A) Criteria for waiver or variance.** In response to a petition completed pursuant to rule 3.6(17A,147,148,150,150A), the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

**653—3.5(17A,147,148,150,150A) Filing of petition.** A petition for a waiver must be submitted in writing to the board, as follows:

**3.5(1) License application.** If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

**3.5(2) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

**3.5(3) Other.** If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's executive director.

**3.5(4) File petition.** A petition is deemed filed when it is received in the board office. A petition should be sent to the Iowa Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686. The petition must conform to the form specified in rule 3.17(17A,147,148,150,150A).

**653—3.6(17A,147,148,150,150A) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for whom a waiver is being requested, and the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 3.4(17A,147,148,150,150A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any formal charges filed, notices of violation, contested case hearings, or investigations relating to the regulated activity or license within the last five years.

6. Any information known to the requester regarding the board's action in similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver.

8. The name, address and telephone number of any person or entity who would be adversely affected by the grant of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

**653—3.7(17A,147,148,150,150A) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive director, a committee of the board, or a quorum of the board.

**653—3.8(17A,147,148,150,150A) Notice.** The board shall acknowledge a petition upon receipt. The board shall ensure that all persons to whom notice is required by any provision of law, including the petitioner, receive notice within 30 days of the receipt of the petition, that the petition is pending and a concise summary of its contents. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the board attesting that notice has been provided.

**653—3.9(17A,147,148,150,150A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

**653—3.10(17A,147,148,150,150A) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**3.10(1) Board discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration

MEDICAL EXAMINERS BOARD[653](cont'd)

of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

**3.10(2) Burden of persuasion.** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

**3.10(3) Narrowly tailored.** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**3.10(4) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**3.10(5) Conditions.** The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

**3.10(6) Time period of waiver.** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

**3.10(7) Time for ruling.** The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**3.10(8) When deemed denied.** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

**3.10(9) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**653—3.11(17A,147,148,150,150A) Public availability.** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

**653—3.12(17A,147,148,150,150A) Summary reports.** Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

**653—3.13(17A,147,148,150,150A) Cancellation of a waiver.** A waiver issued by a division board pursuant to this

chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

**653—3.14(17A,147,148,150,150A) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**653—3.15(17A,147,148,150,150A) Defense.** After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**653—3.16(17A,147,148,150,150A) Judicial review.** Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

**653—3.17(17A,147,148,150,150A) Sample petition for waiver.** A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

BEFORE THE BOARD OF MEDICAL EXAMINERS

Petition by (name of petitioner) for the waiver/variance of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER/ VARIANCE
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1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also, the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in your answer all of the following:

- a. Why applying the rule would result in undue hardship to the petitioner;
- b. Why waiving the rule would not prejudice the substantial legal rights of any person;
- c. Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- d. How substantially equal protection of public health, safety, and welfare will be afforded by a means other than

## MEDICAL EXAMINERS BOARD[653](cont'd)

that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the board and petitioner relating to the regulated activity or license that would be affected by the waiver. Include a description of each affected license held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

6. Provide information known to the petitioner regarding the board's action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question, or that might be affected by the grant of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the grant of the waiver or variance.

9. Provide the name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

\_\_\_\_\_  
Petitioner's signature

\_\_\_\_\_  
Date

These rules are intended to implement Iowa Code chapter 17A as amended by 2000 Iowa Acts, House File 2206, and Iowa Code chapters 147, 148, 150, and 150A.

ITEM 2. Rescind subrule **11.9(3)**.

ITEM 3. Adopt the following **new** rule:

**653—11.36(17A,147,148,272C) Waiver or variance prohibited.** Rules in this chapter are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

ITEM 4. Amend 653—12.4(272C), introductory paragraph, as follows:

**653—12.4(272C) Additional grounds for discipline.** The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, or 272C or the rules promulgated thereunder. The board may impose any of the disciplinary sanctions set forth in rule 12.33(272C), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses. *This rule is not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.*

ITEM 5. Adopt the following **new** rule:

**653—13.12(17A,147,148,272C) Waiver or variance prohibited.** Rules in this chapter are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

ITEM 6. Adopt the following **new** subrule:

**14.4(6) Waiver or variance prohibited.** Provisions of this rule are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

ITEM 7. Adopt the following **new** subrule:

**14.5(10) Waiver or variance prohibited.** Provisions of this rule are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

ITEM 8. Amend 653—14.11(147,148E,272C), introductory paragraph, as follows:

**653—14.11(147,148E,272C) General disciplinary provisions.** The board is authorized to take disciplinary action against any licensee who violates the provisions set forth in state law and administrative rules pertaining to the safe and healthful practice of acupuncture. *This rule is not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.*

ITEM 9. Adopt the following **new** rule:

**653—14.30(147,148E,272C) Waiver or variance prohibited.** Fees in this chapter are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

## ARC 0214B

### MEDICAL EXAMINERS BOARD[653]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 11, “Licensure Requirements,” Iowa Administrative Code.

The Board approved amendments to Chapter 11 during its regularly held meeting on September 21, 2000. The proposed amendments revise the current Chapter 11 as follows:

- In accordance with Iowa Code section 148.5 as amended by 2000 Iowa Acts, Senate File 2302, section 32, the period of a resident license is being changed from one year to an initial license period of two years followed by annual renewals for those who do not get a permanent license. Renewal will require completion of an application, payment of a fee, and a statement from the residency program. The rule is also being revised to add a statement that the board may take disciplinary action on a resident's license for the same reasons it may take action against a permanent license.

- A subscriber to a password-protected Web site will be able to receive verification of licensure status by payment of an individual verification charge of \$3 or an annual subscription of \$2,000 for unlimited verifications in 12 months.

Any interested person may present written comments on the proposed amendments not later than 4 p.m. on November 8, 2000. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686.

There will be a public hearing on November 8, 2000, at 2:30 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code sections 147.55, 147.76, 148.13, 148E.7 and 272C.3.

The following amendments are proposed.

ITEM 1. Amend 653—11.6(148) as follows:

## MEDICAL EXAMINERS BOARD[653](cont'd)

**653—11.6(148) License to practice as a resident physician.**

**11.6(1) General provisions.** The license shall be designated "Resident Physician License" and shall authorize the licensee to practice as a resident physician, while under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery, in an institution or program approved for this purpose by the board. A resident physician license shall expire ~~one year~~ *two years* following the date of issuance and may be annually renewed *thereafter* at the discretion of the medical examiners ~~at a fee of \$25.~~

**11.6(2) Requirements for the initial resident physician license.** Each applicant shall:

a. Submit a completed application form accompanied by a fee of ~~\$50~~ *\$75*.

b. Present a notarized photocopy of a diploma issued by a school or college of medicine and surgery or a school or college of osteopathic medicine and surgery approved by the board, or present other evidence of equivalent medical education approved by the board. The board may accept, in lieu of a diploma from a school or college of medicine approved by it, all of the following:

(1) A notarized photocopy of a diploma issued by a school or college of medicine which has been neither approved or disapproved by the board.

(2) The standard certificate issued by the Educational Commission for Foreign Medical Graduates or the completion of a fifth pathway program in accordance with criteria established by the American Medical Association.

**11.6(3) c.** Candidates may be required to satisfactorily complete an examination prescribed by the ~~medical examiners board.~~

~~a.~~ (1) The board may require written, oral or practical examination.

~~b.~~ (2) The candidate may be required to appear for a personal interview before the board or a committee of the board.

~~d.~~ *The board may refuse to grant renewal of the license pursuant to Iowa Code section 147.4, upon any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code section 147.55.*

**11.6(3) Requirements for renewal of a resident physician license.**

a. *If the resident physician licensee has not qualified for and received a permanent license, the board shall send a renewal notice by mail at least 60 days prior to the expiration date of the resident physician license.*

b. *The resident physician shall be qualified for renewal for one year by submitting a completed renewal application that documents why the individual has not obtained a permanent license, the renewal fee of \$25, and a statement by the residency program of the individual's progress in the program and any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action. No documentation of continuing medical education is required since a resident is in training.*

c. *Failure of the licensee to renew a license within 30 days following its expiration date shall cause the license to lapse and shall invalidate it. A licensee whose license has lapsed and become invalid is prohibited from the practice of medicine and surgery or osteopathic medicine and surgery until renewed or replaced by a permanent medical license.*

**11.6(4) Discipline of a resident license.** The board may discipline a license for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code section 147.55 or 148.6 or Iowa Code chapter 272C.

ITEM 2. Amend subparagraph 11.31(4)"a"(3) as follows:

(3) For an ~~unlimited number of verifications~~ *verification* of licensure status ~~from a password-protected Web site in a 12-month period,~~ *the board shall charge a subscriber \$3 per verification or an annual subscription fee of \$2,000 for an unlimited number of verifications in 12 months.*

ARC 0204B

## PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

### 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 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to amend Chapter 1, "General," Iowa Administrative Code.

These proposed amendments are intended to update the Board's meeting schedule.

Public comments concerning the proposed amendments will be accepted until 4 p.m. on November 7, 2000. Interested persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

These amendments do not mandate additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

These amendments are intended to implement Iowa Code section 455G.

The following amendments are proposed.

Amend rule 591—1.3(455G) as follows:

**591—1.3(455G) General course and method of operations.** Regular meetings of the board shall be held *monthly* on the ~~second and fourth~~ *second and fourth* Thursday of each month at ~~11 10 a.m. in Room 116, Iowa State Capitol Building~~ *the Office of the Insurance Commissioner, 330 E. Maple, Des Moines, Iowa,* unless another time and place of meetings are designated by the board. The board may also hold special meetings as it deems appropriate. ~~If the meeting date coincides with a legal holiday, it shall be held on the next succeeding business day.~~ The purposes of such meetings shall be to review progress in implementation and administration of board programs, to consider and act upon proposals, to establish policy as needed, and to take actions as necessary and appropriate.

## ARC 0203B

## PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

### 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 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to amend Chapters 1 to 4, Iowa Administrative Code.

These proposed amendments are intended to change the contact address in Chapters 1 to 4.

Public comments concerning the proposed amendments will be accepted until 4 p.m. November 7, 2000. Interested persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

These amendments do not mandate additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

These amendments are intended to implement Iowa Code section 455G.

The following amendments are proposed.

ITEM 1. Amend rule 591—1.4(455G) as follows:

**591—1.4(455G) Location where public may submit requests for assistance or information.** Requests for assistance or information should be directed to *Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, c/o the Iowa Division of Insurance, 6th Floor, Lucas State Office Building, Des Moines, Iowa 50319 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50255, telephone number (515)281-5569 225-9263.* Requests may be made personally, by telephone, mail or any other medium available, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. Special arrangements for accessibility of the board at other times will be provided as needed.

ITEM 2. Amend rules 591—2.1(17A) and 591—2.3(17A) as follows:

**591—2.1(17A) Petition for rule making.** In lieu of the word “agency”, insert the word “board”; in lieu of the words “(designated office)”, insert the words “~~Office of the Deputy Commissioner of Insurance, Division of Insurance, 6th Floor, Lucas State Office Building, Des Moines, Iowa 50319 Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266~~”; in lieu of the word “agency’s”, insert the word “board’s”; and in lieu of the words “(AGENCY NAME)”, insert the words “IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD”.

**591—2.3(17A) Inquiries.** In lieu of the words “(designate official by full title and address)”, insert the words “~~Office of the Deputy Commissioner of Insurance, Division of Insur-~~

~~ance, 6th Floor, Lucas State Office Building, Des Moines, Iowa 50319 Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266”.~~

ITEM 3. Amend rules 591—3.1(17A) and 591—3.3(17A) as follows:

**591—3.1(17A) Petition for declaratory ruling.** In lieu of the word “agency”, insert the word “board” except for the first time the word “agency” appears in the first sentence of rule 591—3.1(17A); in lieu of the words “(designate office)”, insert the words “~~Office of the Deputy Commissioner of Insurance, Division of Insurance, 6th Floor, Lucas State Office Building, Des Moines, Iowa 50319 Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266~~”; and in lieu of the words “(AGENCY NAME)”, insert the words “IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD”.

**591—3.3(17A) Inquiries.** In lieu of the words “(designate official by full title and address)”, insert the words “~~Office of the Deputy Commissioner of Insurance, Division of Insurance, 6th Floor, Lucas State Office Building, Des Moines, Iowa 50319 Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266~~”.

ITEM 4. Amend subrule 4.11(1) as follows:

**4.11(1) Written comments.** In lieu of the words “(specify office and address)”, insert “~~Office of the Deputy Commissioner of Insurance, Division of Insurance, 6th Floor, Lucas State Office Building, Des Moines, Iowa 50319 Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266~~”.

## ARC 0201B

## PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

### 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 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to amend Chapter 11, “Remedial Claims,” Iowa Administrative Code.

Chapter 11 describes the guidelines for remedial account claims. This amendment proposes new rule 11.9(455G) which will provide the criteria under which a lien shall attach and be perfected upon real property where an underground storage tank was or is situated and the UST Fund (Fund) has incurred expenses related to the property.

Public comments concerning the proposed amendment will be accepted until 4 p.m. November 7, 2000. Interested

## PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

This rule does not mandate additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

This rule is intended to implement Iowa Code section 455G.13.

The following amendment is proposed.

Amend Chapter 11 by adopting the following **new** rule:

**591—11.9(455G) Liens on tank sites.**

**11.9(1)** The board shall have a lien upon real property where an underground storage tank was or is situated and the fund has incurred expenses related to the property.

**11.9(2)** The board's lien shall be in the amount the owner or operator of the underground storage tank is liable to the fund.

**11.9(3)** The liability of an owner or operator shall be no less than the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in Iowa Code section 455G.13(1), if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of the department of natural resources, the fund, or with Iowa Code chapter 455G.

**11.9(4)** The liability of an owner or operator eligible for assistance under the remedial account shall be no less than the amount of any unpaid portion of the deductible or copayment.

**11.9(5)** A lien shall attach at the later of the following: the date the fund incurs an expense related to the property, or the date the board mails a certified letter, return receipt requested, to the last-known address of the owner or operator demanding payment for fund expenses.

**11.9(6)** Liens under this rule shall continue for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing for record a notice with the appropriate county official of the appropriate county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions.

**11.9(7)** In order to preserve a lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the board shall file with the recorder of the county in which the property is located a notice of the lien. The county recorder of each county shall record such liens in the "index of income tax liens." The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the notice, and shall immediately index the notice in the index book and record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of indexing.

**11.9(8)** The board shall pay a recording fee as provided in Iowa Code section 331.604 for the recording of the lien, or for its satisfaction.

**11.9(9)** Upon the payment of the lien as to which the board has filed notice with a county recorder, the board shall file with the recorder a satisfaction of the lien and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

**ARC 0202B****PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]****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 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to amend Chapter 11, "Remedial Claims," Iowa Administrative Code.

Chapter 11 describes the guidelines for remedial account claims. This amendment proposes new rule 11.10(455G) which will address actions the Board may take when it becomes aware of certain types of misconduct by contractors or subcontractors.

Public comments concerning the proposed amendment will be accepted until 4 p.m. November 7, 2000. Interested persons may submit written or oral comments by contacting the Office of the Deputy Commissioner of Insurance, Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319; telephone (515)281-5705.

This rule does not mandate additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

This rule is intended to implement Iowa Code sections 455G.12A, 455G.3 and 455G.6.

The following amendment is proposed.

Amend Chapter 11 by adopting the following **new** rule:

**591—11.10(455G) Fraud disqualification.**

**11.10(1)** Disqualification of contractors. No contractor or subcontractor shall be eligible for payment with UST program funds, nor shall any owner or operator be reimbursed for payments to any contractor or subcontractor, nor shall any contract between an owner or operator and a contractor or subcontractor be approved, if the administrator determines that such contractor or subcontractor or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of 10 percent or more of such contractor or subcontractor:

a. Has, within the preceding five years, pleaded guilty to, been convicted of, or received a suspended or deferred judgment for theft, fraud, or any other felony or misdemeanor involving deceit, attempted deceit, or falsification or alteration of documents;

b. Is subject to an order, judgment, or decree of a court of competent jurisdiction (including probation) or an administrative order of any state or federal administrative agency entered within the previous five years, which order, judgment, decree, or administrative order temporarily, preliminarily, or permanently enjoins or restrains him, her, or it from engaging in or continuing the performance of any services relating to underground storage tanks or the assessment or remediation of petroleum contamination as a consequence of his, her, or its own misconduct, negligence, or misfeasance; or



PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

c. Has, within the previous five years, obtained, or attempted to obtain, UST fund benefits:

- (1) By means of any intentional or reckless misrepresentation;
- (2) By means of any falsified or altered document;
- (3) For services which were not performed; or
- (4) By other improper means.

**11.10(2)** Waiver or modification of disqualification. The administrator may, at the administrator's discretion, to avoid undue hardship to tank owners or operators, to the UST program, or to contractors or subcontractors, waive any disqualification under this rule as to work performed or to be performed for any or for specified owners or operators. The administrator may also condition or qualify the eligibility of a person or entity that is subject to disqualification hereunder to be paid with UST program funds upon such terms and conditions as the administrator shall, in the administrator's discretion, deem necessary to protect the integrity of the UST program. A disqualification under this rule shall cease to exist if:

a. The basis for the disqualification has been removed by the legislative body, court, or administrative agency creating it;

b. The court or administrative agency with primary jurisdiction over the disqualifying event issues a written waiver of the disqualification;

c. The court or administrative agency with primary jurisdiction over the disqualifying event declines in writing to enforce the disqualification; or

d. More than five years have elapsed since the occurrence of the disqualifying event.

**11.10(3)** Notice of disqualification; reinstatement. Following a determination that a contractor or subcontractor is disqualified pursuant to this rule, the administrator shall notify the contractor or subcontractor in writing that it is no longer eligible to be compensated with fund moneys. The administrator shall also, unless the disqualification has been waived as to existing clients of the contractor or subcontractor, notify all known clients of the disqualified contractor or subcontractor who are participating in UST Fund programs in writing of the disqualification. A disqualified contractor or subcontractor may apply to the administrator for reinstatement of eligibility. If the disqualification has ceased to exist, the administrator, upon receiving such an application, shall reinstate the eligibility of the contractor or subcontractor to be compensated with fund moneys. If the disqualification has not ceased to exist, the administrator may, in the administrator's discretion, reinstate the eligibility of the contractor or subcontractor. The administrator shall notify the contractor or subcontractor who has applied for reinstatement of the administrator's decision within 45 days. The administrator may condition or qualify the reinstatement of a contractor's or subcontractor's eligibility to be compensated with UST fund moneys upon such terms and conditions as the administrator shall, in the administrator's discretion, deem necessary to protect the integrity of the UST program.

**11.10(4)** Verification of eligibility. For purposes of implementing this rule, the administrator may require that, prior to the approval by the board of any contract or budget for assessment or remedial work, the contractor specified in such contract or budget, and all subcontractors to perform work thereunder, certify that they are not subject to disqualification for any of the reasons specified in subrule 11.10(1). The administrator may develop, and revise as necessary, a form by which contractors and subcontractors may make such certification.

**11.10(5)** Definitions. For purposes of this rule, the following terms shall have the meanings set forth below:

"Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified. Entities which have one or more officers or directors in common, whether simultaneously or otherwise, shall be rebuttably presumed to be affiliates.

"Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies or day-to-day activities of a person, whether through ownership, by contract, or otherwise.

"Predecessor" means a person, the major portion of whose business and assets another person acquired in a single succession or in a series of related successions in which the acquiring person acquired the major portion of the business and assets of the acquired person.

**ARC 0192B**

## PHARMACY EXAMINERS BOARD[657]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.10, 17A.22, 124.301, 147.76, and 272C.3, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 1, "Purpose and Organization," Chapter 3, "License Fees, Renewal Dates, Fees for Duplicate Licenses and Certification of Examination Scores," Chapter 4, "Pharmacist-Intern Registration and Minimum Standards for Evaluating Practical Experience," Chapter 6, "General Pharmacy Licenses," Chapter 7, "Hospital Pharmacy Licenses," Chapter 15, "Correctional Facility Pharmacy Licenses," Chapter 16, "Nuclear Pharmacy," and Chapter 19, "Nonresident Pharmacy Licenses," and to adopt new Chapter 34, "Rules for Waivers and Variances," Iowa Administrative Code.

The amendments were approved at the September 12, 2000, regular meeting of the Board of Pharmacy Examiners.

The amendments rescind the Board's current rule regarding procedures for petitions for waiver or variance from rules, adopt new rules regarding petitions for waiver or variance from provisions of Board rules, and change references directing persons to the appropriate rules. Executive Order Number 11 directs state rule-making authorities to adopt rules regarding waivers and variances from rules of the authority and 2000 Iowa Acts, House File 2206, includes requirements imposed on rule-making authorities regarding the grant of such waivers and variances. These proposed amendments implement the requirements of the Executive Order and the new legislation.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on November 7, 2000. Such written materials should be sent to Lloyd K. Jessen, Executive



## PHARMACY EXAMINERS BOARD[657](cont'd)

Secretary/Director, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [lloyd.jessen@ibpe.state.ia.us](mailto:lloyd.jessen@ibpe.state.ia.us).

These amendments are intended to implement Iowa Code sections 17A.22, 22.2, 124.301, 126.17, 147.76, 155A.2, 205.11, 205.13, 272C.3, and 272C.4, and 2000 Iowa Acts, House File 2206.

The following amendments are proposed.

ITEM 1. Rescind rule **657—1.3(17A,124,126,147,155A,205,272C)**.

ITEM 2. Amend rule **657—3.4(155A)**, introductory paragraph; subrule **4.6(1)**; rule **657—6.3(155A)**, introductory paragraph; rule **657—6.4(155A)**; subrule **6.5(3)**; rule **657—7.3(155A)**, introductory paragraph; rule **657—7.4(155A)**; rule **657—15.2(124,126,155A)**; rule **657—15.3(124,126,155A)**, introductory paragraph; rule **657—15.4(124,126,155A)**; rule **657—16.5(155A)**, introductory paragraph; rule **657—16.6(155A)**, introductory paragraph; and rule **657—19.6(155A)**, introductory paragraph, by striking references to “rule 657—1.3(17A,124,126,147,155A,205,272C)” and inserting in lieu thereof “657—Chapter 34.”

ITEM 3. Adopt **new** 657—Chapter 34 as follows:

## CHAPTER 34

## RULES FOR WAIVERS AND VARIANCES

**657—34.1(17A) Definition.** For purposes of this chapter, a “waiver” or “variance” means action by the board which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person or business on the basis of the particular circumstances of that person or business. For simplicity, the term “waiver” shall include both a waiver and a variance and the term “person” shall include both a person and a business.

**657—34.2(17A,124,126,147,155A,205,272C) Scope of chapter.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

**657—34.3(17A,124,126,147,155A,205,272C) Applicability of chapter.** The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

**657—34.4(17A) Criteria for waiver or variance.** In response to a petition completed pursuant to rule 34.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

**657—34.5(17A,124,126,147,155A,205,272C) Filing of petition.** A petition for a waiver shall be submitted in writing to the board as follows:

**34.5(1) License, registration, or permit application.** If the petition relates to a license, registration, or permit application, the petition shall be made in accordance with the application requirements for the license, registration, or permit in question.

**34.5(2) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

**34.5(3) Other.** If the petition does not relate to a license, registration, or permit application or to a pending contested case, the petition may be submitted to the board’s executive secretary/director.

**657—34.6(17A) Content of petition.** A petition for waiver shall include the following information where applicable and known to the petitioner:

1. The name, address, and telephone number of the person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 34.4(17A). This shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the regulated activity, license, registration, or permit affected by the proposed waiver. This history shall include a description of each affected license, registration, or permit held by the petitioner and any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, registration, or permit within the last five years.
6. Any information known to the petitioner regarding the board’s treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of the waiver.
8. The name, address, and telephone number of any person who would be adversely affected by the grant of a petition for waiver.
9. The name, address, and telephone number of any person with knowledge of facts relevant to the proposed waiver.

10. Signed releases authorizing persons with knowledge regarding the request to furnish the board with information relevant to the proposed waiver.

**657—34.7(17A) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner’s request, schedule a telephonic or in-person meeting between the petitioner and the board’s executive

## PHARMACY EXAMINERS BOARD[657](cont'd)

secretary/director, a committee of the board, or a quorum of the board.

**657—34.8(17A) Notice.** The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

**657—34.9(17A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case. Those provisions shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

**657—34.10(17A) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains. The order shall include a statement of the relevant facts and reasons upon which the action is based and a description of the precise scope and duration of the waiver if one is issued.

**34.10(1) Board discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board upon consideration of all relevant factors. The board shall evaluate each petition for a waiver based on the unique, individual circumstances set out in the petition.

**34.10(2) Burden of persuasion.** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

**34.10(3) Narrowly tailored exception.** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**34.10(4) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**34.10(5) Conditions.** The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

**34.10(6) Time period of waiver.** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for the waiver continue to exist.

**34.10(7) Time for ruling.** The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**34.10(8) When deemed denied.** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However,

the board shall remain responsible for issuing an order denying a waiver.

**34.10(9) Service of order.** Within seven days of its issuance, any order issued under these rules shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**657—34.11(17A,22) Public availability.** All orders granting or denying a waiver petition shall be indexed, filed, and made available for public inspection as provided in Iowa Code section 17A.3. Petitions for waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

**657—34.12(17A) Summary reports.** The board shall semi-annually prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, and a citation to the statutory provisions implemented by these rules. The report shall include a general summary of the reasons justifying the board's actions on waiver requests and, if practicable, shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

**657—34.13(17A) Cancellation of a waiver.** A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. That the petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

2. That the alternative means for ensuring adequate protection of the public health, safety and welfare after issuance of the waiver order have been demonstrated to be insufficient; or

3. That the subject of the waiver order has failed to comply with all conditions contained in the order.

**657—34.14(17A,124,126,147,155A,205,272C) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**657—34.15(17A,124,126,147,155A,205,272C) Defense.** After the board issues an order granting a waiver, the order is a defense for the person to whom the order pertains, within the terms and the specific facts indicated therein, in any proceeding in which the rule in question is sought to be invoked.

**657—34.16(17A) Judicial review.** Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code sections 17A.22, 22.2, 124.301, 126.17, 147.76, 155A.2, 205.11, 205.13, 272C.3, and 272C.4, and 2000 Iowa Acts, House File 2206.

## ARC 0220B

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby gives Notice of Intended Action to amend Chapter 30, "Licensure of Marital and Family Therapists and Mental Health Counselors," and Chapter 31, "Continuing Education and Disciplinary Process," and adopt new Chapter 32, "Continuing Education for Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code.

The proposed amendments rescind the current continuing education rules; adopt a new chapter for continuing education; renumber the rule regarding grounds for discipline; and amend cross references to rules.

Any interested person may make written comments on the proposed amendments no later than November 9, 2000, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The Division revised these rules according to Executive Order Number 8. The Division sent letters to the public for comment and two letters were received in return. Division staff also had input on these rules. The comments received were discussed by the Board and decisions were based on need, clarity, intent and statutory authority, cost and fairness.

A public hearing will be held on November 9, 2000, from 9 to 11 a.m. in Fifth Floor Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code section 147.76 and chapter 272C.

The following amendments are proposed.

ITEM 1. Amend rule **645—30.1(147,154D)** by rescinding the definition of "hour of continuing education."

ITEM 2. Amend paragraph **30.3(2)"d"** as follows:

d. All supervision beginning on or after January 1, 2001-2003, shall be provided by a person licensed as a marital and family therapist.

ITEM 3. Amend paragraph **30.4(2)"e"** as follows:

e. All supervision beginning on or after January 1, 2001-2003, ~~must~~ shall be provided by a person licensed as a mental health counselor.

ITEM 4. Adopt **new** subrule 30.5(10) as follows:

**30.5(10)** Licensees who obtain licenses through interstate endorsement shall obtain 40 hours of continuing education credit for renewal of the license if obtained in the first year of the continuing education biennium and 20 hours if the license is obtained in the second year of the continuing education biennium.

ITEM 5. Rescind rule **645—30.8(147,154D)** and renumber **645—30.10(147,154D)** as **645—30.8(147,154D)**.

ITEM 6. Rescind rule **645—30.9(147,154D)**.

ITEM 7. Amend **645—Chapter 31**, title, as follows:

CHAPTER 31  
CONTINUING EDUCATION AND  
DISCIPLINARY PROCESS PROCEDURES

ITEM 8. Rescind rules **645—31.1(272C)** to **645—31.3(272C)** and renumber rules **645—31.8(147,154D, 272C)** to **645—31.10(147,154D,272C)** as **645—31.1(147, 154D,272C)** to **645—31.3(147,154D,272C)**.

ITEM 9. Amend renumbered subrule **31.2(2)**, paragraph "b," as follows:

b. Marital and family therapists use client or clinical materials in teaching, writing, and public presentations only if a written waiver has been obtained in accordance with ~~31.2(2)"a"(4)~~ **31.2(2)"a"(4)**, or when appropriate steps have been taken to protect client identity and confidentiality.

ITEM 10. Rescind and reserve rules **645—31.4(272C)** to **645—31.6(272C)**.

ITEM 11. Adopt **new** **645—Chapter 32** as follows:

CHAPTER 32  
CONTINUING EDUCATION FOR  
MARITAL AND FAMILY THERAPISTS  
AND MENTAL HEALTH COUNSELORS

**645—32.1(272C) Definitions.** For the purpose of these rules, the following definitions shall apply:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

"Administrator" means the administrator of the board of behavioral science examiners.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Approved sponsor" means a person or an organization sponsoring continuing education activities, that has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such organization, educational institution, or person may be deemed automatically approved.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

"Board" means the board of behavioral science examiners.

"Continuing education" means planned, organized learning acts designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at and completion of approved continuing education activity.

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"Inactive license" means the license of a person who is not in practice in the state of Iowa.

"Lapsed license" means a license that a person has failed to renew as required, or the license of a person who failed to meet stated obligations for renewal within a stated time.

"License" means license to practice.

"Licensee" means any person licensed to practice marital and family therapy or mental health counseling in the state of Iowa.

**645—32.2(272C) Continuing education requirements.**

**32.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on October 1 of the even-numbered year and ending on September 30 of the next even-numbered year. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 40 hours of continuing education approved by the board.

**32.2(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 license. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

**32.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them.

**32.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal.

**32.2(5)** It is the responsibility of each licensee to finance the cost of continuing education.

**645—32.3(272C) Standards for approval.**

**32.3(1)** General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The board may request the qualifications of presenters.

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours (One contact hour usually equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

**32.3(2)** Specific criteria. Continuing education hours of credit may be obtained by completing the following:

a. Attendance at sponsor-approved workshops, conferences, symposiums and academic courses. Official tran-

scripts indicating successful completion of academic courses which apply to the field of mental health counseling or marital and family therapy, as appropriate, will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

b. A sponsor-approved activity/program approved by the board of social work examiners or the board of psychology examiners.

c. A maximum of 20 hours of continuing education credit may be granted for any of the following activities not to exceed a combined total of 20 hours:

(1) Presenting professional programs which meet the criteria in 645—32.3(272C). Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit. Presentation at a professional program does not include teaching class at an institution of higher learning at which the applicant is regularly and primarily employed. Presentations to lay public are excluded.

(2) Scholarly research or other activities, the results of which are published in a recognized professional publication such as a refereed journal, monograph or conference proceedings. The scholarly research must be integrally related to the practice of the professions.

(3) Publication in a refereed journal. The article in a refereed journal for which the licensee is seeking continuing education credit must be integrally related to the practice of the professions.

(4) Distance learning conferences or courses will be allowed if the following criteria are met:

1. The program is offered through electronic transmission such as the Iowa Communications Network (ICN).

2. The program allows for interaction between the presenter and the participants.

3. The program issues the participants an official transcript, certificate of attendance or verification of successful completion of the course which applies to the field of mental health counseling or marital and family therapy.

(5) Home study courses will be allowed if the following criteria are met:

1. The program is recognized by the National Board for Certified Counselors (NBCC), Commission on Rehabilitation Counselor Certification (CRCC), American Association of Marriage and Family Therapy (AAMFT) or meets all of the criteria in 645—32.3(272C).

2. An official transcript, verification or certificate of completion is presented after successful completion of the course.

(6) Viewing multimedia presentations will be allowed if the following criteria are met:

1. There is a sponsoring group or agency.

2. There is a facilitator or program official present.

3. The program official may not be the only attendee.

4. The program meets all of the criteria in 645—32.3(272C).

(7) Computer-assisted instructional courses or programs pertaining to the practice of mental health counseling or marital and family therapy will be allowed if the following criteria are met:

1. The courses and programs are approved by the National Board for Certified Counselors (NBCC), Commission on Rehabilitation Counselor Certification (CRCC), American Association of Marriage and Family Therapy (AAMFT)

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

or their affiliates or meet all of the criteria in 645—32.3(272C).

2. An official transcript, certificate of completion, or verification that includes the following information is presented after successful completion of the course:

- Date course/program was completed.
- Title of the course/program.
- Number of course/program continuing education hours.
- Official signature or verification of the course/program sponsor.

(8) Teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of the course.

(9) Authoring papers, publications, and books. The licensee shall receive five hours of credit per page with a maximum of 20 hours of credit.

### 645—32.4(272C) Approval of sponsors, programs, and activities for continuing education.

**32.4(1)** Approval of sponsors. An applicant who desires approval as a sponsor of courses, programs, or other continuing education activities shall, unless exempted elsewhere in these rules, apply for approval to the board on the form designated by the board stating the applicant's educational history for the preceding two years or proposed plan for the next two years.

a. The form shall include:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction to be presented;

(3) Names and qualifications of instructors including résumés or vitae; and

(4) Evaluation form(s).

b. Records shall be retained by the sponsor for four years.

c. Attendance record report. The person or organization sponsoring an approved continuing education activity shall provide a certificate of attendance or verification to the licensee providing the following information:

(1) Program date(s);

(2) Course title and presenter;

(3) Location;

(4) Number of clock hours attended and continuing education hours earned;

(5) Name of sponsor and sponsor number;

(6) Licensee's name; and

(7) Method of presentation.

d. All approved sponsors shall maintain a copy of the following for a minimum of four years from the date of the continuing education activity:

(1) The continuing education activity;

(2) List of enrolled licensees' names and license numbers; and

(3) Number of continuing education clock hours.

e. The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall include:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction presented;

(3) Names and qualifications of instructors including résumés or vitae;

(4) Evaluation form(s); and

(5) A summary of the evaluations completed by the licensees.

**32.4(2)** Prior approval of programs/activities. An organization or person other than an approved sponsor that desires prior approval of a course, program or other education activity or that desires to establish approval of such activity prior to attendance shall apply for approval to the board on a form provided by the board at least 60 days in advance of the commencement of the activity. The board shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state:

a. The date(s);

b. Course(s) offered;

c. Course outline;

d. Total hours of instruction; and

e. Names and qualifications of speakers and other pertinent information.

The organization or person shall be notified of approval or denial by ordinary mail.

**32.4(3)** Review of programs. Continuing education programs/activities shall be reported every year at the designated time as assigned by the board. The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice of the revocation to that sponsor by certified mail. The sponsor shall have the right to hearing regarding the revocation. The request for hearing must be sent within 20 days after the receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The board shall conduct the hearing in compliance with rule 645—11.9(17A).

**32.4(4)** Postapproval of activities. A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 60 days after completion of such activity, the following:

a. The date(s);

b. Course(s) offered;

c. Course outline;

d. Total hours of instruction and credit hours requested;

e. Names and qualifications of speakers and other pertinent information;

f. Request for credit which includes a brief summary of the activity; and

g. Certificate of attendance or verification.

Within 90 days after receipt of such application, the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

**32.4(5)** Voluntary relinquishment. The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

**645—32.5(272C) Reporting continuing education by licensee.** At the time of license renewal, each licensee shall be required to submit a report on continuing education to the board on a board-approved form.

**32.5(1)** The information on the form shall include:

a. Title of continuing education activity;

b. Date(s);

c. Sponsor of the activity;

d. Board-approved sponsor number (if applicable);

e. Number of continuing education hours earned; and

f. Teaching method used.

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**32.5(2)** Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

- a. The board will select licensees to be audited.
- b. The licensee shall make available to the board for auditing purposes a certificate of attendance or verification for all reported activities that includes the following information:
  - (1) Date, location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation;
  - (2) Number of contact hours for program attended; and
  - (3) Indication of successful completion of the course.
- c. For auditing purposes, the licensee must retain the above information for two years after the biennium has ended.
- d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.
- e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of continuing education report.
- f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

**645—32.6(272C) Reinstatement of lapsed license.** Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse must apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;
2. Pays all past due and current renewal fees;
3. Pays all late fees which have been assessed by the board for failure to renew;
4. Pays reinstatement fee;
5. Provides evidence of satisfactory completion of continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 40 by the number of bienniums since the license lapsed, to a maximum of five renewal periods. If the reinstated license is obtained in the first year of the continuing education biennium the licensee shall obtain 40 hours of continuing education, and if the license is obtained in the second year of the continuing education biennium the licensee shall obtain 20 hours of continuing education.
6. The board may require an oral interview prior to reinstatement.
7. Those persons whose licenses have lapsed for more than two bienniums shall also be required to complete the appropriate professional examination.

**645—32.7(272C) Continuing education waiver for active practitioners.** A marital and family therapist or mental health counselor licensed to practice marital and family therapy or mental health counseling shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government em-

ployee outside the United States as a practicing marital and family therapist or mental health counselor.

**645—32.8(272C) Continuing education exemption for inactive practitioners.** A licensee who is not engaged in practice in the state of Iowa may be granted an exemption of continuing education compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in practice in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon forms provided by the board. The licensee shall have completed the required continuing education at the time of reinstatement.

**645—32.9(272C) Continuing education waiver for disability or illness.** The board may, in individual cases involving disability or illness, grant waivers of the minimum continuing educational requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

**645—32.10(272C) Reinstatement of inactive practitioners.** Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of waiver shall, prior to engaging in the practice of marital and family therapy or mental health counseling in the state of Iowa, satisfy the following requirements for reinstatement.

**32.10(1)** Submit written application for reinstatement to the board upon forms provided by the board; and

**32.10(2)** Submit payment of the current renewal and reinstatement fees.

**32.10(3)** Furnish in the application evidence of one of the following:

- a. Completion of a total number of hours of approved continuing education computed by multiplying 40 by the number of bienniums a certificate of exemption shall have been in effect for such applicant to a maximum of five bienniums. If the reinstated license is obtained in the first year of the continuing education biennium the licensee shall obtain 40 hours of continuing education, and if the license is obtained in the second year of the continuing education biennium the licensee shall complete 20 hours of continuing education; or
- b. The board may require an oral interview prior to reinstatement.

**645—32.11(272C) Hearings.** In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, licensee or program provider shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative

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law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 154B.

**ARC 0219B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby gives Notice of Intended Action to amend Chapter 40, "Chiropractic Examiners," and to adopt Chapter 43, "Continuing Education for Chiropractors," and Chapter 44, "Discipline for Chiropractors," Iowa Administrative Code.

The proposed amendments correct cross references to rules; rescind the current continuing education rules; renumber rules; adopt a new chapter for continuing education; and adopt a new chapter for discipline.

Any interested person may make written comments on the proposed amendments no later than November 14, 2000, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The continuing education compliance period was changed to be the same as the renewal period. Continuing education hours for the 2000 continuing education period may be accrued from January 1, 2000, to June 30, 2002. Sixty hours of continuing education will be required for this time period.

The Division revised these rules according to Executive Order Number 8. The Division sent six letters to the public for comment and two letters were received in return. Division staff also had input on these rules. The comments received were discussed by the Board, and decisions were based on need, clarity, intent and statutory authority, cost and fairness.

A public hearing will be held on November 14, 2000, from 1 to 3 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code section 147.76 and chapter 272C.

The following amendments are proposed.

ITEM 1. Amend rule 645—40.1(151) by rescinding the definitions of "accredited sponsor," "approved program or activity," "continuing education," "elective credit hours," "hour of continuing education," "inactive licensee," "non-designated credit hours," and "prescribed credit hours."

ITEM 2. Amend rule 645—40.1(151), definition of "license," as follows:

"License" ~~shall mean means~~ a certificate issued to a person licensed ~~license~~ to practice chiropractic under the laws of this state.

ITEM 3. Rescind rule 645—40.8(151) and renumber rule 645—40.9(151) as 645—40.8(151).

ITEM 4. Rescind rule 645—40.10(151) and renumber 645—40.12(151) as 645—40.10(151).

ITEM 5. Renumber rule 645—40.11(151) as 645—40.9(151) and rules 645—40.13(151) through 645—40.19(151) as 645—40.11(151) through 645—40.17(151).

ITEM 6. Rescind rule 645—40.24(272C) and renumber rule 645—40.51(147,272C) as 645—40.24(147,272C).

ITEM 7. Renumber rules 645—40.36(151) through 645—40.41(151) as 645—40.18(151) through 645—40.23(151).

ITEM 8. Rescind rule 645—40.52(151,272C).

ITEM 9. Rescind rules 645—40.62(272C) through 645—40.67(272C) and 645—40.69(272C) through 645—40.73(272C).

ITEM 10. Adopt **new** 645—Chapter 43 as follows:

**CHAPTER 43****CONTINUING EDUCATION FOR CHIROPRACTORS**

**645—43.1(151) Definitions.** For the purpose of these rules, the following definitions shall apply:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

"Administrator" means the administrator of the board of chiropractic examiners.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Approved sponsor" means an organization, educational institution or person sponsoring continuing education activities that has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such organization, educational institution, or person shall be deemed automatically approved.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

"Board" means the board of chiropractic examiners.

"Continuing education" means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at and completion of approved continuing education activity.

"Inactive license" means the license of a person who is not engaged in practice in the state of Iowa.



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“Lapsed license” means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within a stated time.

“License” means license to practice.

“Licensee” means any person licensed to practice as a chiropractor in the state of Iowa.

**645—43.2(272C) Continuing education requirements.**

**43.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of each even-numbered year two years later. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 60 hours of continuing education approved by the board.

**43.2(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 license. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 60 hours of continuing education per biennium for each subsequent license renewal.

**43.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them.

**43.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal.

**43.2(5)** It is the responsibility of each licensee to finance the cost of continuing education.

**645—43.3(151) Standards for approval.**

**43.3(1)** General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours (One contact hour equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

**43.3(2)** Specific criteria. Continuing education hours of credit may be obtained by completing:

a. At least 36 hours of continuing education credit obtained from a board-approved program that relates to the clinical practice of chiropractic.

b. A minimum of two hours per biennium in professional boundaries.

c. Classes on child abuse, dependent adult abuse, and OSHA training that meet the criteria in subrule 43.3(1). These classes are approved by the board and do not require prior approval or postapproval.

d. Teaching at a Council on Chiropractic Education (CCE) or board of chiropractic examiners-approved institution. Hours may be used only for the initial session and shall have prior board approval.

e. Electronically transmitted programs/activities or home study programs/activities that have a certificate of completion.

**645—43.4(151) Approval of sponsors, programs, and activities for continuing education.**

**43.4(1)** Approval of sponsors. An applicant who desires approval as a sponsor of courses, programs, or other continuing education activities shall, unless exempted elsewhere in these rules, apply for approval to the board on the form designated by the board stating the applicant's educational history for the preceding two years or proposed plan for the next two years.

a. The form shall include:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction to be presented;

(3) Names and qualifications of instructors including résumés or vitae; and

(4) Evaluation form(s).

b. Records shall be retained by the sponsor for four years.

c. Attendance record report. The person or organization sponsoring an approved continuing education activity shall provide a certificate of attendance or verification to the licensee providing the following information:

(1) Program date(s);

(2) Course title and presenter;

(3) Location;

(4) Number of clock hours attended and continuing education hours earned;

(5) Name of sponsor and sponsor number;

(6) Licensee's name; and

(7) Method of presentation.

d. All approved sponsors shall maintain a copy of the following for a minimum of four years from the date of the continuing education activity:

(1) The continuing education activity;

(2) List of enrolled licensees' names and license numbers; and

(3) Number of continuing education clock hours.

e. The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall include:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction presented;

(3) Names and qualifications of instructors including résumés or vitae;

(4) A sample of the evaluation form(s); and

(5) A summary of the evaluations as completed by the licensees.

**43.4(2)** Prior approval of programs/activities. An organization or person other than an approved sponsor that desires prior approval of a course, program or other educational activity or that desires to establish approval of such activity prior to attendance shall apply for approval to the board on a form provided by the board at least 60 days in advance of the commencement of the activity. The board shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state:

a. The date(s);



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- b. Course(s) offered;
- c. Course outline;
- d. Total hours of instruction; and
- e. Names and qualifications of speakers and other pertinent information.

The organization or person shall be notified of approval or denial by ordinary mail.

**43.4(3)** Review of programs. Continuing education programs/activities shall be reported every year at the designated time as assigned by the board. The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice of the revocation to that sponsor by certified mail. The sponsor shall have the right to hearing regarding the revocation. The request for hearing must be sent within 20 days after the receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The board shall conduct the hearing in compliance with rule 645—11.9(17A).

**43.4(4)** Postapproval of activities. A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 60 days after completion of such activity, the following:

- a. The date(s);
- b. Course(s) offered;
- c. Course outline;
- d. Total hours of instruction and credit hours requested;
- e. Names and qualifications of speakers and other pertinent information;
- f. Request for credit which includes a brief summary of the activity; and
- g. Certificate of attendance or verification.

Within 90 days after receipt of such application, the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

**43.4(5)** Voluntary relinquishment. The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

**645—43.5(272C) Reporting continuing education by licensee.** At the time of license renewal, each licensee shall be required to submit a report on continuing education on a board-approved form.

**43.5(1)** The information on the form shall include:

- a. Title of continuing education activity;
- b. Date(s);
- c. Sponsor of the activity;
- d. Board-approved sponsor number;
- e. Number of continuing education hours earned; and
- f. Teaching method used.

**43.5(2)** Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

- a. The board will select licensees to be audited.
- b. The licensee shall make available to the board for auditing purposes a certificate of attendance or verification for all reported activities that includes the following information:

(1) Date(s), location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation;

- (2) Number of contact hours for program attended; and
- (3) Indication of successful completion of the course.

c. For auditing purposes, the licensee must retain the above information for four years.

d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.

e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of continuing education report.

f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

**645—43.6(272C) Reinstatement of lapsed license.** Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse must apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;
2. Pays the renewal fee;
3. Has a personal interview with the board at the board's request; and
4. Provides evidence of satisfactory completion of continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 60 by the number of bienniums since the license lapsed to a maximum of three bienniums. Successful completion of the Special Purposes Examination Council (SPEC) examination may be required if the board finds reason to doubt the licensee's ability to practice with reasonable skill and safety.

**645—43.7(272C) Continuing education waiver for active practitioners.** A chiropractic physician licensed to practice as a chiropractic physician shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing chiropractic physician.

**645—43.8(272C) Continuing education exemption for inactive practitioners.** A licensee who is not engaged in practice in the state of Iowa may be granted an exemption of continuing education compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in practice in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon forms provided by the board. The licensee shall have completed the required continuing education at the time of reinstatement.

**645—43.9(272C) Continuing education waiver for disability or illness.** The board may, in individual cases involv-

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ing disability or illness, grant waivers of the minimum educational requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant a waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

**645—43.10(272C) Reinstatement of inactive practitioners.** Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of waiver shall, prior to engaging in the practice of chiropractic in the state of Iowa, satisfy the following requirements for reinstatement.

**43.10(1)** Submit written application for reinstatement to the board upon forms provided by the board; and

**43.10(2)** Submit payment of the current renewal fee.

**43.10(3)** Furnish in the application evidence of one of the following:

a. Full-time practice in another state of the United States or the District of Columbia and completion of continuing education for each biennium of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of approved continuing education hours substantially equivalent to that required under these rules computed by multiplying 60 by the number of bienniums a certificate of exemption shall have been in effect for the applicant to a maximum of three bienniums. Successful completion of the SPEC examination may be required by the board for reinstatement.

**645—43.11(272C) Hearings.** In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant or licensee shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 151.

ITEM 11. Adopt new 645—Chapter 44 as follows:

## CHAPTER 44

## DISCIPLINE FOR CHIROPRACTORS

**645—44.1(272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions set forth in rule 645—13.1(272C), including civil penalties in an amount not to exceed \$1,000, when the board determines that a licensee is guilty of any of the following acts or offenses:

**44.1(1)** Fraud in procuring a license that includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice chiropractic and includes false representations of a material fact, whether by

word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the department of public health any false or forged diploma, certificate, affidavit, identification, or qualification in making an application for a license in this state.

**44.1(2)** Professional incompetency that includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the chiropractic physician's practice;

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

c. A failure by a chiropractic physician to exercise in a substantial respect that degree of care which is ordinarily exercised by the average chiropractic physician in the state of Iowa acting in the same or similar circumstances;

d. A willful or repeated departure from or the failure to conform to the minimal standard or acceptable and prevailing practice of chiropractic in the state of Iowa.

e. Failure to maintain clinical and fiscal records in support of services rendered for a minimum of five years from one of the following dates as applicable. For the purposes of this rule, clinical records shall include all laboratory and diagnostic imaging studies.

(1) For an adult patient in an uncontested case, the last office visit.

(2) For a minor patient in an uncontested case, the last office visit plus the age of 18 years.

f. Failure to comply with the health department standards for radiation-emitting equipment as used by a doctor of chiropractic, set forth in Iowa Code chapter 136C.

**44.1(3)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a chiropractic physician in the practice of chiropractic and includes any representation contrary to the chiropractic physician's legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another. Activities under this paragraph include, but are not limited to:

(1) Alleging superiority in any way.

(2) Guarantees of any type.

(3) Improper titles.

(4) Inflated or unjustified expectations of favorable results.

(5) Self-laudatory claims of specialty practice for which credentials do not exist.

(6) Representations that patients easily misunderstand.

(7) Claims of extraordinary skills that are not recognized by the profession.

b. Engaging in unethical conduct includes, but is not limited to, a violation of the standards and principles of chiropractic ethics and code of ethics as set out in rule 645—40.24(147,272C) as interpreted by the board.

c. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a chiropractic physician to possess and exercise that degree of skill, learning and care

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

expected of a reasonably prudent chiropractic physician acting in the same or similar circumstances in this state, or instances in which a chiropractic physician is unable to practice chiropractic with reasonable skill and safety as a result of a mental or physical impairment or chemical abuse.

**44.1(4)** Habitual intoxication or addiction to the use of drugs that includes, but is not limited to, the inability of a chiropractic physician to practice chiropractic with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other types of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other types of material which may impair a chiropractic physician's ability to practice the profession with reasonable skill and safety.

**44.1(5)** Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence that includes, but is not limited to, the conviction of a chiropractic physician who has committed a public offense in the practice of the profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of chiropractic, or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon the licensee as a chiropractic physician in this state.

**44.1(6)** Fraud in representations as to skill or ability that includes, but is not limited to, a chiropractic physician having made misleading, deceptive or untrue representations as to the chiropractic physician's competency to perform professional services for which the chiropractic physician is not qualified to perform by training or experience.

**44.1(7)** Use of untruthful or improbable statements in advertisements that includes, but is not limited to, an action by a chiropractic physician in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

- a. Inflated or unjustified expectations of favorable results;
- b. Self-laudatory claims that imply that the chiropractic physician is a skilled chiropractic physician engaged in a field or specialty of practice for which the chiropractic physician is not qualified;
- c. Representations that are likely to cause the average person to misunderstand; or
- d. Extravagant claims or proclamation of extraordinary skills not recognized by the chiropractic profession.

**44.1(8)** Willful or repeated violations of the provisions of Iowa Code chapter 272C that include, but are not limited to, a chiropractic physician having intentionally or repeatedly violated a lawful rule or regulation promulgated by the board of chiropractic examiners or the department of public health or violated a lawful order of the board or the department of public health in a disciplinary hearing or violated the chiropractic practice Acts or rules promulgated thereunder.

**44.1(9)** Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of chiropractic.

**44.1(10)** Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to

the board of chiropractic examiners the revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.

**44.1(11)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice chiropractic.

**44.1(12)** Being guilty of a willful or repeated departure from, or the failure to conform to, the chiropractic practice Acts or rules promulgated thereunder. An actual injury to a patient need not be established.

**44.1(13)** Inability to practice chiropractic with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

**44.1(14)** Willful or repeated violation of lawful rule or regulation promulgated by the board.

**44.1(15)** Violating a lawful order of the board, previously entered by the board in a disciplinary hearing.

**44.1(16)** Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

**44.1(17)** Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

**44.1(18)** Indiscriminately or promiscuously prescribing, administering or dispensing any order for other than lawful purpose.

**44.1(19)** Submission of a false report of continuing education or failure to submit the annual report of continuing education.

**44.1(20)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

**44.1(21)** Failure to comply with a subpoena issued by the board.

**44.1(22)** Failure to file the reports required concerning acts or omissions committed by another licensee.

**44.1(23)** Repeated malpractice.

**44.1(24)** Obtaining any fee by fraud or misrepresentation.

**44.1(25)** Negligence in failing to exercise due care in the delegation of chiropractic services to or supervision of assistants, employees or other individuals, whether or not injury results.

**44.1(26)** Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code chapter 151.

**44.1(27)** Failure to maintain clean and sanitary conditions at the premises in keeping with sound public health standards.

**44.1(28)** Failure to respond, when requested, to communications of the board within 30 days of the mailing of such communication by registered or certified mail.

**44.1(29)** Failure to report child abuse or dependent adult abuse.

**44.1(30)** Obtaining third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

- a. Reporting incorrect treatment dates for the purpose of obtaining payment;
- b. Reporting charges for services not rendered;
- c. Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or
- d. Aiding a patient in fraudulently obtaining payment from a third-party payer.

**44.1(31)** Practicing without a current license or practicing when a license is lapsed.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**44.1(32)** Failure to notify the board of a change of name or address within 30 days of its occurrence.

This rule is intended to implement Iowa Code chapter 272C.

**ARC 0221B**

## PROFESSIONAL LICENSURE DIVISION[645]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Athletic Trainers hereby gives Notice of Intended Action to amend Chapter 350, "Athletic Training," and adopt new Chapter 351, "Continuing Education for Athletic Trainers," Iowa Administrative Code.

The proposed amendments rescind the current continuing education rules and adopt a new chapter for continuing education.

Any interested person may make written comments on the proposed amendments no later than November 14, 2000, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The Division revised these rules in accordance with Executive Order Number 8. The Division sent three letters to the public for comment, and two letters were received in return. Division staff also had input on these rules. The comments received were discussed by the Board, and decisions were made based on need, clarity, intent and statutory authority, cost and fairness.

A public hearing will be held on November 14, 2000, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code section 147.76 and chapters 152D and 272C.

The following amendments are proposed.

ITEM 1. Rescind rule **645—350.13(272C)** and renumber rule **645—350.26(272C)** as **645—350.13(272C)**.

ITEM 2. Rescind rule **645—350.14(272C)** and renumber rule **645—350.31(272C)** as **645—350.14(272C)**.

ITEM 3. Rescind and reserve rules **645—350.15(272C)** through **645—350.21(272C)**.

ITEM 4. Adopt **new** 645—Chapter 351 as follows:

#### CHAPTER 351 CONTINUING EDUCATION FOR ATHLETIC TRAINERS

**645—351.1(272C) Definitions.** For the purpose of these rules, the following definitions shall apply:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

"Administrator" means the administrator of the board of examiners for athletic trainers.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Approved sponsor" means a person or an organization sponsoring continuing education activities that has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such organization, educational institution, or person shall be deemed automatically approved.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing provider requirements during a specified time period.

"Board" means the board of examiners for athletic trainers.

"Continuing education" means planned, organized learning acts acquired during initial licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at and completion of approved continuing education activity.

"Inactive license" means the license of a person who is not engaged in practice in the state of Iowa.

"Lapsed license" means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within a stated time.

"License" means license to practice.

"Licensee" means any person licensed to practice as an athletic trainer in the state of Iowa.

"NATA" means the National Athletic Trainers Association.

"NATABOC" means the National Athletic Trainers Association Board of Certification.

#### **645—351.2(152D) Continuing education requirements.**

**351.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on March 1 of each odd-numbered year and ending on February 28 of the next even-numbered year. Each biennium, each person who is licensed to practice as an athletic trainer in this state shall be required to complete a minimum of 50 hours of continuing education approved by the board. For the 2000 renewal cycle, 62 hours of continuing education shall be completed by March 1, 2003. Continuing education credit earned from September 30, 2000, through March 1, 2001, may be used either for the 2000 renewal cycle or the following biennium. The licensee may use the continuing education credit hours earned only once. The same credit may not be used for both compliance periods. This condition applies for the renewal biennium of 2000 and the following renewal biennium. Continuing education hours will return to 50 hours each biennium at the end of this prorated compliance period.

**351.2(2)** Requirements for 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

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 50 hours of continuing education per biennium for each subsequent license renewal.

**351.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them.

**351.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal.

**351.2(5)** It is the responsibility of each licensee to finance the cost of continuing education.

**645—351.3(152D) Standards for approval.**

**351.3(1)** General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours (One contact hour equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

**351.3(2)** Specific criteria. Continuing education hours of credit may be obtained by completing the following:

a. Participating in a course provided by a NATABOC-approved provider of continuing education; or

b. Participating in continuing education activities of an approved sponsor.

**645—351.4(152D) Approval of sponsors, programs, and activities for continuing education.**

**351.4(1)** Approval of sponsors. An applicant who desires approval as a sponsor of courses, programs, or other continuing education activities shall, unless exempted elsewhere in these rules, apply for approval to the board on the form designated by the board stating the applicant's educational history for the preceding two years or proposed plan for the next two years.

a. The form shall include the following:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction presented;

(3) Names and qualifications of instructors, including résumés or vitae; and

(4) Evaluation form(s).

b. Records shall be retained by the sponsor for four years.

c. Attendance record report. The person or organization sponsoring an approved continuing education activity shall provide a certificate of attendance or verification to the licensee providing the following information:

(1) Course date(s);

(2) Course title and presenter;

(3) Location;

(4) Number of clock hours attended and continuing education hours earned;

(5) Name of sponsor and sponsor number;

(6) Licensee's name; and

(7) Method of presentation.

d. All approved, accredited sponsors shall maintain a copy of the following for a minimum of four years from the date of the continuing education activity:

(1) The continuing education activity;

(2) List of enrolled licensees' names and license numbers; and

(3) Number of continuing education clock hours awarded.

e. The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall include:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction presented;

(3) Names and qualifications of instructors including résumés or vitae;

(4) Evaluation form(s); and

(5) A summary of the evaluations completed by the licensees.

**351.4(2)** Prior approval of programs/activities. An organization or person other than an approved sponsor that desires prior approval of a course, program or other educational activity or that desires to establish approval of such activity prior to attendance shall apply for approval to the board on a form provided by the board at least 60 days in advance of the commencement of the activity. The board shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state:

a. The date(s);

b. Course(s) offered;

c. Course outline;

d. Total hours of instruction; and

e. Names and qualifications of speakers and other pertinent information.

The organization or person shall be notified of approval or denial by ordinary mail.

**351.4(3)** Review of programs. Sponsors shall report continuing education programs every year at a time designated by the board. The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice of the revocation to that sponsor by certified mail. The sponsor shall have the right to hearing regarding the revocation. The request for hearing must be sent within 20 days after the receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The board shall conduct the hearing in compliance with rule 645—11.9(17A).

**351.4(4)** Postapproval of activities. A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

otherwise approved shall submit to the board, within 60 days after completion of such activity, the following:

- a. The date(s);
- b. Course(s) offered;
- c. Course outline;
- d. Total hours of instruction and credit hours requested;
- e. Names and qualifications of speakers and other pertinent information;
- f. Request for credit which includes a brief summary of the activity; and
- g. Certificate of attendance or verification.

Within 90 days after receipt of such application, the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

**351.4(5) Voluntary relinquishment.** The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

**645—351.5(152D) Reporting continuing education by licensee.** At the time of license renewal, each licensee shall be required to submit a report on continuing education to the board on a board-approved form.

**351.5(1)** The information on the form shall include:

- a. Title of continuing education activity;
- b. Date(s);
- c. Sponsor of the activity;
- d. Board-approved sponsor number; and
- e. Number of continuing education hours earned; or
- f. Proof of NATA continuing education certification.

**351.5(2)** Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

- a. The board will select licensees to be audited.
- b. The licensee shall make available to the board for auditing purposes a copy of the certificate of attendance or verification for all reported activities that includes the following information:

- (1) Date, location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation;
- (2) Number of contact hours for program attended;
- (3) Indication of successful completion of course; and
- (4) Copy of official transcript of college courses.

For activities not provided by an approved sponsor, the licensee shall submit a description of the program content which indicates that the content is integrally related to the practice and contributes directly to the provision of services to the public.

- c. For auditing purposes, the licensee must retain the above information for two years after the biennium has ended.

- d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.

- e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of continuing education report.

- f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

**645—351.6(152D) Reinstatement of lapsed license.** Failure of the licensee to renew within 30 days after expiration

date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse may apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;
2. Pays all of the renewal fees then due, up to a maximum of two bienniums;
3. Pays all late fees which have been assessed by the board for failure to renew;
4. Pays reinstatement fees; and
5. Provides evidence of satisfactory completion of Iowa continuing education requirements during the period since the license lapsed.

**645—351.7(152D,272C) Continuing education waiver for active practitioners.** An athletic trainer licensed to practice shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing athletic trainer.

**645—351.8(152D,272C) Continuing education exemption for inactive practitioners.** A licensee who is not engaged in practice may be granted an exemption of continuing education compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of athletic training in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon forms provided by the board. The licensee shall have completed the required continuing education at the time of reinstatement.

**645—351.9(152D,272C) Continuing education waiver for disability or illness.** The board may, in individual cases involving disability or illness, grant waivers of the minimum educational requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant a waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

**645—351.10(152D,272C) Reinstatement of inactive practitioners.** Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of exemption shall, prior to engaging in the practice of athletic training in the state of Iowa, satisfy the following requirements for reinstatement.

**351.10(1)** Submit written application for reinstatement to the board upon forms provided by the board and the current renewal fee.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

351.10(2) Furnish evidence of good standing with NATA for the preceding two bienniums.

645—351.11(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, licensee or program provider shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 152D.

**PUBLIC SAFETY DEPARTMENT[661]**

**Public Notice**

Pursuant to the authority of Executive Order Number 8, the Department of Public Safety hereby gives notice of public hearings scheduled to consider existing rules of the Department. The Department has adopted an Administrative Rules Improvement Plan, as provided in Executive Order Number 8, which specifies a schedule for consideration of all existing rules of the Department.

The following hearings are scheduled on November 9, 2000, in the Third Floor Conference Room (West Half) of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319:

Time	Subject Matter	Rules to Be Considered
9:30 a.m.	Sheriffs Uniforms	661 Iowa Administrative Code, Chapter 3
10:00 a.m.	Criminal Justice Information: Iowa On Line Warrants and Articles System	661 Iowa Administrative Code, Chapter 8, Division I
10:30 a.m.	Bail Enforcement, Private Investigative, and Private Security Businesses	661 Iowa Administrative Code, Chapter 2

Persons may present their views orally or in writing at each public hearing. Persons who wish to make oral presentations at a public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing. Any written comments or information regarding these rules may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the

Agency Rules Administrator by telephone or in person at the Bureau office at least one day prior to the public hearing.

The Department's Administrative Rules Improvement Plan, as well as copies of any of the rules to be reviewed may be obtained from the Department's World Wide Web site at <http://www.state.ia.us/government/dps/admrule/>.

**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 James E. Forney, Superintendent of Banking Holmes Foster, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for October is 7.75%.

**INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS**

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

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

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 October 10, 2000, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

**TIME DEPOSITS**

- 7-31 days . . . . . Minimum 5.70%
- 32-89 days . . . . . Minimum 5.80%
- 90-179 days . . . . . Minimum 5.90%
- 180-364 days . . . . . Minimum 5.90%
- One year to 397 days . . . . . Minimum 5.90%
- More than 397 days . . . . . Minimum 5.90%

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

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



## ARC 0216B

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission hereby amends Chapter 135, "Technical Standards and Corrective Action Requirements of Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

Subrule 135.19(3) specifies when sampling for methyl tertiary-butyl ether (MTBE) is not required. This amendment adds new conditions under which owners and operators can stop analyzing for MTBE. MTBE analysis would no longer be required after it is not found in soil and groundwater samples during RBCA Tier 1, Tier 2 or Tier 3 assessments and ongoing monitoring.

MTBE analysis significantly increases the cost of analyzing a sample. The rule assumes one or more sampling events in which no MTBE has been found. The Iowa UST Fund pays for most sampling costs in the state.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary and contrary to the public interest. The amendment removes the expense of analyzing for MTBE after analysis shows it is not present at the site.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Commission finds that this amendment confers a benefit and removes a restriction on the public such that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing.

This amendment is also published herein under Notice of Intended Action as **ARC 0217B** to allow for public comment. This emergency filing permits the commission to implement the new provision of the law.

This rule may have an impact on small businesses as provided in Iowa Code section 17A.4A.

This amendment is intended to implement Iowa Code section 455B.474.

This amendment became effective September 29, 2000.

Amend subrule **135.19(3)** by adopting the following **new** paragraphs:

c. If prior analysis at a site under 135.19(2) has not shown MTBE present in soil or groundwater.

d. If the department determines MTBE analysis is no longer needed at a site.

[Filed Emergency 9/29/00, effective 9/29/00]

[Published 10/18/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/18/00.



## ARC 0223B

COLLEGE STUDENT AID  
COMMISSION[283]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 261.3 and 261.37(5) and 2000 Iowa Acts, Senate File 2439, section 8, the College Student Aid Commission hereby adopts Chapter 19, "Accelerated Career Education Grant Program," Iowa Administrative Code.

The new chapter provides a rule for administering the Accelerated Career Education Grant Program established by the Legislature in 2000 Iowa Acts, Senate File 2439.

Notice of Intended Action was published in the August 9, 2000, Iowa Administrative Bulletin as ARC 0049B. Comments were received from Des Moines Area Community College and the Department of Education.

There are several changes from the Notice. The adopted chapter more clearly states that students receiving grants under the Program must be enrolled in Accelerated Career Education Grant Programs approved by the Iowa Department of Economic Development. The adopted chapter also enhances the definition of Iowa resident to be used for the Program.

This chapter was approved during the September 19, 2000, meeting of the College Student Aid Commission.

This rule will become effective November 22, 2000.

This rule is intended to implement 2000 Iowa Acts, Senate File 2439, section 8.

The following new chapter is adopted.

CHAPTER 19  
ACCELERATED CAREER EDUCATION  
GRANT PROGRAM

**283—19.1(261) ACE grants.** Educational grants based on financial need may be awarded to Iowa residents enrolled in accelerated career education (ACE) programs, approved by the Iowa department of economic development, at Iowa community colleges.

**19.1(1) Student financial need.**

a. Financial need shall be evaluated annually on the basis of a confidential financial statement, filed on forms designated by the commission, which must be received by the processing agency by the priority date specified in the application instructions.

b. Financial need is defined as the difference between total program expenses at the community college the student plans to attend and the estimated amount of family resources available for college, as determined by the commission. Need determination will include evaluation of all student financial aid received by the student including, but not limited to, federal Pell Grants, Iowa vocational-technical tuition grants, and institutional awards.

**19.1(2) Student eligibility.**

a. A recipient must be an Iowa resident. A student who is determined to be in the state primarily for educational purposes shall be considered a nonresident. The commission will make final residency determinations using criteria developed for all state-funded scholarship and grant programs.

b. A recipient must be enrolled in an accelerated career education program, approved by the Iowa department of economic development, leading to a certificate, diploma, associate of science degree, or associate of applied science de-

gree in accordance with the provisions of Iowa Code chapter 260G.

c. A recipient must be a full-time student as defined by the college unless the financial aid administrator recommends an award to a part-time student based on federal professional judgment criteria as authorized in the federal Higher Education Act of 1965, as amended.

d. A recipient may receive moneys under this program for not more than 150 percent of the length of time required for a full-time student to complete the accelerated career education program.

e. A recipient must meet and maintain the academic eligibility requirements established by the community college.

f. A recipient may receive no more than the amount specified by Iowa law or the amount of the student's established financial need, whichever is less.

**19.1(3) Priority for grants.** Industries and occupations with high levels of shortages of workers based on the level of statewide need for skills and occupations will be identified by the Iowa department of economic development and the workforce development department. The commission will award grants based on the level of need for the identified skills and occupations for which technical workers are in the highest demand as defined by the Iowa department of economic development and the workforce development department.

Applicants who apply by the priority date specified in the application and who are enrolled in designated educational programs will be ranked in order of need, and awards will be granted to those who demonstrate need from highest need to lowest need, insofar as funds permit.

**19.1(4) Award notification.** Grant recipients will be notified of the awards by community college officials. Community college officials are responsible for verifying eligibility and coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. Community college officials will report changes of student eligibility to the commission.

**19.1(5) Maximum annual award.** For purposes of this program, a student must be enrolled four quarters or two semesters plus a summer session to receive the maximum annual award.

**19.1(6) Award transfers and adjustments.** Recipients are responsible for promptly notifying the appropriate community college officials of changes in enrollment or financial situation. Community college officials will make necessary changes and notify the commission.

**19.1(7) Restrictions.** A student who is in default on a Stafford Loan, an SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for accelerated career education grants. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—Chapter 5.

This rule is intended to implement 2000 Iowa Acts, Senate File 2439, section 8.

[Filed 9/29/00, effective 11/22/00]

[Published 10/18/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/18/00.

**ARC 0224B****COLLEGE STUDENT AID  
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission adopts new Chapter 21, "Approval of Postsecondary Schools," Iowa Administrative Code.

The new chapter provides rules for the approval of postsecondary schools seeking to register with the Secretary of State.

Notice of Intended Action was published in the August 9, 2000, Iowa Administrative Bulletin as **ARC 0050B**. No comments were received. Minor technical corrections were made to the rule published under Notice.

This chapter was approved during the September 19, 2000, meeting of the College Student Aid Commission.

This rule will become effective November 22, 2000.

This rule is intended to implement Iowa Code chapter 261B as amended by 2000 Iowa Acts, Senate File 2248.

The following new chapter is adopted.

**CHAPTER 21****APPROVAL OF POSTSECONDARY SCHOOLS**

**283—21.1(78GA,SF2248) Approval criteria.** The college student aid commission shall approve applicant schools that:

1. Are accredited by an agency recognized by the United States Department of Education or its successor agency.
2. Are approved for operation by the appropriate state agencies in all other states in which the schools operate or maintain a presence.
3. Are not subject to a limitation, suspension or termination order issued by the United States Department of Education or its successor agency.
4. Are free of sanctions from the schools' accrediting agencies and appropriate state agencies in all other states in which the schools operate or maintain a presence.
5. Enroll students in Iowa or employ Iowa faculty.
6. Comply with Iowa Code section 261B.7 limiting the use of references to the secretary of state, state of Iowa, or college student aid commission in promotional material.
7. Comply with the requirements of Iowa Code section 261.9(1) "e" to "h."
8. File annual reports that the commission requires from all Iowa colleges and universities.

This rule is intended to implement Iowa Code chapter 261B as amended by 2000 Iowa Acts, Senate File 2248.

[Filed 9/29/00, effective 11/22/00]

[Published 10/18/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/18/00.

**ARC 0199B****CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.508A, the Department of Corrections adopts amendments to Chap-

ter 20, "Institutions Administration," Iowa Administrative Code.

This amendment authorizes a central office account and establishes standards for the review and expenditure of revenues received from the Department's inmate telephone system. This amendment modifies the expenditure process and creates an approval process for institutional expenditures by the appropriate Deputy Director and the Corrections Board.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9918A** on June 28, 2000. No written or oral comments were received. However, the Administrative Rules Review Committee requested that subrule 20.20(2) be changed to clarify the language dealing with the central office account and how the deputy director will determine the amount of telephone commissions generated by each correctional institution. These changes have been incorporated. No other changes were made to the Notice of Intended Action.

The Board of Corrections adopted this amendment on September 22, 2000.

This amendment will become effective on November 22, 2000.

This amendment is intended to implement Iowa Code section 904.508A.

The following amendment is adopted.

Rescind rule 201—20.20(904) and adopt the following new rule in lieu thereof:

**201—20.20(904) Offender telephone commissions.****20.20(1) Definitions.**

"Corrections board" means the department of corrections board.

"Deputy director of administration" means the person responsible for budgeting and planning.

"Director" means the chief executive officer of the department of corrections.

"Regional deputy director" means the person responsible for regional operation of both institution and community corrections services in either the eastern or western portions of Iowa.

"Warden/superintendent" means the chief executive officer of the institution or correctional facility.

**20.20(2) Deposit of funds.** The department of corrections shall deposit and account for all telephone commissions in a clearing account within central office. The deputy director of administration will determine commissions generated by each institution, based on a report from the vendor, for deposit in the institution's offender telephone rebate fund.

**20.20(3) Request for funds.** Each warden/superintendent will determine recurring needs and special projects and submit a written proposal to the respective regional deputy director of institutions for all expenditures and encumbrances.

**20.20(4) Review and approval of expenditures.** The regional deputy director of operations and the deputy director of administration will review the proposals for a quarterly presentation by the director to the corrections board for approval. All expenditures and encumbrances shall require prior approval from the corrections board and the respective regional deputy director of operations. Institutions shall not be allowed to encumber or expend funds without approval. Revenues generated by telephone commissions at each institution shall be used to determine the availability of funds for each project.

**20.20(5) Permitted expenditures.** The director shall advance to the corrections board for approval only projects that benefit offenders. Expenditures may include, but are not

CORRECTIONS DEPARTMENT[201](cont'd)

limited to, projects that provide educational, vocational or recreational services or projects, or work or treatment programs for offenders. Expenditures may also be used to initiate new programs, services, or projects. Institutions shall give spending priority to programs, services, and projects that promote the health and welfare of offenders.

This rule is intended to implement Iowa Code section 904.508A.

[Filed 9/28/00, effective 11/22/00]

[Published 10/18/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/18/00.

## ARC 0197B

### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts Chapter 42, "Rural Resource Coordination Programs for Fire Services," Iowa Administrative Code.

The new rules establish the purpose and criteria for eligibility and selection for funding under two programs: the Response 2020 Program and the Dry Hydrant Program. Both of these programs are intended to meet the fire and emergency response needs of Iowa communities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 9, 2000, as **ARC 0031B**.

A public hearing to receive comments about the new chapter was held on August 29, 2000. No comments were received at the public hearing. However, in a subsequent meeting with the Council of Government representatives, a suggestion was made to increase the maximum award limit for the Dry Hydrant Program from \$12,500 to \$15,000. This increase would allow for activities to occur in multicounty areas. This change has been made in the final rules.

These rules are intended to implement Iowa Code section 15.108(3) and 2000 Iowa Acts, Senate File 2453, section 4, subsection 3, and 2000 Iowa Acts, Senate File 2428, section 1, subsection 3, paragraph "c."

The IDED Board adopted the new chapter on September 21, 2000.

These rules will become effective on November 22, 2000.

The following **new** chapter is adopted.

#### CHAPTER 42

#### RURAL RESOURCE COORDINATION PROGRAMS FOR FIRE SERVICES

**261—42.1(78GA,SF2428,SF2453) Purpose.** This chapter includes provisions for two programs: Response 2020 and dry hydrant grant program. The purpose of Response 2020 is to assist fire and emergency response departments in the planning, assessment and evaluation of local emergency response services and to support systems to improve service delivery through financial and technical assistance. During fiscal year 2001, up to \$200,000 of funding is available to support rural dry hydrant demonstration projects across the state.

**261—42.2(78GA,SF2428,SF2453) Program eligibility.** Cities, counties, and councils of government may apply on

behalf of fire and emergency response departments for these funds. Resource conservation and development councils may apply for dry hydrant funds only. Requests for funding under the dry hydrant program must be made by a consortium of fire departments in order to be considered.

#### **261—42.3(78GA,SF2428,SF2453) Award limits.**

**42.3(1)** For Response 2020 projects, the maximum grant award shall not exceed \$15,000 over a period not to exceed one year.

**42.3(2)** For the dry hydrant grant program, the maximum grant award shall be \$15,000 per each applicant region. A maximum of \$2,500 per dry hydrant may be requested.

a. The award amount for dry hydrant projects shall be used for the following activities including, but not limited to: approved training and education in site selection, hydrant location and water acquisition; and the proper use, installation and maintenance of the hydrants.

b. Fire departments requesting funding must obtain a certification of training in dry hydrants from the State of Iowa Community Fire Service Institute or another approved training entity. The review committee established in rule 42.6(78GA,SF2428,SF2453) must approve any training entity other than the State of Iowa Community Fire Service Institute proposed for use under this program.

**42.3(3)** All applicants must provide 25 percent match for the project. Match may be cash, in-kind services or a combination of the two.

#### **261—42.4(78GA,SF2428,SF2453) Eligible uses of funds.**

**42.4(1)** Eligible uses of funds for the Response 2020 program include, but are not limited to:

a. Procurement of consultants to assist in planning and assessment.

b. Payment for the costs associated with technical assistance.

c. Purchase of materials necessary to complete an eligible project.

**42.4(2)** Dry hydrant grant program. Eligible uses of funds for the dry hydrant grant program include: purchase of dry hydrant equipment, installation, training and education on the use of dry hydrants.

#### **261—42.5(78GA,SF2428,SF2453) Application procedures.**

Applications will be requested at least annually on a date to be determined by the Iowa department of economic development based on availability of funds. Applications must be submitted on forms prescribed by and available from the Iowa department of economic development. Forms may be obtained by contacting the Iowa Department of Economic Development, Division of Community and Rural Development, 200 East Grand, Des Moines, Iowa 50309, or by calling (515)242-4711.

**42.5(1)** Application contents shall include, but are not limited to: summary of project, description of geographic area served, information about each service included in the project area, financial information (such as organization budget, tax levies, volunteer staff, and paid personnel).

**42.5(2)** Application materials must be postmarked by midnight on the established due date. No faxed materials will be accepted.

#### **261—42.6(78GA,SF2428,SF2453) Application review.**

Applications will be reviewed by a team of no fewer than five members selected from the following organizations: Iowa department of economic development, Iowa Fireman's Association, state fire marshal, Iowa Fire Chiefs Association, Iowa State University Extension, Iowa League of Cities,

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

Iowa Association of Counties, Institute of Public Affairs—University of Iowa, Iowa department of public health.

42.6(1) Scoring criteria for proposals. Applications will be ranked on the following criteria:

- a. Demonstrated need in a given area. Identify proposed service area and show that the area is serviceable by the departments in the area - 125 points possible.
- b. Evidence of cooperation and collaboration among neighboring departments - 125 points possible.
- c. Evidence of local financial and volunteer commitment to the project - 50 points possible.
- d. Evidence of capacity of applicant to implement any resulting action plan - 100 points possible.
- e. Completeness of application with all necessary attachments included - 50 points possible.

42.6(2) Additional information needed for dry hydrant grant program. Before an application under the dry hydrant grant program will be reviewed and scored using the criteria in subrule 42.6(1), the following threshold requirements shall be met:

- a. Identification of proposed service area and evidence that it is serviceable by applicant organizations.
- b. Evidence of availability of suitable, accessible water source in proposed project area.
- c. Demonstrated cooperation and participation among applicant departments and other affected entities within the project area.

261—42.7(78GA,SF2428,SF2453) Disbursement of funds. Upon the execution of a contract between the award recipient and the Iowa department of economic development, recipients may request funds on a reimbursement basis for funds awarded under the Response 2020 program. For funds awarded to dry hydrant projects, 50 percent of the funds may be paid in advance of completed work activities subject to approval by the department of revenue and finance. Remaining funds will be paid by the Iowa department of economic development upon receipt of the following: certification of training, proof of installation, and submission of a work plan to maintain the dry hydrants.

These rules are intended to implement Iowa Code section 15.108(30) and 2000 Iowa Acts, Senate File 2453, section 4, subsection 3, and 2000 Iowa Acts, Senate File 2428, section 1, subsection 3, paragraph "c."

[Filed 9/25/00, effective 11/22/00]  
[Published 10/18/00]

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ARC 0193B

ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 57, "Value-Added Agricultural Products and Processes Financial Assistance Program (VAAPFAP)," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 9, 2000, as ARC 0032B.

The amendments add a definition of "loan guarantee," adopt a new subrule that determines the percent of loan and forgivable loan or grant funds to be included in an award, and rescind the subrule that established the interest rate to be charged for a loan and the repayment terms of an award.

A public hearing to receive comments about the amendments was held on August 29, 2000. No comments were received at the public hearing. Comments were received by several members of the Administrative Rules Review Committee at its September 12, 2000, meeting. Specifically, there was a request to clarify the meaning of "customary legal remedies" in the definition of "loan guarantee" in rule 261—57.2(15E) and a request to specify the standards by which the Department would allow a higher percentage of grant or forgivable loan as detailed in paragraph 57.6(2)"b." These clarifications have been included in the final amendments. To more clearly articulate the policy that the percent of loan and forgivable loan funds awarded will be awarded as described in paragraph 57.6(2)"a," the word "generally" was deleted in the phrase "Grants, forgivable loans, and loans shall generally be awarded on the basis of the following."

The IDED Board adopted these amendments on September 21, 2000.

These amendments will become effective on November 22, 2000.

These amendments are intended to implement Iowa Code sections 15E.111 and 15E.112.

The following amendments are adopted.

ITEM 1. Amend rule 261—57.2(15E) by adopting the following new definition in alphabetical order:

"Loan guarantee" means a guarantee of all or part of a loan made by a commercial lender. Payment of all or a portion of the loan guarantee will occur if the business defaults on its repayment of the loan, provided that the lender has exhausted customary legal remedies in an attempt to secure repayment from the borrower. Customary legal remedies include, but are not limited to, collateral recovery and disposition, foreclosure proceedings, payment from a personal or corporate guarantee.

ITEM 2. Rescind subrule 57.6(2) and adopt the following new subrule in lieu thereof:

57.6(2) Amount.

a. Grants, forgivable loans, and loans shall be awarded on the basis of the following:

Total Amount of Award	Loan %	Grant or Forgivable Loan %
\$0 to 20,000	0%	100%
\$20,001 to 150,000	50%	50%
\$150,001 to 250,000	60%	40%
\$250,001 to 350,000	70%	30%
\$350,001 to 450,000	80%	20%
\$450,001 and above	100%	0%

b. The department reserves the right to provide a higher percentage of loan than indicated above. A higher percentage of grant or forgivable loan may be provided if the business can support its request with documentation that the project would not be able to proceed without a higher ratio of grant or forgivable loan funds or if the project is a strategic initiative established according to subrule 57.4(5).

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ITEM 3. Rescind subrule 57.6(3).

[Filed 9/25/00, effective 11/22/00]

[Published 10/18/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/18/00.

## ARC 0218B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission for the Department of Natural Resources hereby amends Chapter 40, "Scope of Division—Definitions—Forms—Rules of Practice," Chapter 41, "Water Supplies," Chapter 42, "Public Notification, Public Education, Consumer Confidence Reports, Reporting, and Record Maintenance," Chapter 43, "Water Supplies—Design and Operation," and Chapter 83, "Laboratory Certification," Iowa Administrative Code.

Changes to Chapter 40 include an amendment to 40.1(455B) regarding the scope of the division to include Chapter 55, "Aquifer Storage and Recovery Rules." Definitions for the following new terms are adopted: "composite correction program," "comprehensive performance evaluation," "comprehensive technical assistance," "disinfection profile," "enhanced coagulation," "enhanced softening," "filter profile," "GAC10," "haloacetic acids," "maximum residual disinfectant level," "maximum residual disinfectant level goal," "SUVA," and "total organic carbon." Changes to the definitions of the following terms are adopted: "act," "acute health effect," "health advisory," "influenced groundwater," "maximum contaminant level goal," "nonacute health effect," "special irrigation district," and "transient noncommunity water system." The following terms are rescinded: "EPA methods" and "health-based standard." The construction permit application schedule form number is also corrected.

Amendments to Chapter 41 include minor technical corrections; analytical methodology updates; incorporation of the new Environmental Protection Agency (EPA) disinfectants/disinfection byproducts rule requirements; elimination of the surface water treatment requirements (these are moved to Chapter 43), elimination of the reiterated ethylene dibromide and 1,2-dibromo-3-chloropropane requirements in 41.11(455B); and sodium reporting requirements.

Amendments to Chapter 42 include minor technical corrections; adoption of the EPA disinfectants/disinfection byproducts and enhanced surface water treatment rule requirements; elimination of the outdated special lead ban public notice requirement; and elimination of the "variances and exemptions" definition from the consumer confidence reporting requirements.

Amendments to Chapter 43 include minor technical corrections; reorganization of the operation fee subrule to allow the Department to adjust the fees by two cents (\$0.02) per capita to meet the \$350,000 target revenue and charge a late fee of \$100; a requirement that the Commission approve any increases above the 14 cents per capita rate; incorporation of new EPA disinfectants/disinfection byproducts and

interim enhanced surface water treatment rule requirements; and incorporation of the surface water treatment rule requirements now found in 41.7(455B).

Amendments to Chapter 83 include: allowing certified operators to analyze certain parameters (exempting such from the normal certified laboratory requirements); eliminating the exception for the University of Iowa Hygienic Laboratory(UHL); incorporating the newest version of the underground storage tank program laboratory certification manual; correction of the term "heterotrophic plate count"; clarification of the UHL's role as the Department's designated appraisal authority for laboratory certification; new language to allow third parties to provide performance evaluation samples for water supply testing, a new requirement that laboratories annually analyze a performance evaluation sample for each analytical method, new language for the disinfection byproducts quality assurance requirements, and provisions for revocation of a laboratory's certification upon request.

These chapters and the amendments were reviewed by the water supply technical advisory group at two separate meetings. The group is comprised of individuals representing a wide variety of water supply stakeholders, including professional drinking water organizations, certified operators, environmental interests, public water supply owners, and other state agencies.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 14, 2000, as **ARC 9888A**. Six public hearings were held, and one comment was received. The comment and all five questions raised at the hearings have been addressed in a responsiveness summary that is on file in the office of the Administrative Rules Coordinator, Room 11, Capitol Building, and in the Records Section, Department of Natural Resources, Wallace State Office Building, Fifth Floor. There are no changes to the Notice of Intended Action as a result of the public comments; however, there is a change in the implementation sentence of each chapter to make it more specific for the chapter.

These amendments are intended to implement Iowa Code section 17A.3(1)"b" and chapter 455B, division III, part 1.

These amendments will become effective on November 22, 2000.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Chs 40 to 43, 83] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 9888A**, IAB 6/14/00.

[Filed 9/29/00, effective 11/22/00]

[Published 10/18/00]

[For replacement pages for IAC, see IAC Supplement 10/18/00.]

## ARC 0215B

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

These amendments: (1) modify the ammonia nitrogen criteria for aquatic life protection; (2) modify the descriptive basis for the Class C criteria; (3) allow for consideration of total residual chlorine (TRC) demand in the mixing zone; (4) establish procedures for seasonal ammonia limits; (5) modify the critical low stream flows referenced in the standards; (6) modify the stream use designations for several waterbodies; and (7) modify the aquatic life criteria for aluminum, mercury, dieldrin, endrin, lindane, pentachlorophenol, silver and toxaphene.

The rule-referenced document "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, as revised on March 20, 1990, is proposed to be modified to include the applicable provision associated with the seven above-noted amendments. A copy of the document is available from the Department's Record Center at (515) 242-5818. A copy has been filed also with the Administrative Rules Coordinator.

Notice of Intended Action was published on May 17, 2000, in the Iowa Administrative Bulletin as **ARC 9839A**. Six public hearings were held with notice of the hearings sent to various individuals, organizations, associations, interest groups, and to statewide news network organizations. Comments from 15 individuals or organizations were received during the public comment period. A responsiveness summary has been prepared addressing those comments.

The adopted amendments have one modification from those published under Notice. At its September 18, 2000, meeting, the Environmental Protection Commission elected to delete the proposed reclassification of South Cedar Creek near Garnavillo. The Commission's action keeps the current Class B(W) Cold Water use designation for the upper reach of the creek. The Notice had proposed to reclassify the upper reach to Class B(LR) Limited Resource.

These amendments were adopted by the Environmental Protection Commission on September 18, 2000.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments will become effective November 24, 2000.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [61.2, 61.3] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9839A**, IAB 5/17/00.

[Filed 9/29/00, effective 11/24/00]  
[Published 10/18/00]

[For replacement pages for IAC, see IAC Supplement 10/18/00.]

## ARC 0190B

## LABOR SERVICES DIVISION[875]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 88B.3 and 91.6, the Labor Commissioner hereby rescinds Chapter 81, "Asbestos Control Procedures," and Chapter 82, "Licensing of Business Entities, Licensing of Training Courses, and Worker Certification," and adopts new Chapter 155, "Asbestos Removal and Encapsulation," Iowa Administrative Code.

Chapter 155 describes regulation of asbestos removal and encapsulation. The principal reasons for the changes are to reduce the likelihood of fraudulent applications; implement Iowa Code chapters 252J and 261; make rules clearer; make technical changes; provide a fee for issuance of a duplicate license or permit; expand the project records retained by permittees; make rules more consistent with current forms and other requirements; protect workers and the public from asbestos exposure; implement legislative intent; and prohibit training providers from training themselves.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 22, 2000, as **ARC 9741A**. An amended Notice of Intended Action to extend the deadline for submission of written data, views, or arguments on the proposed amendments was published in the Iowa Administrative Bulletin as **ARC 9833A** on May 17, 2000.

These amendments have been changed from the Notice of Intended Action. Applicant training requirements were modified for greater consistency with the Environmental Protection Agency's Model Accreditation Plan for States; editing and technical changes were made; schedules for actions on permit and license applications were amended; changes were made in the rule concerning ten-day notices to better match Department of Natural Resources rules and in response to comments; language was added to clarify that type and quantity of asbestos-containing material must be included on ten-day notices; language was added to clarify that Chapter 155 does not create any exemption, waiver, or variance from any otherwise applicable rule or statute; and a definition of "working days" was added.

These amendments are intended to implement Iowa Code chapters 17A, 88B, 252J and 261.

These amendments will become effective November 22, 2000.

The following amendments are adopted.

ITEM 1. Rescind and reserve **875—Chapters 81 and 82**.

ITEM 2. Adopt the following **new** chapter:

## CHAPTER 155

## ASBESTOS REMOVAL AND ENCAPSULATION

**875—155.1(88B) Definitions.**

"Asbestos" means material containing at least 1 percent by weight of chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos or any combination of these minerals. Chemical treatment or alteration does not exempt the material from this definition.

"Asbestos project" means any activity involving the removal or encapsulation of friable asbestos materials, other releases of asbestos such as by the operation of hand-operated or power-operated tools that may produce or release fibers of asbestos, or other substantial alteration of as-

## LABOR SERVICES DIVISION[875](cont'd)

bestos-containing, nonfriable material. Any activities that do not qualify as construction pursuant to rule 875—150.2(91C) are not asbestos projects.

“Business entity” means a partnership, firm, association, corporation, sole proprietorship, or other business concern. A business entity that uses its own employees in removing or encapsulating asbestos for the purpose of renovating, maintaining or repairing its own facilities is not included.

“Contractor/supervisor” means a person who supervises workers on asbestos projects or a person who enters into contracts to perform asbestos projects and personally completes the work.

“Division” means the division of labor services.

“Friable asbestos material” means any material containing more than 1 percent asbestos by weight and that can be crumbled, pulverized, or reduced to powder by hand pressure when dry.

“Inspector” means a person who inspects for asbestos-containing building materials in a school or a public or commercial building.

“License” means an authorization issued by the division permitting an individual to be employed as a worker, contractor/supervisor, inspector, management planner, or project designer.

“Management planner” means a person who prepares asbestos management plans for a school building.

“Permit” means an authorization issued by the division permitting a business entity to remove or encapsulate asbestos.

“Project designer” means a person who designs asbestos response or maintenance projects for a school or a public or commercial building.

“Worker” means a person who performs response or maintenance activities on one or more asbestos projects.

“Working days” means Monday through Friday including holidays that fall on Monday through Friday. The first working day shall be the date of actual delivery or the postmark date, whichever is earlier. However, documents with Saturday or Sunday postmark dates will be treated as though postmarked on the following Monday.

**875—155.2(88B) Permit application procedures.**

**155.2(1) Application.** To apply for or to renew a permit, a business entity shall submit a completed application, Form 309-6504, to the division. All requested applicable information and attachments must be provided. A \$500 nonrefundable application fee shall accompany each permit application.

**155.2(2) Action on application.** A new permit shall be valid for one year from the date of issuance. A renewal permit shall be valid for one year from the expiration date of the applicant's prior permit. A permit may be denied for the reasons set forth in rule 155.8(17A,88B,252J,261) or if the application package is incomplete. Within 60 days of receiving a completed application package for a new permit, the division will issue a license or deny the application. Within 30 days of receiving a completed application package for a permit renewal, the division will issue a license or deny the application. Applications received after expiration of a prior permit will be considered applications for new permits rather than renewals.

**875—155.3(88B) Other asbestos regulations.** Regulation of encapsulation, removal and abatement procedures are found in 875—Chapters 10 and 26 and 567—Chapter 23. Nothing in this chapter shall be viewed as providing an ex-

emption, waiver, or variance from any otherwise applicable regulation or statute.

**875—155.4(88B) Asbestos project records.** The permittee shall keep a record of each asbestos project it performs and shall make the record available to the division at any reasonable time. Records required by this rule shall be kept for at least six years. The records shall include:

**155.4(1)** The name, address, and license number of the individual who supervised the asbestos project and of each employee or agent who worked on the project.

**155.4(2)** The location and a description of the project and the amount of asbestos material that was removed.

**155.4(3)** The start and completion dates of each instance of removal or encapsulation.

**155.4(4)** A summary of the procedures that were used to comply with all applicable standards.

**155.4(5)** The name and address of each asbestos disposal site where the asbestos-containing waste was deposited.

**155.4(6)** A receipt from the asbestos disposal site indicating the amount of asbestos and disposal date.

**155.4(7)** Copies of reports required by 29 CFR 1926.1101 (k)(3)(iii).

**155.4(8)** Copies of air sampling results or initial negative assessment as required by 29 CFR 1926.1101(c).

**155.4(9)** Material safety data sheets for all solvents used on the asbestos project.

**875—155.5(88B) Ten-day notices.**

**155.5(1) General.** Permittees shall notify the division at least ten working days before an asbestos project begins. A project begins when site preparations for asbestos abatement, encapsulation, or removal begin; when asbestos abatement, encapsulation, or removal begins; or when any demolition begins, whichever is sooner. Facsimile transmissions of ten-day notices shall not be accepted.

**155.5(2) Emergency.** When there is an immediate danger to life, health or property, the permittee may file the notice within five days after beginning the project. An explanation of the emergency must be included.

**155.5(3) Format.** The notice shall be on an 8½" by 11" sheet of paper and shall contain the following information:

a. The name, address, and telephone number of and contact person for the permittee performing the project.

b. The name, address, and telephone number of the project.

c. A description of the structure and work to be performed, including type and quantity of asbestos-containing material.

d. The anticipated dates of the project's start and end.

e. Designation of the asbestos disposal site.

f. The signature and printed name of the person who completed the form.

g. The shift or work schedule on which the project will be performed.

**875—155.6(88B) License application procedures.**

**155.6(1) Forms.** Iowa Form 309-2068 must be used for all new and renewal asbestos license applications. The second page of the form is the respirator fit test and the third page is a physician's certification. Forms from other states may not be substituted for the Iowa form or any part thereof. Respirator fit tests and medical examinations must have occurred within the past 12 months. Only worker and contractor/supervisor license applicants must submit the respirator fit test and physician's certification forms. Photocopies of the forms shall not be accepted.



## LABOR SERVICES DIVISION[875](cont'd)

**155.6(2) Training.** A certificate of appropriate training from a course provider approved for asbestos training by the U.S. Environmental Protection Agency must accompany all applications. Applicants for a license must be trained by training providers other than themselves. Applicants who completed initial training under a prior set of applicable rules will not be required to take another initial training course if they complete annual refresher courses.

**155.6(3) Photographs.** Two passport-sized (1½" by 1½") photographs clearly showing the applicant's face shall accompany all license applications received after November 22, 2000.

**155.6(4) Worker licenses.** All persons seeking a license as an asbestos abatement worker shall complete an initial four-day training course and thereafter complete an annual one-day asbestos abatement worker refresher training course. A nonrefundable fee of \$20 shall accompany the application.

**155.6(5) Contractor/supervisor licenses.** All persons seeking a license as an asbestos abatement contractor/supervisor shall complete an initial five-day training course and thereafter complete an annual one-day asbestos abatement contractor/supervisor refresher training course. A nonrefundable fee of \$50 shall accompany the application.

**155.6(6) Inspector licenses.** All persons seeking a license as an asbestos inspector shall complete an initial three-day training course and thereafter complete an annual one-half-day asbestos inspector refresher training course. A nonrefundable fee of \$20 shall accompany the application.

**155.6(7) Management planner licenses.** All persons seeking a license as an asbestos management planner shall complete an initial three-day inspector training course and an initial two-day management planning training course. Thereafter, an annual one-half-day asbestos inspector refresher training course plus an additional one-half-day course on management planning are required. A nonrefundable fee of \$20 shall accompany the application.

**155.6(8) Abatement project designer licenses.** All persons seeking a license as an asbestos abatement project designer shall complete an initial three-day abatement project designer training course. Thereafter, an annual one-day asbestos abatement project designer refresher training course is required. A nonrefundable fee of \$50 shall accompany the application.

**155.6(9) Action on application.** Within 30 days of receiving a completed application, the division will issue a license or deny the application. If a license is issued, it will expire one year from the date the training was completed. An application may be denied for the reasons set forth in rule 155.8(17A,88B,252J,261) or if the application package is incomplete.

**155.6(10) License on job site.** While conducting asbestos work that requires a license, the license or a legible copy of the license shall be in the licensee's possession at the work site.

**875—155.7(88B) Duplicate permits and licenses.** Duplicate original permits and licenses are available from the division for a \$10 fee.

**875—155.8(17A,88B,252J,261) Denial, suspension and revocation.**

**155.8(1) Grounds.** The division may deny an application or suspend or revoke a permit or license when an investigation reasonably determines any of the following:

a. Fraud or deception was utilized in obtaining or attempting to obtain a permit or license.

b. The qualifications for a permit or license are not met.  
c. Any applicable federal or state standard for removal or encapsulation of asbestos was violated.

d. An unlicensed or untrained person was employed or allowed to work on an asbestos project.

e. The division received a certificate of noncompliance from the college student aid commission or the child support recovery unit of the department of human services.

f. Penalties or other debts are owed by the applicant to the division and are 30 days or more in arrears.

**155.8(2) Relinquishing license or permit.** A licensee or permittee must return the original license or permit to the division when a revocation or suspension becomes final.

**155.8(3) Suspension period.** Unless ordered otherwise, a suspension shall last for 12 months.

### **875—155.9(17A,88B) Contested cases.**

**155.9(1) Scope.** This rule applies to civil penalty assessments and to denials, revocations and suspensions of asbestos licenses and permits.

**155.9(2) Procedures.** The labor commissioner shall serve a notice of intended action by restricted certified mail, return receipt requested, or by other service as permitted by Iowa Code section 17A.8. A notice of contest must be received by the labor commissioner within 20 days after service of the notice of intended action. If a notice of contest is not timely filed, the action stated in the notice of intended action shall automatically be effective. Hearing procedures for asbestos contested cases are set forth in 875—Chapter 1, Division V. However, if a contested case is based on receipt by the division of a certificate of noncompliance, procedures outlined in Iowa Code chapter 252J or 261 shall apply.

These rules are intended to implement Iowa Code chapters 17A, 88B, 252J, and 261.

[Filed 9/19/00, effective 11/22/00]

[Published 10/18/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/18/00.

**ARC 0211B**

## **MEDICAL EXAMINERS BOARD[653]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 272C.3 and 68B.4, the Board of Medical Examiners hereby amends Chapter 10, "Medical Examiners," Iowa Administrative Code.

The Board adopted the amendment to Chapter 10 during its regularly held meeting on September 21, 2000.

The adopted amendment to Chapter 10 establishes a rule that identifies the conditions under which board members may sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the Department of Public Health. The rule specifies the conditions for a proper sale including what can be authorized for sale and the required application process, as well as the limitations of the consent.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 28, 2000, as **ARC 9932A**. A public hearing was held on July 18, 2000. No written or oral

## MEDICAL EXAMINERS BOARD[653](cont'd)

comments were received. This amendment is identical to that published under Notice of Intended Action.

This rule is intended to implement Iowa Code section 68B.4.

This rule will become effective November 22, 2000.

The following amendment is adopted.

Adopt the following new rule:

**653—10.11(68B) Selling of goods or services by members of the board or impaired physician review committee (IPRC).**

**10.11(1)** Application of the rule. The board members and members of the IPRC shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the department except as authorized by this rule.

**10.11(2)** Consent. Consent shall be given by a majority of the members of the board. Consent shall not be given to an official to sell goods or services to an individual, association, or corporation regulated by the department unless all of the following conditions are met:

a. The official requesting consent does not have authority to determine whether consent should be given.

b. The official's duties or functions are not related to the department's regulatory authority over the individual, association or corporation to whom the goods and services are being sold, or the selling of the good or service does not affect the official's duties or functions.

c. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the department.

d. The selling of the good or service does not result in the official's selling a good or service to the department on behalf of the individual, association, or corporation.

**10.11(3)** Authorized sales. Sales may be authorized under the following conditions:

a. A member of the board or IPRC may sell goods or services to any individual, association, or corporation regulated by any division within the department, other than the board or committee on which that official serves. This consent is granted because the sale of such goods or services does not affect the member's duties or functions on the board or IPRC.

b. A member of the board may sell goods or services to any individual, association, or corporation regulated by the board if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale of such goods or services does not affect the board or IPRC member's duties or functions on the board or IPRC, respectively. In the event an individual, association, or corporation regulated by the board, to whom a board or IPRC member sells goods or services is directly involved in any matter pending before the board, including a disciplinary matter, that board or IPRC member shall not participate in any deliberation or decision concerning that matter. In the event a complaint is filed with the board concerning the services provided by the board or IPRC member to a member of the public, that board or IPRC member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case.

c. Individual application and approval are not required for the sales authorized by this rule unless there are unique facts surrounding a particular sale which would cause the sale to affect the seller's duties or functions, would give the buyer an advantage in dealing with the board or IPRC, or would otherwise present a conflict of interest.

**10.11(4)** Application for consent. Prior to selling a good or service to an individual, association, or corporation subject to the regulatory authority of the department, an official must obtain prior written consent unless the sale is specifically allowed in subrule 10.11(3). The request for consent must be in writing and signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale. The application should identify the parties to the sale and the amount of compensation. The application should also explain why the sale should be allowed.

**10.11(5)** Limitation of consent. Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this chapter does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules.

This rule is intended to implement Iowa Code section 68B.4.

[Filed 9/29/00, effective 11/22/00]

[Published 10/18/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/18/00.

## ARC 0213B

### MEDICAL EXAMINERS BOARD[653]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76, 148.13 and 272C.3, the Board of Medical Examiners hereby rescinds Chapter 21, "Physician Assistant Supervision," Iowa Administrative Code, and adopts a new Chapter 21, "Physician Eligibility to Supervise a Physician Assistant," Iowa Administrative Code.

The Board adopted Chapter 21 during a telephone conference call on September 28, 2000.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 23, 2000, as **ARC 0064B**. As a result of public comment, these rules are revised from those published under Notice as follows:

- A physician with a temporary or special license in Iowa is eligible to supervise a physician assistant.
- Proposed 21.2(3), under which a physician that assigned a physician assistant to perform tasks not common to the physician's practice was determined ineligible, was replaced with wording that currently is in effect.
- An exception is provided for those physicians working in federal facilities.
- The catchwords of 21.3(148,272C) were changed for clarity.

The adopted chapter establishes:

- A physician's authority to supervise a physician assistant;
- Terms under which a physician is deemed ineligible to supervise a physician assistant;

## MEDICAL EXAMINERS BOARD[653](cont'd)

- Criteria for determining a physician's ineligibility to supervise a physician assistant;
- Grounds for disciplinary action against a physician who supervises a physician assistant;
  - The disciplinary sanction the Board may impose on a physician who supervises a physician assistant; and
  - The communication that the Board expects from the physician to the physician assistant supervisees when the physician becomes ineligible to supervise a physician assistant.

These rules are intended to implement Iowa Code sections 148.13 and 272C.3.

These rules will become effective November 22, 2000.

The following amendment is adopted.

Rescind 653—Chapter 21 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 21

PHYSICIAN ELIGIBILITY TO SUPERVISE  
A PHYSICIAN ASSISTANT

**653—21.1(148,272C) Authority to supervise a physician assistant.** A physician with an active permanent, special, or temporary Iowa license who is actively engaged in the practice of medicine in Iowa may supervise a physician assistant.

NOTE: A physician licensed in another state and working for a federal facility is exempt from this chapter when the physician is supervising a physician assistant in a federal facility in Iowa.

**653—21.2(148,272C) Ineligibility determinants.** A physician is ineligible to supervise a physician assistant for any of the following reasons:

**21.2(1)** The physician does not hold an active, permanent Iowa license.

**21.2(2)** The physician is not actively practicing medicine in Iowa.

**21.2(3)** The physician does not have sufficient training or experience to supervise a physician assistant in the area of medical practice in which a physician assistant is to be utilized.

**21.2(4)** The physician is subject to a disciplinary order of the board that restricts the physician from supervising a physician assistant.

**653—21.3(148,272C) Criteria for determining a physician's eligibility or ineligibility to supervise a physician assistant.**

**21.3(1)** The board deems the following person eligible to supervise a physician assistant: a physician who has a current active permanent, special, or temporary Iowa license, actively practices medicine in Iowa, and has no current disciplinary order or restriction by the board against the licensee supervising a physician assistant.

**21.3(2)** The board shall allow the board of physician assistant examiners to accept a copy of a current active permanent, special, or temporary Iowa license and a physician's attestation of eligibility as proof of eligibility to supervise a physician assistant.

**21.3(3)** The board deems a physician who does not actively practice medicine in Iowa as ineligible to supervise until the physician practices medicine with patients in Iowa on a regular basis. Part-time, voluntary practice with patients in Iowa meets the eligibility requirement.

**21.3(4)** The board deems a physician who has a lapsed, delinquent, inactive, or resident license as ineligible to su-

pervise until the physician is issued a current active permanent, special, or temporary Iowa license by the board.

**653—21.4(148, 272C) Grounds for discipline.** A physician may be subject to disciplinary action for supervising a physician assistant in violation of these rules or the rules found in 653—Chapter 12 or 645—Chapter 325, which relate to duties and responsibilities for physician supervision of physician assistants.

**653—21.5(148,272C) Disciplinary sanction.** The board may restrict or rescind a physician's authority to supervise a physician assistant as part of a disciplinary sanction following a contested case proceeding, if the reason for the disciplinary action impacts the ability of the physician to supervise a physician assistant. The board shall notify the board of physician assistant examiners when it takes a disciplinary action against a physician's license that affects the physician's eligibility to supervise a physician assistant.

**653—21.6(148,272C) Communication with physician assistant supervisees.** The physician shall notify all physician assistant supervisees within one workday upon receiving disciplinary action from the board or any other change in status that affects the physician's eligibility to supervise a physician assistant.

These rules are intended to implement Iowa Code sections 148.13 and 272C.3.

[Filed 9/29/00, effective 11/22/00]

[Published 10/18/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/18/00.

## ARC 0222B

PROFESSIONAL LICENSURE  
DIVISION[645]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Nursing Home Administrators hereby amends Chapter 141, "Licensure of Nursing Home Administrators," and adopts Chapter 143, "Continuing Education for Nursing Home Administration," Iowa Administrative Code.

The amendments rescind the current chapter on continuing education, adopt a new chapter on the same subject and renumber the rules regarding grounds for discipline.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 26, 2000, as **ARC 9999A**. A public hearing was held on August 15, 2000, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa. No public comments were received at the hearing.

Two changes have been made to the Notice of Intended Action.

- A list of items to include in the sponsor's report was added to subrule 143.4(1). New paragraph 143.4(1)"e" now reads as follows:

"e. The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall include:

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- (1) Date(s), location, course title(s) offered and outline of content;
- (2) Total hours of instruction presented;
- (3) Names and qualifications of instructors including résumés or vitae;
- (4) Evaluation form(s); and
- (5) A summary of the evaluations completed by the licensees."

- In rule 143.8(272C), for clarification, the word "waiver" has been changed to "exemption" for inactive practitioners.

These amendments were adopted by the Board of Examiners for Nursing Home Administrators on September 21, 2000.

These amendments will become effective on November 22, 2000.

These amendments are intended to implement Iowa Code section 147.76 and chapter 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [141.10, 141.12, Ch 143] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 9999A**, IAB 7/26/00.

[Filed 9/29/00, effective 11/22/00]  
[Published 10/18/00]

[For replacement pages for IAC, see IAC Supplement 10/18/00.]

**ARC 0189B****RACING AND GAMING  
COMMISSION[491]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99D.7, the Racing and Gaming Commission hereby adopts amendments to Chapter 8, "Mutuel Department," rescinds Chapter 10, "Thoroughbred Racing," and adopts a new Chapter 10,

"Thoroughbred and Quarter Horse Racing," Iowa Administrative Code.

Item 1 removes a duplicative provision from Chapter 8.

Item 2 puts in place a new thoroughbred and quarter horse racing chapter. Many of the rules in the current Chapter 10 are reorganized within the new chapter. Redundant rules have been removed and some rules have been rewritten to reflect current practice.

Notice of Intended Action was published in the August 9, 2000, Iowa Administrative Bulletin as **ARC 0029B**. A public hearing was held on August 30, 2000. No comments were received.

There were two changes from the Notice. Numbered paragraph 10.6(18)"a"(1)"1" was amended for clarification. The paragraph now reads as follows:

1. Is a licensed owner at the meeting who either has foal paper(s) registered with the racing secretary's office or has started a horse at the meeting. A temporary horse owner's license is not valid for claiming purposes; or

Subparagraph 10.7(1)"d"(1) was also amended for clarification, and now reads as follows:

- (1) No person shall administer, cause to be administered, or participate or attempt to participate in any way in the administration of, any medication, drug, foreign substance, or treatment by any route to a horse registered for racing on the day of the race prior to the race in which the horse is entered.

These amendments are intended to implement Iowa Code chapter 99D.

These amendments will become effective November 22, 2000.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [8.3(12)"h," Ch 10] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 0029B**, IAB 8/9/00.

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