



IOWA ADMINISTRATIVE BULLETIN

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Pages 825 to 924

CONTENTS IN THIS ISSUE

Pages 841 to 922 include **ARC 0297B** to **ARC 0337B**

AGENDA

Administrative Rules Review Committee 830

ALL AGENCIES

Schedule for rule making 828
Publication procedures 829
Administrative rules on CD-ROM 829
Agency identification numbers 839

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]"umbrella"

Filed, Superintendent—appointment of
assistants, 1.3(1)"b" **ARC 0304B** 896

CITATION OF ADMINISTRATIVE RULES 827

EMPOWERMENT BOARD, IOWA[349]

Notice, Iowa empowerment board, 1.2,
1.4 to 1.7, 1.10, 1.12, 1.13(2), 1.16,
1.19, 1.23, 1.25, 1.26(1), 1.28, 1.29, 1.31
ARC 0331B 841

ENGINEERING AND LAND SURVEYING

EXAMINING BOARD[193C]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Notice, Licensure by comity, 1.4 **ARC 0330B** 844

HUMAN SERVICES DEPARTMENT[441]

Notice, Child care assistance overpayments,
7.1, 7.5(9), 11.1, 93.151, 170.1, 170.9
ARC 0310B 845

Notice Terminated, Increase in RCF
reimbursement rate, 52.1(3) **ARC 0311B** 848

Notice, HCBS physical disability waivers,
83.102, 83.109(1) **ARC 0312B** 848

Filed, Reimbursement rate—SSA residential
care facilities and in-home health related
care, 52.1(3), 177.4 **ARC 0305B** 896

Filed, Refugee cash assistance—date of entry
for asylees, 60.7 **ARC 0306B** 897

Filed, Eligibility for Medicaid—transfer of
assets, 75.23(8), 89.3, 89.10 **ARC 0307B** 898

Filed, Medicare and Medicaid reimbursements—
critical access hospitals, 79.1 **ARC 0308B** 899

Filed, Dependent adult abuse, 176.3(1), 176.6,
176.10, 176.13, 176.15(2) **ARC 0309B** 900

INFORMATION TECHNOLOGY

DEPARTMENT[471]

Notice, Contested cases, ch 6 **ARC 0297B** 849

Notice, Waivers, ch 7 **ARC 0328B** 857

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Notice, Financial information regulation,
ch 90 **ARC 0325B** 859

Filed Emergency, Financial information
regulation, ch 90 **ARC 0334B** 886

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Filed, Supervision of pharmacists who
administer adult immunizations, 13.3
ARC 0301B 902

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Filed, State parks and recreation areas, ch 61
ARC 0337B 903

Filed, Fishing—method of take, 81.2(11)
ARC 0336B 914

Filed, Wild turkey spring hunting, 98.1(1),
98.3, 98.5, 98.14, 98.16 **ARC 0335B** 915

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Filed Emergency, License renewal
application, 3.7(3), 5.2(3) **ARC 0332B** 893

Filed, Waiver and variance rules, ch 15
ARC 0333B 917

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Notice, Controlled substances—registration
and reregistration fee, 10.3 **ARC 0298B** 859

Filed, Supervision of pharmacists who
administer adult immunizations, 8.33
ARC 0329B 917

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Continued on page 827

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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Telephone: (515)242-5120**

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Notice, Licensure of cosmetologists, electrologists, estheticians, manicurists, nail technologists, and instructors of cosmetology arts and sciences; fees, chs 60, 62 **ARC 0319B** 860
- Notice, Continuing education for cosmetology arts and sciences, ch 64, 65.1, 65.12 **ARC 0320B** 864
- Filed, Barber examiners, 20.12, 20.101 to 20.105, 20.107 to 20.113, 20.200, 20.212, 20.214, ch 23 **ARC 0322B** 918
- Filed, Physical therapists and physical therapist assistants, 200.3(1), 200.5(2), 200.9 to 200.15, 200.23, 200.24, 202.6(2), 202.7 to 202.15, 202.23, ch 303 **ARC 0318B** 919
- Filed, Occupational therapists and occupational therapy assistants, 201.1, 201.4, 201.5(1), 201.7(2), 201.8 to 201.17, 201.24, ch 207 **ARC 0317B** 919
- Filed, Speech pathologists and audiologists, 300.8 to 300.11, 301.1 to 301.7, 301.112, ch 303 **ARC 0321B** 919

PUBLIC HEALTH DEPARTMENT[641]

- Notice, EMS—service program authorization, 132.1, 132.2 **ARC 0326B** 868
- Filed Emergency, Iowa fatality review committee, ch 92 **ARC 0327B** 894

PUBLIC HEARINGS

- Summarized list 834

PUBLIC SAFETY DEPARTMENT[661]

- Filed, Fees for performance of plan reviews, 16.131(2) **ARC 0314B** 920
- Filed, Elevator exemption—apartment buildings less than four stories, 16.705(3) **ARC 0313B** 921

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Filed, Registration fees—certified general and certified residential appraisers, 10.1 **ARC 0323B** 921

REVENUE AND FINANCE DEPARTMENT[701]

- Notice, Individual and corporate income tax; income tax withholding, 39.1, 39.12, 40.3, 40.47, 40.53(1), 40.55, 42.2(10), 42.14, 46.1(2), 52.7, 52.10(3), 52.14, 52.17 **ARC 0315B** 869
- Filed, Sale or rental of information services, 17.36 **ARC 0316B** 922

SUBSTANCE ABUSE COMMISSION[643]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Notice, Regions for substance abuse prevention and treatment, ch 9 **ARC 0324B** 877

TRANSPORTATION DEPARTMENT[761]

- Notice, Consent for sale of goods and services, 26.1, 26.4(2) **ARC 0300B** 878
- Notice, Special permits for operation and movement of vehicles and loads of excess size and weight, 511.1 to 511.15 **ARC 0299B** 878

TREASURER OF STATE

- Notice—Public funds interest rates 883

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Notice, Foreign acquisitions, 32.2(4) **ARC 0302B** 883
- Notice, Negotiated interconnection agreements, 38.7(4) **ARC 0303B** 884

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> |
|---------------------|----------------------------|-------------------|
| 13 | Friday, December 8, 2000 | December 27, 2000 |
| 14 | Friday, December 22, 2000 | January 10, 2001 |
| 15 | Friday, January 5, 2001 | January 24, 2001 |

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
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

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.

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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, December 12, 2000, at 9:30 a.m. in Room 118, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]"umbrella"

Assistants to the superintendent of banking, 1.3(1)"b," Filed **ARC 0304B** 11/29/00

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Registration of dental assistants, 1.1, 6.13(2)"b" to "e," 6.14(2), 6.14(4) to 6.14(8), 10.1, 10.2, 14.3, 14.5, 15.1(12) to 15.1(14), 15.2(6) to 15.2(8), 15.3, 15.4, 21.1, 22.8(3), 22.9(1), 22.9(2), 25.1, 25.2, 25.2(4) to 25.2(7), 25.2(10), 25.3(1), 25.3(2), 25.3(4) to 25.3(7), 25.4(3), 25.6 to 25.10, 27.1(3), 27.5, 27.6, 30.2"1" to "3," 30.3"7," 30.4"1," "2," "4," "6," "15," "19," "21," "22," "24," "30," "32," "34," "39," "43," and "44," 31.1, 31.2"2," 31.6, 31.7(1), 31.7(3), 31.10 to 31.14, 32.2, 32.3(1), 32.3(2), 33.1 to 33.3, 34.1 to 34.3, Filed **ARC 0264B** 11/15/00

Dental hygienists—administration of nitrous oxide inhalation analgesia, 1.1, 10.3(1), 29.6(4), 29.6(5), Notice **ARC 0255B** 11/15/00

Waivers, 7.1, 7.2, 7.4, 7.5, 15.5, 27.12, 30.4, Notice **ARC 0261B** 11/15/00

Resident dental licenses and faculty permits—application requirements, 13.1, 13.2, Notice **ARC 0260B** 11/15/00

Prescribing, administering, and dispensing drugs, 16.1, 16.2(2), 16.2(4), 16.2(5), 16.3(2), 16.3(3), 16.3(6), 16.4(1), 16.4(2)"5," 16.5(2) to 16.5(4), 16.6, 16.7, 16.7(1), Notice **ARC 0259B** 11/15/00

Examination not required for patients who receive fluoride, 16.2(2), Filed Emergency **ARC 0262B** 11/15/00

Dental assistants, ch 20, Filed **ARC 0263B** 11/15/00

Advertising—disclosure of payment by a dentist, 26.1, Notice **ARC 0258B** 11/15/00

Oral and maxillofacial pathology; accreditation, 28.1, 28.2(2)"b," 28.3(2)"b," 28.4, 28.5(2)"c," 28.6(2)"b," 28.7(2)"b," 28.8(2)"b," 28.9(2)"b," Notice **ARC 0257B** 11/15/00

Deep sedation/general anesthesia, conscious sedation and nitrous oxide inhalation analgesia, 29.5(5), 29.10(2)"d," Notice **ARC 0256B** 11/15/00

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Certified school to career program, 11.2, 11.3(3), 11.3(5), 11.3(8), 11.3(10)"g," Filed **ARC 0267B** 11/15/00

Accelerated career education (ACE) program, ch 20, Filed Emergency After Notice **ARC 0269B** 11/15/00

Emergency shelter grants program, 24.2, 24.3, 24.4"1," 24.6, 24.7, 24.10(6), 24.12(4), Notice **ARC 0266B** 11/15/00

Homeless shelter operation grants program, 29.2, 29.4"1," 29.6, 29.7, 29.10"5," 29.11(4), 29.12, Notice **ARC 0265B** 11/15/00

Community economic betterment program; brownfield redevelopment program, 53.8(3)"F"(3), ch 65, Filed **ARC 0268B** 11/15/00

Community attraction and tourism development program, ch 211, title and parenthetical implementations, 211.1 to 211.6, 211.7(1), 211.7(3), 211.8 to 211.10, 211.10(2), 211.10(3), 211.11(1), 211.11(5), 211.11(8), Filed **ARC 0271B** 11/15/00

Vision Iowa program; vision Iowa board: uniform waiver and variance rules, chs 212 and 213, Filed **ARC 0270B** 11/15/00

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Waivers or variances from administrative rules, ch 6, Notice **ARC 0291B** 11/15/00

Adding endorsements to licenses, 14.6, Notice **ARC 0289B** 11/15/00

Requirements for a professional administrator's license, 14.14, Notice **ARC 0290B** 11/15/00

Requirements for a one-year conditional license, 14.15, Filed **ARC 0292B** 11/15/00

Requirements for a two-year conditional license, 14.16, Filed **ARC 0296B** 11/15/00

Elementary and secondary school counselor competencies, 14.20(5), 14.20(6), Filed **ARC 0293B** 11/15/00

Reinstatement of general science endorsement, 14.21(17)"e," Filed **ARC 0294B** 11/15/00

Two-year administrator exchange license, 14.25, Filed **ARC 0295B** 11/15/00

Behind-the-wheel driving instructor authorization, ch 21, Notice **ARC 0287B**, also Filed Emergency **ARC 0288B** 11/15/00

EDUCATION DEPARTMENT[281]

Certified school to career program, ch 48 title, 48.2 to 48.4, Filed **ARC 0252B** 11/15/00

Supplementary weighting plan for at-risk students, 97.1, 97.2, 97.2(4), 97.2(5), 97.2(6)"1," 97.2(8), 97.3, Filed **ARC 0253B** 11/15/00

Vision Iowa school infrastructure program, ch 100, Filed Emergency After Notice **ARC 0254B** 11/15/00

EMPOWERMENT BOARD, IOWA[349]

Empowerment boards, 1.2, 1.4 to 1.6, 1.7(1), 1.7(6)"d," 1.7(7) to 1.7(11), 1.10(7), 1.10(9) to 1.10(12), 1.12(1), 1.12(3), 1.13(2), 1.16(1)"a," 1.16(3), 1.16(4), 1.19, 1.23(5), 1.23(6), 1.25, 1.26(1), 1.28, 1.29, 1.31, Notice **ARC 0331B** 11/29/00

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"Licensure by comity, 1.4(5) to 1.4(7), Notice **ARC 0330B** 11/29/00**ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Federal effluent and pretreatment standards—references updated, 60.2, 62.4, 62.4(37),
62.4(41), 62.4(42), 62.4(44), 62.4(45), 62.5, 63.1(1)"a," Filed Without Notice **ARC 0277B** 11/15/00

Animal feeding operations, proposed amendments to ch 65, Notice **ARC 0278B** 11/15/00

Solid waste comprehensive planning requirements, rescind chs 101 and 109, adopt new ch 101, Notice **ARC 0279B** 11/15/00

HUMAN SERVICES DEPARTMENT[441]

Child care assistance overpayments, 7.1, 7.5(9), 11.1, 93.151, 170.1,170.9, Notice **ARC 0310B** 11/29/00

Tobacco settlement fund risk pool funding, ch 25 division VI, 25.71 to 25.77, Filed **ARC 0272B** 11/15/00

State supplementary assistance (SSA)—increase in maximum rate for residential care facilities,
52.1(3), Notice **ARC 0251B** Terminated **ARC 0311B** 11/29/00

State supplementary assistance (SSA) residential care facility (RCF) and in-home
health-related care (IHHRC) reimbursement rates, 52.1(3), 177.4(3), 177.4(7), 177.4(8)"b," Filed **ARC 0305B** 11/29/00

Refugee cash assistance, 60.7, 60.7(2)"d," Filed **ARC 0306B** 11/29/00

Medicaid—transfer of assets, 75.23(8), 89.3"5" and "9," 89.10, Filed **ARC 0307B** 11/29/00

Reimbursement rates for critical access hospitals, 79.1(1)"g," 79.1(2),
79.1(5)"a" and "aa," Filed **ARC 0308B** 11/29/00

Medicaid waiver services, 83.102(1)"g," 83.102(3), 83.102(5)"b," 83.102(7), 83.109(1), Notice **ARC 0312B** 11/29/00

Payments for foster care and foster parent training, 156.11(2), 156.18(3), Notice **ARC 0273B** 11/15/00

Dependent adult abuse, 176.3(1)"b," 176.6(4), 176.6(10), 176.10(1), 176.10(2),
176.10(3)"e"(8) and (9), 176.10(4), 176.10(5), 176.10(8) to 176.10(10),
176.13(1) to 176.13(3), 176.15(2)"c" and "e," Filed **ARC 0309B** 11/29/00

INFORMATION TECHNOLOGY DEPARTMENT[471]

Contested cases, ch 6, Notice **ARC 0297B** 11/29/00

Waivers, ch 7, Notice **ARC 0328B** 11/29/00

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Elimination of lifetime maximum benefit for transplant coverage under small group and individual
guaranteed issue standard health benefit plans; elimination of reporting to health data commission,
5.90, 71.14(8), 75.10(5), Filed **ARC 0285B** 11/15/00

Financial information regulation, ch 90, Notice **ARC 0325B**, also Filed Emergency **ARC 0334B** 11/29/00

IOWA FINANCE AUTHORITY[265]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]"umbrella"

Private activity bond allocation, 8.1, 8.3 to 8.5, 8.9, 8.10, Notice **ARC 0286B** 11/15/00**LAW ENFORCEMENT ACADEMY[501]**

Decertification or suspension actions against a law enforcement officer certification, 1.1, 5.1(5), 5.1(9),
6.2(2)"a" and "e," 6.3(2), Notice **ARC 0276B** 11/15/00

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Supervision of pharmacists who administer adult immunizations, 13.3, Filed **ARC 0301B** 11/29/00**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

State parks and recreation areas, ch 61, Filed **ARC 0337B** 11/29/00

Fishing—method of take, 81.2(11), Filed **ARC 0336B** 11/29/00

Wild turkey spring hunting, 98.1(1), 98.3, 98.5, 98.14, 98.16, Filed **ARC 0335B** 11/29/00

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

License renewal application, 3.7(3), 5.2(3)"e," Filed Emergency **ARC 0332B** 11/29/00

Waiver and variance rules, ch 15, Filed **ARC 0333B** 11/29/00

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Supervision of pharmacists who administer adult immunizations, 8.33, Filed **ARC 0329B** 11/29/00
 Registration and reregistration fee, 10.3, 10.3(2), Notice **ARC 0298B** 11/29/00

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Barber examiners, 20.12, 20.101 to 20.104, 20.104"25," 20.105, 20.107 to 20.113, 20.200, 20.212, 20.214, ch 23, Filed **ARC 0322B** 11/29/00
 Cosmetology arts and sciences examiners, chs 60 and 62, Notice **ARC 0319B** 11/29/00
 Cosmetology arts and sciences examiners, ch 64, 65.1, 65.12, Notice **ARC 0320B** 11/29/00
 Physical therapists and physical therapist assistants, 200.3(1)"b"(1), 200.5(2), 200.9(1), 200.9(2), 200.10, 200.10(7)"c"(7), 200.10(8), 200.10(15), 200.11, 200.11(1), 200.11(2), 200.11(4), 200.12 to 200.15, 200.23, 200.24, 202.6(2), 202.7, 202.7(1), 202.7(2), 202.8, 202.8(7)"h," 202.9 to 202.15, 202.23, ch 203, Filed **ARC 0318B** 11/29/00
 Occupational therapists and occupational therapy assistants, 201.1, 201.4(1), 201.4(2), 201.5(1)"d," 201.7(2), 201.8, 201.8(3), 201.9, 201.9(3), 201.9(4), 201.9(6), 201.9(8), 201.10, 201.10(8), 201.11 to 201.17, 201.24, ch 207, Filed **ARC 0317B** 11/29/00
 Speech pathology and audiology examiners, 300.8 to 300.11, ch 301 title, 301.1 to 301.7, 301.112, ch 303, Filed **ARC 0321B** 11/29/00
 Physician assistant examiners, 325.4(1)"a"(2), 325.5(1)"d," 325.5(3)"c" to "e," 325.19, ch 328, Notice **ARC 0275B** 11/15/00

PUBLIC HEALTH DEPARTMENT[641]

- Iowa fatality review committee, ch 92, Filed Emergency **ARC 0327B** 11/29/00
 Emergency medical services—service program authorization, 132.1, 132.2, Notice **ARC 0326B** 11/29/00
 Trauma care system—references updated, 134.2(3), 134.2(5), 135.2(1)"a," Notice **ARC 0274B** 11/15/00

PUBLIC SAFETY DEPARTMENT[661]

- Fees for plan reviews by building code bureau, 16.131(2)"c" and "d," Filed **ARC 0314B** 11/29/00
 Apartment buildings less than four stories—elevator exemption, 16.705(3)"a," Filed **ARC 0313B** 11/29/00

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

- Registration fees—certified general and certified residential appraisers, 10.1, Filed **ARC 0323B** 11/29/00

REVENUE AND FINANCE DEPARTMENT[701]

- Rate of interest on interest-bearing taxes—calendar year 2001, 10.2(20), Notice **ARC 0280B** 11/15/00
 Livestock ear tags sold by nonprofit organizations; sales to nonprofit hospitals; Internet access charges, 17.35, 18.20(5), 18.59, Filed **ARC 0282B** 11/15/00
 Sale or rental of information services, 17.36, Filed **ARC 0316B** 11/29/00
 Casual sales, 18.28(1), 18.28(2), Notice **ARC 0281B** 11/15/00
 Exclusion from tax for property delivered by certain media, 18.61, Filed **ARC 0284B** 11/15/00
 Individual income tax; corporate income tax, 39.1(2)"d," 39.1(3)"d," 39.12, 40.3"6," "22" and "23," 40.47, 40.53(1), 40.55, 42.2(10), 42.14, 46.1(2)"i," 52.7(3) to 52.7(5), 52.10(3), 52.14"3," 52.17, Notice **ARC 0315B** 11/29/00
 Unfair cigarette sales—minimum price, discounts, redemption of coupons, 84.2, 84.4, Filed **ARC 0283B** 11/15/00

SUBSTANCE ABUSE COMMISSION[643]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Regions of substance abuse prevention and treatment, ch 9, Notice **ARC 0324B** 11/29/00

TRANSPORTATION DEPARTMENT[761]

- Consent for the sale of goods and services, 26.1, 26.4(2), Notice **ARC 0300B** 11/29/00
 Special permits for operation and movement of vehicles and loads of excess size and weight, 511.1, 511.2(1), 511.2(3), 511.2(4), 511.3(3), 511.3(4), 511.3(7), 511.4, 511.4(1)"a," 511.4(2)"a" and "b," 511.4(3)"a," 511.5(2) to 511.5(9), 511.5(9)"b"(4), 511.6(1)"a," 511.7, 511.7(1)"b" and "d," 511.7(2), 511.7(3), 511.7(4)"b" and "d," 511.7(5)"d" and "e," 511.7(6)"d," 511.8, 511.9, 511.9(1)"b" and "d," 511.9(2), 511.9(3), 511.9(4)"b" and "d," 511.9(5)"d" and "e," 511.9(6)"d," 511.10, 511.10(2), 511.11, 511.11(1)"b" and "d," 511.11(3)"b" and "d," 511.11(4)"b" and "d," 511.11(5)"d," 511.12, 511.13, 511.13(2), 511.14, 511.15(2)"a" and "j," Notice **ARC 0299B** 11/29/00

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Foreign acquisitions, 32.2(4), Notice **ARC 0302B** 11/29/00
 Negotiated interconnection agreements, 38.7(4), Notice **ARC 0303B** 11/29/00

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. Cay 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
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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 |
|---|--|---------------------------------|
| DENTAL EXAMINERS BOARD[650] | | |
| Dental hygienists—administration of nitrous oxide inhalation analgesia, 1.1, 10.3(1), 29.6 IAB 11/15/00 ARC 0255B | Conference Room Suite D 400 SW 8th St. Des Moines, Iowa | December 5, 2000 3 to 4 p.m. |
| Waivers; exemptions from waiver rule, 7.1, 7.2, 7.4, 7.5, 15.5, 27.12, 30.4 IAB 11/15/00 ARC 0261B | Conference Room Suite D 400 SW 8th St. Des Moines, Iowa | December 5, 2000 2 to 3 p.m. |
| Resident dental licenses and faculty permits—application requirements, 13.1, 13.2 IAB 11/15/00 ARC 0260B | Conference Room Suite D 400 SW 8th St. Des Moines, Iowa | December 5, 2000 2 to 3 p.m. |
| Prescribing, administering, and dispensing drugs, 16.1 to 16.7 IAB 11/15/00 ARC 0259B | Conference Room Suite D 400 SW 8th St. Des Moines, Iowa | December 5, 2000 2 to 3 p.m. |
| Disclosure of payment for advertising, 26.1 IAB 11/15/00 ARC 0258B | Conference Room Suite D 400 SW 8th St. Des Moines, Iowa | December 5, 2000 2 to 3 p.m. |
| Oral and maxillofacial pathology; accreditation, 28.1 to 28.9 IAB 11/15/00 ARC 0257B | Conference Room Suite D 400 SW 8th St. Des Moines, Iowa | December 5, 2000 2 to 3 p.m. |
| Renewal of permits for deep sedation/ general anesthesia, 29.5(5), 29.10(2) IAB 11/15/00 ARC 0256B | Conference Room Suite D 400 SW 8th St. Des Moines, Iowa | December 5, 2000 2 to 3 p.m. |
| ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] | | |
| Emergency shelter grants program, 24.2, 24.3, 24.6, 24.7, 24.10(6), 24.12(4) IAB 11/15/00 ARC 0266B | Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa | December 5, 2000 1:30 p.m. |
| Homeless shelter operation grants program, 29.1 to 29.12 IAB 11/15/00 ARC 0265B | Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa | December 5, 2000 2 p.m. |

EDUCATIONAL EXAMINERS BOARD[282]

| | | |
|--|--|-------------------------------|
| Waivers or variances from administrative rules, ch 6 IAB 11/15/00 ARC 0291B | Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa | December 5, 2000 1 p.m. |
| Adding endorsements to licenses, 14.6 IAB 11/15/00 ARC 0289B | Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa | December 5, 2000 2 p.m. |
| Requirements for a professional administrator's license, 14.14 IAB 11/15/00 ARC 0290B | Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa | December 5, 2000 2:30 p.m. |
| Behind-the-wheel driving instructor authorization, 21.1 to 21.6 IAB 11/15/00 ARC 0287B (See also ARC 0288B) | Room 3 South, Third Floor Grimes State Office Bldg. Des Moines, Iowa | December 5, 2000 1:30 p.m. |

ENVIRONMENTAL PROTECTION COMMISSION[567]

| | | |
|---|---|---------------------------------------|
| Animal feeding operations, ch 65, amendments to be proposed IAB 11/15/00 ARC 0278B | Lower Conference Room Sioux Center Public Library 327 First Ave. NE Sioux Center, Iowa | December 12, 2000 7 p.m. |
| | First National Bank Bldg. 211 First Ave. NW Hampton, Iowa | December 13, 2000 7 p.m. |
| | Room 101 Iowa Western Community College 906 Sunnyside Ln. Atlantic, Iowa | December 18, 2000 6:30 p.m. |
| | Conference Room—2nd Floor Wallace State Office Bldg. Des Moines, Iowa | December 19, 2000 1 p.m. |
| | Marland Room, Iowa Hall—2nd Floor Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa | December 20, 2000 1:30 p.m. |
| Solid waste comprehensive planning requirements, rescind chs 101, 109; adopt ch 101 IAB 11/15/00 ARC 0279B (ICN Network) | IDED 200 E. Grand Ave. Des Moines, Iowa | December 8, 2000 1:30 to 4:30 p.m. |
| | Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa | December 8, 2000 1:30 to 4:30 p.m. |
| | Northern Trails AEA 2 9184B 265th St. Clear Lake, Iowa | December 8, 2000 1:30 to 4:30 p.m. |
| | Spencer High School 800 E. Third St. Spencer, Iowa | December 8, 2000 1:30 to 4:30 p.m. |

ENVIRONMENTAL PROTECTION COMMISSION[567]
(ICN Network) (Cont'd)

| | |
|---|---------------------------------------|
| Fort Dodge High School 819 N. 25th St. Fort Dodge, Iowa | December 8, 2000 1:30 to 4:30 p.m. |
| Iowa City Public Library 123 S. Linn St. Iowa City, Iowa | December 8, 2000 1:30 to 4:30 p.m. |
| Indian Hills Community College 651 Indian Hills Dr. Ottumwa, Iowa | December 8, 2000 1:30 to 4:30 p.m. |

HUMAN SERVICES DEPARTMENT[441]

| | | |
|--|--|--------------------------------|
| Child care assistance program, 7.1, 7.5(9), 11.1, 93.151, 170.1, 170.9 IAB 11/29/00 ARC 0310B | Seventh Floor Conference Room Suite 600, Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa | December 21, 2000 10 a.m. |
| | CPI Conference Room 417 E. Kaneshville Blvd. Council Bluffs, Iowa | December 21, 2000 8 a.m. |
| | Large Conference Room Fifth Floor, Bicentennial Bldg. 428 Western Davenport, Iowa | December 20, 2000 10 a.m. |
| | Conference Room 104 City View Plaza 1200 University Des Moines, Iowa | December 20, 2000 10 a.m. |
| | Liberty Room, Mohawk Square 22 N. Georgia Ave. Mason City, Iowa | December 20, 2000 10 a.m. |
| | Conference Room 3 120 E. Main Ottumwa, Iowa | December 20, 2000 1 p.m. |
| | Fifth Floor 520 Nebraska St. Sioux City, Iowa | December 20, 2000 1:30 p.m. |
| | Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa | December 20, 2000 3 p.m. |

INFORMATION TECHNOLOGY DEPARTMENT[471]

| | | |
|---|--|-----------------------------------|
| Contested cases, ch 6 IAB 11/29/00 ARC 0297B | Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa | December 19, 2000 9 to 10 a.m. |
|---|--|-----------------------------------|

INFORMATION TECHNOLOGY DEPARTMENT[471] (Cont'd)

| | | |
|---|--|-----------------------------------|
| Waivers, ch 7 IAB 11/29/00 ARC 0328B | Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa | December 19, 2000 9 to 10 a.m. |
|---|--|-----------------------------------|

INSURANCE DIVISION[191]

| | | |
|---|-------------------------------|------------------------------|
| Financial information regulation, ch 90 IAB 11/29/00 ARC 0325B (See also ARC 0334B herein) | 330 Maple Des Moines, Iowa | December 19, 2000 10 a.m. |
|---|-------------------------------|------------------------------|

IOWA FINANCE AUTHORITY[265]

| | | |
|--|---|----------------------------|
| Private activity bond allocation, 8.1, 8.3 to 8.5, 8.9, 8.10 IAB 11/15/00 ARC 0286B | Conference Room, Suite 250 100 E. Grand Ave. Des Moines, Iowa | December 5, 2000 9 a.m. |
|--|---|----------------------------|

LAW ENFORCEMENT ACADEMY[501]

| | | |
|--|---|----------------------------|
| Decertification or suspension actions, 1.1, 5.1, 6.2, 6.3(2) IAB 11/15/00 ARC 0276B | Conference Room Camp Dodge Johnston, Iowa | December 5, 2000 9 a.m. |
|--|---|----------------------------|

PROFESSIONAL LICENSURE DIVISION[645]

| | | |
|---|---|-----------------------------------|
| Cosmetology arts and sciences examiners—licensure, fees, chs 60 and 62 IAB 11/29/00 ARC 0319B | Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa | December 20, 2000 9 to 11 a.m. |
|---|---|-----------------------------------|

| | | |
|---|---|-----------------------------------|
| Cosmetology arts and sciences examiners—continuing education, discipline, ch 64, 65.1, 65.12 IAB 11/29/00 ARC 0320B | Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa | December 20, 2000 9 to 11 a.m. |
|---|---|-----------------------------------|

| | | |
|--|---|----------------------------------|
| Physician assistant examiners, 325.4(1), 325.5, 325.19, ch 328 IAB 11/15/00 ARC 0275B | Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa | December 6, 2000 9 to 11 a.m. |
|--|---|----------------------------------|

PUBLIC HEALTH DEPARTMENT[641]

| | | |
|--|--|----------------------------------|
| Authority of emergency medical care personnel, 132.1, 132.2 IAB 11/29/00 ARC 0326B (ICN Network) | Public Library 21 E. Third St. Spencer, Iowa | December 19, 2000 1 to 2 p.m. |
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| | |
|--|----------------------------------|
| National Guard Armory 1712 LaClark Rd. Carroll, Iowa | December 19, 2000 1 to 2 p.m. |
|--|----------------------------------|

| | |
|--|----------------------------------|
| National Guard Armory 315 12th Ave. NW Hampton, Iowa | December 19, 2000 1 to 2 p.m. |
|--|----------------------------------|

PUBLIC HEALTH DEPARTMENT[641]**(ICN Network) (Cont'd)**

| | | |
|---|---|----------------------------------|
| | ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa | December 19, 2000 1 to 2 p.m. |
| | National Guard Armory 195 Radford Rd. Dubuque, Iowa | December 19, 2000 1 to 2 p.m. |
| | National Guard Armory 501 Hwy. 1 South Washington, Iowa | December 19, 2000 1 to 2 p.m. |
| Trauma system—references, 134.2, 135.2(1) IAB 11/15/00 ARC 0274B (ICN Network) | National Guard Armory 11 E. 23rd St. Spencer, Iowa | December 5, 2000 1 to 2 p.m. |
| | National Guard Armory 1712 LaClark Rd. Carroll, Iowa | December 5, 2000 1 to 2 p.m. |
| | National Guard Armory 315 12th Ave. NW Hampton, Iowa | December 5, 2000 1 to 2 p.m. |
| | ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | December 5, 2000 1 to 2 p.m. |
| | National Guard Armory 195 Radford Rd. Dubuque, Iowa | December 5, 2000 1 to 2 p.m. |
| | National Guard Armory 501 Hwy. 1 South Washington, Iowa | December 5, 2000 1 to 2 p.m. |

SUBSTANCE ABUSE COMMISSION[643]

| | | |
|---|--|---------------------------|
| Regions for substance abuse prevention and treatment, ch 9 IAB 11/29/00 ARC 0324B | Room 417 Lucas State Office Bldg. Des Moines, Iowa | January 4, 2001 1 p.m. |
|---|--|---------------------------|

TRANSPORTATION DEPARTMENT[761]

| | | |
|---|--|--|
| Consent for the sale of goods and services, 26.1, 26.4(2) IAB 11/29/00 ARC 0300B | Small Materials Conference Room 800 Lincoln Way Ames, Iowa | December 21, 2000 1 p.m. (If requested) |
| Special permits for operation and movement of vehicles and loads of excess size and weight, 511.1 to 511.16 IAB 11/29/00 ARC 0299B | Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa | December 21, 2000 10 a.m. (If requested) |

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]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of African-Americans, Division on the[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
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 0331B

EMPOWERMENT BOARD,
IOWA[349]

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 Supplement section 28.4(9), the Iowa Empowerment Board hereby gives Notice of Intended Action to amend Chapter 1, "Iowa Empowerment Board," Iowa Administrative Code.

Item 1 amends the parenthetical implementation for each rule in Chapter 1.

Item 2 clarifies the purpose of community empowerment and sets forth desired results.

Item 3 defines "fiscal agent" to include community action agencies and rescinds a definition not needed for implementation.

Item 4 establishes an office of empowerment in the Department of Management.

Item 5 increases the citizen members of the Iowa Empowerment Board from 12 to 13 and adds the Director of the Department of Human Rights.

Item 6 clarifies reporting requirements on local indicators of performance.

Item 7 clarifies the process for establishing the process for reporting results.

Item 8 adds language regarding community empowerment areas acquiring necessary insurance coverage and developing a five- and ten-year Iowa Empowerment Board plan; directs Empowerment Board to make funding formula proposals; identifies grant award time lines; and describes funding formula for school ready dollars.

Item 9 clarifies which entities may serve as fiscal agents.

Item 10 directs that core functions be established for home visitation, parent support and preschool services.

Item 11 clarifies membership of community empowerment boards.

Item 12 defines community empowerment boards as units of local government for tort liability purposes.

Item 13 defines the terms of office for community empowerment boards.

Item 14 adds community action agencies as possible fiscal agents for community empowerment boards.

Item 15 describes the role of the decategorization board.

Item 16 describes the components of the empowerment grant program.

Item 17 describes appropriate use of school ready dollars.

Item 18 describes statewide indicators and performance to be described in the annual report.

Item 19 clarifies the funding of grant awards.

Item 20 describes eligibility for early childhood funds.

Item 21 describes school ready application period.

Item 22 describes Iowa empowerment fund and early childhood programs grant account.

Any interested person may make written suggestions or comments on these proposed amendments prior to January 10, 2001. Such written materials should be directed to the Office of Empowerment, Department of Management, Room 12, State Capitol Building, Des Moines, Iowa 50319;

fax (515)281-4225; or E-mail Kris.Bell@idom.state.ia.us. Persons who wish to convey their views orally should contact the Office of Empowerment at (515)281-4537 or (515)281-4321 or at the Office of Empowerment in Room 12 at the State Capitol Building.

These amendments are intended to implement Iowa Code Supplement chapter 28 and 2000 Iowa Acts, chapter 1223.

The following amendments are proposed.

ITEM 1. Amend 349—Chapter 1 by changing the parenthetical implementation from "77GA,SF2406" to "28" wherever it appears.

ITEM 2. Amend rule 349—1.2(28) as follows:

~~349—1.2(28) Purpose. Pursuant to 1998 Iowa Acts, Senate File 2406, section 12, it is the intent of these rules to support families and to prepare children for school. Pursuant to Iowa Code Supplement section 28.2, it is the intent that these rules apply to the establishment of community empowerment areas for the purpose of empowering individuals and their communities to achieve desired results for improving the quality of life in the communities in this state. The role of the Iowa empowerment board, the state, and local governments is to support and facilitate growth of individual and community responsibility in place of the directive role that the public has come to expect of government.~~ Toward this goal, these rules shall accomplish the following:

~~1.2(1)~~ Foster collaboration among state agencies which shall initially include the departments of human services, education, and public health and allow for the coordination of these agencies' funding and other resources.

~~1.2(2)~~ Establish community empowerment areas with broad community representation with the goal of providing services collaboratively to families and children from birth through five years of age for the purpose of improving the quality of life for families with young children.

~~1.2(3)~~ By June 30, 2005, through the community empowerment initiative, every community in Iowa will have developed the capacity and commitment for using local decision making to achieve the following set of desired results:

- a. Healthy children.
- b. Children ready to succeed in school.
- c. Safe and supportive communities.
- d. Secure and nurturing families.
- e. Secure and nurturing child care environments.

ITEM 3. Amend rule 349—1.4(28), definitions of "fiscal agent" and "five-year-old child," as follows:

"Fiscal agent" means a public agency, as defined in Iowa Code section 28E.2, a community action agency as defined in Iowa Code section 216A.91, or a nonprofit corporation to be designated as the fiscal agent for a community empowerment area.

~~"Five-year-old child" means a child who is eligible for kindergarten (five years old by September 15), but is not yet ready for the school experience.~~

ITEM 4. Adopt new rule 349—1.5(28) as follows:

349—1.5(28) Community empowerment office established. A community empowerment office is established in accordance with Iowa Code Supplement section 28.3.

1.5(1) This office shall be established as a division of the department of management to provide a center for facilitation, communication and coordination for community empowerment activities and funding.

1.5(2) Staffing for this office shall be provided by a facilitator appointed by the governor, subject to confirmation by

EMPOWERMENT BOARD, IOWA[349](cont'd)

the senate, and who serves at the pleasure of the governor. A deputy and support staff may be designated, subject to appropriation made for this purpose.

1.5(3) The facilitator shall provide primary staffing to the board, coordinate state technical assistance activities and implementation of the technical assistance system, and other communication and coordination functions to move authority and decision-making responsibility from the state to communities and individuals.

1.5(4) From the moneys deposited in the school ready children grants account for the fiscal year beginning July 1, 2000, and ending June 30, 2001, not more than \$200,000 shall be allocated for the community empowerment office and other technical assistance activities. It is the intent of the general assembly that regional technical assistance teams be established and include staff from various agencies, community colleges, and the Iowa state university of science and technology cooperative extension service in agriculture and home economics. The state empowerment board shall direct staff to work with the advisory council to inventory technical assistance needs. Funds allocated under this subrule may be used by the state empowerment board for the purpose of skills development and support for ongoing training of the regional technical assistance teams. However, funds shall not be used for additional staff or for the reimbursement of staff.

ITEM 5. Amend rule 349—1.6(28), introductory paragraph, as follows:

349—1.6(28) Iowa empowerment board created. An Iowa empowerment board is created in accordance with ~~1998 Iowa Acts, Senate File 2406, section 3 Iowa Code Supplement section 28.3.~~ Initial appointments shall be made in accordance with ~~1998 Iowa Acts, Senate File 2406 chapter 1206, section 18.~~ *Additional member appointments to the board shall be made in accordance with Iowa Code Supplement section 28.3 and 2000 Iowa Acts, chapter 1223, section 17. The Iowa empowerment board shall consist of 17 voting members with 13 citizen members and 4 state agency members. The 4 state agency members shall be the directors of the following departments: education, human rights, human services, and public health. The 13 citizen members shall be appointed by the governor, subject to confirmation by the senate. The governor's appointments of citizen members shall be made in a manner so that each of the state's congressional districts is represented by 2 citizen members and so that all the appointments as a whole reflect the ethnic, cultural, social, and economic diversity of the state. The governor's appointees shall be selected from individuals nominated by community empowerment boards. The nominations shall reflect the range of interests represented on the community boards so that the governor is able to appoint one or more members each for education, health, human services, business, faith, and public interests. At least 1 of the citizen members shall be a service consumer or the parent of a service consumer. Terms of office of all citizen members are three years. A vacancy on the board shall be filled in the same manner as the original appointments for the balance of the unexpired term.*

ITEM 6. Amend subrule 1.7(1) as follows:

1.7(1) In the event that additional appropriations are made to the Iowa empowerment fund account for distribution to the community empowerment areas, continued receipt of those funds ~~is contingent shall result upon showing evidence that the submission to and approval by the Iowa empowerment board of local community empowerment~~

~~board reports identifying progress has been made toward achieving results as measured through the use of core indicators of performance.~~

ITEM 7. Amend subrule **1.7(6)**, paragraph "d," as follows:

d. The board shall establish guidelines for reporting progress by local empowerment areas, including progress made toward achieving results.

(1) *The board shall implement a process for community empowerment areas to identify results.*

(2) *The board shall submit results to the governor and general assembly.*

ITEM 8. Adopt **new** subrules 1.7(7) to 1.7(11) as follows:

1.7(7) The board shall develop guidelines for recommended coverage and take other actions to assist community empowerment area boards in acquiring necessary insurance or other liability coverage at a reasonable cost.

1.7(8) The board shall, with extensive community input, develop and annually update a five-year plan for coordinating, blending, taking other actions to assist community empowerment and redistributing state-administered funding streams made available to community empowerment boards for children aged birth through five.

1.7(9) The board shall, with extensive community input, develop and annually update a ten-year plan for consolidating, blending, and redistributing state-administered funding streams made available to community empowerment areas for other age groups.

The focus for the early years of the ten-year plan shall be on the efforts of the board and affected state agencies to facilitate implementation of individual community empowerment area board requests for pooling, consolidating, blending, and redistributing state-administered funding streams for other age groups.

1.7(10) The board shall develop a distribution formula for allocation of school ready children grant funding to new applicants and to applicants for renewal following expiration of the original grants' funding period. This formula shall be developed in accordance with 1999 Iowa Acts, chapter 190, section 18.

The board shall submit its recommended formula to the governor and general assembly by December 15, 1999, for enactment by July 1, 2001.

1.7(11) Beginning July 1, 1999, the duration of the second year of school ready children grants that were initially funded in the previous fiscal year shall be shortened to end on June 30, 2000, and the amount of the grant paid out in the fiscal year beginning July 1, 1999, shall be prorated accordingly.

a. Beginning July 1, 1999, the three partially funded empowerment areas shall receive full funding in accordance with 1999 Iowa Acts, chapter 190, section 18.

b. For the fiscal year beginning July 1, 2000, in awarding grants and establishing grant amounts for all designated community empowerment areas that have never been awarded a school ready children grant, the Iowa empowerment board shall use the following formula criteria and weightings for distribution of grant moneys: 0 to 5 population at 185 percent poverty (45 percent); 0 to 5 population (35 percent) and base (20 percent). This provision is not applicable to those designated community empowerment areas that were awarded a school ready children grant prior to the fiscal year beginning July 1, 2000, and those areas shall be

EMPOWERMENT BOARD, IOWA[349](cont'd)

held harmless from the provisions implemented by the Iowa empowerment board pursuant to this paragraph.

ITEM 9. Amend subrule 1.10(7) as follows:

~~1.10(7) Designation of a public agency to be the fiscal agent for the community empowerment area of this state, as defined in Iowa Code section 28E.2, a community action agency, as defined in Iowa Code section 216A.91, or a nonprofit corporation, to be the fiscal agent for grant moneys and for other moneys administered by the community board.~~

ITEM 10. Adopt **new** subrule 1.10(9) as follows and renumber subrules 1.10(9) to 1.10(11) as 1.10(10) to 1.10(12):

1.10(9) Identification of core functions for home visitation, parent support and preschool services provided under a school ready children grant.

ITEM 11. Amend subrule 1.12(1) as follows:

~~1.12(1) A majority of the members of a community empowerment area board shall be private citizens and elected officials. At least one member shall be a service consumer or the parent of a service consumer. Additional membership shall include a community volunteer and at least one decision-making representative from each of the following agencies: education, public health and human services. Community empowerment area functions shall be performed under the authority of a community empowerment board. A majority of the members of a community board shall be elected officials and members of the public who are not employed by a provider of services to or for the community board. At least one member shall be a service consumer or the parent of a service consumer. Terms of office of community board members shall not be more than three years and the terms shall be staggered. The balance of the members may be individuals who are employees of or who receive compensation from any of the following:~~

- ~~1. A school district.~~
- ~~2. A county.~~
- ~~3. A local board of health.~~
- ~~4. A hospital.~~
- ~~5. A charitable funding group.~~
- ~~6. The department of human services.~~
- ~~7. A religious institution.~~
- ~~8. An area education agency.~~
- ~~9. Juvenile court services.~~
- ~~10. An area substance abuse agency.~~
- ~~11. A community action program.~~
- ~~12. A city.~~
- ~~13. A business organization.~~
- ~~14. A labor organization.~~
- ~~15. A service club.~~
- ~~16. A business.~~
- ~~17. Consumers.~~
- ~~18. A private, community-based organization.~~
- ~~19. A neighborhood association.~~
- ~~20. A child care resource and referral service.~~
- ~~21. A library.~~
- ~~22. Others as determined by the community empowerment board, such as public health providers, individuals with early childhood expertise, or child care providers.~~

~~a. The membership of a community empowerment area board shall include members with education, health, human services, business, faith and public interests.~~

~~b. In the event of a disagreement arising within a community empowerment area regarding the interests represented on the community board, board decisions, or other disputes that cannot be locally resolved, state or regional~~

~~technical assistance may be provided, upon request, to assist the area in resolving the disagreement.~~

ITEM 12. Adopt **new** subrule 1.12(3) as follows:

1.12(3) A community empowerment area board is a unit of local government for purposes of Iowa Code chapter 670, relating to tort liability of governmental subdivisions.

ITEM 13. Amend subrule 1.13(2) as follows:

~~1.13(2) The initial membership of the community board as identified in 1998 Iowa Acts, Senate File 2406, section 14, subsection 1, shall be established in the proposal submitted to the board. One third of the members shall serve for a one-year term, one third for a two-year term, and one third for a three-year term. A majority of the members of a community board shall be elected officials and members of the public who are not employed by a provider of services to or for the community board. Terms of office of community board members shall be not more than three years and the terms shall be staggered.~~

ITEM 14. Amend subrule **1.16(1)**, paragraph "a," as follows:

a. Designate a public agency of this state, as defined in Iowa Code section 28E.2, a community action agency, as defined in Iowa Code section 216A.91, or a nonprofit corporation to be the fiscal agent for grant moneys and for other moneys administered by the community board.

ITEM 15. Adopt **new** subrules 1.16(3) and 1.16(4) as follows:

1.16(3) A decategorization governance board shall coordinate the board's planning and budgeting activities with the community empowerment area board for the community empowerment area within which the decategorization county is located.

1.16(4) Over time, a plan must be developed to incorporate the decategorization board into the community empowerment area board.

ITEM 16. Amend rule 349—1.19(28) as follows:

~~349—1.19(28) Grant components.~~ The departments of education, human services, and public health shall jointly develop and promote an Iowa empowerment grant program which shall provide for all of the following components.

~~1.19(1) Core functions.~~ Core functions that are components of services to provide a common foundation across the state for the development and implementation of home visitation, parent support and preschool services.

~~1.19(1) 1.19(2) Core indicators.~~ Core indicators of performance that will measure the effectiveness of the programs and services as outlined in the Iowa empowerment grant plan to support families and children in advancing all aspects of their health and development. At a minimum, community empowerment boards shall develop core indicators that address the following and that will be used to measure progress with respect to the current status and the desired status:

~~a. Early childhood environments.~~

~~(1) Children have access to safe, nurturing environments that are developmentally appropriate in promoting the social, emotional, physical, and intellectual growth of children.~~

~~(2) Early childhood programs have identified standards of quality that are based on research and best practices.~~

~~b. Health.~~

~~(1) Children receive regular health care, dental care, nutrition, and physical experiences needed to promote healthy minds and bodies.~~

EMPOWERMENT BOARD, IOWA[349](cont'd)

~~(2) Families receive early and continuing prenatal care which shall include parent education and support.~~

~~e. Parent education and support.~~

~~(1) Parents enhance their knowledge about child development and about how to support their children's learning and life skills development.~~

~~(2) Parents utilize early childhood services as needed and rate them as effective and responsive in meeting family needs.~~

~~a. Healthy children.~~

~~b. Children ready to succeed in school.~~

~~c. Safe and supportive communities.~~

~~d. Secure and nurturing families.~~

~~e. Secure and nurturing child care environments.~~

~~1.19(2) 1.19(3)~~ Additional indicators. Community empowerment areas may expand upon the indicators identified above. Technical assistance will be provided to community empowerment areas in developing the empowerment area-specific indicators to be used to meet the local goals.

ITEM 17. Adopt **new** subrules 1.23(5) and 1.23(6) as follows:

1.23(5) Beginning July 1, 1999, up to 3 percent, not to exceed \$60,000, of the school ready children grant moneys may be used by the community board for administrative costs and other implementation expenses.

1.23(6) For the fiscal year beginning July 1, 1999, applicant community empowerment areas are encouraged to continue to meet the current practice of committing approximately 60 percent of any approved school ready children grant funding to home visitation and parent support services for families with newborns and infants, based upon local community needs assessments.

ITEM 18. Amend rule 349—1.25(28) as follows:

349—1.25(28) Annual report. The community board shall submit an annual report on the effectiveness of the program in addressing school readiness and children's health and safety needs to the Iowa empowerment board and to the local governing bodies. The annual report shall indicate the effectiveness of the community board in achieving state and locally determined core indicators of performance. *As a condition of receiving funding, each local empowerment board shall report to the state empowerment board progress on each of the following state indicators approved by the state board:*

1. *Low birth weight;*
2. *Rate of immunization by age 2;*
3. *Children entering kindergarten are ready for school;*
4. *Incidence of child abuse;*
5. *Teen birth rate;*
6. *Serious crime;*
7. *Juvenile arrests;*
8. *Poverty level;*
9. *Employment rate;*
10. *Child abuse in a child care setting; and*
11. *Availability of child care.*

Local empowerment boards shall also report on progress on locally selected indicators.

ITEM 19. Amend subrule 1.26(1) as follows:

~~1.26(1) A school ready children grant shall be awarded to a community board for a three-year period, with annual payments made to the community board. School ready children grant account funds shall be distributed through a grant application process. Grant awards shall be contingent upon the availability of funds.~~

ITEM 20. Amend rule 349—1.28(28), introductory paragraph, as follows:

~~**349—1.28(28) Eligible for other funds.** Community empowerment areas approved to receive Iowa empowerment funds to support a school ready children program are also eligible to receive moneys to support an early childhood program. Designated community empowerment areas are eligible to receive school ready children grant funding and early childhood program grants.~~

ITEM 21. Amend rule 349—1.29(28) as follows:

~~**349—1.29(28) Application period.** The initial school ready children grant application period begins July 1, 1998. The school ready children grant application period begins July 1 of the current fiscal year. The deadline for applications for school ready grants shall be on the last Friday of August, with grant awards to be made on the first Monday of October. Subsequent grant periods will be based upon availability of funding.~~

ITEM 22. Amend rule 349—1.31(28) as follows:

~~**349—1.31(28) Iowa empowerment fund.** An Iowa empowerment fund is created in the state treasury as specified in 1998 Iowa Acts, Senate File 2406, section 9 Iowa Code Supplement section 28.9. A school ready children program account is created in the Iowa empowerment fund under the authority of the Iowa empowerment board to be administered by the director of the department of education. Moneys credited to the account shall be distributed by the department of education to designated community empowerment areas pursuant to criteria established by the Iowa board in accordance with law. An early childhood programs grant account is created in the Iowa empowerment fund and shall be distributed by the department of human services in the form of grants to community empowerment areas pursuant to criteria established by the Iowa board in accordance with law. The criteria shall include but are not limited to a requirement that a community empowerment area must be designated by the Iowa board in accordance with Iowa Code Supplement section 28.5 in order to be eligible to receive an early childhood programs grant.~~

ARC 0330B

**ENGINEERING AND LAND
SURVEYING EXAMINING
BOARD[193C]**

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 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 1, "Administration," Iowa Administrative Code.

These amendments revise the requirements for licensure by comity for engineers who are licensed in another jurisdiction and are seeking licensure in Iowa.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

Waiver of these rules can be sought pursuant to 193C—Chapter 7, “Waivers or Variances from Rules.”

Any interested person may make written or oral suggestions or comments on these proposed amendments on or before December 19, 2000. Comments should be directed to Glean Coates, Executive Officer, Engineering and Land Surveying Examining Board, 1918 SE Hulsizer Road, Ankeny, Iowa 50021, or by telephone (515)281-7360.

These amendments are intended to implement Iowa Code section 542B.20.

The following amendments are proposed:

ITEM 1. Amend subrule 1.4(5) as follows:

1.4(5) Licensure by comity. Any person who has been licensed as a professional engineer in a foreign jurisdiction may be considered for licensure in Iowa without the need for further examination if the original license based on approved examination is in active status. Applications for licensure by comity will be evaluated on the following basis:

a. The applicant’s foreign licensure must have been granted only after satisfaction of requirements equal to or more stringent than those which would be required by Iowa Code section 542B.14, if the applicant’s original licensure was sought in Iowa; and

b. The applicant’s present record of education, references, practical experience, and successful completion of approved examinations currently satisfies the substantive requirements of Iowa Code section 542B.14.

c. A comity applicant for licensure in land surveying shall comply with subrule 1.4(5), paragraphs “a” and “b,” above; be interviewed by the land surveyor member(s) of the board; complete successfully the Iowa State Specific Examination; and complete successfully other examinations as determined by the board.

d. In lieu of the detailed personal history requested on an application for licensing, an applicant for licensure by comity may submit educational and professional records as verified by that person’s NCEES Council Record.

e. A temporary permit to practice engineering in the state may be granted to a comity applicant upon approval of a professional engineer member of the board. The temporary permit shall expire at the next regularly scheduled meeting of the board. Temporary permits shall be granted only to applicants who meet all requirements and who are expected to qualify for approval by the full board at the next meeting.

~~f. If a comity applicant did not have the required four years of experience before writing the professional examination, the board may approve the application for licensure if the applicant satisfies all other conditions of licensure, the applicant has not been disciplined in any other jurisdiction, and the applicant has had at least five years of practical engineering experience of a character satisfactory to the board since initial licensure.~~

ITEM 2. Renumber subrule **1.4(6)** as **1.4(7)** and adopt **new** subrule 1.4(6) as follows:

1.4(6) Comity licensure for applicants who completed the professional examination before completing the experience requirement.

a. Purpose. Licensure requirements for professional engineers are generally consistent across jurisdictions, but occasionally the board receives an application for comity licensure from an applicant who was allowed to complete the professional engineering examination before completing the practical engineering experience required of Iowa applicants. This subrule is intended to provide a mechanism for comity applicants faced with this situation to become li-

ensed in Iowa without retaking the professional examination.

b. Licensure conditions. If an applicant for comity licensure as a professional engineer satisfies all four of the licensing requirements set forth in Iowa Code section 542B.14(1) (i.e., education, fundamentals examination, four or more years of practical engineering experience of a character satisfactory to the board, and professional examination) at the time of application, but the applicant was permitted by the jurisdiction of initial licensure to complete the professional examination with a shortfall of the practical experience required of professional examination candidates in Iowa, the board may approve the applicant for comity licensure without further written examination pursuant to Iowa Code section 542B.20, if the applicant has had, since initial licensure, additional practical engineering experience of a character satisfactory to the board of at least twice the shortfall. Under no circumstances will the amount of additional experience required be less than six months.

ARC 0310B

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 234.6, the Department of Human Services proposes to amend Chapter 7, “Appeals and Hearings,” Chapter 11, “Overpayments,” Chapter 93, “PROMISE JOBS Program,” and Chapter 170, “Child Care Services,” appearing in the Iowa Administrative Code.

These proposed amendments implement recoupment procedures for the child care assistance program, including child care payments received through the PROMISE JOBS program.

Under these amendments, all child care assistance overpayments resulting from client or provider errors shall be subject to recoupment. Agency errors shall not be recouped from clients or providers.

The Department of Inspections and Appeals shall notify all clients and providers when the Department of Human Services determines that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The county office shall provide additional information regarding the computation of the overpayment upon the client’s or provider’s request. The client or provider may appeal the computation of the overpayment and any action to recover the overpayment.

Upon notification of the overpayment, the client or provider may choose to make a lump sum payment or make periodic installment payments when an agreement to do this is made with the Department of Inspections and Appeals. Failure by the client or provider to negotiate a repayment agreement or to make payment as agreed shall result in the withholding of all state payments to the client or provider, includ-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ing income tax returns and state checks for wages or services rendered.

These amendments do not provide for waivers to the recoupment process because individuals may request a waiver of the recoupment provisions under the Department's general rule on exceptions at rule 441—1.8(217).

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 December 20, 2000.

Oral presentations may be made by persons appearing at the following meetings. Written comments will also be accepted at these times.

Cedar Rapids—December 21, 2000 10 a.m.
Cedar Rapids Regional Office
Iowa Building - Suite 600
Seventh Floor Conference Room
411 Third St. S.E.
Cedar Rapids, Iowa 52401

Council Bluffs—December 21, 2000 8 a.m.
CPI Conference Room
Council Bluffs Regional Office
417 E. Kanessville Boulevard
Council Bluffs, Iowa 51501

Davenport—December 20, 2000 10 a.m.
Davenport Area Office
Bicentennial Building—Fifth Floor
Large Conference Room
428 Western
Davenport, Iowa 52801

Des Moines—December 20, 2000 10 a.m.
Des Moines Regional Office
City View Plaza
Conference Room 104
1200 University
Des Moines, Iowa 50314

Mason City—December 20, 2000 10 a.m.
Mason City Area Office
Mohawk Square, Liberty Room
22 North Georgia Avenue
Mason City, Iowa 50401

Ottumwa—December 20, 2000 1 p.m.
Ottumwa Area Office
Conference Room 3
120 East Main
Ottumwa, Iowa 52501

Sioux City—December 20, 2000 1:30 p.m.
Sioux City Regional Office
Fifth Floor
520 Nebraska St.
Sioux City, Iowa 51101

Waterloo—December 20, 2000 3 p.m.
Waterloo Regional Office
Pinecrest Office Building
Conference Room 420
1407 Independence Avenue
Waterloo, Iowa 50703

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impair-

ments should contact the Office of Policy Analysis at (515)281-8440 and advise of special needs.

These amendments are intended to implement Iowa Code sections 234.6(6) and 239B.17 to 239B.22.

The following amendments are proposed.

ITEM 1. Amend rule **441—7.1(17A)**, definition of “aggrieved person,” by adopting the following **new** numbered paragraph “**10.**”

10. Who is contesting a child care provider or child care assistance client claim, as provided in rule 441—170.9(234).

ITEM 2. Amend rule 441—7.5(17A) by adopting the following **new** subrule:

7.5(9) Appeals of child care assistance benefit overissuances or overpayments. Subject to the time limitations described in subrule 7.5(4), a person's right to appeal the existence, computation, and amount of a child care assistance benefit overissuance or overpayment begins when the person receives the first Form 470-3627, Demand Letter for Child Care Assistance Provider Error Overissuance, or Form 470-3628, Demand Letter for Child Care Assistance Client Error Benefit Overissuance, from the department of human services, informing the person of the child care assistance overpayment. A hearing shall not be held if an appeal is filed in response to a second or subsequent Demand Letter for Child Care Assistance Provider Error Overissuance or Demand Letter for Child Care Assistance Client Error Benefit Overissuance.

ITEM 3. Amend rule **441—11.1(217,421)**, definitions of “debtor,” “public assistance,” and “repayment agreement,” as follows:

“Debtor” shall mean a current or former recipient of public assistance (~~usually the head of the household~~) that has been determined by the department to be responsible for the repayment of a particular overpayment. For food stamps, “debtor” shall include all adult members of the food stamp household participating at the time the overpayment occurred. *For child care assistance, “debtor” may include the current or former provider or current or former recipient of child care assistance.*

“Public assistance” shall mean family investment program, food stamps, medical assistance, state supplemental assistance, PROMISE JOBS, transitional child care, *child care assistance*, and refugee cash assistance.

“Repayment agreement” shall mean an agreement entered into voluntarily between the department and the debtor for the repayment of overpayments.

Agreements shall be made on Form 470-0495, Repayment Contract, Form 470-0338, Demand Letter for Food Stamp Agency Error Overissuance, Form 470-3486, Demand Letter for Food Stamp Intentional Program Violation Overissuance, Form 470-3487, Demand Letter for Food Stamp Inadvertent Household Error Overissuance, Form 470-2616, Demand Letter for FIP/RCA Agency Error Overissuance, Form 470-3489, Demand Letter for FIP/RCA Intentional Program Violation Overissuance, Form 470-3490, Demand Letter for FIP/RCA Client Error Overissuance, and Form 470-2891, Demand Letter for Medicaid or State Supplementary Assistance Overpayment, *Form 470-3627, Demand Letter for Child Care Assistance Provider Error Overissuance, or Form 470-3628, Demand Letter for Child Care Assistance Client Error Benefit Overissuance.*

ITEM 4. Amend rule 441—93.151(239B), introductory paragraphs, as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—93.151(239B) Recovery of PROMISE JOBS expense allowances. When a participant or a provider receives an expense allowance for transportation or other supportive expenses which are greater than allowed under these rules or a duplicate payment of these expense allowances, an overpayment is considered to have occurred and recovery is required. There are two categories of PROMISE JOBS expense allowances subject to recovery: (1) transportation and (2) other supportive expense allowances ~~excluding child care~~. The PROMISE JOBS worker shall notify the department of inspections and appeals (DIA) to record the overpayment in the overpayment recovery system at the same time that the client or provider is notified of the overpayment. The outstanding balance of any overpayments which occurred prior to July 1, 1990, shall be treated in the same manner. A PROMISE JOBS overpayment shall be recovered through repayment in part or in full, or through offsetting against future payments in the same category. Underpayments and overpayments may be offset against each other in correcting incorrect payments in the same category. Repayments received by the PROMISE JOBS unit and information about recoveries made through offsetting shall be transmitted to the Department of Human Services, Cashier's Office.

Overpayments of PROMISE JOBS child care issued for months prior to July 1999 shall be subject to recovery rules of the PROMISE JOBS program. *Overpayments of child care assistance issued for July 1999 and any month thereafter are subject to recovery rules of the child care assistance program set forth in rule 441—170.9(234).*

ITEM 5. Amend rule **441—170.1(234)** by adopting the following **new** definitions in alphabetical order:

“Agency error” means any error that is not a client or provider error.

“Client” means a current or former recipient of the child care assistance program.

“Client error” means and may result from:

- False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances which may affect eligibility or the amount of assistance received;
- Failure to timely report changes in income, resources, or other circumstances which may affect eligibility or the amount of assistance received;
- Failure to timely report the receipt of and, if applicable, to refund assistance in excess of the amount shown on the most recent notice of decision;
- Failure to comply with the need for service requirements.

“Overpayment” means any benefit or payment received in an amount greater than the amount the client or provider is entitled to receive.

“Parent” means the parent or the person who serves in the capacity of the parent of the child receiving child care assistance services.

“Provider” means the provider of the child care assistance.

“Provider error” means and may result from:

- Presentation for payment of any false or fraudulent claim for services or merchandise;
- Submittal of false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled;
- Charging the department an amount for services rendered over and above what is charged private pay clients for the same services.

“Recoupment” means the repayment of an overpayment by a payment from the client or provider or both.

ITEM 6. Amend 441—Chapter 170 by adopting the following **new** rule.

441—170.9(234) Child care assistance overpayments. All client or provider child care assistance overpayments shall be subject to recoupment.

170.9(1) Notification and appeals. All clients or providers shall be notified by the department of inspections and appeals, as described at 441—subrule 7.5(9), when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The county office shall provide additional information regarding the computation of the overpayment upon the client's or provider's request. The client or provider may appeal the computation of the overpayment and any action to recover the overpayment in accordance with 441—subrule 7.5(9).

170.9(2) Determination of overpayments. All overpayments due to client or provider error or due to benefits or payments issued pending an appeal decision shall be recouped. Overpayments shall be computed as if the information had been acted upon timely.

170.9(3) Benefits or payments issued pending appeal decision. Recoupment of overpayments resulting from benefits or payments issued pending a decision on an appeal hearing shall not occur until after a final appeal decision is issued affirming the department.

170.9(4) Failure to cooperate. Failure by the client to cooperate in the investigation of alleged overpayments shall result in ineligibility for the months in question and the overpayment shall be the total amount of assistance received during those months. Failure by the provider to cooperate in the investigation of alleged overpayments shall result in payments being recouped for the months in question.

170.9(5) Source of recoupment. The client or provider may choose to make a lump sum payment or make periodic installment payments as agreed to on Form 470-3627 or Form 470-3628. Failure to negotiate an approved payment agreement may result in further collection action as outlined in 441—Chapter 11.

170.9(6) Procedures for recoupment.

a. Referral. When the county office determines that an overpayment exists, the case shall be referred to the department of inspections and appeals for investigation, recoupment, or referral for possible prosecution.

b. When financial circumstances change, the department of inspections and appeals has the authority to revise the recoupment plan.

c. Recoupment for client error overpayments shall be made from the parent, or the person who serves in the capacity of the parent of the child, who received child care assistance at the time the overpayment occurred. When both parents were in the home at the time the overpayment occurred, both parents are equally responsible for repayment of the overpayment.

170.9(7) Suspension and waiver. Recoupment will be suspended on nonfraud overpayments when the amount of the overpayment is less than \$35. Recoupment will be waived on nonfraud overpayments of less than \$35 which have been held in suspense for three years.

ARC 0311B

HUMAN SERVICES DEPARTMENT[441]

Notice of Termination

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby terminates the rule making under the provisions of Iowa Code section 17A.4(1)"b" amending Chapter 52, "Payment," Iowa Administrative Code.

Notice of Intended Action regarding subrule 52.1(3) was published in the Iowa Administrative Bulletin on November 1, 2000, as **ARC 0251B**.

The substance of **ARC 0251B** was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on November 1, 2000, as **ARC 0231B**. The purpose of **ARC 0251B** was to solicit comment on that submission, the subject matter of which was incorporated by reference.

The Adopted and Filed Emergency amendment increased the maximum State Supplementary Assistance (SSA) residential care facility (RCF) reimbursement rate for the month of November 2000 only. **ARC 0305B** herein removes the one-month change under regular rule making effective February 1, 2001. **ARC 0251B** is now superfluous and is hereby terminated.

ARC 0312B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

These amendments eliminate the 30-day institutional stay requirement for the Home- and Community-Based (HCBS) Physical Disability waiver program and provide that all waiver slots are available on a first-come, first-served basis. The subrule regarding appeal to the county is rescinded because the county has no responsibility for management of or payment for these cases.

Under current policy, a person must be a resident of a medical institution and have been a resident for at least 30 consecutive days at the time of initial application for the physical disability waiver. The Legislature did provide an exception to that policy, allowing up to ten persons, two per Departmental region, who are in need of the skilled nursing facility or intermediate nursing and who are not residents of a medical institution at the time of application, to receive physical disability waiver services.

The Seventy-eighth General Assembly, in 2000 Iowa Acts, chapter 1228, section 8, subsection 6, did direct the Department to aggressively pursue options to expand the waiv-

er to the limit of the number approved in the waiver by the Secretary of the United States Department of Health and Human Services (currently 120 persons). The General Assembly directed the openings to be available on a first-come, first-served basis.

At the current time less than one-fourth of the available slots are being accessed.

These amendments do not provide for waivers in specified situations because these changes are required by legislation and the changes confer a benefit on persons needing the services offered by the waiver who have not been institutionalized.

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 December 20, 2000.

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

The following amendments are proposed.

ITEM 1. Amend rule 441—83.102(249A) as follows:

Amend subrule **83.102(1)** by rescinding and reserving paragraph "g."

Amend subrule 83.102(3) as follows:

83.102(3) Slots. The total number of persons receiving HCBS physical disability waiver services in the state shall be limited to the number provided in the waiver approved by the Secretary of the U.S. Department of Health and Human Services. ~~Of these, ten slots during any waiver year (two in each departmental region) shall be reserved for persons who were not residents of a medical institution at the time of initial application for the physical disability waiver as allowed by the exception under paragraph 83.102(1)"g."~~ These slots shall be available on a first-come, first-served basis.

Amend subrule **83.102(5)**, paragraph "b," as follows:

b. On the third day after the receipt of the completed Form 470-0442 or 470-0660, if no slot is available, the division of medical services shall enter persons on the HCBS physical disabilities waiver state waiting list ~~for institutionalized persons or on a regional waiting list for the slots reserved for persons who are not institutionalized~~ according to the following:

(1) Persons not currently eligible for Medicaid shall be entered on the basis of the date a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, is submitted on or after April 1, 1999, and date-stamped in the county department office. Consumers currently eligible for Medicaid shall be added on the basis of the date the consumer requests HCBS physical disability program services as documented by the date of the consumer's signature on Form 470-0660 submitted on or after April 1, 1999. In the event that more than one application is received on the same day, persons shall be entered on the waiting list on the basis of the day of the month of their birthday, the lowest number being first on the list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the state waiting list ~~for institutionalized persons or on a regional waiting list for the slots reserved for persons who are not institutionalized~~. As slots become available, persons shall be selected from the waiting lists list to maintain the number of approved persons on the program based on their order on the waiting lists list.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subrule 83.102(7) as follows:

83.102(7) HCBS physical disability waiver waiting lists list. When services are denied because the statewide limit for institutionalized persons on the number of slots is reached, a notice of decision denying service based on the limit and stating that the person's name shall be put on a statewide waiting list shall be sent to the person by the department.

~~When services are denied because the two slots per region for persons already residing in the community at the time of application are filled, a notice of decision denying service based on the limit on those slots and stating that the person's name shall be put on a waiting list by region for one of the community slots shall be sent to the person by the department.~~

ITEM 2. Rescind and reserve subrule **83.109(1)**.

ARC 0297B

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, chapter 1141, the Information Technology Department hereby gives Notice of Intended Action to adopt Chapter 6, "Contested Cases," Iowa Administrative Code.

This proposed chapter applies to contested case proceedings conducted by the Information Technology Council. It allows for any person claiming an entitlement to a contested case proceeding to file for such a proceeding with the Information Technology Council.

The chapter details with specificity what procedures are to be followed by both the Council and any involved parties regarding contested case proceedings conducted by the Information Technology Council.

The chapter sets forth circumstances in which persons involved in a contested case proceeding shall withdraw from participation in the making of any proposed or final decisions. Also, the chapter allows for the consolidation or severance of contested case proceedings under particular circumstances.

The chapter includes policies regarding prohibited communications in a contested case proceeding, and it sets forth which communications are subject to such prohibition. In addition, the chapter creates a procedure regarding Emergency Adjudicative proceedings by which the Information Technology Department may take necessary emergency action to prevent or avoid immediate danger to the public health, safety, or welfare.

Any interested person may make written or electronic suggestions or comments on the proposed chapter on or before December 19, 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 December 19, 2000, from 9 to 10 a.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, chapter 1141, and Iowa Code chapter 17A.

The following new chapter is proposed.

CHAPTER 6 CONTESTED CASES

471—6.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the information technology council.

471—6.2(17A) Definitions. Except where otherwise specifically defined by law:

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

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

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

"Presiding officer" means the information technology council, one or more members of the council, or an administrative law judge assigned to the case.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the majority of the information technology council did not preside.

471—6.3(17A) Time requirements.

6.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

6.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

471—6.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

471—6.5(17A) Notice of hearing.

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

6.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

6.5(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as an advocate for the agency or the state and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., the information technology council, members of the council, administrative law judge); and
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 6.6(17A), that the presiding officer be an administrative law judge.

471—6.6(17A) Presiding officer.

6.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the agency head or members of the agency.

6.6(2) The agency may deny the request only upon a finding that one or more of the following apply:

- a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. An administrative law judge with the qualifications identified in subrule 6.6(4) is unavailable to hear the case within a reasonable time.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

6.6(3) The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 6.6(4), the parties shall be notified at least 10 days prior to the hearing if a qualified administrative law judge will not be available.

6.6(4) An administrative law judge assigned to act as presiding officer in any information technology department case shall have the following technical expertise unless waived by the information technology council: knowledge of contract law.

6.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the council. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

6.6(6) Unless otherwise provided by law, agency head and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

471—6.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

471—6.8(17A) Telephone or video proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings or interactive video proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or video hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. The cost of the telephone hearing or an interactive video hearing may be assessed equally to each party.

471—6.9(17A) Disqualification.

6.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, direc-

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

tor or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.9(3) and 6.23(9).

6.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

6.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 6.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 6.25(17A) and seek a stay under rule 6.30(17A).

471—6.10(17A) Consolidation—severance.

6.10(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

471—6.11(17A) Pleadings.

6.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hear-

ing or subsequent order of the presiding officer, unless otherwise ordered.

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

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

6.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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

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

6.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

471—6.12(17A) Service and filing of pleadings and other papers.

6.12(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

6.12(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

6.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the information technology department.

6.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

delivered to the Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

6.12(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantial conformity with the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319 and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

471—6.13(17A) Discovery.

6.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

6.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 6.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

6.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

471—6.14(17A) Subpoenas.**6.14(1) Issuance.**

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

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

6.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for a lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

471—6.15(17A) Motions.

6.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a fail-

ure to respond within the required time period in ruling on a motion.

6.15(3) The presiding officer may schedule oral argument on any motion.

6.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

6.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provision of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 6.29(17A) and appeal pursuant to 6.28(17A).

471—6.16(17A) Prehearing conference.

6.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

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

6.16(2) Each party shall bring to the prehearing conference:

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

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

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

6.16(3) In addition to the requirements of subrule 6.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

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

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

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

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

6.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone or video prehearing conference.

471—6.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

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

6.17(2) In determining whether to grant a continuance, the presiding officer may consider:

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

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

471—6.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

471—6.19(17A) Intervention.

6.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the ground for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

6.19(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the

proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

6.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

471—6.20(17A) Hearing procedures.

6.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

6.20(2) All objections shall be timely made and stated on the record.

6.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

6.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

6.20(6) Witnesses may be sequestered during the hearing.

6.20(7) The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

471—6.21(17A) Evidence.

6.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

6.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

6.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

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

6.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

471—6.22(17A) Default.

6.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days (unless another period of time is specifically specified by statute or rule) after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 6.28(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which must be attached to the motion.

6.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

6.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further ap-

peal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 6.25(17A).

6.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues, but unless the defaulting party has appeared, it cannot exceed the relief demanded.

6.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 6.30(17A).

471—6.23(17A) Ex parte communication.

6.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

6.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 6.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

6.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.23(1).

6.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Par-

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

ties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 6.17(17A).

6.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

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

471—6.24(17A) Recording costs. Upon request, the information technology department shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

471—6.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the council may review an interlocutory order. In determining whether to do so, the council shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

471—6.26(17A) Posthearing procedures. The presiding officer may ask the parties to submit proposed findings and conclusions of law and proposed order or briefs. Copies of the submission shall be served on all parties. The submission schedule, including waiver or briefs, shall be determined at the close of the hearing.

471—6.27(17A) Final decision.

6.27(1) When a quorum of the entire information technology council presides over the reception of evidence at the hearing, its decision is a final decision.

6.27(2) In a contested case in which the hearing is held before an administrative law judge or a panel of the council's board members constituting less than a quorum of the council, the presiding officer or panel shall render a proposed decision. The proposed decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A. The proposed decision becomes the final decision of the council without further proceedings unless there is an appeal to, or review on motion of, the authority within 30 days.

6.27(3) The proposed or final decision or order shall:

- a. Be in writing or stated in the record.
- b. Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed findings of fact in accordance with rule 6.26(17A), the decision or order shall include a ruling upon each proposed finding.
- c. Include conclusions of law, supported by cited authority or a reasoned opinion.
- d. Be delivered to the parties either by personal service or by certified mail, return receipt requested.

471—6.28(17A) Appeals and review.

6.28(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the council within 30 days after issuance of the proposed decision.

6.28(2) Review. The information technology council may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

6.28(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the information technology department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

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

6.28(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The council may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

6.28(5) Scheduling. The information technology department shall issue a schedule for consideration of the appeal.

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

6.28(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

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

471—6.29(17A) Applications for rehearing.

6.29(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

6.29(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.28(4), the applicant requests an opportunity to submit additional evidence.

6.29(3) Time of filing. The application shall be filed with the information technology department within 20 days after issuance of the final decision.

6.29(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the information technology department shall serve copies on all parties.

6.29(5) Disposition. Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

471—6.30(17A) Stays of agency actions.**6.30(1)** When available.

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

b. Any party to a contested case proceeding may petition the information technology council for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

6.30(2) When granted. In determining whether to grant a stay, the presiding officer shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

6.30(3) Vacation. A stay may be vacated by the issuing authority upon application of the information technology department or any other party.

471—6.31(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practi-

cable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

471—6.32(17A) Emergency adjudicative proceedings.

6.32(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

6.32(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the agency's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the agency;

(3) Certified mail to the last address on file with the agency;

(4) First-class mail to the last address on file with the agency; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for the purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.32(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

6.32(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergen-

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

cy adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A and 2000 Iowa Acts, chapter 1141.

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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, chapters 1141 and 1176, the Information Technology Department hereby gives Notice of Intended Action to adopt Chapter 7, "Waivers," Iowa Administrative Code.

This chapter creates a policy in which the Information Technology Council may grant waivers from rules adopted by the Information Technology Council. It establishes applicable standards and a uniform procedure for granting such waivers to individuals.

The chapter describes the manner in which a petition must be presented to the Council and what information shall be included in the petition when submitted. In addition, the chapter allows for the Council to request any additional information from the individual relative to the petition.

The chapter includes policies regarding the notice of the petition for waiver and the Council's ruling on a particular petition. It also provides that all orders granting or denying waiver petitions shall be made available for public inspection as provided in Iowa Code section 17A.3.

The chapter sets forth circumstances in which the Information Technology Council may withdraw, cancel, or modify a waiver previously issued. In addition, the chapter includes policies for violations of a condition in a waiver, for treatment of the waiver as a defense, and for judicial review.

Any interested person may make written or electronic suggestions or comments on the proposed adoption on or before December 19, 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. Electronic mail regarding administrative rules may be submitted to ITD.Rules@its.state.ia.us.

Also, there will be a public hearing on December 19, 2000, from 9 to 10 a.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 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, chapter 1176, and Iowa Code chapter 17A.

The following **new** chapter is proposed.

CHAPTER 7 WAIVERS

471—7.1(17A,78GA,ch1176) Definition. For purposes of this chapter, "a waiver or variance" means action by the information technology council which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person or entity on the basis of the particular circumstances of that person or entity. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

471—7.2(17A,78GA,ch1176) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the council 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.

471—7.3(17A,78GA,ch1176) Applicability. The council may only grant a waiver from a rule if the council has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The council may not waive requirements created or duties imposed by statute.

471—7.4(17A,78GA,ch1176) Criteria for waiver or variance. In response to a petition completed pursuant to rule 7.6(17A,78GA,ch1176), the council may issue an order waiving in whole or in part the requirements of a rule if the council finds, based on clear and convincing evidence, all of the following:

1. Application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. 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.

471—7.5(17A,78GA,ch1176) Filing of petition for waiver. A petition for a waiver must be submitted in writing to the council as follows:

7.5(1) 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.

7.5(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted to the executive assistant to the director to the information technology department.

471—7.6(17A,78GA,ch1176) Content of petition for waiver. A petition for waiver shall include the following information where applicable and when known by 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 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.

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 7.4(17A,78GA,ch1176). 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 council and the petitioner relating to the regulated activity affected by the proposed waiver, including a description of contested case hearings relating to the activity within the past five years.

6. Any information known to the requester regarding the council'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 grant of the waiver.

8. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a waiver.

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 council with information relevant to the waiver.

471—7.7(17A,78GA,ch1176) Additional information. Prior to issuing an order granting or denying a waiver, the council 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 council may, on its own motion or at the petitioner's request, schedule a telephonic, ICN, or in-person meeting between the petitioner and the chairperson of the council, a committee of the council, or a quorum of the council.

471—7.8(17A,78GA,ch1176) Notice. The council shall acknowledge a petition upon receipt. The council 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 council may give notice to other persons. To accomplish this notice provision, the council 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 council attesting that notice has been provided.

471—7.9(17A,78GA,ch1176) 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, and shall otherwise apply to agency proceedings for a waiver only when the council so provides by rule or order or is required to do so by statute.

471—7.10(17A,78GA,ch1176) 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.

7.10(1) Council discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the council, upon consideration of all relevant factors. Each petition for a waiver shall be

evaluated by the council based on the unique, individual circumstances set out in the petition.

7.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the council should exercise its discretion to grant a waiver from a department rule.

7.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

7.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the council shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

7.10(5) Conditions. The council may place any condition on a waiver that the council finds desirable to protect the public health, safety, and welfare.

7.10(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 council, a waiver may be renewed if the council finds that grounds for a waiver continue to exist.

7.10(7) Time for ruling. The council 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 council shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

7.10(8) When deemed denied. Failure of the council to grant or deny a petition within the required time period shall be deemed a denial of that petition by the council. However, the council shall remain responsible for issuing an order denying a waiver.

7.10(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.

471—7.11(17A,78GA,ch1176) 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 council is authorized or required to keep confidential. The council may accordingly edit confidential information from petitions or orders prior to public inspection.

471—7.12(17A,78GA,ch1176) Summary reports. Semi-annually, the information technology department 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 each rule, and a general summary of the reasons justifying the council'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 at the Information Technology Department, Level B, Hoover State Office Building, Des Moines, Iowa 50319. Copies of this report shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

471—7.13(17A,78GA,ch1176) Cancellation of a waiver. A waiver issued by the council pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the council 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.

471—7.14(17A,78GA,ch1176) 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 order may be subject to the same remedies or penalties as a person who violates the rule at issue.

471—7.15(17A,78GA,ch1176) Defense. After the council 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.

471—7.16(17A,78GA,ch1176) Judicial review. Judicial review of a council decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement 2000 Iowa Acts, chapter 1176, and Iowa Code chapter 17A.

ARC 0325B**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 2000 Iowa Acts, chapter 1023, section 5, and Iowa Code chapter 17A, the Insurance Division hereby proposes to adopt new Chapter 90, "Financial Information Regulation," Iowa Administrative Code.

The purpose of these rules is to comply with the federal Gramm-Leach-Bliley Act, Pub. L. No. 106-102, which regulates the privacy of information held by an insurer or a producer. Federal law requires that states adopt rules by November 13, 2000, to carry out Title V of the Act. These rules require insurers and producers to develop privacy policies, to develop systems for implementing these policies and protecting personal information of consumers and customers and to provide notices to all customers and consumers prior to either the effective date or a later compliance date established by the Division. These rules also establish a compliance date of July 1, 2001, for entities regulated by the Division. This date is consistent with the compliance date established by federal regulators responsible for enforcing the Act as it applies to federally regulated financial institutions.

Any person may make written comments on the proposed rules on or before December 19, 2000. Comments should be directed to Susan E. Voss, Deputy Commissioner, Insurance Division, 330 Maple, Des Moines, Iowa 50319. Comments may also be transmitted by E-mail to susan.voss@comm6.state.ia.us or may be transmitted via facsimile to (515)281-5692.

A public hearing will be held at 10 a.m. on December 19, 2000, in the office of the Insurance Division, 330 Maple, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Susan Voss no later than December 18, 2000, to be placed on the agenda.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 0334B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2000 Iowa Acts, chapter 1023, section 5, and P.L. 106-102.

ARC 0298B**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 section 124.301, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 10, "Controlled Substances (Drugs)," Iowa Administrative Code.

The proposed amendments were approved at the October 10, 2000, regular meeting of the Board of Pharmacy Examiners.

The amendments increase the fee for registration and registration renewal under the Iowa Controlled Substances Act and increase the penalty for late registration or registration renewal. These fees have not been adjusted since 1985. This proposal would increase the annualized registration fee by \$10 and is needed to cover increasing program costs.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on December 19, 2000. Such written materials should be sent to Lloyd K. Jessen, Executive 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.

These amendments are intended to implement Iowa Code section 124.301.

The following amendments are proposed.

ITEM 1. Amend rule 657—10.3(124), introductory paragraph, as follows:

657—10.3(124) Registration and reregistration fee. For each registration or reregistration to manufacture, distribute, dispense, conduct research or instructional activities and conduct chemical analysis with controlled substances listed in Schedules I through V of *Iowa Code* chapter 124, registrants shall pay a biennial fee of \$50 \$70.

PHARMACY EXAMINERS BOARD[657](cont'd)

ITEM 2. Amend subrule 10.3(2) as follows:

10.3(2) Late application. Persons required to register or reregister under the provisions of *Iowa Code* chapter 124, division III, who file late application, shall pay an additional \$50 \$70 late payment fee.

ARC 0319B**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 157.14, the Board of Cosmetology Arts and Sciences Examiners hereby gives Notice of Intended Action to rescind Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences," and adopt a new Chapter 60 with the same title, and to rescind Chapter 62, "Fees," *Iowa Administrative Code*, and adopt a new Chapter 62 with the same title.

The proposed amendments rescind the current rules regarding licensing and fees and adopt a new chapter for licensure and a new chapter for fees.

Any interested person may make written comments on the proposed amendments no later than December 20, 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 ten letters to the public for comment and three 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 December 20, 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 157.14 and chapter 272C.

The following amendments are proposed.

ITEM 1. Rescind **645—Chapter 60** and adopt in lieu thereof the following **new** chapter:

CHAPTER 60**LICENSURE OF COSMETOLOGISTS,
ELECTROLOGISTS, ESTHETICIANS, MANICURISTS,
NAIL TECHNOLOGISTS, AND INSTRUCTORS OF
COSMETOLOGY ARTS AND SCIENCES**

645—60.1(157) Definitions. For purposes of these rules, the following definitions shall apply:

"Board" means the Iowa board of cosmetology arts and sciences examiners.

"Core curriculum" means the basic core life sciences curriculum that is required for completion of any course of study of the cosmetology arts and sciences excepting manicuring.

"Cosmetology arts and sciences" means any or all of the following practices, performed with or without compensation by a licensee: cosmetology, electrology, esthetics, and nail technology.

"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 30 days of the renewal date.

"Licensee" means any person or entity holding a license pursuant to *Iowa Code* chapter 157 and 645—Chapters 60 to 65, *Iowa Administrative Code*.

"Mentor" means a licensee providing guidance in a mentoring program.

"Mentoring" means a program allowing students to experience cosmetology arts and sciences in a licensed salon under the guidance of a mentor.

"Practice discipline" means the practice of electrology, esthetics, nail technology, manicuring or cosmetology as recognized by the board of cosmetology arts and sciences examiners.

"Testing service" means Experior Testing Service, 1360 Energy Park Drive, Saint Paul, Minnesota 55108-5252.

"Trainee" means any person who completes the requirements for licensure in the cosmetology arts and sciences listed in *Iowa Code* section 157.3, except for the examination, and who has a temporary permit.

645—60.2(157) Requirements for licensure.

60.2(1) Requirements for a license. An applicant for a license shall:

a. Complete a board-approved application form. Application forms may be obtained from the board Web site (www.state.ia.us/idph_pl) or directly from Experior Assessment, LLC, 1360 Energy Park Drive, Saint Paul, Minnesota 55108-5252. All applications shall be sent to Experior Assessment.

b. Complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the testing service. Applications shall be complete before the candidate is eligible to sit for the examination.

c. Provide the appropriate fees with application to the testing service.

d. Present proof of graduation from high school or its equivalent to the testing service. If educated outside the United States, the applicant must attach an original evaluation of the applicant's education for Word Evaluation Services (WES) or any other accredited evaluation service. An applicant may obtain an application for evaluation by contacting WES at (212)966-6311 or by writing to WES, P.O. Box 745, Old Chelsea Station, New York, NY 10113-0745. An applicant may also provide documentation by attaching a copy of acceptable GED points/diploma or TABE scores.

e. Present a diploma or an official transcript of grades in the practice discipline for which the applicant is requesting licensure. This shall be sent to the testing service with the application, showing completion of training at a school approved by the Iowa board of cosmetology arts and sciences examiners.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

f. Pass the theory examination for the particular practice discipline with a score of 75 percent or greater.

g. Pass the state law and rules examination with a score of 75 percent or greater.

60.2(2) Requirements for an instructor's license. An applicant for an instructor's license shall:

a. Submit completed application and fees to the testing service;

b. Be a graduate of an accredited high school or the equivalent thereof;

c. Be licensed in the state of Iowa in the specific practice discipline to be taught or be licensed as a cosmetologist who possesses the skill and knowledge required to instruct in that practice discipline;

d. Have completed 1,000 hours of instructor's training with curriculum contents to be determined by the board or two years' active practice in the field of cosmetology within six years prior to application proven by documentation;

e. Submit proof of attendance at an advanced instructor's institute prescribed by the board;

f. Pass an instructor's and Iowa law examination; and

g. Submit proof of 60 hours of practical experience, excluding school hours, in the area of electrolysis prior to application for an instructor of electrolysis license.

60.2(3) Conditions. The following conditions apply for all cosmetology arts and sciences licenses.

a. Candidates eligible for testing may contact Exporior Testing Service, 1360 Energy Park Drive, Saint Paul, Minnesota 55108-5252 or www.exporioronline.com (in the subject area specify "IA Cos") and arrange a testing time.

b. No application shall be considered until the requested supporting documents and fee have been received by the testing service.

c. Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.

d. The licensure fee is nonrefundable.

e. Licensees who were issued their initial licenses within six months prior to the renewal beginning date shall not be required to renew their licenses until the renewal month two years later.

645—60.3(157) Course of study requirements. No school of cosmetology arts and sciences will be approved by the board of cosmetology arts and sciences examiners unless it complies with the course of study requirements as provided below.

60.3(1) Requirements for hours.

COSMETOLOGY CURRICULUM

| | | |
|---|------------|------------|
| Core life sciences | 150 hours | |
| Cosmetology theory (Including business and management related to the practice of cosmetology.) | 615 hours | |
| Total core life sciences and cosmetology theory is 765 hours. | | |
| Applied practical instruction | 1335 hours | |
| Total course of study | | 2100 hours |

ELECTROLOGY CURRICULUM

| | | |
|-------------------------------|-----------|-----------|
| Core life sciences | 150 hours | |
| Electrology theory | 50 hours | |
| Applied practical instruction | 225 hours | |
| Total course of study | | 425 hours |

ESTHETICS CURRICULUM

| | | |
|-------------------------------|-----------|-----------|
| Core life sciences | 150 hours | |
| Esthetics theory | 115 hours | |
| Applied practical instruction | 335 hours | |
| Total course of study | | 600 hours |

NAIL TECHNOLOGY CURRICULUM

| | | |
|-------------------------------|-----------|-----------|
| Core life sciences | 150 hours | |
| Nail technology theory | 50 hours | |
| Applied practical instruction | 125 hours | |
| Total course of study | | 325 hours |

MANICURIST CURRICULUM

| | | |
|--|----------|----------|
| No core life sciences required | | |
| Theory (Including introduction to manicuring, nail disorders, sterilization, bacteriology.) | 26 hours | |
| Applied practical instruction | 14 hours | |
| Total course of study | | 40 hours |

60.3(2) Curriculum requirements.

a. Theory instruction shall be taught from a standard approved textbook.

b. Theory instruction may be supplemented from other related textbooks.

c. A student shall be under supervision of a licensed instructor at all times.

d. The mentoring option may not exceed 5 percent of the total course hours of any practice discipline course of study.

e. The instructor shall be licensed in the state of Iowa in the specific practice discipline to be taught or be licensed as a cosmetologist who possesses the skill and knowledge required to instruct in that practice discipline.

f. Course subjects taught in the school curriculum including skills and business management shall relate to the specific course practice discipline.

g. The student shall not begin the mentoring program until completing a minimum of 50 percent of the total course hours and other requirements of the mentoring program established by the school.

h. Required hours for theory and applied practical hours do not have to be obtained from one school.

i. Only hours from accredited or state board-approved school programs will be accepted.

60.3(3) Qualifiers for licensure in specific practice disciplines.

a. A cosmetology license is not a requirement for an electrolysis, esthetics, nail technology or manicurist license.

b. Core life sciences curriculum of 150 hours shall be transferable in its entirety from one practice discipline to another practice discipline.

c. Theory hours earned in each practice discipline of cosmetology arts and sciences may be used in applying for a cosmetology license.

60.3(4) Core life sciences curriculum. The core life sciences curriculum shall contain the following instruction:

a. Human anatomy and physiology:
Cell, metabolism and body systems,
Human anatomy;

b. Bacteriology;

c. Infection control practices:
Universal precautions,
Sanitation,
Sterilization,
Disinfection;

d. Basic chemistry;

e. Matter;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- f. Elements:
 - Compounds and mixtures;
- g. Basic electricity;
- h. Electrical measurements:
 - Reproduction of light rays,
 - Infrared rays,
 - Ultraviolet rays,
 - Visible rays/spectrum;
- i. Safety;
- j. Hygiene and grooming:
 - Personal and professional health;
- k. Professional ethics;
- l. Public relations; and
- m. State, federal law, administrative rules and standards.

645—60.4(157) Licensure by endorsement. The board may receive by endorsement any applicant from another state, territory, District of Columbia, province or foreign country who:

1. Submits to the testing service a completed application and appropriate fee;
2. Obtains verification from any state, territory, District of Columbia, province or foreign country or provinces where the applicant is licensed. Verifications of current licensure in the practice discipline in another state for at least 12 months in the 24-month period preceding the submission of the application must be mailed from that state, territory, District of Columbia, provinces or foreign countries directly to Experior Testing. The testing service will not accept verifications received from the applicant;
3. Submits a notarized copy of the passing score on the examinations of Experior Testing Service, NIC (National Interstate Council) or pass the current Iowa theory examination recognized by the board; and
4. Passes the state law and administrative rule examination with a passing score of 75 or greater.

645—60.5(157) Licensure by reciprocal agreement. The board may enter into a reciprocal agreement with any state, territory, District of Columbia, province or foreign country with equal or similar requirements for licensure of cosmetology arts and sciences applicants.

645—60.6(157) Temporary permits to practice cosmetology arts and sciences. An applicant who is applying for initial licensure and is not licensed in another state and who has met the requirements for licensure except for the written examinations may apply for a temporary permit to practice cosmetology arts and sciences. The temporary permit is valid from the date the application is completed until passage of the examination in the practice discipline for which the applicant is seeking licensure. The temporary permit shall be valid for a maximum of 90 days from the date of issuance. The temporary permit holder shall practice under direct supervision of a licensee. After 90 days the temporary permit is invalid and the person may not practice in the cosmetology arts and sciences.

The temporary permit of an applicant who does not pass the second examination shall be revoked. The applicant shall submit the temporary permit to the testing service before sitting for another examination.

645—60.7(157) Demonstrator's permit. The board may issue a demonstrator's permit for the purpose of demonstrating cosmetology arts and sciences to the consuming public.

1. A demonstrator's permit shall be valid for a salon, person or an event. The location, purpose and duration shall be stated on the permit.

2. A demonstrator's permit shall be valid for no more than ten days.

3. A completed application shall be submitted on a form provided by the board at least 30 days in advance of the intended use dates.

4. An application fee shall be submitted as set forth in these rules.

5. No more than four permits shall be issued to any applicant during a calendar year.

645—60.8(157) License renewal.

60.8(1) The biennial license renewal period for a license to practice cosmetology arts and sciences shall begin on April 1 of one year and end on March 31 two years later. All licensees shall renew on a biennial basis.

60.8(2) A renewal of license application and continuing education report form to practice as a cosmetology arts and sciences licensee shall be mailed to the licensee at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay the biennial renewal fees on or before the renewal date.

a. The licensee shall submit the completed application and continuing education report form with the renewal fee to the board office before the license expiration date.

b. Individuals who were issued their initial license within six months of the license renewal beginning date will not be required to renew their license until the next renewal two years later.

c. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses.

d. Persons licensed to practice as cosmetology arts and sciences licensees shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

60.8(3) Late renewal. If the renewal fees, continuing education report and renewal application are received within 30 days after the license renewal expiration date, the late fee for failure to renew before expiration shall be charged.

60.8(4) When all requirements for license renewal are met, the licensee shall be sent a license renewal card by regular mail.

645—60.9(272C) Exemptions for inactive practitioners.

60.9(1) A licensee who is not engaged in practice in the state of Iowa and who is residing within or without the state of Iowa may be granted a waiver of 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 the state of Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board. A licensee must hold a current license in order to apply for exempt status.

60.9(2) Reinstatement of exempted, inactive practitioners. Inactive practitioners who have requested and been granted a waiver of compliance with the renewal requirements and who have obtained a certificate of exemption shall, prior to engaging in the practice of the profession in Iowa, satisfy the requirements for reinstatement as outlined in 645—64.10(157,272C).

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

60.9(3) Reinstatement of inactive license after exemption. The following chart illustrates the requirements for reinstatement based on the length of time a license has been considered inactive.

| Reinstatement of an inactive license may be granted by the board if the applicant satisfies the following requirements, as applicable: | 30 days after expiration date up to 1 biennium | 2 bienniums | 3 bienniums | 4 or more bienniums |
|--|--|--------------------|--------------------|--|
| Submits written application for reinstatement | Required | Required | Required | Required |
| Pays past due renewal fee(s) | \$50 | \$100 | \$100 | \$100 |
| Pays reinstatement fees | \$50 | \$50 | \$50 | \$50 |
| Completes approved continuing education hours OR | 8 hours | 16 hours | 24 hours | 32 hours |
| Completes national board examination and pays examination fee | NA | NA | NA | Required \$20 |
| Total fees, continuing education hours, and examinations required for reinstatement: | \$100, 8 hours | \$150, 16 hours | \$150, 24 hours | \$170, 32 hours or national board examination |

645—60.10(272C) Lapsed licenses.

60.10(1) If the renewal fees and continuing education report are received more than 30 days after the license renewal expiration date, the license shall be considered lapsed. An application for reinstatement must be filed with the board and be accompanied by the reinstatement fee, the renewal fee for each biennium the license is lapsed and the late fee for failure to renew before expiration. The licensee may be subject to an audit of the licensee's continuing education report.

60.10(2) Licensees who have not fulfilled the requirements for license renewal or for an exemption in the required time frame will have a lapsed license and shall not engage in the practice of cosmetology arts and sciences. Practicing without a license may be cause for disciplinary action.

60.10(3) To reinstate, licensees shall comply with all requirements for reinstatement as outlined in 645—64.6(157).

60.10(4) Reinstatement of a lapsed license. The following chart illustrates the requirements for reinstatement based on the length of time a license has lapsed.

| Reinstatement of a lapsed license may be granted by the board if the applicant satisfies the following requirements, as applicable: | 30 days after expiration date up to 1 biennium | 2 bienniums | 3 bienniums | 4 or more bienniums |
|---|--|--------------------|--------------------|--|
| Submits written application for reinstatement | Required | Required | Required | Required |
| Pays past due renewal fee(s) | \$50 | \$100 | \$100 | \$100 |
| Pays reinstatement fees | \$50 | \$50 | \$50 | \$50 |
| Pays late fee(s) for failure to renew | \$50 | \$50 | \$50 | \$50 |
| Completes approved continuing education hours | 8 hours | 16 hours | 24 hours | 32 hours |
| Completes national board examination and pays examination fee | NA | NA | NA | Required \$20 |
| Total fees, continuing education hours, and examinations required for reinstatement: | \$150, 8 hours | \$200, 16 hours | \$200, 24 hours | \$220, 32 hours, national board examination |

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

60.10(5) Reinstatement of a lapsed instructor's license. The following chart illustrates the requirements for reinstatement based on the length of time a license has lapsed.

| Reinstatement of a lapsed instructor's license may be granted by the board if the applicant satisfies the following requirements, as applicable: | 30 days after expiration date up to 1 biennium | 2 bienniums | 3 bienniums | 4 or more bienniums |
|--|--|-------------|-------------|---|
| Submits written application for reinstatement | Required | Required | Required | Required |
| Pays past due renewal fee(s) | \$25 | \$50 | \$50 | \$50 |
| Pays late fees for failure to renew | \$20 | \$20 | \$20 | \$20 |
| Takes a teaching technology course | NA | NA | NA | Required |
| Passes the instructor theory and Iowa law examinations and pays the required examination fee | NA | NA | NA | Required \$20 |
| Total fees and examinations required for reinstatement: | \$45 | \$70 | \$70 | \$90, Instructor theory and Iowa law examinations |

645—60.11(272C) License denial.

60.11(1) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined in these rules shall specifically describe the facts to be contested and determined at the hearing.

60.11(2) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapter 272C.

These rules are intended to implement Iowa Code chapter 272C and Iowa Code chapter 157.

ITEM 2. Rescind **645—Chapter 62** and adopt in lieu thereof the following **new** chapter:

**CHAPTER 62
FEES**

645—62.1(147,157) License fees. All fees are nonrefundable.

62.1(1) Licensure fee for license to practice cosmetology arts and sciences, licensure by endorsement, licensure by reciprocity, or an instructor's license shall be \$50.

62.1(2) Biennial license renewal fee for each license for each biennium shall be \$50.

62.1(3) Late fee for failure to renew before expiration shall be \$50.

62.1(4) Reinstatement fee for a lapsed license or an inactive license shall be \$50.

62.1(5) Duplicate license fee shall be \$10.

62.1(6) Verification of license fee shall be \$10.

62.1(7) Returned check fee shall be \$15.

62.1(8) Disciplinary hearing fee shall be a minimum of \$75.

62.1(9) Temporary permit fee shall be \$10.

62.1(10) Theory examination fee shall be \$70.

62.1(11) Fee for retaking the theory examination shall be \$70.

62.1(12) Iowa law (jurisprudence) examination fee shall be \$30.

62.1(13) Fee for retaking the Iowa law (jurisprudence) examination shall be \$30.

62.1(14) Fee for license to conduct a school teaching cosmetology arts and sciences shall be \$500.

62.1(15) Fee for renewal of a license or change of location of a school teaching cosmetology arts and sciences shall be \$225 annually.

62.1(16) Salon license fee shall be \$35.

62.1(17) Renewal of a salon license fee shall be \$70 biennially.

62.1(18) Fee for change of location for a salon shall be \$35.

62.1(19) Salon name change fee shall be \$15.

62.1(20) Demonstrators temporary permit fee shall be \$35 for the first day and \$10 for each day thereafter that the permit is valid.

62.1(21) Biennial license renewal fee for an instructor for each biennium shall be \$50.

This rule is intended to implement Iowa Code section 147.80 and Iowa Code chapter 157.

ARC 0320B

**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 157.14, the Board of Cosmetology Arts and Sciences Examiners hereby gives Notice of Intended Action to rescind Chapter 64, "Cosmetology Arts and Sciences Continuing Education," and adopt new Chapter 64, "Continuing Education for Cosmetol-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ogy Arts and Sciences," and amend Chapter 65, "Disciplinary Procedures for Cosmetology Arts and Sciences Licensees," Iowa Administrative Code.

The proposed amendments rescind the current continuing education rules, adopt a new chapter for continuing education, and renumber the rules regarding discipline.

Any interested person may make written comments on the proposed amendments no later than December 20, 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 December 20, 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 157.14 and chapter 272C.

The following amendments are proposed.

ITEM 1. Rescind 645—Chapter 64 and adopt the following new chapter in lieu thereof:

CHAPTER 64
CONTINUING EDUCATION FOR
COSMETOLOGY ARTS AND SCIENCES

645—64.1(157) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means the license of a person who is acting, functioning, and working in compliance with license requirements.

"Administrator" means the administrator of the board of cosmetology arts and sciences 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 cosmetology arts and sciences 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 an 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 or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65, Iowa Administrative Code.

"Prescribed practice" means an area of specialty within the scope of cosmetology arts and sciences.

"Self-study course" means a form of systematic learning performed at a licensee's residence, office, or other private location including, but not limited to, viewing of videotapes, participating in studies electronically transmitted from another location, or participating in self-assessment testing (open book tests that are completed by the licensee, submitted to the provider, graded, and returned to the licensee with correct answers).

645—64.2(157) Continuing education requirements.

64.2(1) The biennial continuing education compliance period shall extend for a period that begins on April 1 of one year and ends on March 31 two years later. All licenses shall be renewed on a biennial basis. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of eight hours of continuing education approved by the board.

a. One-half of the cosmetology arts and sciences licensees shall renew for the period of April 1 of an even-numbered year to March 31 of the next even-numbered year.

b. One-half of the cosmetology arts and sciences licensees shall renew for the period of April 1 of an odd-numbered year to March 31 of the next odd-numbered year.

c. Requirements of licensees holding two or more licenses within the scope of cosmetology arts and sciences:

(1) The licensee shall obtain eight hours of continuing education in the area of cosmetology arts and sciences.

(2) For each additional license, the licensee shall obtain an additional four hours of continuing education in the prescribed practice discipline.

(3) Licensees that are instructors of cosmetology arts and sciences shall obtain an additional eight hours of continuing education in teaching technology.

d. Licensees currently licensed in Iowa but practicing exclusively in another state may comply with Iowa continuing education requirements for license renewal by meeting the continuing education requirements of the state or states where the licensee practices. Those licensees living and practicing in a state which has no continuing education requirement for renewal of a license shall not be required to meet Iowa's continuing education requirement but shall pay all renewal fees when due.

64.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of eight hours of continuing education per biennium for each subsequent license renewal.

64.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing educa-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tion activity. These hours must be approved by the board or otherwise meet the requirements herein and be approved by the board pursuant to statutory provisions and the rules that implement them.

64.2(4) No hours of continuing education shall be carried over into the next biennium.

64.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—64.3(157) Standards for approval.

64.3(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, location, course title, presenter(s);

(2) Numbers of program contact hours (One contact hour equals one hour of continuing education credit); and

(3) Official signature or verification by program sponsor.

64.3(2) Specific criteria.

a. Continuing education hours of credit may be obtained by attending continuing education activities of an approved sponsor.

b. The licensee may attend programs on product knowledge, methods, and systems. No direct selling of products is allowed as part of a continuing education offering.

c. The licensee may participate in continuing education courses/programs that are approved by the board of cosmetology arts and sciences examiners providing criteria in these rules are met.

d. The licensee may participate in self-study courses as defined in 645—64.1(157).

e. In addition to fulfilling the requirements in 64.2(1), those persons holding an instructor's license must complete a minimum of eight hours of continuing education approved by the board in the area of teaching technology.

f. The licensee shall obtain at least four hours in each area of prescribed practice for each cosmetology license held.

645—64.4(157) Approval of sponsors, programs, and activities for continuing education.

64.4(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 program description;

(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) 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:

(1) The continuing education activity;

(2) List of enrolled licensees' names and license numbers; and

(3) Number of continuing education clock hours awarded for a minimum of four years from the date of the continuing education activity.

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.

64.4(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. Program description;

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.

64.4(3) Review of programs. Continuing education programs/activities shall be reported every year at the designated time assigned by the board. The board may at any time reevaluate an approved sponsor or program. 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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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).

64.4(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. Program description;
- 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.

64.4(5) Voluntary relinquishment. The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

645—64.5(157) 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.

64.5(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.

64.5(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; and
 - (3) Indication of the 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 the 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—64.6(157) 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 to a maximum of two bienniums;
3. Pays the reinstatement fee;
4. Pays all late fees which have been assessed by the board for failure to renew;
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 8 by the number of bienniums since the license lapsed to a maximum of four bienniums or 32 continuing education hours.

6. If the license has lapsed for four bienniums or more, the person shall complete the national board examination.

7. For a lapsed instructor license, the licensee shall pay the past renewal and late fees to a maximum of two bienniums, take a teaching technology course, and pass the instructor and Iowa law examinations within six months of date of reinstatement.

645—64.7(157,272C) Continuing education waiver for active practitioners. A licensee licensed to practice as outlined in 645—Chapter 60 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 licensee under 645—Chapter 60.

645—64.8(157,272C) 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—64.9(157,272C) Continuing education waiver for disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum education 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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

educational requirements waived by such methods as may be prescribed by the board.

645—64.10(157,272C) 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 practice in the state of Iowa, satisfy the following requirements for reinstatement.

64.10(1) Submit a written application for reinstatement to the board upon forms provided by the board;

64.10(2) Submit the reinstatement fee;

64.10(3) Pay all of the renewal fees then due to a maximum of two bienniums; and

64.10(4) Furnish in the application evidence of one of the following:

a. Satisfactory completion of continuing education requirements during the period since the license became inactive. The total number of continuing education hours required for license reinstatement is computed by multiplying 8 by the number of bienniums since the license lapsed to a maximum of four bienniums or 32 continuing education hours.

b. If the license has lapsed for four bienniums or more, the person shall complete the national board examination.

645—64.11(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 157.

ITEM 2. Renumber rule **645—65.12(272C)** as **645—65.1(272C)**.

ARC 0326B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 132, "Emergency Medical Services—Service Program Authorization," Iowa Administrative Code.

The proposed amendments are intended to implement 2000 Iowa Acts, chapter 1009, by allowing EMS providers to function in a hospital or other entity in which health care is ordinarily provided.

The Department has provided specific provisions for a waiver or variance from rules in Chapter 132. A party seek-

ing a waiver or variance from the rules should do so pursuant to the waiver provisions contained in subrule 132.8(11).

The Department's Emergency Medical Services Advisory Council unanimously adopted the proposed changes at the October 11, 2000, meeting.

The Department of Public Health will hold a public hearing over the Iowa Communications Network (ICN) on Tuesday, December 19, 2000, from 1 to 2 p.m. Sites participating in the ICN broadcast include the following:

Spencer Public Library, 21 East Third, Spencer

National Guard Armory, 1712 LaClark Road, Carroll

National Guard Armory, 315 12th Avenue NW, Hampton

Department of Public Health, ICN Room, Sixth Floor, Lucas

State Office Building, 321 East 12th Street, Des Moines

National Guard Armory, 195 Radford Road, Dubuque

National Guard Armory, 501 Highway 1 South, Washington

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Department of Public Health and advise of specific needs.

Any oral or written comments must be received on or before December 19, 2000. Comments should be addressed to Gary Ireland, EMS Bureau Chief, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309.

These amendments are intended to implement Iowa Code chapter 147A.

The following amendments are proposed.

ITEM 1. Amend rule **641—132.1(147A)** as follows:

Amend the following definitions:

"Ambulance" means any privately or publicly owned rotorcraft or ground vehicle specifically designed, modified, constructed, equipped, staffed and used regularly to transport the sick, injured or otherwise incapacitated. ~~who are in need of out-of-hospital emergency medical care or whose condition requires treatment or continuous observation while being transported.~~

"Ambulance service" means any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation and emergency medical ~~services. care at the scene of an emergency or while en route to a hospital or during transfer from one medical care facility to another or to a private home. An ambulance service may use first response or rescue vehicles (nontransport) to supplement ambulance vehicles.~~

"Current course completion card" means written recognition given for training and successful course completion of CPR or ACLS with an expiration date or a recommended renewal date that exceeds the current date.

"Mutual aid" means an agreement, preferably in writing, between two or more services that addresses how and under what circumstances each service will respond to a request for assistance *in situations that exhaust available resources.*

"Off-line medical direction" means the monitoring of EMS providers through ~~retroactive~~ *retrospective* field assessments and treatment documentation review, critiques of selected cases with the EMS personnel, and statistical review of the system.

"On-line medical direction" means immediate medical ~~advice via radio or phone communications between the EMS provider and~~ *direction provided directly to service program EMS providers, in accordance with written parameters and*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

protocols, by the medical director, supervising physician or physician designee either on-scene or by any telecommunications system.

"Physician designee" means any registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners, who holds a current course completion card in ACLS. The physician designee ~~may act~~ acts as an intermediary for a supervising physician in accordance with written policies and protocols in directing the actions of emergency medical care personnel ~~in accordance with written policies and protocols providing emergency medical services.~~

"Service program" or "service" means any ~~24-hour emergency~~ medical care ambulance service or nontransport service that has received authorization by the department.

Adopt the following **new** definitions in alphabetical order:

"Critical care transport (CCT)" means specialty care patient transportation when medically necessary for a critically ill or injured patient, between medical care facilities, and provided by an authorized ambulance service that is endorsed by the department to provide critical care transportation and staffed by one or more critical care paramedics or other health care professional in an appropriate specialty area.

"Direct supervision" means services provided by an EMS provider in a hospital setting or other health care entity in which health care is ordinarily performed when in the personal presence of a physician or under the direction of a physician who is immediately available or under the direction of a physician assistant or registered nurse who is immediately available and is acting consistent with adopted policies and protocols of a hospital or other health care entity.

"Patient care report" means the out-of-hospital medical record documenting the evaluation and management of the patient.

"Tiered response" means a rendezvous of service programs to allow the transfer of patient care.

ITEM 2. Amend rule 641—132.2(147A) as follows:

641—132.2(147A) Authority of emergency medical care personnel.

~~132.2(1) Emergency medical care personnel shall perform under the supervision of a physician in accordance with Iowa Code chapter 147A and these rules.~~

132.2(2) An emergency medical care provider may:

a. Render *via on-line medical direction* emergency and nonemergency medical care in those areas for which the emergency medical care provider is certified, as part of an authorized service program:

- (1) At the scene of an emergency;
- (2) During transportation to a hospital;
- (3) While in the hospital emergency department;
- (4) Until patient care is directly assumed by a physician or by authorized hospital personnel; and
- (5) During transfer from one medical care facility to another or to a private home.

b. Function in any hospital or any other entity in which health care is ordinarily provided only when under the direct supervision of a physician when:

- (1) Enrolled as a student or participating as a preceptor in a training program approved by the department;
- (2) Fulfilling continuing education requirements;
- (3) Employed by or assigned to a hospital or other entity in which health care is ordinarily provided only when under

the direct supervision of a physician as a member of an authorized service program, or in an individual capacity, by rendering lifesaving services in the facility in which employed or assigned pursuant to the emergency medical care provider's certification and under direct supervision of a physician, physician assistant, or registered nurse. An emergency medical care provider shall not routinely function without the direct supervision of a physician, physician assistant, or registered nurse. However, when the physician, physician assistant, or registered nurse cannot directly assume emergency care of the patient, the emergency medical care personnel may perform, without direct supervision, emergency medical care procedures for which certified, if the life of the patient is in immediate danger and such care is required to preserve the patient's life;

(4) Employed by or assigned to a hospital or other entity in which health care is ordinarily provided only when under the direct supervision of a physician as a member of an authorized service program, or in an individual capacity, to perform nonlifesaving procedures for which trained and designated in a written job description. Such procedures may be performed after the patient is observed by and when the emergency medical care provider is under the supervision of the physician, physician assistant, or registered nurse, including when the registered nurse is not acting in the capacity of a physician designee, and where the procedure may be immediately abandoned without risk to the patient.

132.2(3) to 132.2(6) No change.

ARC 0315B

REVENUE AND FINANCE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 39, "Filing Return and Payment of Tax," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 42, "Adjustments to Computed Tax," Chapter 43, "Assessments and Refunds," Chapter 46, "Withholding," and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

A number of changes in the individual income tax, corporate income tax, and income tax withholding laws were made by 2000 Iowa Acts, chapters 1078, 1058, 1072, 1103, 1163, 1194, 1209, 1146 and 1174. Most of the changes are retroactively applicable to January 1, 2000, for tax years beginning on or after that date. However, two of the changes are effective on January 1, 2001, for tax years beginning on or after that date.

Item 1, which amends subrule 39.1(2), provides that non-residents of Iowa are required to file Iowa income tax returns if they are subject to Iowa alternative minimum tax even if the nonresidents have Iowa net incomes of less than \$1,000.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Item 2, which amends subrule 39.1(3), provides that part-year residents of Iowa are required to file Iowa returns if they are subject to Iowa alternative minimum tax even if the part-year residents have Iowa net income of less than \$1,000. This item also includes revision of the implementation clause for rule 39.1(422).

Item 3, amending rule 39.12(422), provides that persons who serve in an area designated as a qualified hazardous duty area are eligible for the same tax benefits as persons serving in a combat zone. This item also describes the tax benefits that are available to individuals serving in a hazardous duty area as well as persons serving in support of persons in the hazardous duty area. This item also includes revision of the implementation clause.

Item 4, which amends rule 40.3(422), provides that interest from notes issued by rural water districts is exempt from state income tax as well as interest from bonds issued by water districts.

Item 5 amends rule 40.3(422) by adding two new paragraphs regarding bonds issued by the Iowa higher education loan authority and bonds issued for the Vision Iowa Program which are state tax-exempt. This item also includes amendment of the implementation clause for rule 40.3(422).

Item 6, which amends rule 40.47(422), describes an additional increase in the partial pension/retirement income exclusion for certain taxpayers, which is effective for tax years beginning on or after January 1, 2001. The item also amends the implementation clause for this rule.

Item 7, amending rule 40.53(422), revises the rule for the deduction of contributions made to the educational savings plan trust to provide that a participant can make a greater contribution on behalf of a respective beneficiary in a tax year than under prior law. In addition, the item provides that the amount that is deductible on the participant's state income tax return for the 2000 tax year has been increased or indexed for inflation. The implementation clause for this rule is also revised in this item.

Item 8, adopting new rule 40.55(422), provides an income tax exemption for income payments received by victims of the holocaust for labor performed in the World War II era and for assets stolen from or lost by these victims. In cases in which the holocaust victims are deceased, heirs of the victims are eligible for the income tax exemption of the income payments.

Item 9 amends the implementation clause for rule 42.1(257,422) to show that 2000 legislation repealed a provision for a specific surtax for the removal of asbestos in public schools which did not affect the surtax rule. References are added in this implementation clause to school district surtax provisions which should have been previously cited.

Item 10, adopting new subrule 42.2(10), provides for the computation of the research activities credit as under the prior statute. The rule also includes a provision for making an election for computing the research credit in a manner that is consistent with the alternative incremental credit described in federal income tax law. Finally, the new rule provides that taxpayers can choose the method used to compute the research credit for state income tax purposes without considering the method used to compute the credit on the federal return. The implementation clause for rule 42.2(422) is also amended in this item.

Item 11 adopts new rule 42.14(422), which describes the provisions of the assistive device credit for individual income tax purposes. This is a credit for payments made by small businesses to acquire assistive devices for disabled

employees or to make workplace modifications for the employees.

Item 12 amends the implementation clause for rule 43.8(422) to show that the provision for the cow/calf refund was revised in 2000 Iowa Acts, House File 2136 [chapter 1058], although the actual rule did not require revision.

Item 13 amends subrule 46.1(2) by adopting a new paragraph that describes the withholding of state income tax from distributions from pensions and other retirement incomes to the extent the distributions are made on or after January 1, 2001. This item also amends the implementation clause for rule 46.1(422).

Item 14 adopts three new subrules for research activity credits. The first research activities credit is for corporate income tax purposes and includes a provision for computing the credit as under the prior law. This subrule also includes a provision for an election for computing the research activities credit using the alternative incremental credit method provided in federal income tax law. Finally, this subrule provides that taxpayers can choose the method used to compute the research activities credit for state income tax purposes without considering the method used to compute the credit on the federal return. The second subrule includes a provision for an additional research activities credit for a taxpayer that meets the qualifications of an eligible business. This research credit is an additional research credit to the initial research credit for individual or corporate purposes and is calculated like the initial research credit. The third subrule is a research activities credit for increasing research activities within an area designated as a quality jobs enterprise zone and is in lieu of the other research credits.

Item 15 amends subrule 52.10(3) to make references in that subrule to the new subrule 52.7(3) for the research activities credit and to new subrule 52.7(4) for the research activities credit for an eligible business.

Item 16 amends subrule 52.14(3) to make a reference in that subrule to subrule 52.7(5) which is the new subrule for the research credit for increasing research activities within a quality jobs enterprise zone.

Item 17 adopts new rule 52.17(422), which describes all the provisions for the assistive device credit for corporate taxpayers. This is a credit for amounts paid by small businesses for acquiring assistive devices for disabled employees or for making workplace modifications for these employees.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities that contract with political subdivisions.

There are no waiver provisions reflected in these rules because the Department lacks the statutory authority to grant waivers of rules that are mainly an interpretation of statutes.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A (1998 Iowa Acts, chapter 1202, section 10). The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A (1998 Iowa Acts, chapter 1202, section 10) if a written request is filed by delivery or by mailing postmarked no later than January 2, 2001, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who qualify as a small business, or an organization representing at least 25 such persons.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Any interested person may make written suggestions or comments on these proposed amendments on or before December 29, 2000. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to orally convey their views should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 22, 2000.

These amendments are intended to implement Iowa Code sections 12.71, 15.335, 15A.9, 217.39, 261A.27, 279.52, 357A.15, 422.3, 422.7, 422.10, 422.11E, 422.12B, 422.13, 422.21, 422.33 and 422.121 as amended by 2000 Iowa Acts, chapters 1078, 1058, 1072, 1103, 1163, 1194, 1209, 1146 and 1174.

The following amendments are proposed.

ITEM 1. Amend subrule 39.1(2) by adopting the following new paragraph "d."

d. Nonresidents with net incomes of less than \$1,000 that are subject to Iowa alternative minimum tax. For tax years beginning on or after January 1, 2000, every nonresident of Iowa who has a net income from Iowa sources of less than \$1,000 must make, sign, and file a return if the nonresident is subject to Iowa alternative minimum tax.

ITEM 2. Amend subrule 39.1(3) by adopting the following new paragraph "d" and amend the implementation clause for rule 701—39.1(422) as follows:

d. Part-year residents with net incomes of less than \$1,000 that are subject to Iowa alternative minimum tax. For tax years beginning on or after January 1, 2000, every part-year resident of Iowa who has a net income from Iowa sources of less than \$1,000 must make, sign and file a return if the part-year resident is subject to Iowa alternative minimum tax.

This rule is intended to implement Iowa Code *Supplement* sections 422.5 and 422.13 as amended by 1993 2000 Iowa Acts, chapter 123 1146.

ITEM 3. Amend rule 701—39.12(422) as follows:

701—39.12(422) Tax benefits for persons serving in the operation desert shield a combat zone or a qualified hazardous duty area. For tax years ending after August 2, 1990, a number of state tax benefits are authorized for persons who served serve in the an area designated by the President and the Congress in 1991 as a combat zone. *Similar state tax benefits are also authorized for persons who serve in an area designated by the President and the Congress as a qualified hazardous duty area for tax years beginning on or after January 1, 1999.* Those persons who were in the combat zone serving in support of the armed forces personnel in a combat zone or those persons who were serving in support of armed forces personnel in a qualified hazardous duty area are also eligible for the state tax benefits. The eligible individuals are given the same additional time period to file state income tax returns and perform other acts related to the department of revenue and finance as would constitute timely filing of returns or timely performance of other acts as described in Section 7508(a) of the Internal Revenue Code. "Other acts related to the department" includes filing claims for refund for any type of tax administered by the department, making tax payments other than withholding payments, filing appeals on tax mat-

ters, filing returns for taxes other than income tax, and performing other acts such as making timely contributions to individual retirement accounts. The additional time period for filing returns and performing other acts applies to the spouse of the person who was in the combat zone or the qualified hazardous duty area or the spouse of a person who was serving in support of persons in the combat zone or the hazardous duty area to the extent the spouse files jointly or separately on the combined return with the person who was in the combat zone or the hazardous duty area, or when the spouse is a party with the person who was serving in support of persons in the combat zone or hazardous duty area to any tax matter with the department for which the additional time period is allowed. For purposes of the tax benefits provided to persons in the combat zone, the Internal Revenue Code is to include the provisions in Public Law No. 102-2 which was enacted in January 1991. The additional time period for filing state returns and performing other acts is 180 days after the person leaves the combat zone or hazardous duty area which is the same time period as allowed in federal income tax law. However, a person who was hospitalized because of illness or injury in the combat zone or the hazardous duty area has up to five years to file returns or perform certain acts with this department after leaving the combat zone or hazardous duty area.

For tax years beginning on or after January 1, 1995, certain persons performing peacekeeping duties in a location designated by Congress as a qualified hazardous duty zone or other individuals performing military duties overseas in support of the persons in the hazardous duty area are eligible for the tax benefits described above. See rule 39.14(422) for additional information on the *Bosnia-Herzegovina* hazardous duty area.

This rule is intended to implement Iowa Code *Supplement* sections 422.3 and 422.21 as amended by 1996 2000 Iowa Acts, Senate File 2168 chapter 1146.

ITEM 4. Amend rule 701—40.3(422), numbered paragraph "6," as follows:

6. Rural water districts: Bonds and notes issued under Iowa Code section 357A.15.

ITEM 5. Amend rule 701—40.3(422) by adopting the following new numbered paragraphs "22" and "23" and amending the implementation clause as follows:

22. Iowa higher education loan authority: Obligations issued by the authority on or after July 1, 2000, pursuant to either division of Iowa Code chapter 261A as authorized in section 261A.27.

23. Vision Iowa program: Bonds issued on or after July 1, 2000, upon request of the vision Iowa board pursuant to subsection 8 of Iowa Code section 12.71.

This rule is intended to implement 2000 Iowa Acts, chapter 1174, section 15, and Iowa Code section sections 261A.27 as amended by 2000 Iowa Acts, chapter 1209, 357A.15 as amended by 2000 Iowa Acts, chapter 1078, and 422.7.

ITEM 6. Amend rule 701—40.47(422), introductory paragraph and implementation clause, as follows:

701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors. For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the ex-

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

clusion is eligible for a partial exclusion of retirement benefits received in the tax year. *For tax years beginning on or after January 1, 2001, the partial exclusion of retirement benefits received in the tax year is increased up to a maximum of \$6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of \$12,000 for a husband and wife who file a joint Iowa return.* For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year is ~~was~~ increased to up to a maximum of \$5,000 for a person other than a husband or wife who files a separate state income tax return, and up to a maximum of \$10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of \$10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of \$12,000 for tax years beginning on or after January 1, 2001. The \$10,000 or \$12,000 exclusion may be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses.

This rule is intended to implement Iowa Code sections 422.5 and 422.7 as amended by 1998 2000 Iowa Acts, ~~House File 2513~~ chapter 1194.

ITEM 7. Amend rule 701—40.53(422) as follows:

Amend subrule 40.53(1), introductory paragraph, as follows:

40.53(1) Deduction from net income for contributions made to the Iowa educational savings plan trust on behalf of beneficiaries. Effective with contributions made on or after July 1, 1998, an individual referred to as a "participant" can claim a deduction on the Iowa individual income tax return for contributions made by that individual to the Iowa educational savings plan trust on behalf of a beneficiary. The deduction on the 1998 Iowa return cannot exceed \$2,000 per beneficiary for contributions made in 1998 or the adjusted maximum annual amount for contributions made after 1998. Note that the maximum annual amount *that can be deducted per beneficiary is to be* may be adjusted or increased to an amount greater than \$2,000 for inflation on an annual basis. *Starting with tax years beginning in the 2000 calendar year, a participant may contribute an amount on behalf of a beneficiary that is greater than \$2,000, but may claim a deduction on the Iowa individual return, of the lesser of the amount given or \$2,000 as adjusted by inflation. For example, if a taxpayer made a \$5,000 contribution on behalf of a beneficiary to the educational savings plan in 2000, the taxpayer may claim a deduction on the IA 1040 return for 2000 in the amount of \$2,054, as this amount is \$2,000 as adjusted for inflation in effect for 2000.*

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 2000 Iowa Acts, ~~House File 2419~~ chapter 1163.

ITEM 8. Amend 701—Chapter 40 by adopting the following **new** rule:

701—40.55(422) Exemption of income payments for victims of the holocaust and heirs of victims. For tax years beginning on or after January 1, 2000, income payments received by individuals because they were victims of the holocaust or income payments received by individuals who are heirs of victims of the holocaust are excluded in the computation of net incomes, to the extent the payments were included

in the individuals' federal adjusted gross incomes. Victims of the holocaust were victims of persecution in the World War II era for racial, ethnic or religious reasons by Nazi Germany or other Axis regime.

Holocaust victims may receive income payments for slave labor performed in the World War II era. Income payments may also be received by holocaust victims as reparation for assets stolen from, hidden from, or otherwise lost in the World War II era, including proceeds from insurance policies of the victims. The World War II era includes the time of the war and the time immediately before and immediately after the war. However, income from assets acquired with the income payments or from the sale of those assets shall not be excluded from the computation of net income. The exemption of income payments shall only apply to the first recipient of the income payments who was either a victim of persecution by Nazi Germany or any other Axis regime or a person who is an heir of the victim of persecution.

This rule is intended to implement Iowa Code sections 217.39 and 422.7 as amended by 2000 Iowa Acts, chapter 1103.

ITEM 9. Amend rule 701—42.1(422), implementation clause, as follows:

This rule is intended to implement Iowa Code sections 257.21, 257.29, ~~279.54,~~ 298.2, 442.15, and 422.16 and 442.17.

ITEM 10. Amend rule 701—42.2(422) by adopting the following **new** subrule and amending the implementation clause as follows:

42.2(10) Research activities credit. Effective for tax years beginning on or after January 1, 2000, the taxes imposed for individual income tax purposes will be reduced by a tax credit for increasing research activities in this state. See subrule 42.2(6) for the research activities credit that was applicable for individual income tax purposes for tax years beginning on or after January 1, 1985, but prior to January 1, 2000.

a. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research activities.

b. In lieu of the credit computed under paragraph "a" of this subrule, a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

For purposes of this subrule, the terms “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that for purposes of the alternative incremental credit described in paragraph “b” of this subrule, such amounts are limited to research activities conducted within this state. For purposes of this subrule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, 2000.

c. An individual may claim a research activities credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income of the business entity taxed to the individual. The amount claimed by an individual from the business entity is to be based upon the pro-rata share of the individual’s earnings from a partnership, S corporation, estate or trust. Any research credit in excess of the individual’s tax liability, less the credits authorized in Iowa Code sections 422.11A, 422.12 and 422.12B may be refunded to the individual or may be credited to the individual’s tax liability for the following tax year.

This rule is intended to implement Iowa Code Supplement sections 15.333 and 422.10 *as amended by 2000 Iowa Acts, chapters 1194 and 1146*, and Iowa Code sections 422.11A, 422.12 and 422.12B *as amended by 2000 Iowa Acts, chapter 1146*.

ITEM 11. Amend 701—Chapter 42 by adopting the following new rule:

701—42.14(422) Assistive device tax credit. Effective for tax years beginning on or after January 1, 2000, a taxpayer, who is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer, may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first \$5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer’s tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer is not to deduct for Iowa income tax purposes any amount of the cost of an assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

42.14(1) Submitting applications for the credit. A small business wanting to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed \$500,000. The certificate for entitlement of the assistive device credit is to include the taxpayer’s name, the taxpayer’s address, the taxpayer’s tax identification number, the estimated amount of the tax credit, the date on which the taxpayer’s application was approved, the date when it is anticipated that the assistive device project

will be completed and a space on the application where the taxpayer is to enter the date that the assistive device project was completed. The certificate for entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer’s Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2000, and completed the assistive device workplace modification project on January 15, 2001, taxpayer A could claim the assistive device credit on taxpayer A’s 2001 Iowa return, assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue and finance will not allow the assistive device credit on a taxpayer’s return if the certificate of entitlement or a legible copy of the certificate is not attached to the taxpayer’s income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is a partnership, limited liability company, S corporation, estate, or trust, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the owners with a statement showing how the credit is to be allocated among the individual owners of the business entity. An individual owner is to attach a copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual’s state income tax return.

42.14(2) Definitions. The following definitions are applicable to this rule:

“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.

“Business entity” means partnership, limited liability company, S corporation, estate, or trust, where the income of the business is taxed to each of the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

“Disability” means the same as defined in Iowa Code section 225C.46. Therefore, “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:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;

5. Alcoholism.

"Employee" means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered an employee of the small business for purposes of this rule.

"Small business" means that the business either had gross receipts in the tax year before the current tax year of \$3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

"Workplace modifications" means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

42.14(3) Allocation of credit to owners of a business entity. If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an assistive device credit for a tax year of \$2,500 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an assistive device credit for the tax year of \$625 or 25 percent of the total assistive device credit of the partnership.

This rule is intended to implement 2000 Iowa Acts, chapter 1194, section 11.

ITEM 12. Amend the implementation clause for rule **701—43.8(422)** as follows:

This rule is intended to implement Iowa Code sections 422.120 and 422.122 and Iowa Code Supplement section 422.121 as amended by 2000 Iowa Acts, chapter 1058.

ITEM 13. Amend rule 701—46.1(422) as follows:

Amend subrule **46.1(2)** by adopting the following **new** paragraph "i":

i. Withholding from distributions made on or after January 1, 2001, from pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans. Effective for distributions made on or after January 1, 2001, from pension plans, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans, state income tax is generally required to be withheld from the distributions when federal income tax is being withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term "pensions and other retirement plans" includes all distributions of retirement benefits covered by the partial exemption described in rule 701—40.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan if the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a pension plan or other retirement plan if the amount of the distribution is \$500 per month or less or if the taxable amount is \$500 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422), if the state taxable amount can be determined by the payee of the distribution. There is also no requirement for withholding state income tax from a pension or other retirement plan if the distribution is \$1,000 per month or less or if the taxable amount is \$1,000 or less and

the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422) and that person has indicated an intention to file a joint state income tax return for the year in which the distribution is made. In instances where the distribution amount or the taxable amount is more than \$500 per month but less than \$6,000 for the year, no state income tax will be required to be withheld, if the person receiving the distribution is eligible for the partial exemption of retirement benefits.

Finally, there is no requirement for withholding from a lump-sum payment from a qualified retirement plan if the lump-sum payment is \$6,000 or less, the recipient is eligible for the partial exemption of distributions from pensions and other retirement plans, and the lump-sum payment is the only distribution from the retirement plan in the year.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 96.3, 99B.21, 99D.16, 99E.19, and 99F.18, 422.5 and 422.16 and Iowa Code sections section 422.7, 422.15, and 422.16 as amended by 1998 2000 Iowa Acts, House File 2513 chapter 1194.

ITEM 14. Amend rule 701—52.7(422) by adopting the following **new** subrules and amending the implementation clause as follows:

52.7(3) Research activities credit for tax years beginning in 2000. Effective for tax years beginning on or after January 1, 2000, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities.

a. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

b. In lieu of the credit computed under paragraph "a" of this subrule, a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

c. For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that for purposes of the alternative incremental credit described in paragraph "b" of this subrule, such amounts are limited to research activities conducted within this state. For purposes of this rule, "Internal Revenue

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Code" means the Internal Revenue Code in effect on January 1, 2000.

d. A shareholder in an S corporation may claim the pro-rata share of the Iowa credit for increasing research activities on the shareholder's individual return. The S corporation must provide each shareholder with a schedule showing the computation of the corporation's Iowa credit for increasing research activities and the shareholder's pro-rata share. The shareholder's pro-rata share of the Iowa credit for increasing research activities must be in the same ratio as the shareholder's pro-rata share in the earnings of the S corporation.

Any research credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91 and 422.111 may be refunded to the taxpayer or credited to the estimated tax of the corporation for the following year.

52.7(4) Research activities credit for an eligible business. Effective for tax years beginning on or after January 1, 2000, an eligible business may claim a tax credit for increasing research activities in this state during the period the eligible business is participating in the new jobs and income program with the Iowa department of economic development. An eligible business must meet all the conditions listed under Iowa Code section 15.329, which include requirements to make an investment of \$10 million as indexed for inflation and the creation of a minimum of 50 full-time positions. The research credit authorized in this subrule is in addition to the research activities credit described in subrule 42.2(10) or the research credit described in subrule 52.7(3).

a. The additional research activities credit for an eligible business is computed under the criteria for computing the research activities credit under subrule 42.2(10) or under subrule 52.7(3), depending on which of those subrules the initial research credit was computed. The same qualified research expenses and basic research expenses apply in computation of the research credit for an eligible business as were applicable in computing the credit in subrule 42.2(10) or 52.7(3). In addition, if the alternative incremental credit method was used to compute the initial research credit under subrule 42.2(10) or 52.7(3), that method would be used to compute the research credit for an eligible business. Therefore, if a taxpayer that met the qualifications of an eligible business had a research activities credit of \$200,000 as computed under subrule 52.7(3), the research activities credit for the eligible business would result in an additional credit for the taxpayer of \$200,000.

b. If the eligible business is a partnership, S corporation, limited liability company, estate or trust where the income from the eligible business is taxed to the individual owners of the business, these individual owners may claim the additional research activities credit allowed to the eligible business. The research credit is allocated to each of the individual owners of the eligible business on the basis of the pro-rata share of that individual's earnings from the eligible business.

52.7(5) Corporate tax research credit for increasing research activities within a quality jobs enterprise zone. Effective for tax years beginning on or after January 1, 2000, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities within an area designated as a quality jobs enterprise zone. This credit for increasing research activities is in lieu of the research activities credit described in subrule 42.2(10) or the research activities credit described in subrule 52.7(3).

a. The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax

year based upon the state's apportioned share of the qualifying expenditures for research activities.

(2) Thirteen percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in the quality jobs enterprise zone to total qualified research expenditures.

b. In lieu of the credit computed under paragraph "a" of this subrule, a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the quality jobs enterprise zone in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 3.30 percent, 4.40 percent, and 5.50 percent, respectively.

c. For purposes of this rule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that for purposes of the alternative incremental credit described in subrule 52.7(3) of this rule, such amounts are limited to research activities conducted within the quality jobs enterprise zone. For purposes of this rule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2000.

d. Any research credit in excess of the corporation's tax liability for the taxable year may be refunded to the taxpayer or credited to the corporation's tax liability for the following year.

This rule is intended to implement Iowa Code *Supplement* section 422.33 as amended by 1998 2000 Iowa Acts, *Senate File 2537 chapter 1194*.

ITEM 15. Amend subrule 52.10(3) to read as follows:

52.10(3) Research activities credit. An additional research credit of 6½ percent of the state's apportioned share of "qualifying expenditures" is available to an eligible business. The credit is available for qualifying expenditures incurred after May 1, 1994. The additional research activities credit is in addition to the credit set forth in Iowa Code section 422.33(5).

See rule 701—52.7(422) for the computation of the research activities credit.

See also subrule 52.7(3) for the computation of the research activities credit for tax years beginning on or after January 1, 2000, and subrule 52.7(4) for the research activities credit for an eligible business for tax years beginning on or after January 1, 2000.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier. This is in contrast to the research activities credit in Iowa Code section 422.33(5) where any credit in excess of the tax liability for the tax year may be carried forward until used or refunded. For tax years ending on or after July 1, 1996, the additional research activities credit may at the option of the taxpayer be refunded.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code *Supplement* section 15.333 as amended by 1999 Iowa Acts, chapter 172 and section 15.335 as amended by 2000 Iowa Acts, chapter 1194.

ITEM 16. Amend rule 701—52.14(422), numbered paragraph "3" and the implementation clause, as follows:

3. Research activities credit as provided in Iowa Code section 15.335 (see rule 701—52.10(15)) *for tax years ending after May 1, 1994, but prior to tax years beginning on or after January 1, 2000) and subrule 52.7(5) for the research credit for increasing research activities within a quality jobs enterprise zone for tax years beginning on or after January 1, 2001.*

This rule is intended to implement Iowa Code section 15E.186 and Iowa Code *Supplement* section 15A.9(8) ~~created~~ as amended by 1997 2000 Iowa Acts, House File 724 chapter 1194.

ITEM 17. Amend 701—Chapter 52 by adopting the following new rule:

701—52.17(422) Assistive device tax credit. Effective for tax years beginning on or after January 1, 2000, a taxpayer who is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first \$5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer is not to deduct for Iowa income tax purposes any amount of the cost of the assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

52.17(1) Submitting applications for the credit. A small business wanting to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed \$500,000. The certificate for entitlement of the assistive device credit is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved and the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer is to enter the date that the assistive de-

vice project was completed. The certificate for entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2000, and completed the assistive device workplace modification project on January 15, 2001, taxpayer A could claim the assistive device credit on taxpayer A's 2001 Iowa return assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue and finance will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not attached to the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is an S corporation, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the shareholders with a statement showing how the credit is to be allocated among the individual owners of the S corporation. An individual owner is to attach a copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual's state income tax return.

52.17(2) Definitions. The following definitions are applicable to this subrule:

"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.

"Business entity" means partnership, limited liability company, S corporation, estate or trust, where the income of the business is taxed to the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

"Disability" means the same as defined in Iowa Code section 225C.46. Therefore, "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:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;
5. Alcoholism.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

"Employee" means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401 (c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered to be an employee of the small business for purposes of this rule.

"Small business" means that the business either had gross receipts in the tax year before the current tax year of \$3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

"Workplace modifications" means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

52.17(3) Allocation of credit to owners of a business entity. If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if an S corporation has an assistive device credit for a tax year of \$2,500 and one shareholder of the S corporation receives 25 percent of the earnings of the corporation, that shareholder would receive an assistive device credit for the tax year of \$625 or 25 percent of the total assistive device credit of the S corporation.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2000 Iowa Acts, chapter 1194.

ARC 0324B**SUBSTANCE ABUSE
COMMISSION[643]****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 subsection 125.7(4), the Substance Abuse Commission proposes to adopt a new Chapter 9, "Regions for Substance Abuse Prevention and Treatment," Iowa Administrative Code.

This new chapter proposes to establish rules for substance abuse prevention and treatment regions, particularly to establish a process for changes in service areas. Iowa Code section 125.12 outlines the comprehensive program for substance abuse treatment and requires the division of the state into regions. The Director, with the review of the Commission, established regions many years ago. No provision was made at that time for responding to requests for changes in the service areas of the regions. These rules propose a process for that action.

Any interested person may make written comments or suggestions on or before January 4, 2001. Such written materials should be directed to Janet Zwick, Director, Division of Health Promotion, Prevention, and Addictive Behaviors, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

A public hearing on these proposed rules will be held on January 4, 2001, at 1 p.m. in Room 417, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa.

These rules are intended to implement Iowa Code section 125.12.

The following **new** chapter is proposed.

CHAPTER 9**REGIONS FOR SUBSTANCE ABUSE PREVENTION
AND TREATMENT**

643—9.1(125) Service areas established. The department of public health, with the consent of the commission on substance abuse, has established regions for substance abuse prevention and treatment service areas. Substance abuse assessment, prevention and education, and outpatient and follow-up treatment and rehabilitation shall be available in each service area. Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital, inpatient treatment, residential treatment, and halfway house treatment shall be available within reasonable driving distance of the service area.

643—9.2(125) Request for a change in service areas. Any existing service provider may file an application with the director to change an existing service area.

643—9.3(125) Application. The application shall include the following:

1. The name, address, and description of the applicant;
2. A description of the proposed change;
3. The applicant's rationale in support of the change in service area;
4. The number of clients the applicant proposes to serve and the proposed increase in quality or quantity of services to these clients;
5. A description of community support for the change; and
6. The names and addresses of all affected parties, including existing service providers.

643—9.4(125) Notification of affected parties. Within ten calendar days of receipt of a complete application, the director shall provide written notification to any affected parties identified in the application and shall allow any affected parties so notified 30 calendar days to submit written information in support of, or in opposition to, the application.

643—9.5(125) Public hearing. The director may hold a public hearing at which the applicant and any affected parties may provide an oral presentation with respect to their positions. The director shall give notice to the applicant and all affected parties ten calendar days prior to holding the hearing. The hearing shall not be a contested case hearing as that term is defined in Iowa Code chapter 17A.

643—9.6(125) Proposed decision. The director shall issue a written proposed decision which includes findings of fact and either approves or rejects the application. In issuing this decision, the director shall consider the proposed application, other information received from the applicant, information received from affected parties, the terms of any relevant contract, city and county lines, population concentrations, and existing substance abuse treatment and prevention services.

643—9.7(125) Change during term of contract. The director shall not approve an application which would change a service area during the term of an existing contract.

SUBSTANCE ABUSE COMMISSION[643](cont'd)

643—9.8(125) Commission review. The director's proposed decision shall be reviewed by the commission at its next regularly scheduled meeting. The commission shall review all of the materials considered by the director, as described in rule 9.6(125), and the proposed decision and vote to approve or reject the director's proposed decision.

643—9.9(125) Commission decision. The commission's decision shall be issued in writing and shall be final agency action for the purposes of Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 125.12.

ARC 0300B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 68B.4, 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 26, "Consent for the Sale of Goods and Services," Iowa Administrative Code.

Iowa Code section 68B.4 requires the Department of Transportation to adopt rules specifying the method by which officials may obtain agency consent for the sale of goods and services. The following proposed amendments are made to update this chapter. The definition of "official" is expanded to include division directors and reflects the current definition in Iowa Code chapter 68B. The Director of Transportation is authorized to grant consent to sales by the division directors. The person who grants the consent to sales by the Director of Transportation is changed from the Deputy Director of Transportation to the Division Director of the Director's Staff Division. The Department of Transportation no longer has a Deputy Director of Transportation.

The Department does not intend to grant waivers for this requirement because the requirement is statutory and cannot be waived.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than December 19, 2000.

A meeting to hear requested oral presentations is scheduled for Thursday, December 21, 2000, at 1 p.m. in the Small Materials Conference Room of the Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

These amendments are intended to implement Iowa Code chapter 68B.

Proposed rule-making actions:

ITEM 1. Amend rule **761—26.1(68B)**, definition of "official," as follows:

"Official" means the director of transportation, or a member of the transportation commission, or a division director.

ITEM 2. Amend subrule 26.4(2) as follows:

26.4(2) Who may consent. The ~~deputy director of transportation~~ *director of the director's staff division* is authorized to consent to sales by the director of transportation. The director of transportation is authorized to consent to sales by a member of the transportation commission or a division director.

ARC 0299B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10, 307.12, and 321E.15, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

Chapter 511 is being amended to comply with current law as follows:

Items 7, 8 and 9 implement 1997 Iowa Acts, chapter 104, section 28 (Iowa Code section 321E.11). These proposed amendments permit movement 30 minutes prior to sunrise to 30 minutes following sunset.

Item 17 implements 1997 Iowa Acts, chapter 100, section 11 (Iowa Code section 321E.14). This proposed amendment adds a fee for an annual oversize/overweight permit. The fee amount for an all-systems permit is also added.

Items 25 and 26 implement 1999 Iowa Acts, chapter 13, section 20 (Iowa Code Supplement section 321E.8). These proposed amendments increase the maximum length and height limits allowed for an indivisible vehicle or indivisible load when moved on a highway under an annual permit.

Item 30 implements 1997 Iowa Acts, chapter 100, section 8 (Iowa Code section 321E.8) and 1999 Iowa Acts, chapter 13, section 20 (Iowa Code Supplement section 321E.8). This proposed amendment adds a new rule concerning the issuance of annual oversize/overweight permits.

Items 34 and 35 implement 1999 Iowa Acts, chapter 13, section 20 (Iowa Code Supplement section 321E.8). These proposed amendments increase the maximum length and height limits allowed for an indivisible vehicle or indivisible load when moved on a highway under an all-systems permit.

Item 48 implements 1997 Iowa Acts, chapter 100, sections 7, 8 and 9 (Iowa Code sections 321E.7, 321E.8 and 321E.9) and 1999 Iowa Acts, chapter 13, section 20 (Iowa Code Supplement section 321E.8). This proposed amendment allows a crane to have a maximum of 24,000 pounds per axle for movement under a single-trip permit and also

TRANSPORTATION DEPARTMENT[761](cont'd)

adds the maximum axle weights and maximum gross weights for vehicles and loads moved under an annual oversize/overweight permit. These amendments also add information concerning the maximum gross weights for vehicles and loads moved under an all-systems permit.

Other amendments are made to Chapter 511 to add or amend definitions, add references to the annual oversize/overweight permit where needed, rewrite some introductory sentences to explain the various types of permits, add or amend implementation clauses, eliminate obsolete language, provide clarification, edit language for consistency, correct form numbers and reflect the renumbering of rules to allow for the addition of the annual oversize/overweight permit rule.

Waiver provisions are not included because Iowa Code chapter 321E and this chapter already provide for exceptions to be made in special or emergency situations.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.

5. Be received by the Director's Staff Division no later than December 19, 2000.

A meeting to hear requested oral presentations is scheduled for Thursday, December 21, 2000, at 10 a.m. in the DOT Conference Room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

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

These amendments are intended to implement Iowa Code chapters 321 and 321E.

Proposed rule-making actions:

ITEM 1. Amend rule **761—511.1(321E)** by adopting the following **new** definition in alphabetical order:

"Primary roads" or "primary road system" is defined in Iowa Code section 306.3. The primary road system includes the interstate road system.

ITEM 2. Amend rule **761—511.1(321E)** by rescinding the definition of "special or emergency situation" and by adopting the following **new** definition in alphabetical order:

"Special or emergency situation" means one or more of the following:

1. Circumstances where the movement is necessary to cooperate with cities, counties, other state agencies or other states in response to a national or other disaster.
2. Circumstances where the movement is necessary to cooperate with national defense officials.
3. Circumstances where the movement is necessary to cooperate with public or private utilities in order to maintain their public services.
4. Circumstances where the movement is essential to ensure safety and protection of any person or property due to an

event such as, but not limited to, pollution of natural resources, a potential fire or an explosion.

5. Circumstances where weather or transportation problems create an undue hardship for citizens of the state of Iowa.

6. Circumstances where the movement involves emergency-type vehicles.

7. Uncommon or extraordinary circumstances where the movement is essential to the existence of an Iowa business and the move may be accomplished without causing undue hazards to the safety of the traveling public or undue damage to private or public property.

8. Other unique circumstances that warrant the issuance of a permit as determined by the permit-issuing authority.

ITEM 3. Amend rule **761—511.1(321E)** by adopting the following **new** implementation clause:

This rule is intended to implement Iowa Code sections 321E.9, 321E.15, 321E.27, 321E.29 and 321E.34.

ITEM 4. Amend subrule 511.2(1) as follows:

511.2(1) Applications, forms, instructions and restrictions are available by mail from the Office of Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; or in person at its location in Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa; by telephone at (515)237-3264; or by facsimile at (515)237-3257. Permits may be obtained electronically upon making application to the office of motor carrier services.

ITEM 5. Rescind and reserve subrule **511.2(3)**.

ITEM 6. Amend subrule 511.2(4), introductory paragraph, as follows:

511.2(4) Except as provided in subrule ~~511.7(5)~~ 511.7(6) and rule ~~511.12~~ 511.13(321,321E), permits may be issued only for the transporting of a single article which exceeds statutory size or weight limits or both, and which cannot reasonably be divided or reduced to statutory size and weight limits. However, permits may be issued for the transporting of property consisting of more than one article when:

ITEM 7. Amend subrule 511.3(3) as follows:

511.3(3) Movement shall be permitted only during the hours from *one-half hour before sunrise* to *one-half hour after sunset* unless it is established by the permit-issuing authority that the movement can be better accomplished at another period of time because of traffic volume conditions.

ITEM 8. Amend subrule 511.3(4) as follows:

511.3(4) Except as provided in Iowa Code section 321.457, no movement shall be permitted on the holidays of Memorial Day, Independence Day and Labor Day, after 12 noon on days preceding these holidays and holiday weekends, during holiday weekends, or during special events when abnormally high traffic volumes can be expected. A holiday weekend occurs when the holiday falls on Friday, Saturday, Sunday or Monday. No movement shall be permitted until *one-half hour before sunrise* on the day after the holiday or holiday weekend.

ITEM 9. Amend subrule 511.3(7), introductory paragraph, as follows:

511.3(7) Continuous moves. Vehicles and loads may travel by permit between *one-half hour after sunset* and *one-half hour before sunrise* if, in addition to the general provisions and general requirements specified by the permit, the following conditions are met.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 10. Amend rule **761—511.3(321E)** by adopting the following **new** implementation clause:

This rule is intended to implement Iowa Code sections 321E.1 and 321E.11.

ITEM 11. Amend rule 761—511.4(321E), introductory paragraph, as follows:

761—511.4(321E) Permits. Permits issued shall be in writing and may be either single-trip permits, multitrip permits, or annual permits, *annual oversize/overweight or all-systems permits.*

ITEM 12. Amend paragraph **511.4(1)“a”** as follows:

a. ~~Annual, multitrip and single-trip permits~~ *Permits* for movement on the primary road system may be obtained in person, by telephone, facsimile, wire service, *electronic communication*, or by mail ~~from the office of motor carrier services~~ at the address in subrule 511.2(1).

ITEM 13. Amend paragraph **511.4(2)“a”** as follows:

a. Applications for permits for movement on the primary road system shall be made and permits shall be issued on departmental Forms 442009, *442047, 442058 and 442051, 442058 and 442059.*

ITEM 14. Amend paragraph **511.4(2)“b”** as follows:

b. Any applications to other permit-issuing authorities made upon Forms 442009, *442047, 442058 and 442051, 442058 and 442059* shall be sufficient and accepted as properly made by these authorities.

ITEM 15. Amend paragraph **511.4(3)“a”** as follows:

a. ~~An annual Annual, annual oversize/overweight, and all-systems permit permits~~ shall expire on the last day of the month one year from the date of issuance.

ITEM 16. Amend rule 761—511.5(321E), parenthetical implementation, as follows:

761—511.5(321,321E) Fees and charges.

ITEM 17. Amend rule 761—511.5(321,321E) by renumbering subrules **511.5(2)** to **511.5(7)** as **511.5(4)** to **511.5(9)**, respectively, and by adopting **new** subrules 511.5(2) and 511.5(3) as follows:

511.5(2) Annual oversize/overweight permit. A fee of \$300 shall be charged for each annual oversize/overweight permit, payable prior to the issuance of the permit.

511.5(3) All-systems permit. A fee of \$120 shall be charged for each annual all-systems permit, payable prior to the issuance of the permit.

ITEM 18. Amend renumbered subparagraph **511.5(9)“b”(4)** as follows:

(4) Account privileges may be permanently canceled after written notice to the account holder when the requirements listed in paragraph ~~511.5(7)“b”~~ *511.5(9)“b”* are not met.

ITEM 19. Amend rule **761—511.5(321,321E)** by adopting the following **new** implementation clause:

This rule is intended to implement Iowa Code sections 321.12, 321.122, 321E.14, 321E.29 and 321E.29A.

ITEM 20. Amend paragraph **511.6(1)“a”** as follows:

a. Public liability insurance in the amounts of \$100,000 bodily injury each person, \$200,000 bodily injury each occurrence, and \$50,000 property damage with an expiration date to cover the tenure of the annual, *annual oversize/overweight, all-systems*, multitrip or single-trip permit shall be required. In lieu of filing with the permit-issuing authority, a copy of the current certificate of public liability insur-

ance in these amounts shall be carried in the vehicle for which the permit has been issued.

ITEM 21. Amend rule **761—511.6(321E)** by adopting the following **new** implementation clause:

This rule is intended to implement Iowa Code section 321E.13.

ITEM 22. Amend rule 761—511.7(321,321E), introductory paragraph, as follows:

~~**761—511.7(321,321E) Issuance of annual Annual permits.** Annual permits for travel on state highways may be issued for the following: indivisible vehicles or indivisible loads for travel when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. Annual permits are issued for the following:~~

ITEM 23. Amend paragraph **511.7(1)“b”** as follows:

b. Length. 75 feet 0 inches overall. ~~Front-end projection may, at the discretion of the permit-issuing authority, exceed 15 feet.~~

ITEM 24. Amend paragraphs **511.7(1)“d,” 511.7(4)“d,” 511.7(5)“d”** and **511.7(6)“d”** by striking the words “See rule 511.11(321,321E)” and inserting in lieu thereof the words “See rule 511.12(321,321E).”

ITEM 25. Amend subrule 511.7(2) as follows:

511.7(2) Vehicles with indivisible loads, including construction machinery, mobile homes and factory-built structures, provided the following are not exceeded:

a. Width. 14 feet 6 inches.
b. Length. ~~100~~ *120* feet 0 inches overall. ~~Front-end projection may, at the discretion of the permit-issuing authority, exceed 15 feet.~~

c. Height. ~~Statutory: 13~~ *15* feet 6 5 inches.

d. Weight. See rule ~~511.11~~ *511.12*(321,321E).

e. Distance. Movement is restricted to 50 miles unless trip routes are obtained from the office of motor carrier services. Trip routes are valid for five days.

ITEM 26. Amend subrule 511.7(3) as follows:

511.7(3) Vehicles with indivisible loads, including construction machinery, mobile homes and factory-built structures, provided the following are not exceeded:

a. Width. 16 feet 0 inches.
b. Length. ~~100~~ *120* feet 0 inches.
c. Height. ~~13~~ *15* feet 6 5 inches.
d. Weight. See rule ~~761—511.11~~ *511.12*(321,321E).

e. Distance. Trip routes must be obtained from the office of motor carrier services.

ITEM 27. Amend paragraph **511.7(4)“b”** as follows:

b. Length. 100 feet 0 inches overall. ~~Front-end projection may, at the discretion of the permit-issuing authority, exceed 15 feet.~~

ITEM 28. Rescind paragraph **511.7(5)“e.”**

ITEM 29. Amend rule **761—511.7(321,321E)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, *321E.1, 321E.2, 321E.10, 321E.28, 321E.29 and 321E.29A* and *Iowa Code Supplement section 321E.8.*

ITEM 30. Amend 761—Chapter 511 by renumbering rules **511.8(321,321E)** to **511.13(321E)** as **511.9(321,**

TRANSPORTATION DEPARTMENT[761](cont'd)

321E) to 511.14(321E), respectively, and by adopting the following **new** rule:

761—511.8(321,321E) Annual oversize/overweight permits. Annual oversize/overweight permits are issued for indivisible vehicles or indivisible loads for travel when either the dimensions or the weight or both the dimensions and the weight exceed statutory limits. Travel is not allowed on the interstate. Routing is subject to embargoed bridges and roads and posted speed limits. Annual oversize/overweight permits are issued for the following:

511.8(1) Vehicles with indivisible loads, including construction machinery, mobile homes and factory-built structures, provided the following are not exceeded:

- a. Width. 12 feet 5 inches.
- b. Length. 120 feet 0 inches.
- c. Height. 15 feet 5 inches.
- d. Weight. See rule 511.12(321,321E).

e. Routing. The owner or operator shall select a route using a vertical clearance map, kip map, bridge embargo map and detour and road embargo map provided by the department. The owner or operator shall contact the department by telephone at 1-800-925-6469 between 8 a.m. and 4 p.m., Monday through Thursday, except for legal holidays or at any other time at (515)237-3206 prior to making the move to verify that the owner or operator is using the most recent information.

511.8(2) Reserved.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.1, 321E.2 and 321E.28 and Iowa Code Supplement section 321E.8.

ITEM 31. Amend renumbered rule 761—511.9(321, 321E), introductory paragraph, as follows:

761—511.9(321,321E) Issuance of all-system All-systems permits. ~~All-system All-systems~~ permits are issued by the office of motor carrier services ~~for indivisible vehicles or indivisible loads~~ for travel on ~~state the primary road system highways (unless restricted by embargo maps or posted limits)~~ and specified city streets and county roads ~~when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits.~~ The office of motor carrier services will provide a list of the authorized city streets and county roads. These permits are issued ~~in accordance with~~ for the following:

ITEM 32. Amend renumbered paragraph 511.9(1)“b” as follows:

b. Length. 75 feet 0 inches overall. ~~Front-end projection may, at the discretion of the permit-issuing authority, exceed 15 feet.~~

ITEM 33. Amend renumbered paragraphs 511.9(1)“d,” 511.9(4)“d,” 511.9(5)“d” and 511.9(6)“d” by striking the words “See rule 511.11(321,321E)” and inserting in lieu thereof the words “See rule 511.12(321,321E).”

ITEM 34. Amend renumbered subrule 511.9(2) as follows:

511.9(2) Vehicles with indivisible loads, including construction machinery, mobile homes and factory-built structures, provided the following are not exceeded:

- a. Width. 14 feet 6 inches.
- b. Length. ~~400 120~~ feet 0 inches overall. ~~Front-end projection may, at the discretion of the permit-issuing authority, exceed 15 feet.~~
- c. Height. ~~Statutory: 13 15~~ feet 6 5 inches.

d. Weight. See rule ~~511.11~~ 511.12(321,321E).

e. Distance. Movement is restricted to 50 miles unless trip routes are obtained from the office of motor carrier services and city and county jurisdictions. Trip routes are valid for five days.

ITEM 35. Amend renumbered subrule 511.9(3) as follows:

511.9(3) Vehicles with indivisible loads, including construction machinery, mobile homes and factory-built structures, provided the following are not exceeded:

- a. Width. 16 feet 0 inches.
- b. Length. ~~400 120~~ feet 0 inches.
- c. Height. ~~13 15~~ feet 6 5 inches.
- d. Weight. See rule ~~761—511.11~~ 511.12(321,321E).

e. Distance. Trip routes must be obtained from the office of motor carrier services and city and county jurisdictions.

ITEM 36. Amend renumbered paragraph 511.9(4)“b” as follows:

b. Length. 100 feet 0 inches overall. ~~Front-end projection may, at the discretion of the permit-issuing authority, exceed 15 feet.~~

ITEM 37. Rescind renumbered paragraph 511.9(5)“e.”

ITEM 38. Amend renumbered rule 761—511.9(321, 321E), implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.1, 321E.2, 321E.10, 321E.28 and 321E.29 and Iowa Code Supplement section 321E.8.

ITEM 39. Amend renumbered rule 761—511.10(321, 321E), introductory paragraph, as follows:

761—511.10(321,321E) Multitrip permits. *Multitrip permits are issued for indivisible vehicles or indivisible loads for travel when either the dimensions or the weight or both the dimensions and the weight exceed statutory limits. The permit shall be for specific routes between points of origin and destination. Multitrip permits are issued for the following:*

ITEM 40. Amend renumbered subrule 511.10(2) as follows:

511.10(2) Multitrip permits may be issued for all movements allowed under the single-trip permit provisions of rule ~~511.10~~ 511.11(321,321E) provided the movement is within the size and weight limitations of subrule ~~511.9(1)~~ 511.10(1).

ITEM 41. Amend renumbered rule 761—511.10 (321,321E), implementation clause, as follows:

This rule is intended to implement Iowa Code ~~section~~ sections 321.454, 321.456, 321.457, 321.463, 321E.1, 321E.2, 321E.9A and 321E.28.

ITEM 42. Amend renumbered rule 761—511.11(321, 321E), introductory paragraph, as follows:

761—511.11(321,321E) Issuance of single-trip Single-trip permits. ~~Single-trip permits may be issued for a movement that exceeds statutory size or weight limits from the point of origin to the point of ultimate destination for:~~ *for indivisible vehicles or indivisible loads for travel when either the dimensions or the weight or both the dimensions and the weight exceed statutory limits. The permit shall be for a specific route between an origin and destination. Single-trip permits are issued for the following:*

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 43. Amend renumbered paragraph **511.11(1)“b”** as follows:

b. Length. 80 feet 0 inches overall. ~~Front-end projection may, at the discretion of the permit-issuing authority, exceed 15 feet 0 inches.~~

ITEM 44. Amend renumbered paragraphs **511.11(1)“d,” 511.11(3)“d,” 511.11(4)“d”** and **511.11(5)“d”** by striking the words “See rule 511.11(321,321E)” and inserting in lieu thereof the words “See rule 511.12(321,321E).”

ITEM 45. Amend renumbered paragraph **511.11(3)“b”** as follows:

b. Length. 120 feet 0 inches overall. ~~Front-end projection may, at the discretion of the permit-issuing authority, exceed 15 feet 0 inches overall.~~

ITEM 46. Amend renumbered paragraph **511.11(4)“b”** as follows:

b. Length. 120 feet 0 inches overall. ~~Front-end projection may, at the discretion of the permit-issuing authority, exceed 15 feet 0 inches.~~

ITEM 47. Amend renumbered rule **761—511.11(321, 321E)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, and 321E.1, 321E.2, 321E.9, 321E.28 and 321E.29.

ITEM 48. Rescind renumbered rule **761—511.12(321, 321E)** and adopt in lieu thereof the following **new** rule:

761—511.12(321,321E) Maximum axle weights and maximum gross weights for vehicles and loads moved under permit.

511.12(1) Annual and all-systems permits.

a. For movement under an annual or all-systems permit, the axle weights and combined gross weight shall not exceed the limits found in Iowa Code section 321.463.

b. See subrule 511.12(5) for exceptions for construction machinery.

511.12(2) Annual oversize/overweight permits.

a. For movement under an annual oversize/overweight permit, the gross weight on any axle shall not exceed 20,000 pounds, with a maximum of 136,000 pounds total gross weight.

b. See subrule 511.12(5) for exceptions for construction machinery.

511.12(3) Multitrip permits.

a. For movement under a multitrip permit, the gross weight on any axle shall not exceed 20,000 pounds with a maximum of 156,000 pounds total gross weight.

b. See subrule 511.12(5) for exceptions for construction machinery.

511.12(4) Single-trip permits.

a. For movement under a single-trip permit, the gross weight on any axle shall not exceed 20,000 pounds.

b. If the combined gross weight exceeds 100,000 pounds, a single-trip permit may be issued for the movement only if the permit-issuing authority determines that it would not cause undue damage to the road and is in the best interest of the public.

c. Cranes may have a maximum of 24,000 pounds per axle for movement under a single-trip permit. Routes must be reviewed by the permit-issuing authority prior to issuance.

d. See subrule 511.12(5) for exceptions for construction machinery.

511.12(5) Construction machinery. Construction machinery may have a gross weight of 36,000 pounds on any single axle equipped with minimum size 26.5-inch by 25-inch flotation pneumatic tires and a maximum gross weight of 20,000 pounds on any single axle equipped with minimum size 18-inch by 25-inch flotation pneumatic tires, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of 80,000 pounds for movement under an annual or all-systems permit and 126,000 pounds for movement under a single-trip, multitrip or annual oversize/overweight permit.

For tire sizes and weights allowed between the maximum and minimum indicated, the following formula shall apply: Axle weight = 20,000 pounds + (tire width - 18) × 1,882 pounds.

This rule is intended to implement Iowa Code sections 321.463, 321E.7 to 321E.9A and 321E.32.

ITEM 49. Amend renumbered subrule 511.13(2) as follows:

511.13(2) At the discretion of the permit-issuing authority, the combined gross weight may exceed the statutory weight, but the axle weights shall be subject to rule ~~511.11 511.12~~(321,321E).

ITEM 50. Rescind renumbered rule 761—511.14(321E) and adopt in lieu thereof the following **new** rule:

761—511.14(321) Towing units. The towing unit shall be a truck or truck tractor with dual wheels and with a gross vehicle weight rating of at least 10,000 pounds when towing mobile homes or loads exceeding 10,000 pounds.

This rule is intended to implement Iowa Code section 321.457.

ITEM 51. Amend paragraph **511.15(2)“a”** as follows:

a. The escorting vehicle shall be ~~approximately the size of a normal passenger~~ a mid-size automobile or pickup motor truck with sufficient mobility to be able to assist in an emergency and designed to afford clear and unobstructed vision both front and rear. In questionable cases the ~~office of motor-carrier services~~ permit-issuing authority shall determine if a vehicle meets these conditions.

ITEM 52. Amend paragraph **511.15(2)“j”** as follows:

j. A pole used for measuring vertical clearances shall be ~~carried~~ mounted on the escort vehicle. The escort shall be required to measure all vertical clearances whenever the height of the permitted vehicle exceeds 14 feet 4 inches *up to and including 20 feet*.

ITEM 53. Amend rule **761—511.15(321E)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section sections 321E.14, and 1997 Iowa Acts, House File 704, section 29 321E.24 and 321E.34.

ITEM 54. Amend rule **761—511.16(321,321E)**, implementation clause, as follows:

~~These rules are~~ This rule is intended to implement Iowa Code sections 321.452 to 321.466 and Iowa Code chapter 321E 321.492, 321E.16 and 321E.20.

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 November 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 November 9, 2000, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 5.80%
- 32-89 days Minimum 5.90%
- 90-179 days Minimum 6.10%
- 180-364 days Minimum 6.10%
- One year to 397 days Minimum 6.10%
- More than 397 days Minimum 6.10%

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 0302B

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 476.76, and 476.77, the Utilities Board (Board) gives notice that on No-

vember 8, 2000, the Board issued an order in Docket No. RMU-00-10, In re: Foreign Acquisitions. Pursuant to a petition for rule making filed on September 28, 2000, by UtiliCorp United Inc. (UtiliCorp), the Board is noticing for comment proposed changes to 199 IAC 32.2(4), which deals with public utility acquisitions outside the United States. UtiliCorp’s proposal changes the test for determining whether a foreign acquisition qualifies for an exemption from the reorganization statutes and rules, Iowa Code sections 476.76 and 476.77.

Currently, 199 IAC 32.2(4) provides that Board review of acquisitions outside the United States is not necessary in the public interest if certain conditions are met. First, the public utility does not receive more than 10 percent of its gross utility revenues from Iowa operations. Second, the public utility has not expended more than \$500 million in the current calendar year on foreign acquisitions. Third, the aggregate value of foreign acquisitions does not exceed 30 percent of the net book value of the public utility’s assets.

UtiliCorp’s proposal eliminates the second and third tests and replaces them with two new tests. First, the exemption would not apply if the public utility does not hold an investment grade credit rating from two major credit rating services. Second, the exemption would not apply if the acquisition exceeds 15 percent of the net book value of the public utility’s assets.

UtiliCorp in its petition for rule making said that the proposed rule changes would expedite its bidding process and provide the Board with information that will better allow it to judge the risks associated with a public utility’s foreign investment strategy. The proposed amendment requires the public utility to have an investment grade rating from two major credit rating agencies before the exemption applies. Today, there are three major rating agencies. The proposed amendment also requires credit reports from all three agencies to be filed on an annual basis.

Pursuant to Iowa Code sections 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before December 19, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author’s name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

If requested pursuant to Iowa Code section 17A.4(1)“b,” or on its own motion after reviewing the statements, the Board will determine whether an opportunity for oral presentation should be provided.

These amendments are intended to implement Iowa Code sections 476.76 and 476.77.

The following amendments are proposed.

Amend subrule 32.2(4) as follows:

32.2(4) Notwithstanding the provisions of subrules 32.2(1) and 32.2(2), board review of acquisitions outside the United States by a public utility is not necessary in the public interest as long as the public utility does not receive more than 10 percent of its gross *utility* revenues from Iowa operations. The public utility is to notify the board and consumer advocate of any acquisitions which take place pursuant to the exemption within 30 days of the closing of the transaction. The notification shall include the dollar amount of the acquisition, ~~and~~ a description of the acquisition, *and a description of the financing. The public utility shall file on or before March 1 of each year an annual summary of its foreign ac-*

UTILITIES DIVISION[199](cont'd)

quisitions and recent credit rating reports from all major credit rating services.

However, this exemption does not apply once the public utility expends more than \$500 million per calendar year on such acquisitions or if the aggregate value of foreign acquisitions which take place after January 1, 1996, exceeds 30 percent of the net book value of the public utility's assets. If one of these thresholds is met, future acquisitions. However, this exemption does not apply if the public utility does not hold an investment grade credit rating from two major credit rating services or if its proposed direct expenditure on the acquisition, including guarantees and financing with recourse to the public utility, exceeds 15 percent of the net book value of the public utility's assets. If the exemption does not apply, the acquisition may not take place without the filing of a proposal for reorganization or request for waiver. In a rate case proceeding, the board may, upon proper showing, adjust the return on equity to reflect any risk associated with the foreign acquisitions.

ARC 0303B

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 476.1, 476.2, 476.11, and 476.101 and 47 U.S.C. Sections 252(e) and (i), the Utilities Board (Board) gives notice that on November 3, 2000, the Board issued an order in Docket No. RMU-00-11, In re: Negotiated Interconnection Agreements. The Board is proposing to amend 199 IAC 38.7(4) concerning the review of negotiated interconnection agreements to accomplish its obligations under the federal statutes while reducing the time and paperwork now required to review and approve the agreements.

Federal statutes leave the Board with oversight of the negotiated agreements to address public interest concerns and to ensure that no discrimination exists against any other carrier not a party to the agreement (47 U.S.C. § 252(e)(2)(A)). The current process of issuing an order docketing each negotiated interconnection agreement for comments, waiting 30 days, preparing a staff memorandum, and then issuing an order approving the agreement involves a substantial number of repetitive tasks that provide no additional oversight to the process on the Board's part and no discernable benefit to the end-user customer. The Board to this date has received no comments opposing the approval of a negotiated agreement, and internal review has not produced a recommendation to reject any agreement.

The Board has determined that its review and approval procedures can be simplified without diminishing the statutory oversight. There are two aspects of the proposed changes. First are proposed changes to 199 IAC 38.7(4) to eliminate the need for the two orders issued by the Board, unless internal review shows that the agreement discriminates against another carrier or is not in the public interest, or comments are filed objecting to the agreement. Second, the Board will develop a Web page on the Board's Web site that

will list negotiated interconnection agreements, amendments, and adoptions within five days of filing.

The Web page posting of the agreement or amendment will be the notice to the public that will show the date for filing comments. Interested persons will be given 30 days from the date the agreement was filed to file objections or support for the agreement, and the agreement will be deemed approved on the forty-first day after filing, if there are no objections and if internal review raises no issues.

The proposed changes to the subrule and the procedures for reviewing and approving negotiated interconnection agreements will thus shorten the time for those seeking approval of the agreements, and the approval will occur without the administrative burden of issuing two orders. The internal review of the agreements will not change significantly. The Web page will indicate the approval date of the agreement or whether the agreement has been docketed.

Adoption by telecommunications carriers of the terms, conditions, and rates from previously approved interconnection agreements are allowed under 47 U.S.C. Section 252(i). Board review is not contemplated for such adoptions. However, adoptions will be listed on the Board's Web page.

The Board will also rescind the paragraph setting a time line on resubmission. The federal Act favors competition facilitated by interconnection agreements, and the deadline for resubmission does not further that goal.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before December 19, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board on its own motion after reviewing the statements may determine that an oral presentation should be scheduled.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, 476.11, 476.101, and 47 U.S.C. Sections 252(e) and (i).

The following amendments are proposed.

Amend 199—subrule 38.7(4) as follows:

38.7(4) Board review of agreements.

a. *Filing of agreements.* All ~~interconnections~~ *interconnection* agreements shall be filed with the board for approval within 15 days after the issuance of a final decision on the arbitrated issues, in the case of arbitrated agreements or, in the case of negotiated agreements, after the execution of the agreement.

b. *Notice of negotiated agreements, amendments, and adoption of agreements.* Notice of the filing of a negotiated interconnection agreement, an amendment to an agreement, or adoption of an agreement will be posted within five working days after the filing date, on the board's Web site, <http://www.state.ia.us/iub>.

b c. *Comments on arbitrated agreements.* Within ten days following the filing of the arbitrated agreement ~~or 30 days after a negotiated agreement is filed for with the board~~ for review, the parties involved in the negotiations or arbitration, and any other interested party, may submit written comments to the board supporting either approval or rejection of the agreement. If the board does not approve or reject the

UTILITIES DIVISION[199](cont'd)

agreement within ~~90 days after a negotiated agreement or~~ within 30 days after submission by the parties of an agreement adopted by arbitration, the agreement shall be deemed approved.

~~e. Resubmission: If the board rejects a voluntary agreement or arbitration award, the parties may resubmit the agreement for board approval within 30 days following such rejection if the parties have remedied the deficiencies set forth in the board's findings.~~

d. *Comments on negotiated agreements and amendments to agreements. Within 30 days of the filing date of the negotiated agreement or amendment, the parties involved in the negotiations and any other interested party may submit written comments with the board supporting either acceptance or rejection of the agreement or amendment. If no comments are filed and no issues are generated by the internal board review, the agreement or amendment shall be deemed approved 41 days after the filing date. If comments*

opposing approval are filed or the internal board review recommends investigation, the agreement or amendment shall be docketed. The docketing order shall be issued within 40 days after the filing date. If the board does not issue a decision on a docketed filing within 90 days after the filing date, the agreement or amendment shall be deemed approved.

e. *Comments on adoption of agreements. No board approval is necessary when there is an adoption of the terms, conditions, and rates from an approved interconnection agreement. The adoption is effective upon filing. If there are terms, conditions, or rates in the filing that are not from an adopted agreement, then the filing is subject to the provisions of paragraph 38.7(4) "d."*

f. *Indefinite terms, conditions, or rates. When the agreement or amendment contains terms, conditions, or rates that are not yet agreed to, the parties shall file an amendment to the agreement once they have reached agreement on the terms, conditions, or rates.*

ARC 0334B

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of 2000 Iowa Acts, chapter 1023, section 5, and Iowa Code chapter 17A, the Insurance Division hereby adopts new Chapter 90, "Financial Information Regulation," Iowa Administrative Code.

The purpose of these rules is to comply with the federal Gramm-Leach-Bliley Act, Pub. L. No. 106-102, which regulates the privacy of information held by an insurer or a producer. Federal law requires that states adopt rules by November 13, 2000, to carry out Title V of the Act. These rules require insurers and producers to develop privacy policies, to develop systems for implementing these policies and protecting personal information of consumers and customers and to provide notices to all customers and consumers prior to either the effective date or a later compliance date established by the Division. These rules also establish a compliance date of July 1, 2001, for entities regulated by the Division. This date is consistent with the compliance date established by federal regulators responsible for enforcing the Act as it applies to federally regulated financial institutions.

Pursuant to Iowa Code section 17A.4(2), the Division finds that notice and public participation are unnecessary. This finding is based upon the fact that rules are required by all states and must comply with the federal Act.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and the rules should become effective on November 13, 2000, as they confer a benefit on consumers and customers.

These rules are also published herein under Notice of Intended Action as **ARC 0325B** to allow public comment. This emergency filing permits the Division to implement the new provisions of the law.

These rules are intended to implement 2000 Iowa Acts, chapter 1023, section 5, and P.L. 106-102.

These rules became effective November 13, 2000.

The following new chapter is adopted.

CHAPTER 90

FINANCIAL INFORMATION REGULATION

191—90.1(505) Purpose and scope.

90.1(1) This chapter governs the treatment of nonpublic personal financial information about individuals by all licensees of the insurance division.

90.1(2) This chapter also applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This chapter does not apply to information about individuals or companies that obtain products or services for business, commercial or agricultural purposes.

90.1(3) A licensee domiciled in this state that is in compliance with this chapter shall be deemed to be in compliance with Title V of P.L. 106-102 in a state that has not enacted laws or regulations that meet the requirements of Title V.

191—90.2(505) Definitions. For the purpose of these rules, the following definitions shall apply:

"Affiliate" means any company that controls, is controlled by or is under common control with another company.

"Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

"Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying article assigned to the individual, irrespective of the source of the underlying information.

"Commissioner" means the insurance commissioner.

"Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

"Consumer" means an individual, or that individual's legal representative, who seeks to obtain, obtains or has obtained from a licensee an insurance product or service that is to be used primarily for personal, family or household purposes and about whom the licensee has nonpublic personal information. Consumer includes any of the following:

1. An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

2. An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

3. An individual is a licensee's consumer if:

- The individual is a beneficiary of a life insurance policy underwritten by the licensee;
- The individual is a claimant under an insurance policy issued by the licensee;
- The individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or
- The individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and
- The licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under rules 90.12(505), 90.13(505) and 90.14(505) of this chapter.

An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

An individual is not the consumer of the licensee provided that the licensee provides the initial, annual and revised notices required under rules 90.3(505), 90.4(505), and 90.7(505) to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant, or further, provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under rules 90.12(505), 90.13(505) and 90.14(505) and solely due to any of the following:

- a. The consumer is a participant in or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary,
- b. The consumer is covered under a group or blanket insurance policy or group annuity contract issued by the licensee, or
- c. The consumer is a beneficiary in a workers' compensation plan.

However, an individual described in "a" through "c" is a consumer of a licensee if the licensee does not meet all the above conditions. In no event shall an individual solely by

INSURANCE DIVISION[191](cont'd)

virtue of the status described in "a" through "c" above be deemed a customer for purposes of this chapter.

An individual is not a licensee's consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee or because the individual has designated the licensee as trustee for a trust.

"Consumer reporting agency" means "consumer reporting agency" as defined in Section 603(f) of the federal Fair Credit Reporting Act.

"Control" means any of the following:

1. Ownership, control or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

2. Control in any manner over the election of a majority of the directors, trustees or general partners or individuals exercising similar functions of the company; or

3. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

"Customer" means a consumer who has a customer relationship with a licensee.

"Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides to the consumer one or more insurance products or services that are to be used primarily for personal, family or household purposes.

A consumer has a continuing relationship with a licensee if the consumer is a current policyholder of an insurance product issued by or through the licensee or if the consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

A consumer does not have a continuing relationship with a licensee under the following examples:

1. The consumer applies for insurance but does not purchase the insurance;

2. The licensee sells the consumer airline travel insurance in an isolated transaction;

3. The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

4. The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

5. The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

6. The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

7. The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

8. For the purposes of these rules, the individual's last-known address according to the licensee's record is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

"Designed to call attention" means a licensee designs to call attention to the nature and significance of the information in a notice if the licensee does the following:

1. Uses a plain-language heading to call attention to the notice;

2. Uses a typeface and type size that are easy to read;

3. Provides wide margins and ample line spacing;

4. Uses boldface or italics for key words; and

5. Is in a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

"Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to the financial activities described in Section 4(k) of the Bank Holding Company Act of 1956. Financial institution does not include the following:

1. Any person or entity with respect to any financial activity that is subject to the jurisdiction of the commodity futures trading commissioner under the Commodity Exchange Act.

2. The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971.

3. Institutions chartered by Congress specifically to engage in securitizations, secondary market sales including sales of servicing rights, or similar transactions related to a transaction of a consumer as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

"Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956. Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

"Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of Iowa. Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

"Licensee" means all licensed carriers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of the state or by the department of public health. Licensee shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker but only in regard to the excess lines placements pursuant to state rules.

"Nonaffiliated third party" means any person except a licensee's affiliate or a person employed jointly by a licensee and any company that is not a licensee's affiliate. Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) of the federal Bank Holding Company Act or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act.

"Nonpublic personal information" or "nonpublic personal financial information" means personally identifiable financial information and any list, description or other groupings

INSURANCE DIVISION[191](cont'd)

of consumers and publicly available information pertaining to them that is derived using any personally identifiable financial information that is not publicly available.

Nonpublic personal financial information does not include health information, publicly available information, except as included on a list as described above or any list or description pertaining to consumers that is derived without using any personally identifiable financial information that is not publicly available.

“Opt out” means a direction by the consumer that the licensee not disclose nonpublic personal financial information about the consumer to a nonaffiliated third party other than as permitted by rules 90.12(505), 90.13(505), and 90.14(505).

“Personally identifiable financial information” means any information a consumer provides to a licensee to obtain an insurance product or service from the licensee, information about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer or information the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

Personally identifiable financial information does not include health information, a list of names and addresses of customers of an entity that is not a financial institution and information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, and addresses.

“Publicly available information” means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records, widely distributed media sources or disclosures to the general public that are required to be made by federal, state or local law.

“Reasonably understandable” means the licensee’s notice is presented in the following form:

1. Using clear, concise sentences, paragraphs, and sections;
2. Using short explanatory sentences or bullet lists whenever possible;
3. Uses definite, concrete, plain language and active voice whenever possible;
4. Avoids multiple negatives;
5. Avoids legal or highly technical business terminology whenever possible; and
6. Avoids explanations that are imprecise and readily subject to different interpretations.

191—90.3(505) Initial privacy notice to consumers required.

90.3(1) A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to the following persons and at the following times:

- a. An individual who becomes the licensee’s customer, not later than when the licensee establishes a customer relationship, except as provided in subrule 90.3(5); and
- b. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by rules 90.13(505) and 90.14(505).

90.3(2) A licensee is not required to provide an initial notice to a consumer under subrule 90.3(1) if:

- a. The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party other than as authorized by rules 90.13(505)

and 90.14(505) and the licensee does not have a customer relationship with the consumer; or

b. A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

90.3(3) A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

90.3(4) When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subrule 90.3(1) as follows:

a. The licensee provides a revised policy notice under rule 90.7(505) that covers the customer’s new insurance product or service; or

b. If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under subrule 90.3(1).

90.3(5) A licensee may provide the initial notice required by paragraph 90.3(1)“a” within a reasonable time after the licensee establishes a customer relationship if:

a. Establishing the customer relationship is not at the customer’s election; or

b. Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer’s transaction and the customer agrees to receive the notice at a later time.

90.3(6) When a licensee is required by this rule to deliver an initial privacy notice, the licensee shall deliver it according to rule 90.8(505). If the licensee uses a short-form initial notice for noncustomers according to subrule 90.5(6), the licensee may deliver its privacy notice according to subrule 90.5(6).

191—90.4(505) Annual privacy notice to customers required.

90.4(1) A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. “Annually” means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the 12 consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

90.4(2) A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

90.4(3) When a licensee is required by this rule to deliver an annual privacy notice, the licensee shall deliver it according to rule 90.8(505).

191—90.5(505) Information to be included in privacy notices.

90.5(1) The initial annual and revised privacy notices that a licensee provides under rules 90.3(505), 90.4(505) and 90.7(505) shall include each of the following items of information in addition to any other information the licensee wants to provide and that apply to the licensee and to the consumers to whom the licensee sends its privacy notice:

- a. The categories of nonpublic personal financial information that the licensee collects;

INSURANCE DIVISION[191](cont'd)

b. The categories of nonpublic personal financial information that the licensee discloses;

c. The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under rules 90.13(505) and 90.14(505);

d. The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under rules 90.13(505) and 90.14(505);

e. A separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted if a licensee discloses nonpublic personal financial information to a nonaffiliated third party under rule 90.12(505) and no other exception in rules 90.13(505) and 90.14(505) applies to that disclosure;

f. An explanation of the consumer's right under subrule 90.9(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

g. Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act;

h. The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information; and

i. Any disclosure that the licensee makes under subrule 90.5(2).

90.5(2) If a licensee discloses nonpublic personal financial information as authorized under rules 90.13(505) and 90.14(505), the licensee is not required to list those exceptions in the initial or annual privacy notices required by rules 90.3(505) and 90.4(505). When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable and permitted by law.

90.5(3) If a licensee discloses nonpublic personal financial information under the exception in rule 90.12(505) to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of paragraph 90.5(1)"e" if it does the following:

a. Lists the categories of nonpublic personal financial information it discloses using the same categories and examples the licensee used to meet the requirements of paragraph 90.5(1)"b" as applicable; and

b. States whether the third party is a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution or a financial institution with whom the licensee has a joint marketing agreement.

90.5(4) If a licensee does not disclose and does not wish to reserve the right to disclose nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under rules 90.13(505) and 90.14(505), the licensee may simply state that fact, in addition to the information it shall provide under paragraphs 90.5(1)"a," "h," and "i" and subrule 90.5(2).

90.5(5) A licensee shall describe its policies and practices with respect to protecting the confidentiality and security of

nonpublic personal financial information if it does both of the following:

a. Describes in general terms who is authorized to have access to the information; and

b. States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

90.5(6) A licensee may satisfy the initial notice requirements in 90.3(1)"b" and 90.6(3) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt-out notice as required in rule 90.6(505).

a. The short-form initial notice shall be clear and conspicuous, state that the licensee's privacy notice is available upon request and explain a reasonable means by which the consumer may obtain that notice.

b. The licensee shall deliver its short-form initial notice according to rule 90.8(505). The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to rule 90.8(505).

90.5(7) The licensee's notice may include categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future but does not currently disclose and categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

191—90.6(505) Form of opt-out notice to consumers and opt-out methods.

90.6(1) A licensee required to provide an opt-out notice under subrule 90.9(1) shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that rule. The notice shall state the following:

a. The licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

b. The consumer has the right to opt out of that disclosure; and

c. A reasonable means by which the consumer may exercise the opt-out right.

90.6(2) A licensee may provide the opt-out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with rule 90.3(505).

90.6(3) If a licensee provides the opt-out notice later than required for the initial notice in accordance with rule 90.3(505), the licensee shall also include in writing or, if the consumer agrees, electronically a copy of the initial notice with the opt-out notice.

90.6(4) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt-out notice. The licensee's opt-out notice shall explain how the licensee will treat an opt-out direction by a joint consumer.

a. Any of the joint consumers may exercise the right to opt out. The licensee may do either of the following:

(1) Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

(2) Permit each joint consumer to opt out separately.

INSURANCE DIVISION[191](cont'd)

b. The licensee shall permit one of the joint consumers to opt out on behalf of all the joint consumers if a licensee permits each joint consumer to opt out separately.

c. A licensee may not require all joint consumers to opt out before it implements any opt-out direction.

90.6(5) A licensee shall comply with a consumer's opt-out direction as soon as reasonably practicable after the licensee receives it.

90.6(6) A consumer may exercise the right to opt out at any time.

90.6(7) A consumer's direction to opt out under this rule is effective until the consumer revokes it in writing or electronically, if the consumer agrees to revoke electronically.

90.6(8) When a customer relationship terminates, the customer's opt-out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt-out direction that applied to the former relationship does not apply to the new relationship.

90.6(9) When a licensee is required to deliver an opt-out notice by this rule, the licensee shall deliver it according to rule 90.8(505).

191—90.7(505) Revised privacy notices.

90.7(1) Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under rule 90.3(505) unless the following occur:

a. The licensee has provided to the consumer a clear and conspicuous revised privacy notice that accurately describes its policies and practices;

b. The licensee has provided to the consumer a new opt-out notice;

c. The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

d. The consumer does not opt out.

90.7(2) A revised privacy notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

90.7(3) When a licensee is required to deliver a revised privacy notice by this rule, the licensee shall deliver it according to rule 90.8(505).

191—90.8(505) Delivery of notice.

90.8(1) A licensee shall provide any notices that these rules require so that each consumer can reasonably be expected to receive actual notice in writing, or if the consumer agrees, electronically.

90.8(2) A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if one of the following occurs:

a. The customer uses the licensee's Web site to access insurance products and services electronically and agrees to receive notices at the Web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the Web site; or

b. The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

90.8(3) A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

90.8(4) For customers only, a licensee shall provide the initial notice required by paragraph 90.3(1)"a," the annual notice required by subrule 90.4(1) and the revised notice required by rule 90.7(505) so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

90.8(5) A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee may also provide a notice on behalf of another financial institution.

90.8(6) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of subrules 90.3(1), 90.4(1) and 90.7(1), respectively, by providing one notice to those consumers jointly.

191—90.9(505) Limits on disclosure of nonpublic personal financial information to nonaffiliated third parties.

90.9(1) A licensee may not directly or through any affiliate disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party except as otherwise authorized in these rules unless the following occur:

a. The licensee has provided to the consumer an initial notice as required under rule 90.3(505).

b. The licensee has provided to the consumer an opt-out notice as required in rule 90.6(505).

c. The licensee has given the consumer a reasonable opportunity to opt out of the disclosure before the licensee discloses the information to the nonaffiliated third party; and

d. The consumer does not opt out.

90.9(2) A licensee provides a consumer with a reasonable opportunity to opt out under the following methods:

a. The licensee mails the notices required in 90.9(1) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

b. A customer opens an on-line account with a licensee and agrees to receive the notices required in 90.9(1) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

c. For an isolated transaction such as providing the customer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notice required in 90.9(1) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

90.9(3) A licensee shall comply with this rule regardless of whether the licensee and the consumer have established a customer relationship.

90.9(4) Unless a licensee complies with this rule, the licensee may not directly or through any affiliate disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

90.9(5) A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffil-

INSURANCE DIVISION[191](cont'd)

iated third parties with respect to which the consumer wishes to opt out.

191—90.10(505) Limits on redisclosure and reuse of nonpublic personal financial information.

90.10(1) In the event a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception to rules 90.13(505) and 90.14(505), the licensee's disclosure and use of that information is limited as follows:

a. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

b. The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

c. The licensee may disclose and use the information pursuant to an exception in rule 90.13(505) or 90.14(505) in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

90.10(2) In the event a licensee received nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in rules 90.13(505) and 90.14(505), the licensee may disclose the information only as follows:

a. To the affiliates of the financial institution from which the licensee received the information;

b. To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

c. To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

90.10(3) In the event a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in rules 90.13(505) and 90.14(505), the third party may disclose and use that information only as follows:

a. The third party may disclose the information to the licensee's affiliates;

b. The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

c. The third party may disclose and use the information pursuant to an exception in rules 90.13(505) and 90.14(505) in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

90.10(4) In the event a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in rules 90.13(505) and 90.14(505), the third party may disclose the information only to the following:

a. The licensee's affiliates;

b. The third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

c. Any other person, if the disclosure would be lawful if the licensee made it directly to that person.

191—90.11(505) Limits on sharing account number information for marketing purposes.

90.11(1) A licensee shall not directly or through an affiliate disclose, other than to a consumer reporting agency, a

policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct-mail marketing or marketing through electronic mail to the consumer.

90.11(2) The above subrule does not apply if a licensee discloses a policy number or similar form of access number or access code to any of the following:

a. A licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

b. A licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

c. A participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

191—90.12(505) Exception to opt-out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing.

90.12(1) The opt-out requirements in rules 90.6(505) and 90.9(505) do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions for the licensee on the licensee's behalf, if the licensee does the following:

a. Provides the initial notice in accordance with rule 90.3(505); and

b. Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in rules 90.13(505) and 90.14(505) in the ordinary course of business to carry out those purposes.

90.12(2) The services a nonaffiliated third party performs for a licensee under subrule 90.12(1) may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

90.12(3) For purposes of this rule, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

191—90.13(505) Exceptions to notice and opt-out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions.

90.13(1) The requirements for initial notice in paragraph 90.3(1)"b," for the opt out in rules 90.6(505) and 90.9(505), and for service providers and joint marketing in rule 90.12(505) do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with the following:

a. Servicing or processing an insurance product or service that a consumer requests or authorizes;

b. Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private-label credit card program or other extension of credit on behalf of such entity;

c. A proposed or actual securitization, secondary market sale including sales of servicing rights, or similar transaction related to a transaction of the consumer; or

d. Reinsurance or stop loss or excess loss insurance.

INSURANCE DIVISION[191](cont'd)

90.13(2) For purposes of this rule, “necessary to effect, administer or enforce a transaction” means that the disclosure is as follows:

a. Required, or is one of the lawful or appropriate methods, to enforce the licensee’s rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

b. Required, or is a usual, appropriate or acceptable method, for the following transactions:

(1) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer’s account in the ordinary course of providing the insurance product or service;

(2) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(3) To provide a confirmation, statement or other record of the transaction or information on the status or value of the insurance product or service to the consumer or the consumer’s agent or broker;

(4) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(5) To underwrite insurance at the consumer’s request or for any of the following purposes as they relate to a consumer’s insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits including utilization review activities, participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(6) To disclose in connection with the following:

1. The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

2. The transfer of receivables, accounts or interests therein; or

3. The audit of debit, credit or other payment information.

191—90.14(505) Other exceptions to notice and opt-out requirements for disclosure of nonpublic personal financial information.

90.14(1) The requirements for initial notice to consumers in paragraph 90.3(1)“b,” for the opt out in rules 90.6(505) and 90.9(505), and for service providers and joint marketing in rule 90.12(505) do not apply when a licensee discloses nonpublic personal financial information as follows:

a. With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

b. To protect the confidentiality or security of a licensee’s records pertaining to the consumer, service, product, or transaction;

c. To protect against or prevent actual or potential fraud or unauthorized transactions;

d. For required institutional risk control or for resolving consumer disputes or inquiries;

e. To persons holding a legal or beneficial interest relating to the consumer;

f. To persons acting in a fiduciary or representative capacity on behalf of the consumer;

g. To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are

rating a licensee, persons that are assessing the licensee’s compliance with industry standards, and the licensee’s attorneys, accountants and auditors;

h. To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978, to law enforcement agencies including the Federal Reserve Board; Office of the Comptroller of the Currency; Federal Deposit Insurance Corporation; Office of Thrift Supervision; National Credit Union Administration; the Securities and Exchange Commission; the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II, and 12 U.S.C. Chapter 21, a state insurance authority, and the Federal Trade Commission, selfregulatory organizations or for an investigation on a matter related to public safety;

i. To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act;

j. From a consumer report reported by a consumer reporting agency;

k. In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business unit;

l. To comply with federal, state, or local laws, rules and other applicable legal requirements;

m. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

n. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law;

o. For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers’ compensation plan.

90.14(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal financial information as permitted under subrule 90.6(6).

191—90.15(505) Notice through a Web site. If a licensee provides a notice on a Web site, the licensee shall comply with the above requirements if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the Web site such as text, graphics, hyperlinks or sound do not distract attention from the notice. In addition, the licensee shall either place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted, or place a link on a screen that consumers frequently access that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

191—90.16(505) Licensee exception to notice requirement.

90.16(1) A licensee is not subject to the notice and opt-out requirements for nonpublic personal financial information as follows:

a. The licensee is an employee, agent or other representative of another licensee; and

b. The other licensee otherwise complies with, and provides the notices required by, the provisions of the rules and the licensee does not disclose any nonpublic personal financial information to any person other than the other licensee or its affiliates in a manner permitted by these rules.

INSURANCE DIVISION[191](cont'd)

90.16(2) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and opt-out requirements for nonpublic personal financial information in these rules provided the following:

a. The broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose including joint servicing or marketing under rule 90.12(505) except as permitted by rules 90.13(505) or 90.14(505); and

b. The broker or insurer delivers to the consumer at the time a customer relationship is established a notice on which the following is printed in 16-point type:

PRIVACY NOTICE

NEITHER THE U.S. BROKER THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

191—90.17(505) Protection of Fair Credit Reporting Act. Nothing in these rules shall be construed to modify, limit or supersede the operations of the federal Fair Credit Reporting Act, and no inference shall be drawn on the basis of the provisions of these rules regarding whether information is transaction or experience information under Section 603 of that Act.

191—90.18(505) Nondiscrimination. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of the consumer's or customer's nonpublic personal financial information pursuant to the provisions of this chapter.

191—90.19(505) Severability. If any rule or portion of a rule of this chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the rules or the applicability of the provision to other persons or circumstances shall not be affected.

191—90.20(505) Penalties. An insurer or producer or licensee that violates a requirement of these rules shall be found to have committed a violation of Iowa Code section 507B.4 in addition to any other penalties provided by the laws of this state.

191—90.21(505) Effective dates.

90.21(1) These rules became effective November 13, 2000. However, in order to provide sufficient time for licensees to establish policies and systems to comply with the requirements of these rules, the commissioner extends the time for compliance until July 1, 2001.

90.21(2) A licensee shall provide by July 1, 2001, an initial notice as required by rule 90.3(505) to consumers who are the licensee's customers on July 1, 2001.

90.21(3) Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of paragraph 90.12(1)"a," even if the contract does not include a requirement that the third party maintain confidentiality of nonpublic personal financial information, provided that the licensee entered into the agreement on or before July 1, 2001.

These rules are intended to implement 2000 Iowa Acts, chapter 1023, section 5, and P.L. 106-102.

[Filed Emergency 11/9/00, effective 11/13/00]
[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0332B**NURSING BOARD[655]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby adopts amendments to Chapter 3, "Licensure to Practice Registered Nurse/Licensed Practical Nurse" and Chapter 5, "Continuing Education," Iowa Administrative Code.

These amendments provide for the notification by mail of the availability of the license renewal application at the Board's Internet address. The licensee may obtain the renewal application by mail upon request. The requirement for submission of a certificate at the time of renewal for certain licensees is eliminated. These amendments facilitate on-line renewal.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because the amendments facilitate licensure.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing, as they confer a benefit by expediting the licensure renewal process.

The Board of Nursing adopted these amendments on November 8, 2000.

These amendments became effective November 9, 2000.

These amendments are intended to implement Iowa Code chapters 17A, 147, 152 and 272C.

The following amendments are adopted.

ITEM 1. Rescind subrule 3.7(3) and adopt in lieu thereof the following new subrule 3.7(3):

3.7(3) Renewal. At least 60 days prior to expiration of the license, the licensee shall be notified by mail that a renewal application is available at the board's Internet address. Renewal applications are also available by mail upon request.

a. The required materials and the renewal fee as specified in rule 3.1(17A,147,152,272C) are to be submitted to the board office 30 days before license expiration.

b. When the licensee has satisfactorily completed the requirements for renewal 30 days before expiration of the previous license, a renewal wallet card shall be mailed to the licensee before expiration of the previous license.

c. A license to practice as a registered nurse/licensed practical nurse based on renewal shall expire every three years on the fifteenth day of the birth month.

ITEM 2. Amend subrule 5.2(3), paragraph "e," to read as follows:

e. A licensee shall be deemed to have complied with the continuing education requirements when that person at the time of renewal possesses evidence of certification in a specialty area of nursing practice for the advanced registered nurse practitioner as defined in rule 655—7.1(152). The continuing education credit requirements shall be waived;

NURSING BOARD[655](cont'd)

however, a licensee who claims this exception shall ~~submit a copy retain evidence~~ of current certification by the national organization at the time of renewal as well as other requirements specified in 655—subrule 3.7(3) to be submitted upon request.

[Filed Emergency 11/9/00, effective 11/9/00]

[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0327B

PUBLIC HEALTH
DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 135.43, the Department of Public Health hereby adopts a new Chapter 92, "Iowa Fatality Review Committee," Iowa Administrative Code.

The new chapter implements 2000 Iowa Acts, chapter 1137, authorizing the Director of Public Health to establish a "Child Fatality Review Committee." The chapter provides that the purpose of the child fatality review committee is to determine whether the Department of Human Services and others involved with the case of child abuse responded appropriately and to issue a report containing its findings and recommendations.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because the new chapter implements 2000 Iowa Acts, chapter 1137.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the new chapter should be waived and that it be made effective upon filing as it confers a benefit to the public.

The State Board of Health adopted this chapter on November 8, 2000, during its regularly scheduled meeting.

This chapter is subject to the Department's rules regarding waivers.

These rules became effective November 9, 2000.

These rules are intended to implement 2000 Iowa Acts, chapter 1137.

The following new chapter is adopted.

CHAPTER 92

IOWA FATALITY REVIEW COMMITTEE

641—92.1(135) Purpose. The purpose of the child fatality review committee is to determine whether the department of human services and others involved with the case of child abuse responded appropriately.

641—92.2(135) Definitions.

"Child abuse assessment" means an assessment performed in accordance with Iowa Code section 232.71B.

"Child fatality" means the death of a child through the age of 17 years.

"Committee" means the Iowa child fatality review committee.

"Department" means the department of public health.

"Director" means the director of the department of public health.

"Multidisciplinary team" means the group of individuals as defined in Iowa Code section 235A.13.

641—92.3(135) Committee. The committee is an ad hoc committee appointed by the director on a case-by-case basis. The committee shall include a medical examiner, a pediatrician who is knowledgeable concerning deaths of children, and a person involved in law enforcement. The committee may also consult with individuals with specific child death expertise as necessary to perform the duties and responsibilities of the committee. The department shall provide staffing and administrative support to the committee.

641—92.4(135) Formation of the committee. The director may appoint a committee to review the death of a child under the age of 18 upon the request from a member of the legislature or the governor in cases in which a report of suspected child abuse had been filed with the department of human services pursuant to Iowa Code section 232.70 as amended by 2000 Iowa Acts, chapter 1137, section 4, within two years preceding the child's death.

641—92.5(135) Committee protocol for review. In determining whether the department of human services and others involved with the case of child abuse responded appropriately, the committee shall review records relevant to the child's death, which may include but are not limited to the following:

1. All reports of suspected child abuse on the identified child made to the department of human services pursuant to Iowa Code section 232.70 as amended by 2000 Iowa Acts, chapter 1137, section 4;
2. All child abuse assessments performed on the identified child in accordance with Iowa Code section 232.71B;
3. All other department of human services records maintained on the identified child;
4. All relevant law enforcement records which refer to the identified child;
5. All relevant medical and hospital records of the identified child;
6. All relevant court records which refer to the identified child;
7. Records of any multidisciplinary team which reviewed the case of the identified child;
8. Records of any public entity which reviewed the case of the identified child; and
9. All relevant records maintained by a day care provider, other child care provider, preschool, elementary school, middle school, or high school which refer to the identified child.

The committee shall also consult with any multidisciplinary team that is operating in the area where the fatality occurred.

641—92.6(135) Content of report. Upon completion of the review, the director shall submit the committee's report to the governor and general assembly. The committee report shall include findings concerning the case and recommendations for changes to prevent child fatalities when similar circumstances exist. The report shall include but is not limited to the following information:

1. The dates, outcomes, and results of any actions taken by the department of human services and others in regard to each report and allegation of child abuse involving the child who died.
2. The results of any review of the case performed by a multidisciplinary team or by any other public entity that reviewed the case.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

3. Confirmation of the department of human services' receipt of any report of child abuse involving the child, including confirmation as to whether or not any assessment involving the child was performed in accordance with Iowa Code section 232.71B, the results of any assessment, a description of the most recent assessment and the services offered to the family, the services rendered to the family, and the basis for the department's decisions concerning the case.

641—92.7(135) Consultation with county attorney. Prior to issuing the report, the committee shall consult with the county attorney responsible for prosecution of the alleged perpetrator of the child fatality. The committee's report shall include child abuse information associated with the case and the child but is subject to the restrictions applicable to the department of human services for release of information concerning a child fatality or near fatality in accordance with Iowa Code section 235A.15(9) [2000 Iowa Acts, chapter 1137, section 9].

641—92.8(135) Supplemental report. Following the completion of the trial of any alleged perpetrator of the child fatality and the appeal period for the granting of a new trial, the committee shall issue a supplemental report containing the information that was withheld, in accordance with rule 92.7(135), so as not to jeopardize the prosecution or the rights of the alleged perpetrator to a fair trial as described in Iowa Code section 235A.15(9) "f" and "g" [2000 Iowa Acts, chapter 1137, section 9].

641—92.9(135) Confidentiality and disclosure of information. The committee shall have access to patient records and other confidential information. The committee may re-disseminate confidential information in the committee's report which shall be submitted to the governor and the general assembly. For all other purposes, the committee shall main-

tain the confidentiality of all records which are confidential under Iowa Code section 22.7, Iowa Code chapter 235, or other provision of law. A person in possession or control of medical, investigative, or assessment information or other information pertaining to a child death and child abuse review shall allow the inspection and reproduction of the information by the department, upon the request of the department, to be used only in the administration and for the duties of the Iowa child fatality review committee. A person does not incur legal liability by reason of releasing information to the department as required under and in compliance with this rule.

641—92.10(135) Immunity and liability. Review committee members are immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of any act, omission, proceeding, decision, or determination undertaken or performed, or recommendation made as a review committee member provided that the review committee members acted in good faith and without malice in carrying out their official duties in their official capacity. A complainant bears the burden of proof in establishing malice or lack of good faith in an action brought against review committee members involving the performance of their duties and powers.

A person who releases or discloses confidential data, records, or any other type of information in violation of this chapter is guilty of a serious misdemeanor.

These rules are intended to implement 2000 Iowa Acts, chapter 1137.

[Filed Emergency 11/9/00, effective 11/9/00]
[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0304B**BANKING DIVISION[187]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Banking Division of the Commerce Department hereby adopts an amendment to Chapter 1, "Description of Organization," Iowa Administrative Code.

The amendment removes the fixed number of assistants and provides that the Superintendent, pursuant to Iowa Code section 524.208, determines the number of assistants deemed necessary to the proper discharge of the duties imposed upon the Superintendent by the laws of this state.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 4, 2000, as **ARC 0159B**. A public hearing was held on October 24, 2000, at 10 a.m. in the Banking Division Conference Room at 200 East Grand Avenue, Suite 300, Des Moines, Iowa. No parties attended the public hearing. Three written comments were received prior to the hearing; however, none of these comments were germane to the proposed amendment.

This rule as amended does not provide for waivers in specified situations because the rule itself allows flexibility as to the number of assistants that may be appointed by the Superintendent to carry out the duties of the office.

This amendment is identical to the amendment published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 524.208.

This amendment will become effective January 3, 2001.

The following amendment is adopted.

Amend paragraph **1.3(1)“b”** to read as follows:

~~b. Assistants to the superintendent. Three assistants to the~~ *The superintendent may appoint assistants to perform duties prescribed by the superintendent, including general supervision of all bank examining personnel, administration and supervision of regulatory examinations, and administration and supervision of all matters relating to the exercise of banking powers authorized by the laws of this state and other matters for which each is responsible.*

[Filed 11/8/00, effective 1/3/01]

[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0305B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 217.6 and 2000 Iowa Acts, chapter 1228, section 13, subsection 2, paragraph "a," and section 44, the Department of Human Services hereby amends Chapter 52, "Payment," and Chapter 177, "In-Home Health Related Care," appearing in the Iowa Administrative Code.

These amendments increase the maximum and flat State Supplementary Assistance (SSA) residential care facility

(RCF) and in-home health related care (IHHRC) reimbursement rate. The maximum RCF reimbursement rate will be increased from \$24.26 to \$24.50 per day. The flat RCF reimbursement rate will be increased from \$17.36 to \$17.50 per day. The monthly IHHRC reimbursement rate will be increased from \$466.49 to \$471.06.

The Seventy-eighth General Assembly directed that the Department may take actions to meet the federal pass-along requirement mandated by Title XVI of the Social Security Act, Section 1618, if necessary. These rate increases are necessary to meet the federal pass-along requirements for calendar year 2000.

In order to comply with the federal pass-along requirement in calendar year 2000, Iowa's total SSA expenditures must be at least \$19,575,651. Based on current projections, the Department projects that calendar year 2000 may be short of this required spending level. Current projections indicate that a 0.98 percent increase in the RCF and IHHRC reimbursement rates is necessary to ensure compliance with the pass-along requirement in calendar year 2000. This spending shortfall is attributable to a decline in in-home health related care usage.

These amendments do not provide for waiver in specified situations because they confer a benefit and are required to meet the federal pass-along requirement, as mandated by the legislature. Individuals may request a waiver of the monthly IHHRC reimbursement under the Department's general rule on exceptions at rule 441—1.8(217).

These amendments were previously Adopted and Filed Emergency and published in the August 9, 2000, Iowa Administrative Bulletin as **ARC 0009B**. Notice of Intended Action to solicit comments on that submission was published in the August 9, 2000, Iowa Administrative Bulletin as **ARC 0008B**.

Subrule 52.1(3) was revised to reflect the removal of policy which was adopted on an emergency basis effective November 1, 2000. (See **ARC 0231B** in the November 1, 2000, Iowa Administrative Bulletin.) That policy implemented an increase in the maximum RCF reimbursement rate from \$24.50 to \$29.34 per day for the month of November only.

The Council on Human Services adopted these amendments November 8, 2000.

These amendments are intended to implement Iowa Code sections 249.3(2) and 249.4 and 2000 Iowa Acts, chapter 1228, section 13, subsection 2, paragraph "a."

These amendments shall become effective February 1, 2001, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 52.1(3), introductory paragraph, as follows:

52.1(3) Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of ~~\$17.36~~ *\$17.50* or on a cost-related reimbursement system with a maximum reimbursement per diem rate of ~~\$29.34 for the month of November 2000 and \$24.50 for each month thereafter~~ *\$24.50*. A cost-related per diem rate shall be established for each facility choosing this method of payment according to rule 441—54.3(249).

ITEM 2. Amend rule 441—177.4(249) as follows:

Amend subrule 177.4(3) as follows:

177.4(3) Maximum costs. The maximum cost of service shall be ~~\$466.49~~ *\$471.06*. The provider shall accept the pay-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ment made and shall make no additional charges to the recipient or others.

Amend subrule 177.4(7), introductory paragraph, as follows:

177.4(7) Income for adults. The gross income of the individual and spouse, living in the home, shall be limited to ~~\$466.49~~ ~~\$471.06~~ per month if one needs care or ~~\$932.98~~ ~~\$942.12~~ if both need care, with the following disregards:

Amend subrule 177.4(8), paragraph "b," introductory paragraph, as follows:

b. The income of the child shall be limited to ~~\$466.49~~ ~~\$471.06~~ per month with the following disregards:

[Filed 11/8/00, effective 2/1/01]

[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0306B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 60, "Refugee Cash Assistance," appearing in the Iowa Administrative Code.

These amendments change the definition of date of entry for asylees and disregard as income and as a resource incidental cash resettlement moneys that sponsors make available to refugees applying for refugee cash assistance (RCA).

Eligibility for RCA is limited to eight months. The eight-month period begins with the date the alien enters the United States. However, aliens seeking asylum cannot access RCA until they have actually been granted asylum. Currently, because of the time it generally takes the Immigration and Naturalization Service (INS) to process alien status adjustments, asylees are often prohibited from accessing RCA because the eight-month period from the date they entered the United States has expired by the time they are granted asylum.

To better serve asylees, the Office of Refugee Resettlement (ORR) has ruled that for aliens seeking asylum the "date of entry" is the date they are granted asylum and begins the eight-month eligibility period for RCA.

EXAMPLE: April 3 – date of entry into the United States
December 5 – date asylum is granted

Under these amendments, December 5 is considered the "date of entry." The eight-month eligibility period for RCA would be December through July.

Under the current rule, the asylee would not be able to access RCA because the eight-month eligibility period (April through November) would have expired November 30, before the date asylum was granted.

The first few months after having been granted asylum are critical to asylees as they attempt to find work, adapt to a new culture and environment and, in many cases, attempt to bring their families from countries that are war-torn and unsafe. The new rule allows for asylees to receive assistance during a most difficult time period.

Unlike other aliens, refugees are brought to the United States by the state's voluntary resettlement agencies. Resettlement agencies receive funds from the U.S. Department

of State and ORR to be used for refugees' basic living expenses when first arriving in the United States, such as for housing, furniture, clothing, and other needed items. Refugees also usually have a local sponsor, such as an individual, a church or fraternal group. The particular resettlement agency makes the resettlement funds available to the refugee's local sponsor for use within established guidelines. Sponsors generally use the funds to make vendor payments to stores, landlords and other entities providing services or goods to the refugee family. Occasionally, a sponsor or the resettlement agency may give a small amount of the resettlement funds directly to the refugee family for necessary personal items, such as toiletries.

Under the current rule, cash that sponsors or resettlement agencies give directly to the refugee family is counted against the RCA cash grant. Under these amendments, the cash will be disregarded. These amendments allow for the exchange of a small amount of cash for needed personal items without refugees' incurring a reduction in their RCA grant.

These amendments do not provide for waivers in specified situations because these amendments are required by federal regulations that do not provide for waivers.

These amendments were previously Adopted and Filed Emergency and published in the October 4, 2000, Iowa Administrative Bulletin as **ARC 0157B**. Notice of Intended Action to solicit comments on that submission was published in the October 4, 2000, Iowa Administrative Bulletin as **ARC 0158B**.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments November 8, 2000.

These amendments are intended to implement Iowa Code section 217.6.

These amendments shall become effective February 1, 2001, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 441—60.7(217), introductory paragraph, as follows:

441—60.7(217) Time limit for eligibility. A refugee may receive assistance, if otherwise eligible, during the first eight months the refugee is in the United States, beginning the month the refugee enters the country. *EXCEPTION: For asylees, the date of entry is the date asylum is granted. The eight-month period of eligibility begins the month asylum is granted.* A nonrefugee child in the home with a refugee parent (or refugee parents, if both are in the home) is eligible for assistance until the parent(s) has been in the United States for eight months, or until the child reaches eight months of age, whichever occurs first.

ITEM 2. Amend subrule 60.7(2) by adopting the following new paragraph "d":

d. Any cash grant received by the applicant under the Department of State or the Department of Justice reception and placement programs shall be disregarded as income and as a resource.

[Filed 11/8/00, effective 2/1/01]

[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0307B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," and Chapter 89, "Debts Due from Transfers of Assets," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments November 8, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on October 4, 2000, as **ARC 0146B**.

These amendments revise policy governing transfer of assets to become eligible for Medicaid to implement legislative changes adopted by the Seventy-eighth General Assembly, which became effective July 1, 2000. The amendments are as follows:

- A definition is added to subrule 75.23(8) governing conditions of eligibility for Medicaid on "transfer or disposal of assets" which includes:
 1. Giving away or selling an interest in an asset;
 2. Placing an interest in an asset in a trust that is not available to the grantor;
 3. Removing or eliminating an interest in a jointly owned asset in favor of other owners;
 4. Disclaiming an inheritance of any property, interest, or right pursuant to Iowa Code section 633.704 on or after July 1, 2000;
 5. Failure to take a share of an estate as a surviving spouse (also known as "taking against a will") on or after July 1, 2000, to the extent that the value received by taking against the will would have exceeded the value of the inheritance received under the will; or
 6. Transferring or disclaiming the right to income not yet received.

Items "1" through "3" and "6" above reflect existing policy. Items "4" and "5" are required by the new legislation.

When a person disclaims an inheritance, or fails to exercise the right to take against a will, that person is avoiding the receipt of an asset that could be used to pay for medical care. If not penalized as transfers of assets, the result would be Medicaid dollars being used to pay for services for which the divested funds could have otherwise paid.

The following are amendments to 441—Chapter 89 governing transfer of assets policy for debt recovery.

- Under current policy, transfers of less than \$2,000 are not counted as creating a debt to the Department. Transfers of assets by the same transferor over a calendar year are aggregated. These amendments limit the amount for transfers from \$2,000 per calendar year to \$2,000 over a five-year look back period.
 - The exemption of the transfer of a homestead to any person other than a person exempt under federal regulations is eliminated. Transfers of a homestead to a spouse, disabled or minor children, children who provide care that enabled the parent to avoid earlier admission to the nursing facility, and to siblings who lived with the transferor for a specified time period continue to be exempt.
 - A new rule is added to clarify that actions initiated under Iowa Code chapter 249F are not appealable under the Iowa Administrative Procedure Act (Iowa Code chapter 17A). Any review will go directly to district court.

These amendments do not provide for waivers in specified situations because the changes are required by state legislation that does not provide for waiver.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 249A.3 and Iowa Code chapter 249F as amended by 2000 Iowa Acts, chapter 1060.

These amendments shall become effective January 3, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule **75.23(8)** by adopting the following **new** definition in alphabetical order:

"Transfer or disposal of assets" means any transfer or assignment of any legal or equitable interest in any asset as defined above, including:

1. Giving away or selling an interest in an asset;
2. Placing an interest in an asset in a trust that is not available to the grantor (see 75.24(2)"b"(2));
3. Removing or eliminating an interest in a jointly owned asset in favor of other owners;
4. Disclaiming an inheritance of any property, interest, or right pursuant to Iowa Code section 633.704 on or after July 1, 2000 (see Iowa Code Supplement section 249A.3(11) as amended by 2000 Iowa Acts, chapter 1060, section 3);
5. Failure to take a share of an estate as a surviving spouse (also known as "taking against a will") on or after July 1, 2000, to the extent that the value received by taking against the will would have exceeded the value of the inheritance received under the will (see Iowa Code Supplement section 249A.3(11) as amended by 2000 Iowa Acts, chapter 1060, section 3); or
6. Transferring or disclaiming the right to income not yet received.

ITEM 2. Amend the implementation clause following rule **441—75.23(249A)** as follows:

This rule is intended to implement Iowa Code ~~section~~ **sections 249A.3 and 249A.4**.

ITEM 3. Amend rule **441—89.3(249F)** as follows:

Amend numbered paragraph "**5**" as follows:

5. Transfers of less than \$2,000. ~~However, all~~ **All** transfers by the same transferor during ~~a calendar year~~ **the five-year period prior to the application for medical assistance by the transferor** shall be aggregated. If a transferor transfers property to more than one transferee during ~~a calendar year~~ **the five-year period prior to application for medical assistance by the transferor**, the \$2,000 exemption shall be divided equally between the transferees **for the five-year period prior to application for medical assistance**.

Rescind and reserve numbered paragraph "**9**."

ITEM 4. Amend 441—Chapter 89 by adopting the following **new** rule:

441—89.10(249F) Exemption from Iowa Code chapter 17A. Actions initiated under Iowa Code chapter 249F are not subject to Iowa Code chapter 17A. Review by the district court shall be an original hearing before the district court.

ITEM 5. Amend the implementation clause following **441—Chapter 89** as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

These rules are intended to implement Iowa Code chapter 249F as amended by ~~1999 Iowa Acts, Senate File 92~~ 2000 Iowa Acts, chapter 1060.

[Filed 11/8/00, effective 1/3/01]
[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0308B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments November 8, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on September 20, 2000, as **ARC 0131B**.

The Seventy-eighth General Assembly directed the Department to increase the reimbursement rate for state fiscal year 2000 for critical access hospitals to the rate provided for these hospitals under the federal Medicare program.

The Balanced Budget Amendment Act of 1997, Rural Hospital Flexibility Grant Program, provides guidelines for Medicare to reimburse critical access hospitals approved under the critical access hospital (CAH) program for the reasonable cost of services provided. A critical access hospital is defined as a facility that serves a rural or vulnerable population and is necessary to the economic health and well-being of the surrounding community.

Under the critical access hospital (CAH) program, the CAH is reimbursed by Medicare for reasonable costs, rather than on a DRG or APG basis. The Department of Public Health has implemented and oversees the CAH program. The Health Care Financing Administration (HCFA) certifies hospitals as critical access hospitals. The Department of Inspections and Appeals inspects and licenses critical access hospitals.

According to Medicare Conditions of Participation for critical access hospitals as described in 42 CFR Part 485, Subpart F, and state hospital licensure requirements administered by the Department of Inspections and Appeals, to qualify as a critical access hospital the hospital shall:

- Be located in a rural area as defined by the Medicare program.
- Be no less than 35 miles from another hospital or be designated by the Department of Public Health as a necessary provider of health care services.
- Provide 24-hour emergency care.
- Maintain no more than 15 acute care inpatient beds.
- Have a maximum of 25 acute care inpatient beds in the case of a hospital having a swing-bed agreement with a limit of 15 acute care patients.
- Limit stays to a maximum of a 96-hour annual average.

Additionally, the hospital shall continue to comply with all general hospital licensure requirements as defined in Department of Inspections and Appeals rules at 481—Chapter 51.

There are approximately 45 hospitals that could qualify to become CAHs over the next five years. As of August 31, 2000, there are 11 certified CAHs; and 8 more are in the process of certification.

These amendments provide for an additional annual payment to critical access hospitals based on the reasonable cost of services provided to Medicaid patients. The state legislature appropriated \$250,000 from the Tobacco Settlement funds for the Department to reimburse approved critical access hospitals at the same rates as Medicare.

These amendments do not provide for waivers in specific situations because they confer a benefit on CAHs. All CAHs should be reimbursed using the same methodology.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 249A.4 and 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "g."

These amendments shall become effective February 1, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(1)** by adopting the following new paragraph "g":

g. Retrospectively adjusted prospective rates. Critical access hospital providers are reimbursed prospectively on a DRG basis for inpatient care and an APG basis for outpatient care, pursuant to subrule 79.1(5), with retrospective adjustments based on annual cost reports submitted by the hospital at the end of the hospital's fiscal year. The retroactive adjustment equals the difference between the reasonable costs of providing covered services to eligible fee-for-service Medicaid recipients (excluding recipients in managed care), determined in accordance with Medicare cost principles, and the Medicaid fee-for-service reimbursement received on the DRG and APG basis. Amounts paid prior to adjustment that exceed reasonable costs shall be recovered by the department. The base rate upon which the DRG and APG payment is built shall be changed after any retrospective adjustment to reflect, as accurately as is possible, the reasonable costs of providing covered services to eligible fee-for-service Medicaid recipients for the coming year using the most recent utilization as submitted to the fiscal agent and Medicare cost principles.

ITEM 2. Amend subrule **79.1(2)** by adopting the following new basis of reimbursement provider category in alphabetical order:

| <u>Provider category</u> | <u>Basis of reimbursement</u> | <u>Upper limit</u> |
|-----------------------------|--|--|
| Hospitals (Critical access) | Retrospectively adjusted prospective rates. See 79.1(1)"g" and 79.1(5) | The reasonable cost of covered services provided to medical assistance recipients or the upper limits for other hospitals, whichever is greater. |

ITEM 3. Amend subrule **79.1(5)** as follows:

Amend paragraph "a" by adopting the following new definition in alphabetical order:

"Critical access hospital" or "CAH" means a hospital licensed as a critical access hospital by the department of inspections and appeals pursuant to rule 481—51.52(135B).

HUMAN SERVICES DEPARTMENT[441](cont'd)

Adopt the following **new** paragraph "aa":

aa. Retrospective adjustment for critical access hospitals. Payments to critical access hospitals pursuant to paragraphs 79.1(5)"a" to "z" are subject to a retrospective adjustment equal to the difference between the reasonable costs of covered services provided to eligible fee-for-service Medicaid recipients (excluding recipients in managed care), based on the hospital's annual cost reports and Medicare cost principles, and the Medicaid fee-for-service reimbursement received pursuant to paragraphs 79.1(5)"a" to "z." Amounts paid prior to adjustment that exceed reasonable costs shall be recovered by the department. The base rate upon which the DRG and APG payment is built shall be changed after any retrospective adjustment to reflect, as accurately as is possible, the reasonable costs of providing the covered service to eligible fee-for-service Medicaid recipients for the coming year using the most recent utilization as submitted to the fiscal agent and Medicare cost principles.

[Filed 11/8/00, effective 2/1/01]

[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0309B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 234.6 and 235B.5, the Department of Human Services hereby amends Chapter 176, "Dependent Adult Abuse," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments November 8, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on October 4, 2000, as **ARC 0147B**.

These amendments revise and clarify the process for requesting dependent adult abuse information and update policy regarding who may request an employment background check to conform policy with changes passed by the Seventy-eighth General Assembly. In addition, form names and numbers and Iowa Code references are updated.

Policy is revised to clarify who should request information from the county office and who should request information from the Central Registry. Only subjects of a report and persons authorized to access the information who are making an oral request because they believe the information is needed immediately may request the information from the county. All other requests are to be submitted to the Registry by mail or fax.

Administrators of an agency providing care to a dependent adult in another state, the superintendent, or the superintendent's designee, of a school district, and the authorities in charge of an accredited nonpublic school are added to the list of persons authorized to have access to dependent adult abuse information for the purposes of a volunteer or employment record check.

A subrule containing policy governing the method of dissemination of abuse information is rescinded as the information is contained elsewhere in the rules.

Policy is added to provide that, if health care programs complete an employment background check using the Inter-

net electronic information system maintained by the Health Facilities Division of the Department of Inspections and Appeals, the administrator of the program is required to sign a form, before receiving the information, agreeing not to disseminate the information received.

These amendments do not provide for waivers in specified situations because only persons authorized by Iowa law to receive dependent adult abuse information may do so.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 235B as amended by 2000 Iowa Acts, Chapter 1067.

These amendments shall become effective January 3, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule **176.3(1)**, paragraph "b," as follows:

b. ~~Adult~~ *Dependent adult* abuse exists as defined in Iowa Code Supplement section 235B.2.

ITEM 2. Amend subrules 176.6(4) and 176.6(10) as follows:

176.6(4) County attorneys, law enforcement agencies, multidisciplinary teams as defined in *Iowa Code* section ~~235A.13, subsection 9, 235B.1, subsection 1,~~ and social services agencies in the state shall cooperate and assist in the evaluation or assessment upon the request of the department. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

176.6(10) In every case involving adult abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court, to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult when necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to ~~1983 Iowa Acts, chapter 453, section 4, Iowa Code section 235B.3, subsection 7,~~ paragraph "c," the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid ~~out of the court expense fund~~ *by the county*.

ITEM 3. Amend rule 441—176.10(235B) as follows:

Amend subrules 176.10(1) and 176.10(2) as follows:

176.10(1) Requests for information. Written requests for adult abuse information *by the subject of a report as defined in subrule 176.10(3), paragraph "a," shall* may be submitted to the county office of the department on Form ~~SS-1114 470-0612, Request for Dependent Adult Abuse Registry Information, except as provided in subrule 176.10(3), paragraph "c."~~

Oral requests for dependent adult abuse information may be made to the county office or the central registry when the person making the request believes that the information is needed immediately and the person is authorized to access the information, pursuant to the requirements of Iowa Code

HUMAN SERVICES DEPARTMENT[441](cont'd)

section 235B.7, subsection 2. If a request is made orally by telephone, a written request shall be filed within 72 hours of the oral request using Form 470-0612, Request for Dependent Adult Abuse Registry Information. When an oral request to the county office to obtain dependent adult abuse information is granted by the central registry, the county shall document the approval to the central registry through use of Form 470-0612.

~~Requests may be made by telephone to the central registry by mail or fax pursuant to the requirements of Iowa Code chapter 235B as amended by 1991 Iowa Acts, Senate File 455, section 7, subsection 2 section 235B.7. Oral requests must be followed by a written request to the central registry within 72 hours on Form SS-1114.~~

176.10(2) Verification of identity. The county office shall verify the identity of the person making the request on Form SS-1114 470-0612, Request for Dependent Adult Abuse Registry Information. Upon verification of the identity of the person making the request, the county office shall transmit the request to the central registry. The central registry shall verify the identity of persons making requests for information directly to the central registry by telephone, mail, fax, or in person, on Form 470-0612, Request for Dependent Adult Abuse Registry Information.

Amend subrule **176.10(3)**, paragraph "e," by adopting the following new subparagraphs:

(8) The administrator of an agency providing care to a dependent adult in another state, for the purpose of performing an employment background check.

(9) The superintendent, or the superintendent's designee, of a school district or the authorities in charge of an accredited nonpublic school for the purposes of a volunteer or employment record check.

Rescind subrule 176.10(4) and adopt the following new subrule in lieu thereof:

176.10(4) Requests concerning applicants for employment and employees of health care programs. A health care program making a request for dependent adult abuse information for the purpose of determining employability, as authorized by Iowa Code section 235B.6, subsection 2, paragraph "e," subparagraphs (6) and (7), and section 135C.33, subsection 6, shall request the information directly from the central registry or obtain the information from the Internet electronic information system maintained by the health facilities division of the department of inspections and appeals.

Requests made directly to the central registry shall be made on Form 470-0612, Request for Dependent Adult Abuse Registry Information.

Health care programs requesting dependent adult abuse background checks on employee applicants and employees by use of the Internet electronic information system shall complete Form 470-3767, Non-Redissemination Agreement. The form shall be signed by the administrator of the health care program and be sent to the central registry before receipt of the information from the department. The administrator shall agree not to disseminate dependent adult abuse information obtained through the Internet electronic information system, except as authorized in Iowa Code sections 235B.6 and 235B.8.

Amend subrules 176.10(5) and 176.10(8) to 176.10(10) as follows:

176.10(5) Dissemination of undetermined reports. A report which cannot be determined by a preponderance of the evidence to be founded or unfounded may be disseminated and redisseminated in accordance with Iowa Code ~~chapter~~

~~235B as amended by 1991 Iowa Acts, Senate File 455, section 6, section 235B.8 until the report is expunged. Information referred to in the report may be referred to in subsequent reports and evaluations.~~

176.10(8) Dependent adult abuse information disseminated and redisseminated. Notwithstanding subrule 176.10(1), written requests and oral requests are not required for dependent adult abuse information that is disseminated to an employee of the department of human services, a district court, or the attorney representing the department as authorized by Iowa Code ~~chapter 235B as amended by 1991 Iowa Acts, Senate File 455, section 6 section 235B.6.~~

176.10(9) Required notification. The department shall notify orally the subject of a report of the results of the evaluation or assessment. The department shall subsequently transmit a written notice to the subject which will include information regarding the results, the confidentiality provisions of Iowa Code ~~Supplement sections 235B.6 and 235B.12, and the procedures for correction or expungement and appeal of dependent adult abuse information as provided in Iowa Code Supplement section 235B.10.~~

176.10(10) Mandatory reporter notification. The department shall attempt to notify orally the mandatory reporter who made the report in a dependent adult abuse case of the results of the evaluation or assessment and of the confidentiality provisions of Iowa Code ~~Supplement section sections 235B.6 and Iowa Code section 235B.12.~~ The department shall subsequently transmit a written notice on Form 470-2444, Adult Protective Notification, to the mandatory reporter who made the report. The form shall include information regarding the results of the evaluation or assessment and confidentiality provisions. A copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in Iowa Code section 235B.8.

ITEM 4. Amend rule 441—176.13(235B) as follows:

Amend subrules 176.13(1) to 176.13(3) as follows:

176.13(1) Founded reports. A report of dependent adult abuse determined to be founded shall be retained and sealed by the registry in accordance with Iowa Code ~~chapter 235B as amended by 1991 Iowa Acts, Senate File 455, section 9 section 235B.9.~~

176.13(2) Unfounded reports. A report of dependent adult abuse determined to be unfounded shall be expunged when it is determined to be unfounded in accordance with Iowa Code ~~chapter 235B as amended by 1991 Iowa Acts, Senate File 455, section 9, subsection 2 section 235B.9, subsection 2.~~

176.13(3) Undetermined reports. A report of dependent adult abuse in which the information cannot be determined by a preponderance of the evidence to be founded or unfounded shall be expunged by the registry in accordance with Iowa Code ~~chapter 235B as amended by 1991 Iowa Acts, Senate File 455, section 9 section 235B.9, subsection 2.~~

Rescind the implementation clause.

ITEM 5. Amend subrule **176.15(2)**, paragraphs "c" and "e," as follows:

c. That no team members shall redisseminate adult abuse information obtained solely through the multidisciplinary team. This shall not preclude redissemination of information as authorized by Iowa Code ~~chapter 235B as amended by 1991 Iowa Acts, Senate File 455, section 6, section 235B.6~~ when an individual team member has received information as a result of another authorized access provision of the Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

e. That any written report or document produced by the team pertaining to an individual case shall be made a part of the file for the case and shall be subject to all confidentiality provisions of Iowa Code chapter 235B as amended by 1994 Iowa Acts, Senate File 455 sections 235B.6 and 235B.8 and of 441—Chapter 176.

ITEM 6. Amend 441—Chapter 176, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 235B as amended by 2000 Iowa Acts, chapter 1067.

[Filed 11/8/00, effective 1/3/01]

[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0301B

MEDICAL EXAMINERS BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby amends Chapter 13, "Standards of Practice and Professional Ethics," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 19, 2000, as **ARC 9786A**. This amendment is identical to that published under Notice of Intended Action.

The Board of Medical Examiners approved the amendment during a meeting held via telephone conference call November 6, 2000. The Board of Pharmacy Examiners approved the amendment during a meeting held via telephone conference call on November 6, 2000.

The rule permits physicians to prescribe via written protocol adult immunizations for influenza and pneumococcal vaccines for administration by authorized pharmacists. Physicians may also prescribe other adult immunizations for an individual patient by a prescription or medication order for administration by an authorized pharmacist. The rule defines the preparatory process the authorized pharmacist must complete and itemizes the elements needed in a written protocol for a physician to prescribe adult immunizations for administration to patients by an authorized pharmacist. Finally, the rule describes the supervisory relationship between a prescribing physician and an administering pharmacist.

A rule pertaining to the administration of immunizations by pharmacists has also been adopted by the Board of Pharmacy Examiners and is published herein as **ARC 0329B**.

This amendment is intended to implement Iowa Code sections 147.76 and 272C.3.

This amendment will become effective January 3, 2001.

The following new rule is adopted.

653—13.3(147) Supervision of pharmacists who administer adult immunizations. A physician may prescribe adult immunizations via written protocol for influenza and pneumococcal vaccines for administration by an authorized pharmacist if the physician meets these requirements for supervising the pharmacist.

13.3(1) Definitions.

a. "Authorized pharmacist" means an Iowa-licensed pharmacist who has documented that the pharmacist has suc-

cessfully completed an educational program meeting the training standards on vaccine administration as provided by an American Council on Pharmaceutical Education (ACPE)-approved provider of continuing pharmaceutical education that:

(1) Requires documentation by the pharmacist of current certification in the American Heart Association or the Red Cross Basic Cardiac Life Support Protocol for health care providers;

(2) Is an evidence-based course that includes study material and hands-on training and techniques for administering vaccines, requires testing with a passing score, complies with current Centers for Disease Control and Prevention guidelines, and provides instruction and experiential training in the following content areas:

1. Standards for immunization practices;
2. Basic immunology and vaccine protection;
3. Vaccine-preventable diseases;
4. Recommended immunization schedules;
5. Vaccine storage and management;
6. Informed consent;
7. Physiology and techniques for vaccine administration;
8. Pre- and post-vaccine assessment and counseling;
9. Immunization record management; and
10. Management of adverse events, including identification, appropriate response, documentation, and reporting.

b. "Vaccine" means a specially prepared antigen which, upon administration to a person, will result in immunity and, specifically for the purposes of this rule, shall mean influenza and pneumococcal vaccines.

c. "Written protocol" means a physician's order for one or more patients that contains, at a minimum, the following:

(1) A statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of adult immunizations for influenza and pneumococcus;

(2) A statement identifying the individual authorized pharmacists;

(3) A statement that forbids an authorized pharmacist from delegating the administration of adult immunizations to anyone other than another authorized pharmacist or a registered nurse;

(4) A statement identifying the vaccines that may be administered by an authorized pharmacist, the dosages, and the route of administration;

(5) A statement identifying the activities an authorized pharmacist shall follow in the course of administering adult immunizations, including:

1. Procedures for determining if a patient is eligible to receive the vaccine;

2. Procedures for determining the appropriate scheduling and frequency of drug administration in accordance with applicable guidelines;

3. Procedures for record keeping and long-term record storage including batch or identification numbers;

4. Procedures to follow in case of life-threatening reactions; and

5. Procedures for the pharmacist and patient to follow in case of reactions following administration;

(6) A statement that describes how the authorized pharmacist shall report the administration of adult immunizations, within 30 days, to the physician issuing the written protocols and to the patient's primary care physician, if one has been designated by the patient. In case of serious complications, the authorized pharmacist shall notify the physicians within 24 hours and submit a VAERS report to the bu-

MEDICAL EXAMINERS BOARD[653](cont'd)

reau of immunizations, Iowa department of public health. (VAERS is the Vaccine Advisory Event Reporting System.) A serious complication is one that requires further medical or therapeutic intervention to effectively protect the patient from further risk, morbidity, or mortality.

13.3(2) Supervision. A physician who prescribes adult immunizations to an authorized pharmacist for administration shall adequately supervise that pharmacist. Physician supervision shall be considered adequate if the delegating physician:

- Ensures that the authorized pharmacist is prepared as described in subrule 13.3(1), paragraph "a";
- Provides a written protocol that is updated at least annually;
- Is available through direct telecommunication for consultation, assistance, and direction, or provides physician backup to provide these services when the physician supervisor is not available;
- Is an Iowa-licensed physician who has a working relationship with an authorized pharmacist within the physician's local provider service area.

13.3(3) Administration of other adult immunizations by pharmacists. A physician may prescribe, for an individual patient by prescription or medication order, other adult immunizations to be administered by an authorized pharmacist.

This rule is intended to implement Iowa Code sections 147.76 and 272C.3.

[Filed 11/7/00, effective 1/3/01]

[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0337B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code, and adopts new Chapter 61 with the same title.

This amendment accomplishes the following:

- Rescinds the current Chapter 61 and replaces it with a new version.
- Increases camping fees.
- Increases the rental fee for cabins at Lacey-Keosauqua State Park and Lake Wapello State Park.
- Sets fees for the new cabins to be built at Backbone State Park.
- Allows heated lodges and cabins to be reserved for the entire month of January instead of just the first week of January.
- Adds Pleasant Creek, Lake Darling, Green Valley and McIntosh Woods State Parks cabin areas to the list of parks where a small tent by the camping cabins is allowed.
- Prohibits paintball guns in state parks and recreation areas.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 4, 2000, as **ARC 0166B**. Fewer than 25 letters and telephone calls from the public

were received stating that the increase was too much and asking why the Commission did not provide a senior citizen discount. Several commenters also mentioned that the campers should not be the only ones paying for park improvements and that an entrance fee should be charged instead or funding should be provided from the General Fund. Based on the minimum response from the public, the camping fee increase was not changed. The following changes from the Notice have been made:

1. The definition of "group camp" was changed to read as follows:

"Group camp" means those camping areas at Dolliver, Springbrook and Lake Keomah where organized groups (i.e., family groups or youth groups) may camp. Dining hall facilities are available."

2. A change was made to correctly identify the location of Noble Island in Allamakee County.

3. The spelling of "Williams Prairie" and "AmeriCorps" has been corrected.

4. In subrule 61.3(1), the words "per night" were added to clarify camping fee rates.

5. In paragraph 61.3(1)"b," the calculations for camping fees have been corrected and the correct camping fees have been listed.

6. In paragraph 61.3(1)"j," the number of coupons in the camping coupon book was changed to seven and the associated fee was changed.

7. In paragraph 61.3(5)"g," the number of days campers must leave a campground was changed from five days back to three days and the word "day" was changed to "night" in regard to the number of "nights" a camper may register.

8. In paragraph 61.4(1)"b," information regarding cabin, yurt, and lodge rental tax calculations was added and the word "day" was changed to "night" in regard to cabin and yurt rental fees.

9. In paragraph 61.4(1)"c," the word "shelter" was changed to "lodge" in the listing for Wapsipinicon State Park.

10. A new paragraph "e" was added to subrule 61.4(1) to set the reservation fee for the new shelters with kitchen facilities at Elinor Bedell and Lake Manawa State Parks.

11. The phrase "of the first night of the rental period" was deleted in the last sentence of paragraph 61.4(3)"g." The sentence now reads as follows:

"No walk-in rentals will be permitted after 6 p.m."

12. The last sentence of paragraph 61.5(8)"b"(2)"1" was changed to clarify how a nonhandicapped person may accompany a handicapped person who holds a permit for use of a vehicle in a park.

13. Paragraph 61.5(8)"b"(2)"3" was changed to clarify that a handicapped permit holder wishing access to a preserve must consult with a preserves staff member in Des Moines.

14. In paragraph 61.5(8)"b"(5)"2," the speed limit that an approved motor vehicle may be operated at was decreased to 5 mph.

15. In subrule 61.5(13), Plymouth County was added to the location of Stone State Park.

16. Subrule 61.7(4) was changed to clarify the permitted use of guns for deer hunting in the Mines of Spain Recreation Area.

This amendment is intended to implement Iowa Code sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 to 461A.51, 461A.57, and 723.4 and Iowa Code chapter 724.

This amendment will become effective on January 3, 2001.

NATURAL RESOURCE COMMISSION[571](cont'd)

The following amendment is adopted.

Rescind 571—Chapter 61 and adopt in lieu thereof the following new chapter:

CHAPTER 61

STATE PARKS AND RECREATION AREAS

571—61.1(461A) Applicability. This chapter is applicable to all state-owned parks and recreation areas managed by the department of natural resources and political subdivisions unless otherwise noted.

571—61.2(461A) Definitions.

“Bank or shoreline” means the zone of contact of a body of water with the land and an area within 25 feet of the water’s edge.

“Basic unit” or “basic camping unit” means the portable shelter used by one to six persons.

“Beach” is as defined in rule 571—64.1(461A).

“Beach house open shelter” means a building located on the beach which is open on two or more sides and which may or may not have a fireplace.

“Cabin” means a small one-story dwelling of simple construction which is available for rental on a daily or weekly basis.

“Camping” means the erecting of a tent or shelter of natural or synthetic material, or placing a sleeping bag or other bedding material on the ground or parking a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.

“Chaperoned, organized youth group” means a group of persons 17 years of age and under which is sponsored by and accompanied by adult representatives of a formal organization including, but not limited to, Boy Scouts and Girl Scouts of America, churches, Young Men’s and Young Women’s Christian Association.

“Fishing” means taking or attempting to take fish utilizing hook, line and bait as defined in Iowa Code section 481A.72, or use of permitted devices for taking rough fish as determined by Iowa Code section 481A.76.

“Free climbing” means climbing with the use of hands and feet only and without the use of ropes, pins and other devices normally associated with rappelling and rock climbing.

“Group camp” means those camping areas at Dolliver, Springbrook and Lake Keomah where organized groups (i.e., family groups or youth groups) may camp. Dining hall facilities are available.

“Lodge” means a day-use building which is enclosed on all four sides and may have kitchen facilities such as a stove or refrigerator and which is available for rent on a daily basis. “Lodge” does not include buildings that are open on two or more sides and that contain fireplaces only.

“Modern area” means a camping area which has showers and flush toilets.

“Nonmodern area” means a camping area in which no showers are provided and which contains only pit-type latrines or flush-type toilets. Potable water may or may not be available to campers.

“Open shelter” means a building which is open on two or more sides and which may or may not include a fireplace.

“Organized youth group campsite” means a designated camping area within or next to the main campground where chaperoned, organized youth groups may camp.

“Person with physical disability” means an individual, commonly termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury

to the spinal cord; a person who is a single or double amputee of the legs; or a person with any other physical affliction which makes it impossible to ambulate successfully in park or recreation area natural surroundings without the use of a wheeled conveyance.

“Persons with disabilities parking permit” means an identification device bearing the international symbol of accessibility issued by the Iowa department of transportation or similar devices issued by other states. The device can be a hanging device or on a motor vehicle as a plate or sticker as provided in Iowa Code section 321L.2 or 321L.9.

“Possession” means exercising dominion or control with or without ownership over property.

“Prohibited activity” means any activity other than fishing as defined in this rule including, but not limited to, picnicking and camping.

“Property” means personal property such as goods, money, or domestic animals.

“Recreation areas” means the following areas that have been designated by action of the natural resource commission:

| <u>Area</u> | <u>County</u> |
|--------------------------------|---------------|
| Badger Creek Recreation Area | Madison |
| Brushy Creek Recreation Area | Webster |
| Claire Wilson Park | Dickinson |
| Emerson Bay and Lighthouse | Dickinson |
| Fairport Recreation Area | Muscatine |
| Lower Gar Access | Dickinson |
| Marble Beach | Dickinson |
| Mines of Spain Recreation Area | Dubuque |
| Pioneer Recreation Area | Mitchell |
| Pleasant Creek Recreation Area | Linn |
| Templar Park | Dickinson |
| Volga River Recreation Area | Fayette |
| Wilson Island Recreation Area | Pottawattamie |

These areas are managed for multiple uses, including public hunting, and are governed by rules established in this chapter as well as 571—Chapters 52 and 105. Use and management of these areas are governed by Iowa Code chapter 461A and by rules prescribed on area signs pursuant to Iowa Code section 461A.44.

“Refuse” means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid or solid waste or other discarded material.

“Scuba diving” means swimming with the aid of self-contained underwater breathing apparatus.

“State park” means the following areas managed by the state and designated by action of the natural resource commission:

| <u>Area</u> | <u>County</u> |
|-------------------|---------------|
| A. A. Call | Kossuth |
| Backbone | Delaware |
| Beed’s Lake | Franklin |
| Bellevue | Jackson |
| Big Creek | Polk |
| Black Hawk | Sac |
| Bobwhite | Wayne |
| Cedar Rock | Buchanan |
| Clear Lake | Cerro Gordo |
| Dolliver Memorial | Webster |

NATURAL RESOURCE COMMISSION[571](cont'd)

| | |
|--------------------------|-----------------------|
| Elinor Bedell | Dickinson |
| Elk Rock | Marion |
| Fort Atkinson | Winneshiek |
| Fort Defiance | Emmet |
| Geode | Henry |
| George Wyth | Black Hawk |
| Green Valley | Union |
| Gull Point | Dickinson |
| Honey Creek | Appanoose |
| Lacey-Keosauqua | Van Buren |
| Lake Ahquabi | Warren |
| Lake Anita | Cass |
| Lake Darling | Washington |
| Lake Keomah | Mahaska |
| Lake Macbride | Johnson |
| Lake Manawa | Pottawattamie |
| Lake of Three Fires | Taylor |
| Lake Wapello | Davis |
| Ledges | Boone |
| Lewis and Clark | Monona |
| Maquoketa Caves | Jackson |
| McIntosh Woods | Cerro Gordo |
| Mini-Wakan | Dickinson |
| Nine Eagles | Decatur |
| Noble Island | Allamakee |
| Okamanpedan | Emmet |
| Palisades-Kepler | Linn |
| Pikes Peak | Clayton |
| Pikes Point | Dickinson |
| Pilot Knob | Winnebago |
| Pine Lake | Hardin |
| Prairie Rose | Shelby |
| Preparation Canyon | Monona |
| Red Haw | Lucas |
| Rice Lake | Winnebago |
| Rock Creek | Jasper |
| Shimek Forest Camp | Lee |
| Springbrook | Guthrie |
| Stephens Forest Camp | Lucas |
| Stone | Plymouth and Woodbury |
| Trapper's Bay | Dickinson |
| Twin Lakes | Calhoun |
| Union Grove | Tama |
| Viking Lake | Montgomery |
| Walnut Woods | Polk |
| Wanata | Clay |
| Wapsipinicon | Jones |
| Waubonsie | Fremont |
| Wildcat Den | Muscatine |
| Yellow River Forest Camp | Allamakee |

Use and management of these areas are governed by Iowa Code chapter 461A and by other rules prescribed on area signs pursuant to Iowa Code section 461A.44.

“State park managed by another governmental entity” means the following areas designated by action of the natural resource commission:

| <u>Area</u> | <u>County</u> |
|--------------------------|---------------|
| Browns Lake-Bigelow Park | Woodbury |
| Cold Springs | Cass |
| Crystal Lake | Hancock |
| Eagle Lake | Hancock |
| Echo Valley | Fayette |
| Frank A. Gotch | Humboldt |
| Galland School | Lee |
| Heery Woods | Butler |
| Kearny | Palo Alto |
| Lake Cornelia | Wright |
| Lake Odessa Campground | Louisa |
| Margo Frankel Woods | Polk |
| Mill Creek | O'Brien |
| Oak Grove | Sioux |
| Oakland Mills | Henry |
| Pammel | Madison |
| Sharon Bluffs | Appanoose |
| Spring Lake | Greene |
| Swan Lake | Carroll |

Use and management of these areas are governed by Iowa Code chapter 461A, by this chapter, and by rules adopted by the managing entity.

“State preserve” means the following areas or portion of the areas designated by action of the natural resource commission and state preserves advisory board:

| <u>Area</u> | <u>County</u> |
|----------------------------|---------------|
| A. F. Miller | Bremer |
| Ames High Prairie | Story |
| Anderson Prairie | Emmet |
| Behrens Ponds and Woodland | Linn |
| Berry Woods | Warren |
| Bird Hill | Cerro Gordo |
| Bixby | Clayton |
| Bluffton Fir Stand | Winneshiek |
| Brush Creek Canyon | Fayette |
| Brushy Creek | Webster |
| Cameron Woods | Scott |
| Casey's Paha | Tama |
| Catfish Creek | Dubuque |
| Cayler Prairie | Dickinson |
| Cedar Bluffs Natural Area | Mahaska |
| Cedar Hills Sand Prairie | Black Hawk |
| Cheever Lake | Emmet |
| Claybanks Forest | Cerro Gordo |
| Clay Prairie | Butler |
| Coldwater Cave | Winneshiek |
| Crossman Prairie | Howard |
| Decorah Ice Cave | Winneshiek |
| Derald Dinesen Prairie | Shelby |
| Dolittle Prairie | Story |
| Fallen Rock | Hardin |

NATURAL RESOURCE COMMISSION[571](cont'd)

| | | | |
|-------------------------------|--------------------------|--|------------|
| Fish Farm Mounds | Allamakee | Pilot Knob | Hancock |
| Five Ridge Prairie | Plymouth | Retz Memorial Woods | Clayton |
| Fleming Woods | Poweshiek | Roberts Creek | Clayton |
| Fort Atkinson | Winneshiek | Rock Creek Island | Cedar |
| Freda Haffner Kettlehole | Dickinson | Rock Island Botanical | Linn |
| Gitchie Manitou | Lyon | Roggman Boreal Slopes | Clayton |
| Hanging Bog | Linn | Rolling Thunder Prairie | Warren |
| Hardin City Woodland | Hardin | Savage Memorial Woods | Henry |
| Hartley Fort | Allamakee | Searryl's Cave | Jones |
| Hayden Prairie | Howard | Sheeder Prairie | Guthrie |
| Hoffman Prairie | Cerro Gordo | Silver Lake Fen | Dickinson |
| Indian Bluffs Primitive Area | Jones | Silvers-Smith Woods | Dallas |
| Indian Fish Trap | Iowa | Slinde Mounds | Allamakee |
| Kalsow Prairie | Pocahontas | St. James Lutheran Church | Winneshiek |
| Kish-Ke-Kosh | Jasper | Starr's Cave | Des Moines |
| Lamson Woods | Jefferson | Steele Prairie | Cherokee |
| Liska-Stanek Prairie | Webster | Stinson Prairie | Kossuth |
| Little Maquoketa River Mounds | Dubuque | Strasser Woods | Polk |
| Malanaphy Springs | Winneshiek | Sylvan Runkel | Monona |
| Malchow Mounds | Des Moines | Toolesboro Mounds | Louisa |
| Manikowski Prairie | Clinton | Turin Loess Hills | Monona |
| Mann Wilderness Area | Hardin | Turkey River Mounds | Clayton |
| Marietta Sand Prairie | Marshall | White Pine Hollow | Dubuque |
| Mericle Woods | Tama | Williams Prairie | Johnson |
| Merrill A. Stainbrook | Johnson | Wittrock Indian Village | O'Brien |
| Merritt Forest | Clayton | Woodland Mounds | Warren |
| Montauk Historical Site | Fayette | Woodman Hollow | Webster |
| Mossy Glen | Clayton | Woodthrush Woods | Jefferson |
| Mount Talbot | Woodbury and Plymouth | Use and management of these areas are governed by rules established in this chapter as well as by management plans adopted by the preserves advisory board. | |
| Mt. Pisgah Cemetery | Union | "Swim" or "swimming" means to propel oneself in water by natural means, such as movement of limbs, and includes but is not limited to wading and the use of inner tubes or beach toy-type swimming aids. | |
| Nestor Stiles | Cherokee | "Winter season" means from the second Saturday in October to the third Sunday in May. | |
| Ocheyedan Mound | Osceola | "Yurt" means a one-room circular fabric structure built on a platform which is available for rental on a daily or weekly basis. | |
| Old State Quarry | Johnson | | |
| Palisades-Dows | Linn | | |
| Pecan Grove | Muscatine | | |
| Pellet Memorial Woods | Cass | | |
| Pilot Grove | Iowa | | |

571—61.3(461A) Camping.

61.3(1) Fees. The following are maximum per-night fees for camping in state parks and recreation areas. The fees may be reduced or waived by the director for special events or special promotional efforts sponsored by the department of natural resources. Special events or promotional efforts shall be conducted so as to give all park facility users equal opportunity to take advantage of reduced or waived fees. Reductions or waivers shall be on a statewide basis covering like facilities. In the case of promotional events, prizes shall be awarded by random drawing of registrations made available to all park visitors during the event.

| | <u>Fee</u> | <u>Sales Tax</u> | <u>Total Per Night</u> |
|--|------------|------------------|------------------------|
| a. The following fees shall be in effect from the Monday before the national Memorial Day holiday through Monday, the national Labor Day holiday except where the period of applicability has been extended by 61.3(1)"k": | | | |
| Nonmodern | \$8.57 | .43 | \$9.00 |
| Modern | 10.48 | .52 | 11.00 |

NATURAL RESOURCE COMMISSION[571](cont'd)

| | <u>Fee</u> | <u>Sales Tax</u> | <u>Total Per Night</u> |
|--|------------|----------------------|--------------------------------|
| b. The following fees shall be in effect from the Tuesday following the national Labor Day holiday through Sunday one week prior to the national Memorial Day holiday except where the period of applicability has been limited by 61.3(1)"k": | | | |
| Nonmodern | 5.71 | .29 | 6.00 |
| Modern | 7.62 | .38 | 8.00 |
| c. Per person over the basic unit of six | .48 | .02 | .50 |
| d. Electricity | 4.76 | .24 | 5.00 |
| This fee will be charged in addition to the camping fee on sites where electricity is available (whether it is used or not). | | | |
| e. Chaperoned, organized youth group campsite, per group | 14.29 | .71 | 15.00 |
| f. Cable television hookup | 1.90 | .10 | 2.00 |
| g. Sewer and water hookup | 2.85 | .15 | 3.00 |
| h. Additional fee for campgrounds designated for equestrian use. | 2.85 | .15 | 3.00 |
| This fee is in addition to applicable fees listed above. | | | |
| i. Additional vehicle permitted under 61.3(5)"d" | 4.76 | .24 | 5.00 |
| j. Camping tickets (book of seven) | 86.67 | 4.33 | 91.00 |

(1) Camping tickets shall be valid for the calendar year in which the book is purchased and the calendar year immediately following.

In areas subject to a local option sales tax, the fee shall be administratively adjusted so that persons camping in those areas will pay the same total cost applicable in other areas.

(2) Camping tickets sold in one year will be valid for the following year. Persons using camping tickets purchased during the previous year will not be required to pay the difference due to any fee increase.

k. Fees as given in paragraph "a" shall be in effect each year in the following areas during the time period shown below:

Backbone State Park, Delaware County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Elinor Bedell State Park, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities at Gull Point State Park are closed for the season, whichever comes first.

Elk Rock State Park, Marion County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Emerson Bay Campground, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Fairport Campground, Muscatine County—May 1 through Monday, the national Labor Day holiday.

Gull Point State Park, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Lake Manawa State Park, Pottawattamie County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Ledges State Park, Boone County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Maquoketa Caves State Park, Jackson County—Monday before the national Memorial Day holiday through October

31 or until the shower facilities are closed for the season, whichever comes first.

Marble Beach Campground, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Pikes Peak State Park, Clayton County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Waubonsie State Park, Fremont County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

61.3(2) Varying fees. Fees charged for like services in state-owned areas under management by political subdivisions may vary from those established by this chapter.

61.3(3) Procedures for camping registration.

a. In most instances, registration of campers will be handled by a self-registration process. Registration forms will be provided by the department of natural resources.

Campers shall, within one-half hour of arrival at the campground, complete the registration form, place the appropriate fee or number of camping tickets in the envelope and place the envelope in the depository provided by the department of natural resources. One copy must then be placed in the holder provided at the campsite.

b. Campsites are considered occupied and registration for a campsite shall be considered complete when the requirements of 61.3(3)"a," second paragraph, have been met; however, it shall be the responsibility of the registered camper to ensure that the site is visibly occupied, thereby secure from others registering into the site if the site appears not to be occupied.

NATURAL RESOURCE COMMISSION[571](cont'd)

c. Campsite registration must be in the name of a person 18 years of age or older who will occupy the camping unit on that site for the full term of the registration.

d. Each camping ticket as provided in 61.3(1)"j" shall cover the cost of one night of camping in a modern area on a site where electricity is furnished. Persons camping on equestrian sites or on sites which also have sewer and water hookups or cable television hookups available must pay the additional charges for these services in addition to utilizing a camping ticket. Use of a camping ticket in an area or on a site which would require a lesser fee than an electrical site in a modern area will not entitle the user to a refund or credit of any nature.

61.3(4) Designated youth group campsite registration and reservations.

a. Registration procedures for designated youth group campsites shall be governed by "a," "b" and "c" of 61.3(3).

b. Designated youth group campsites may be reserved by contacting the park manager. Reservations will be accepted only for the current calendar year.

61.3(5) Restrictions on campsite/campground use. This subrule sets forth conditions of public use which apply to all state parks and recreation areas. These general conditions are subject to exceptions for specific areas as listed in 61.3(6), 61.6(461A) and 61.9(461A). The conditions in this subrule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

a. Camping is restricted to designated camping areas within state parks and recreation areas and state forest campgrounds.

b. Camping is restricted to one basic unit per site except that a small tent or other type of camping unit may be placed on a site with the basic unit so long as the persons occupying the second unit are under 18 years of age and are dependent members of the immediate family occupying the basic unit.

c. Each camping group shall utilize only the electrical outlet fixture designated for its particular campsite. No extension cords or other means of hookup shall be used to furnish electricity from one designated campsite to another.

d. Each camping group will be permitted to park one motor vehicle not being used for camping purposes at the campsite. One additional vehicle may be parked at the campsite, unless otherwise posted at the park, provided that the fee given in 61.3(1)"i" has been paid.

e. All motor vehicles, excluding motorcycles, not covered by the provision in 61.3(5)"d" shall be parked in designated extra-vehicle parking areas.

f. Campers shall register as provided in subrule 61.3(3) within one-half hour of entering the campground.

g. Campers shall vacate the campground or register for the night prior to 4 p.m. daily. Registration can be for more than 1 night at a time but not for more than 14 consecutive nights. All members of the camping party must vacate the state park campground after the fourteenth night and may not return to that same area until a minimum of 3 days has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department of natural resources campground host program agreement or to seasonal employees working under the Internship or AmeriCorps program.

h. Campsites marked with the international symbol of accessibility shall be used only by vehicles displaying a persons with disabilities parking permit. The vehicle must be in use by a person with a disability, either as an operator or passenger.

i. In designated campgrounds in all state areas, equine animals and llamas must be stabled inside a trailer or, when provided, at a hitch rail, individual stall or corral. Equine animals and llamas may be hitched to trailers for short periods of time to allow for grooming and saddling. These animals may be stabled at trailers where no hitching facilities are provided. Portable stalls/pens or electric fences are not permitted.

61.3(6) Area-specific restrictions on campground use. Notwithstanding the general conditions of public use set forth in 61.3(5) and 61.5(461A), special conditions shall apply to specific areas listed as follows:

a. Brushy Creek Recreation Area, Webster County.

(1) In the designated equestrian campgrounds, the maximum number of equine animals to be tied to the new, larger hitching rails is six and the maximum number for the older, smaller rails is four. Persons with a number of equine animals in excess of the number permitted on the hitching rail at their campsite shall be allowed to stable their additional animals in a trailer or at a nearby, unrented campsite.

(2) In the designated equestrian campgrounds, equine animals may be tied to trailers for short periods of time to allow grooming or saddling; however, the tying of equine animals to the exterior of trailers for extended periods of time or for stabling is not permitted.

b. Mines of Spain Recreation Area, Dubuque County. All persons except campers shall vacate all portions of the Mines of Spain Recreation Area prior to 10:30 p.m. each day, and no person or persons shall enter into the area until 4 a.m. the following day. Campers must remain in the campground between 10:30 p.m. and 4 a.m.

c. Volga River State Recreation Area, Fayette County. Access into and out of designated campgrounds shall be permitted from 4 a.m. to 10:30 p.m. From 10:30 p.m. to 4 a.m., only registered campers are permitted in the campground.

d. Lake Manawa State Park, Pottawattamie County. Except for the following limitations on campground length of stay, campsite use restrictions as stated in 61.3(5) shall apply to Lake Manawa.

Registration can be for more than 1 night at a time but not for more than 14 consecutive nights. No person may camp at the Lake Manawa campground for more than 14 nights in any 30-day period.

e. Walnut Woods State Park, Polk County. Except for the following limitations on campground length of stay, campsite use restrictions as stated in 61.3(5) shall apply to Walnut Woods.

Registration can be for more than 1 night at a time but not for more than 14 consecutive nights. No person may camp at the Walnut Woods campground for more than 14 nights in any 30-day period.

61.3(7) Campground fishing. Rule 61.9(461A) is not intended to prohibit fishing by registered campers who fish from the shoreline within the camping area.

571—61.4(461A) Rental facilities, including cabins, lodges, open shelters, beach house open shelters, yurts, and group camps. The following are maximum fees for facility use in state parks and recreation areas. The fees may be reduced or waived by the director for special events or special promotional efforts sponsored by the department of natural resources. Special events or promotional efforts shall be conducted so as to give all park facility users equal opportunity to take advantage of reduced or waived fees. Reductions or waivers shall be on a statewide basis covering like facilities. In the case of promotional events, prizes shall be awarded by

NATURAL RESOURCE COMMISSION[571](cont'd)

random drawing of registrations made available to all park visitors during the event.

61.4(1) Fees:

a. Cabin rental. This fee does not include tax. Tax will be calculated at time of final payment.

| | <u>Per Night*</u> | <u>Per Week</u> |
|---|-----------------------|---------------------|
| Backbone State Park, Delaware County | | |
| Renovated cabins | \$50 | \$300 |
| Two-bedroom cabins | 85 | 510 |
| Deluxe cabins | 100 | 600 |
| Dolliver State Park, Webster County | 35 | 210 |
| Green Valley State Park, Union County | 35 | 210 |
| Lacey-Keosauqua State Park, Van Buren County | 40 | 240 |
| Lake Darling State Park, Washington County | 30 | 175 |
| Lake of Three Fires State Park, Taylor County | 22 | 120 |
| Lake Wapello State Park, Davis County (except Cabin No. 13) | 50 | 300 |
| Lake Wapello State Park, Davis County (Cabin No. 13) | 85 | 510. |
| Palisades-Kepler State Park, Linn County | 30 | 175 |
| Pine Lake State Park, Hardin County | | |
| Sleeping-area cabins (four-person occupancy limit) | 40 | 240 |
| One-bedroom cabins | 55 | 330 |
| Pleasant Creek State Recreation Area, Linn County | 30 | 175 |
| Springbrook State Park, Guthrie County | 22 | 120 |
| Wilson Island State Recreation Area, Pottawattamie County (No. 1) | 18 | 110 |
| Extra cots, where available | 1 | |

*Minimum two nights

b. Yurt rental. This fee does not include tax. Tax will be calculated at time of final payment.

| | <u>Per Night*</u> | <u>Per Week</u> |
|---|-----------------------|---------------------|
| McIntosh Woods State Park, Cerro Gordo County | \$30 | \$175 |

*Minimum two nights

c. Lodge rental per reservation. This fee does not include tax. Tax will be calculated at time of payment.

| | <u>Per Day</u> |
|---|----------------|
| A. A. Call State Park, Kossuth County | \$70 |
| Backbone State Park Auditorium, Delaware County** | 40 |
| Backbone State Park, Delaware County | 100 |
| Beed's Lake State Park, Franklin County | 55 |
| Bellevue State Park-Nelson Unit, Jackson County | 80 |
| Clear Lake State Park, Cerro Gordo County | 80 |

| | |
|---|-----|
| Dolliver Memorial State Park-Central Lodge, Webster County ** | 40 |
| Dolliver Memorial State Park-South Lodge, Webster County | 55 |
| Ft. Defiance State Park, Emmet County | 40 |
| George Wyth State Park, Black Hawk County** | 50 |
| Gull Point State Park, Dickinson County | 100 |
| Lacey-Keosauqua State Park, Van Buren County | 60 |
| Lake Ahquabi State Park, Warren County | 60 |
| Lake Keomah State Park, Mahaska County | 50 |
| Lake Macbride State Park, Johnson County | 55 |
| Lake of Three Fires State Park, Taylor County | 55 |
| Lake Wapello State Park, Davis County | 60 |
| Lewis and Clark State Park, Monona County | 40 |
| Palisades-Kepler State Park, Linn County | 100 |
| Pine Lake State Park, Hardin County | 60 |
| Pleasant Creek Recreation Area, Linn County** | 50 |
| Stone State Park, Woodbury/Plymouth Counties | 100 |
| Walnut Woods State Park, Polk County | 110 |
| Wapsipinicon State Park, Jones County | |
| Heated year-round lodge | 40 |
| Unheated seasonal lodge | 30 |

**Does not contain kitchen facilities

d. Open shelter reservation, \$20 plus applicable tax.

e. Reservation for open shelter with kitchen, \$50 plus applicable tax.

f. Beach house open shelter reservation, \$40 plus applicable tax.

Lake Ahquabi State Park, Warren County

Lake Wapello State Park, Davis County

Pine Lake State Park, Hardin County

Springbrook State Park, Guthrie County

g. Group camp rental. This fee does not include tax.

(1) Dolliver State Park, Webster County, and Springbrook State Park, Guthrie County. Rental includes use of restroom/shower facility at Dolliver.

1. Chaperoned, organized youth groups—\$1.25 per day per person with a minimum charge per day of \$55.

2. Other groups—\$15 per day per cabin plus \$25 per day for the kitchen and dining facility.

(2) Springbrook dining hall—day use only, \$40.

(3) Lake Keomah State Park, Mahaska County.

1. Chaperoned, organized youth groups—\$25 per day for the dining/restroom facility plus the applicable camping fee.

2. Other groups—\$25 per day for the dining/restroom facility plus the applicable camping fee.

61.4(2) Varying fees. Fees charged for like services in state-owned areas under management by political subdivisions may vary from those established by this chapter.

61.4(3) Procedures for lodge, open shelter, beach house open shelter, yurt, cabin, and group camp registration, reservations and rentals.

a. Reservations for all rental facilities must be in the name of a person 18 years of age or older who will be present at the facility for the full term of the reservation.

NATURAL RESOURCE COMMISSION[571](cont'd)

b. Except for the year-round-use cabins and heated lodges, reservations for the facilities listed in this subrule are to be made only for the current calendar year. For the year-round-use cabins and the heated lodges at Walnut Woods, Wapsipinicon, and Lacey-Keosauqua State Parks, reservations will be accepted starting on November 1 of each year only for the month of January of the next year.

c. Mail-in reservations for the next calendar year received prior to January 1 or November 1, as applicable, will be placed in a box and chosen by random drawing on the first business day following January 1 or November 1.

d. All mail-in requests will be handled on a random-drawing basis daily throughout the calendar year.

e. Telephone and walk-in reservations will not be accepted until the first business day following November 1 of each year for the heated cabins and heated lodges and the first business day after January 1 of each year for all other cabins, yurts, group camps, lodges, open shelters, beach house open shelters, or designated organized youth campsites.

f. Walk-in and telephone requests on the first business day following January 1 or November 1, as applicable, will be handled on a first-come, first-served basis after all mail-in requests have been handled. Walk-in and telephone requests after the first business day following January 1 or November 1 will be handled on a first-come, first-served basis.

g. Except as provided in 61.4(3)"h" and "i," cabin and group camp reservations must be for a minimum of one week (Saturday p.m. to Saturday a.m.). Reservations for more than a two-week stay will not be accepted for any facility. These facilities, if not reserved, may be rented for a minimum of two nights on a walk-in, first-come, first-served basis. No walk-in rentals will be permitted after 6 p.m.

h. After Labor Day week, and prior to the Monday before the national Memorial Day holiday, two-night reservations may be made in advance for cabin use during that time period. Such reservations must be received at least seven days prior to the first night of the desired two-night stay.

i. The sleeping-room cabin at Wilson Island State Recreation Area, the cabins and group camp at Dolliver, the cabins at Pleasant Creek, Green Valley and Lake Darling, the yurts at McIntosh Woods, and the group camp at Springbrook State Park may be reserved for a minimum of two nights throughout the rental season.

j. Persons renting cabins, yurts or group camp facilities must check in at or after 4 p.m. on Saturday. Check-out time is 11 a.m. or earlier on Saturday.

k. Persons renting facilities listed in 61.4(3)"i" must check in at or after 4 p.m. on the first day of the two-night rental period. Check-out time is 11 a.m. or earlier on the last day of the two-night rental period.

l. Except by arrangement for late arrival with the park manager, no cabin, yurt or group camp reservation will be held past 6 p.m. on the first night of the reservation period if the person reserving the facility does not arrive. When arrangements for late arrival have been made, the person must appear prior to the park's closing time established by Iowa Code section 461A.46 and subrule 61.5(10) or access will not be permitted to the facility until 8 a.m. the following day. Arrangements must be made with the park manager if next-day arrival is to be later than 9 a.m.

m. The number of persons occupying rental cabins is limited to six in cabins which contain one bedroom or less and eight in cabins with two bedrooms. Occupancy of the sleeping-area and camping cabins located at Green Valley

State Park, Lake Darling State Park, Pine Lake State Park, Pleasant Creek State Recreation Area and Wilson Island State Recreation Area is limited to four persons. Occupancy of the yurts is limited to four persons.

n. Except at Wilson Island State Recreation Area, Dolliver State Park, Pleasant Creek State Recreation Area, Lake Darling State Park, Green Valley State Park and McIntosh Woods State Park, no tents or other camping units are permitted for overnight occupancy in the designated cabin area. Tents or camping units placed in the cabin area are subject to the occupancy requirements of 61.3(5)"b."

o. Lodges, open shelters and beach house open shelters may be reserved using the procedures outlined in paragraphs "a" through "f." Lodges, open shelters and beach house open shelters which are not reserved are available on a first-come, first-served basis.

p. Except by arrangement with the park manager in charge of the area, persons renting lodge, shelter, and beach house open shelter facilities and all guests shall vacate the facility by 10 p.m.

61.4(4) Winter season cabin rental—Backbone State Park, Pine Lake State Park and Wilson Island Recreation Area. Procedures and conditions for winter season cabin rental include the following:

a. Procedures for winter season rentals of the heated cabins at Backbone State Park, Pine Lake State Park, and Wilson Island State Recreation Area shall be governed by paragraphs "a" through "f," "h," "i," "m," and "n" of 61.4(3).

b. All reservation requests must be for a minimum stay of two nights.

c. All reservation requests must be received by the park manager at least two weeks prior to the first night covered by the reservation in order to allow work schedule adjustments for park personnel.

d. Unreserved cabins may be rented for a minimum of two nights on a walk-in, first-come, first-served basis. Renters must check in during normal business hours (8 a.m. to 4 p.m.). Check-in will be subject to availability of staff.

e. Reservations may not be held past 9 p.m. on the first night of the reservation period if the person reserving the facility does not arrive or make arrangements with the park manager for late arrival. The cabin may be rented on a first-come, first-served basis to another person if the original renter has not arrived or made other arrangements prior to 12 noon of the next day.

61.4(5) Reservations for handicapped-accessible cabins at Backbone and Pine Lake State Parks.

a. Persons with physical disabilities may make reservations for the four year-round cabins at Backbone State Park and the handicapped-accessible cabin at Pine Lake State Park under the following procedures:

(1) Priority reservations for these facilities will be accepted from October 1 through December 1 at 4:30 p.m., or the closest business day, for the following calendar year only. This may include the full week containing the New Year's Day holiday of that year.

(2) Application for reservations must be on forms furnished by DNR.

(3) Mail-in reservations received between the dates given in subparagraph (1) shall be placed in a box and chosen by random drawing on the first business day following December 1. Walk-in and telephone requests on December 1 or the closest business day will be handled on a first-come, first-served basis without priority considerations.

NATURAL RESOURCE COMMISSION[571](cont'd)

b. Reservation requests received outside of the above application period will be handled by the procedures given in 61.4(3)"a" through "o."

c. Procedures for rental of the handicapped-accessible cabins shall be governed by paragraphs "a," "g," "h," "j," and "l" through "n" of 61.4(3).

61.4(6) Reservation and damage deposits for all rental facilities.

a. Reservation deposit.

(1) All cabin, yurt or group camp reservation requests must be accompanied by a reservation deposit equivalent to one day of the daily rate for that rental unit as provided in 61.4(1)"a," "b" or "g." No sales tax shall be included. The deposit shall be required for each rental unit and rental period requested. The reservation deposit will be applied toward the total rental fee when the rental fee is due. Reservations made by telephone will be held for seven working days. If written confirmation and the reservation deposit are not received by the end of the seventh working day, the reservation will be canceled.

(2) Requests for lodge, open shelter, and beach house open shelter rental shall be accompanied by the full rental fee as provided in 61.4(1)"c" through "f," including tax. Reservations made by telephone will be held for seven working days. If written confirmation and the reservation fee are not received by the end of the seventh working day, the reservation will be canceled.

b. Rental fee and damage deposit payment.

(1) Upon arrival for the cabin or yurt rental period, renters shall pay in full a damage deposit in the amount of \$50 and the remainder of the applicable rental fee, including all sales tax. This damage deposit shall be paid by use of a separate financial instrument (e.g., check, money order, or cash) from the rental fee.

(2) Upon arrival for the group camp rental period, renters shall pay in full a damage deposit of \$50. The remainder of the applicable rental fee, including all sales tax, shall be paid in full when the rental period is over and the area is ready to be vacated.

(3) Upon arrival for the lodge rental period, renters shall pay in full a damage deposit of \$50.

(4) Damage deposits will be refunded only after authorized personnel inspect the rental facility to ensure that the facility and furnishings are in satisfactory condition.

(5) If it is necessary for department personnel to clean up the facility or repair any damage beyond ordinary wear and tear, a log of the time spent in such cleanup or repair shall be kept. The damage deposit refund shall be reduced by an amount equivalent to the applicable hourly wage of the employees for the time necessary to clean the area or repair the damage and by the cost of any repairs of furnishings.

(6) The deposit is not to be construed as a limit of liability for damage to state property. The department may take legal action necessary to recover additional damages.

(7) Individuals who wish to cancel a reservation must do so at least 30 calendar days prior to the rental date in order to receive a full refund of the reservation deposit or any rental fees paid in advance. If it is necessary to cancel a reservation after the 30-day allowance, a refund may be made only under the following conditions:

1. Inclement weather prohibits arrival at or entrance to the state park cabin, group camp, open shelter, lodge area, beach house open shelter or yurt.

2. Personal emergency prevents arrival or requires departure prior to the end of the rental period. Personal emergency is defined to include a death, serious illness or acci-

dent involving immediate family. Rental fees may be refunded on a prorated basis in the case of early departure due to personal emergency.

61.4(7) Miscellaneous fees. This fee does not include tax.

| | <u>Maximum Fee</u> |
|------------------------------------|--------------------|
| Vessel storage space (wet or dry) | |
| Pontoon boats—eight months or less | \$150 |
| eight months or less (new docks) | 200 |
| year-round | 200 |
| year-round (new docks) | 250 |
| Other boats—eight months or less | 125 |
| eight months or less (new docks) | 150 |
| year-round | 150 |
| year-round (new docks) | 200 |

571—61.5(461A) Restrictions—area and use. This rule sets forth conditions of public use which apply to all state parks and recreation areas. These general conditions are subject to exceptions for specific areas as listed in 61.3(6), 61.6(461A) and 61.9(461A). The conditions in this rule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

61.5(1) Animals.

a. The use of equine animals and llamas is limited to roadways or to trails designated for such use.

b. Animals are prohibited within designated beach areas.

c. Livestock are not permitted to graze or roam within state parks and recreation areas. The owner of the livestock shall remove the livestock immediately upon notification by the department of natural resources personnel in charge of the area.

d. Except for dogs being used in designated hunting or in dog training areas, pets such as dogs or cats shall not be allowed to run at large within state parks, recreation areas, and preserves. Such animals shall be on a leash or chain not to exceed six feet in length and shall be either led by or carried by the owner, attached to an anchor/tie out or vehicle, or confined in a vehicle.

61.5(2) Beach use/swimming.

a. Except as provided in paragraphs "b" and "d" of this subrule, all swimming and scuba diving shall take place in the beach area within the boundaries marked by ropes, buoys, or signs within state park and recreation areas. Inner tubes, air mattresses and other beach-type items shall be used only in designated beach areas.

b. Persons may scuba dive in areas other than the designated beach area provided they display the diver's flag as specified in rule 571—41.10(462A).

c. The provisions of paragraph "a" of this subrule shall not be construed as prohibiting wading in areas other than the beach by persons actively engaged in shoreline fishing.

d. Unless otherwise posted, persons may swim outside the beach area under the following conditions:

(1) Within ten feet of a vessel which is anchored not less than 100 yards from the shoreline or the marked boundary of a designated beach.

(2) Sailboat or other vessel passengers who enter the water to upright or repair their vessel and remain within ten feet of that vessel.

(3) All vessels, except those being uprighted, must be attended at all times by at least one person remaining on board.

NATURAL RESOURCE COMMISSION[571](cont'd)

61.5(3) Bottles. Possession or use of breakable containers, the fragmented parts of which can injure a person, is prohibited in beach areas of state parks and recreation areas.

61.5(4) Chainsaws. Except by written permission of the director of the department of natural resources, chainsaw use is prohibited in state parks and recreation areas. This provision is not applicable to employees of the department of natural resources in the performance of their official duties.

61.5(5) Firearms. The use of firearms in state parks and recreation areas, as defined in 61.2(461A), is limited to the following:

a. Lawful hunting as traditionally provided at Badger Creek Recreation Area, Brushy Creek Recreation Area, Pleasant Creek Recreation Area, Volga River Recreation Area and Wilson Island Recreation Area.

b. Target and practice shooting in areas designated by DNR.

c. Special events, festivals, and education programs sponsored or permitted by DNR.

d. Special hunts authorized by the natural resource commission to control animal population.

61.5(6) Fishing off boat docks within state areas. Persons may fish off all state-owned docks within state parks and recreation areas. Persons fishing off these docks must yield to boats and not interfere with boaters. Willful interference is a violation of this subrule.

61.5(7) Garbage. Using government refuse receptacles for dumping household, commercial, or industrial refuse brought as such from private property is prohibited.

61.5(8) Motor vehicle restrictions.

a. Except as provided in these rules, motor vehicles are prohibited on state parks, recreation areas and preserves except on constructed and designated roads, parking lots and campgrounds.

b. Persons with physical disabilities. Persons with physical disabilities may use certain motor vehicles on state parks, recreation areas and preserves, according to restrictions set out in this paragraph, in order that they might enjoy such recreational opportunities as are available to others.

(1) Definition. For purposes of this subrule, the following definition shall apply. "Motor vehicle" means any self-propelled vehicle, electric or gas, having at least three wheels, but no more than six, and that is limited in engine displacement to less than 800 cubic centimeters and in total dry weight to less than 1,450 pounds.

(2) Permits.

1. Each person with a physical disability must have a permit issued by the director in order to use motor vehicles on state parks, recreation areas, and preserves. Such permits will be issued without charge. An applicant must submit a certificate from a doctor stating that the applicant meets the criteria describing a person with a physical disability. One nonhandicapped companion may accompany the permit holder on the same vehicle if that vehicle is designed for more than one rider; otherwise the companion must walk.

2. Existing permits. Those persons possessing a valid permit for use of a motorized vehicle on game management areas as provided in 571—51.7(461A) may use a motor vehicle to gain access to recreational opportunities and facilities within state parks, recreation areas and preserves.

(3) Approved areas. A permit holder must contact the park manager or natural resource technician of the specific area that the permit holder wishes to use on each visit. The park manager or technician will determine which areas or portions of areas will not be open to use by permittees, in order to protect permittees from hazards or to protect certain

natural resources of the area. The park manager or technician may assist by arranging access to the areas within the park manager's or technician's jurisdiction and by designating specific sites or trails on the area where the motor vehicle may be used and where it may not be used. The park manager or technician will provide a map of the park or recreation area showing sites where use is permitted and bearing the signature of the manager or technician. Approval for use of a motor vehicle on state preserves also requires consultation with a member of the preserves staff in Des Moines.

(4) Exclusive use. The issuance of a permit does not imply that the permittee has exclusive use of an area. Permittees shall take reasonable care so as not to unduly interfere with the use of the area by others.

(5) Prohibited acts and restrictions.

1. Except as provided in 61.5(8)"a," the use of a motor vehicle on any park, recreation area or preserve by a person without a valid permit or at any site not approved on a signed map is prohibited. Permits and maps must be carried by the permittee at any time the permittee is using a motor vehicle on a park, recreation area or preserve and must be exhibited to any department employee or law enforcement official upon request.

2. The speed limit for an approved motor vehicle off roadways will be no more than 5 mph. The permit of a person who is found exceeding the speed limit will be revoked.

3. The permit of any person who is found causing damage to cultural and natural features or abusing the privilege of riding off-road within the park will be revoked.

(6) Employees exempt. Restrictions in subrule 61.5(8) shall not apply to department personnel, law enforcement officials, or other authorized persons engaged in research, management or enforcement when in performance of their duties.

61.5(9) Noise. Creating or sustaining any unreasonable noise in any portion of all state parks and recreation areas is prohibited at all times. The nature and purpose of a person's conduct, the impact on other area users, the time of day, location, and other factors which would govern the conduct of a reasonable, prudent person under the circumstances shall be used to determine whether the noise is unreasonable. This shall include the operation or utilization of motorized equipment or machinery such as an electric generator, motor vehicle, or motorized toy; or audio device such as a radio, television set, tape deck, public address system, or musical instrument; or other device causing unreasonable noise. Between the hours of 10:30 p.m. and 6 a.m., noise which can be heard at a distance of 120 feet or three campsites shall be considered unreasonable.

61.5(10) Opening and closing times. Except by arrangement or permission granted by the director or the director's authorized representative or as otherwise stated in this chapter, the following restrictions shall apply: All persons shall vacate all state parks before 10:30 p.m., each day, except authorized campers in accordance with Iowa Code section 461A.46, and no person or persons shall enter into such parks and preserves until 4 a.m. the following day.

61.5(11) Paintball guns. The use of any item generally referred to as a paintball gun is prohibited in state parks, recreation areas and preserves.

61.5(12) Restrictions on picnic site use.

a. Open picnic sites marked with the international symbol of accessibility shall be used only by a person or group with a person qualifying for and displaying a persons with disabilities parking permit on the person's vehicle.

NATURAL RESOURCE COMMISSION[571](cont'd)

b. Paragraph 61.5(12)“a” does not apply to picnic shelters marked with the international accessibility symbol. The use of the symbol on shelters shall serve only as an indication that the shelter is wheelchair accessible.

61.5(13) Rock climbing or rappelling. The rock climbing practice known as free climbing and climbing or rappelling activities which utilize bolts, pitons, or similar permanent anchoring equipment or ropes, harnesses, or slings is prohibited in state parks and recreation areas, except by persons or groups registered with the park manager or technician in charge of the area. Individual members of a group must each sign a registration. Climbing or rappelling will not be permitted at the Ledges State Park, Boone County; Dolliver State Park, Webster County; Stone State Park, Woodbury and Plymouth Counties; Wildcat Den State Park, Muscatine County; or Mines of Spain Recreation Area, Dubuque County. Other sites may be closed to climbing or rappelling if environmental damage or safety problems occur or if an endangered or threatened species is present.

61.5(14) Speech or conduct unreasonably interfering with lawful use of an area by others.

a. Unprovoked speech commonly perceived as offensive or abusive is prohibited when such speech unreasonably interferes with lawful use and enjoyment of the area by another member of the public.

b. Quarreling or fighting is prohibited when it unreasonably interferes with the lawful use and enjoyment of the area by another member of the public.

571—61.6(461A) Certain conditions of public use applicable to specific parks and recreation areas. Notwithstanding the general conditions of public use set forth in 61.3(5) and 61.5(461A), special conditions shall apply to the specific areas listed as follows:

61.6(1) Hattie Elston Access and Claire Wilson Park, Dickinson County.

a. Except as provided in 61.9(461A), these areas are closed to public access from 10:30 p.m. to 4 a.m.

b. Parking of vehicles of any type on these areas is prohibited unless the vehicle operator and occupants are actively using the area for fishing or other recreational purposes.

c. Overnight camping is prohibited.

61.6(2) Pleasant Creek Recreation Area, Linn County. Swimming is limited by the provisions of 61.5(2); also, swimming is prohibited at the beach from 10:30 p.m. to 6 a.m. daily. Access into and out of the north portion of the area between the east end of the dam to the campground shall be closed from 10:30 p.m. to 4 a.m., except that walk-in overnight fishing will be allowed along the dam. The areas known as the dog trial area and the equestrian area shall be closed from 10:30 p.m. to 4 a.m., except for equestrian camping and for those persons participating in a DNR-authorized field trial. From 10:30 p.m. to 4 a.m., only registered campers are permitted in the campground.

61.6(3) Wapsipinicon State Park, Jones County. The recreation area portion of the park is closed to the public from 10:30 p.m. to 4 a.m.

571—61.7(461A) Mines of Spain hunting, trapping and firearms use.

61.7(1) The following described portions of the Mines of Spain Recreation Area are established and will be posted as wildlife refuges:

a. That portion within the city limits of the city of Dubuque located west of U.S. Highway 61 and north of Mar Jo Hills Road.

b. The tract leased by the department of natural resources from the city of Dubuque upon which the E. B. Lyons Interpretive Center is located.

c. That portion located south of the north line of Section 8, Township 88 North, Range 3 East of the 5th P.M. between the west property boundary and the east line of said Section 8.

d. That portion located north of Catfish Creek, east of the Mines of Spain Road and south of the railroad tracks. This portion contains the Julien Dubuque Monument.

61.7(2) Trapping and archery hunting for all legal species are permitted in compliance with all open-season, license and possession limits on the Mines of Spain Recreation Area except in those areas designated as refuges by subrule 61.7(1).

61.7(3) Firearm use is prohibited in the following described areas:

a. The areas described in subrule 61.7(1).

b. The area north and west of Catfish Creek and west of Granger Creek.

61.7(4) Deer hunting and hunting for all other species are permitted using shotguns only and are permitted only during the regular gun season as established by 571—Chapter 106. Areas not described in 61.7(3) are open for hunting. Hunting shall be in compliance with all other regulations.

61.7(5) Turkey hunting with shotguns is allowed only in compliance with the following regulations:

a. Only during the first shotgun hunting season established in 571—Chapter 98, which is typically four days in mid-April.

b. Only in that area of the Mines of Spain Recreation Area located east of the newly established roadway and south of the Horseshoe Bluff quarry.

61.7(6) The use or possession of a handgun or any type of rifle is prohibited on the entire Mines of Spain Recreation Area except as provided in 61.7(4). Target and practice shooting with any type of firearm is prohibited.

61.7(7) All forms of hunting, trapping and firearms use not specifically permitted by 61.7(461A) are prohibited on the Mines of Spain Recreation Area.

571—61.8(461A) After-hours fishing—exception to closing time. Persons shall be allowed access to the areas designated in 61.9(461A) between the hours of 10:30 p.m. and 4 a.m. under the following conditions:

1. The person is to be actively engaged in fishing.

2. The person shall behave in a quiet, courteous manner so as to not disturb other users of the park such as campers.

3. Access to the fishing site from the parking area shall be by the shortest and most direct trail or access facility.

4. Vehicle parking shall be in the lots designated by signs posted in the area.

5. Activities other than fishing are allowed with permission of the director or an employee designated by the director.

571—61.9(461A) Designated areas for after-hours fishing. Areas which are open from 10 p.m. to 4 a.m. are shown on maps available from the department of natural resources. The areas are described as follows:

61.9(1) Black Hawk Lake, Sac County. The area of the state park between the road and the lake running from the marina at Drillings Point on the northeast end of the lake approximately three-fourths of a mile in a southwesterly direction to a point where the park boundary decreases to include only the roadway.

NATURAL RESOURCE COMMISSION[571](cont'd)

61.9(2) Bobwhite State Park, Wayne County. Both sides of the east-west causeway embankment on County Road J46 from the parking lot on the west end of the causeway to a point approximately 300 feet east of the causeway bridge.

61.9(3) Claire Wilson Park, Dickinson County. The entire area including the parking lot, shoreline and fishing trestle facility.

61.9(4) Elinor Bedell State Park, Dickinson County. The entire length of the shoreline within state park boundaries.

61.9(5) Green Valley Lake, Union County.

a. The embankment of the road from the small parking area east of the park ranger's residence east to the "T" intersection and south to the westerly end of a point of land jutting into the lake directly south of the parking lot mentioned above.

b. From the east side of the spillway easterly across the dam to the west edge of the parking lot.

61.9(6) Hattie Elston Access, Dickinson County. The entire area including the parking lot shoreline and boat ramp facilities.

61.9(7) Honey Creek State Park, Appanoose County. The boat ramp area located north of the park office, access to which is the first road to the left upon entering the park.

61.9(8) Lake Geode State Park, Des Moines County portion. The area of the dam embankment between the county road and the lake as shown on the map.

61.9(9) Lake Keomah State Park, Mahaska County.

a. The embankment of the dam between the crest of the dam and the lake.

b. The shoreline between the road and the lake from the south boat launch area west and north to the junction with the road leading to the group camp shelter.

61.9(10) Lake Macbride State Park, Johnson County. The shoreline of the south arm of the lake adjacent to the county road commencing at the "T" intersection of the roads at the north end of the north-south causeway proceeding across the causeway thence southeasterly along a foot trail to the east-west causeway, across the causeway to the parking area on the east end of that causeway.

61.9(11) Lake Manawa State Park, Pottawattamie County. The west shoreline including both sides of the main park road, commencing at the north park entrance and continuing south 1.5 miles to the parking lot immediately north of the picnic area known as "Boy Scout Island."

61.9(12) Lower Pine Lake, Hardin County. West shoreline along Hardin County Road S56 from the beach southerly to the boat ramp access.

61.9(13) Mini-Wakan State Park, Dickinson County. The entire area.

61.9(14) North Twin Lake State Park, Calhoun County. The shoreline of the large day-use area containing the swimming beach on the east shore of the lake.

61.9(15) Pikes Point State Park, Dickinson County. The shoreline areas of Pikes Point State Park on the east side of West Okoboji Lake.

61.9(16) Prairie Rose State Park, Shelby County. The west side of the embankment of the causeway across the southeast arm of the lake including the shoreline west of the parking area to its junction with the road leading toward the park ranger residence.

61.9(17) Rock Creek Lake, Jasper County. Both sides of the County Road F27 causeway across the main north portion of the lake.

61.9(18) Union Grove State Park, Tama County.

a. The dam embankment from the spillway to a line parallel with the west end of the parking lot adjacent to the dam.

b. The area of state park between the county road and the lake along the west shoreline from the causeway on the north end of the lake to the southerly end of the arm of the lake that extends southwesterly of the main water body.

61.9(19) Upper Pine Lake, Hardin County. Southwest shoreline extending from the boat launch ramp to the dam.

61.9(20) Viking Lake State Park, Montgomery County. The embankment of the dam from the parking area located southeast of the dam area northwesterly across the dam structure to its intersection with the natural shoreline of the lake.

571—61.10(461A) Vessels prohibited. Rule 61.9(461A) does not permit the use of vessels on the artificial lakes within state parks after the 10:30 p.m. park closing time. All fishing is to be done from the bank or shoreline of the permitted area.

571—61.11(461A) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

571—61.12(461A) Restore the outdoors program. Funding provided through the appropriation made by 1997 Iowa Acts, chapter 215, and subsequent Acts, shall be used to renovate, replace or construct new vertical infrastructure and associated appurtenances in state parks and other public facilities managed by the department of natural resources.

The intended projects will be included in the department's annual five-year capital plan in priority order by year and approved by the natural resource commission for inclusion in its capital budget request.

The funds appropriated by 1997 Iowa Acts, chapter 215, section 37, and subsequent Acts, will be used to renovate, replace or construct new vertical infrastructure through construction contracts, agreements with local government entities responsible for managing state parks and other public facilities, and agreements with the department of corrections to use inmate labor where possible. Funds shall also be used to support site survey, design and construction contract management through consulting engineering and architectural firms and for direct survey, design and construction management costs incurred by department engineering and architectural staff for restore the outdoors projects. Funds shall not be used to support general department oversight of the restore the outdoors program, such as accounting, general administration or long-range planning.

These rules are intended to implement Iowa Code sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 to 461A.51, 461A.57, and 723.4 and Iowa Code chapter 724.

[Filed 11/13/00, effective 1/3/01]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0336B

**NATURAL RESOURCE
COMMISSION[571]**

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby

NATURAL RESOURCE COMMISSION[571](cont'd)

amends Chapter 81, "Fishing Regulations," Iowa Administrative Code.

The amendment provides for the taking of designated fish by hand, snagging, spearing, bow and arrow, and artificial light in designated areas.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 6, 2000, as **ARC 0104B**. Public hearings were held on September 26, 27, 28, and 29, 2000. One change has been made to the Notice as a result of Commission review and comment. Paragraphs "a" and "b" have not been adopted, and paragraph "c" is now an unnumbered paragraph.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, 481A.67 and 481A.76.

This amendment will become effective January 3, 2001.

The following amendment is adopted.

Amend rule 571—81.2(571) by adopting the following **new** subrule:

81.2(11) Method of take. Artificial light may be used in the taking of any fish. The following species of fish may be taken by hand fishing, snagging, spearing, and bow and arrow: common carp, bighead carp, grass carp, silver carp, black carp, bigmouth buffalo, smallmouth buffalo, black buffalo, quillback carpsucker, highfin carpsucker, river carpsucker, spotted sucker, white sucker, shorthead redhorse, golden redhorse, silver redhorse, sheepshead, shortnose gar, longnose gar, dogfish, gizzard shad, and goldfish. All other species of fish not hooked in the mouth, except paddlefish legally taken by snagging, must be returned to the water immediately with as little injury as possible. A fish is foul hooked when caught by a hook in an area other than in the fish's mouth. Snagging is defined as the practice of jerking any type of hook or lure, baited or unbaited, through the water with the intention of foul hooking fish. Exceptions to snagging as a method of take are as follows:

No snagging is permitted in the following areas:

1. Des Moines River from directly below Saylorville Dam to the Southeast 14th Street bridge in Des Moines.
2. Cedar River in Cedar Rapids from directly below the 5 in 1 Dam under I-380 to the 1st Avenue bridge.
3. Cedar River in Cedar Rapids from directly below the "C" Street Roller Dam to 300 yards downstream.
4. Iowa River from directly below the Coralville Dam to 300 yards downstream.
5. Chariton River from directly below Lake Rathbun Dam to 300 yards downstream.
6. Spillway area from directly below the Spirit Lake outlet to the confluence at East Okoboji Lake.

[Filed 11/13/00, effective 1/3/01]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0335B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby gives Notice of

Intended Action to amend Chapter 98, "Wild Turkey Spring Hunting," Iowa Administrative Code.

These rules give the regulations for hunting wild turkeys, including season dates, bag limits, method of take, license quotas and application procedures.

These amendments are intended to implement the Department's electronic licensing system, provide for the collection of harvest information, and promote fairness in the distribution of nonresident licenses.

Notice of Intended Action was published October 4, 2000, as **ARC 0165B**. The following changes have been made to the Notice. These changes were made by Commission members prior to their approval of the Notice of Intended Action. The changes were erroneously omitted from the Notice and are being made now.

1. In 98.5(481A) and 98.16(481A), respectively, the word "immediately" has been omitted from the second sentence, which now reads as follows: "Each hunter that bags a wild turkey must fill out and sign the harvest report card after the transportation tag is attached to the turkey."

2. Also, in 98.5(481A) and 98.16(481A), the phrase "on the same day the turkey is tagged" has been changed to read "within 48 hours of tagging the turkey" in 98.5(481A) and "within 48 hours of tagging the turkey or before leaving the state" in 98.16(481A).

3. In 98.3(4), the second sentence was omitted because some county recorders have chosen not to issue licenses.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These amendments shall become effective January 3, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule 98.1(1) as follows:

98.1(1) License. All hunters must have in possession a spring wild turkey hunting license valid for the current year when hunting wild turkey. No one, while hunting wild turkey, shall carry or have in possession any license or transportation tag issued to another hunter. A hunter having a license valid for one of the spring turkey hunting periods may accompany, call for, or otherwise assist any other hunter who has a valid turkey hunting license for any of the spring hunting periods *in any zone*, except that the hunter doing the assisting may not shoot a turkey or carry a firearm or bow unless the hunter has a valid license with an unused tag for the current season *and zone*. If a turkey is taken, it must be tagged with the tag issued to the hunter who shot the turkey. Two types of licenses will be issued.

a. Combination shotgun-or-archery licenses will be issued by zone and period and will be valid in the designated zone and for the designated period only. No one shall apply for or obtain more than two combination shotgun-or-archery licenses. *If two licenses are obtained, one must be for hunting period four in Zone 4.* Hunters who obtain one or two combination shotgun-or-archery licenses, whether free or paid, may not apply for or obtain an archery-only license.

b. Archery-only licenses will be valid statewide and shall be valid during all hunting periods open for spring turkey hunting. No one may apply for or obtain more than two archery-only licenses. Hunters purchasing one or two archery-only licenses, *whether free or paid*, may not apply for or obtain a combination shotgun-or-archery license.

ITEM 2. Rescind rule 571—98.3(481A) and adopt in lieu thereof the following **new** rule:

571—98.3(481A) Procedures to obtain licenses. All spring wild turkey hunting licenses will be sold or may be ap-

NATURAL RESOURCE COMMISSION[571](cont'd)

plied for using the electronic licensing system for Iowa (ELSI). Licenses and license applications may be purchased through ELSI license agents or by calling the ELSI telephone ordering system.

98.3(1) Licenses with quotas. All licenses for zone and season combinations that have license quotas, as specified in subrule 98.3(3), will be issued through a random drawing. Applications for these licenses may be purchased through ELSI beginning the first Saturday after January 1 through the last Sunday in January. No one may submit more than one application during the application period. If applications have been sold in excess of the license quota for any zone or hunting period, a drawing will be held to determine which applicants receive licenses. Licenses or refunds of license fees will be mailed to applicants after the drawing is completed. License agent writing fees, department administrative fees and telephone order charges will not be refunded. If any license quota has not been filled, the excess licenses will be sold on a first-come, first-served basis through ELSI beginning the second Saturday after the close of the application period and continuing until the quota has been filled or until the last day of the hunting period for which that license is valid, whichever occurs first. No one may obtain more than one limited-quota license.

98.3(2) Licenses that do not have quotas. Spring wild turkey hunting licenses that are not subject to a quota will be sold beginning the second Saturday after the close of the initial application period through the last day of the hunting period for which the license is valid.

98.3(3) License quotas. Separate quotas will be established for each license type.

a. Combination shotgun-or-archery licenses. A limited number of combination shotgun-or-archery hunting licenses will be issued for each hunting period in Zones 1, 2 and 3. There shall be no limit on combination shotgun-or-archery licenses in any hunting period in Zone 4. The same quota shall apply to Zones 1, 2 and 3 in all four hunting periods. The maximum number of combination shotgun-or-archery licenses that will be issued in each zone for each hunting period is as follows:

- (1) Zone 1. 65.
- (2) Zone 2. 125.
- (3) Zone 3. 80.
- (4) Zone 4. No limit.

b. Archery-only licenses. The number of archery-only licenses shall not be limited.

98.3(4) Landowner-tenant licenses. An eligible landowner or tenant may obtain a free combination shotgun-or-archery license or a free archery-only license. Nonresident landowners are not eligible for free turkey hunting licenses.

a. Free combination shotgun-or-archery licenses. Free combination shotgun-or-archery licenses will be issued by hunting period and will be valid only on the farm unit of the landowner or tenant. One paid combination shotgun-or-archery license may be obtained in addition to the free license, but at least one of these licenses (paid or free) must be for hunting period four in Zone 4.

b. Free archery-only licenses. Free archery-only licenses will be valid for all hunting periods but only on the farm unit of the landowner or tenant.

ITEM 3. Adopt **new** rule 571—98.5(481A) as follows:

571—98.5(481A) Harvest reporting system. A harvest report card will be attached to each transportation tag. Each hunter that bags a wild turkey must fill out and sign the harvest report card after the transportation tag is attached to the

turkey. The completed harvest report card must be taken to any ELSI license agent within 48 hours of tagging the turkey. The license agent will enter the harvest report information into the ELSI terminal and print out a harvest verification tag. The verification tag must be placed on the turkey and remain there until the turkey is processed for consumption. A wild turkey carcass or part of a carcass may not be taken to a locker plant for processing unless the proper verification tag is attached.

ITEM 4. Rescind rule 571—98.14(483A) and adopt in lieu thereof the following **new** rule:

571—98.14(483A) Application procedure. Applications for nonresident spring wild turkey hunting licenses must be made through the electronic licensing system for Iowa (ELSI) telephone order system. Applications will be accepted from the first Saturday after January 1 through the last Sunday in January. No one may submit more than one application during the application period. If applications have been sold in excess of the license quota for any zone or hunting period, a drawing will be held to determine which applicants receive licenses. Licenses or refunds of license fees will be mailed to applicants after the drawing is completed. License agent writing fees, department administrative fees and telephone order charges will not be refunded. If any license quota has not been filled, the excess licenses will be sold on a first-come, first-served basis through the telephone ordering system beginning the second Saturday after the close of the application period and lasting until the quota has been filled or the last day of the hunting period for which the license is valid, whichever occurs first. No one may obtain more than one nonresident spring wild turkey hunting license. Hunters may apply individually or as a group of up to 15 applicants. All members of a group will be accepted or rejected as a group in the drawing. If a group is rejected, members of that group may purchase licenses individually if excess licenses are available.

Each individual applicant that is unsuccessful in the drawing will be assigned one preference point for each consecutive year in which the individual applies and is unsuccessful. Preference points will not accrue in a year in which an applicant fails to apply, but the applicant will retain any preference points previously earned. Once an applicant receives a license, all preference points will be erased. Preference points will apply to any zone or hunting period for which a hunter applies.

The first license drawing each year will be made from the pool of applicants with the most preference points. If licenses are still available after the first drawing, subsequent drawings will be made from pools of applicants with successively fewer preference points and continue until the license quota is reached or all applicants have received licenses. Applicants who apply as a group will be included in a pool of applicants with the same number of preference points as that of the member of the group with the fewest preference points assigned.

ITEM 5. Adopt **new** rule 571—98.16(481A) as follows:

571—98.16(481A) Harvest reporting system. A harvest report card will be attached to each transportation tag. Each hunter that bags a wild turkey must fill out and sign the harvest report card after the transportation tag is attached to the turkey. The completed harvest report card must be taken to any ELSI license agent within 48 hours of tagging the turkey or before leaving the state. The license agent will enter the harvest report information into the ELSI terminal and print

NATURAL RESOURCE COMMISSION[571](cont'd)

out a harvest verification tag. The verification tag must be placed on the turkey and remain there until the turkey is processed for consumption. A wild turkey carcass or part of a carcass may not be taken to a locker plant for processing unless the proper verification tag is attached.

[Filed 11/13/00, effective 1/3/01]

[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0333B**NURSING BOARD[655]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby adopts Chapter 15, "Waiver and Variance Rules," Iowa Administrative Code.

Chapter 15 establishes uniform rules providing for waivers or variances from administrative rules. This rule making implements Executive Order Number 11 signed by the Governor on September 14, 1999, and 2000 Iowa Acts, chapter 1176. It provides for increased flexibility of administrative rule enforcement as applied to individual licensed nurses, continuing education providers or nursing education programs.

These rules were published in the Iowa Administrative Bulletin on October 4, 2000, as **ARC 0171B**. These rules are identical to those published under Notice.

These rules will become effective January 3, 2001.

These rules are intended to implement Iowa Code chapters 17A, 147 and 152.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 15] is being omitted. These rules are identical to those published under Notice as **ARC 0171B**, IAB 10/4/00.

[Filed 11/9/00, effective 1/3/01]

[Published 11/29/00]

[For replacement pages for IAC, see IAC Supplement 11/29/00.]

ARC 0329B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Pharmacy Examiners hereby amends Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The new rule permits physicians to prescribe via written protocol adult immunizations for influenza and pneumococcal vaccines for administration by authorized pharmacists. Physicians may also prescribe other adult immunizations for an individual patient by a prescription or medication order for administration by an authorized pharmacist. The rule de-

fines the preparatory process the authorized pharmacist must complete and itemizes the elements needed in a written protocol for a physician to prescribe adult immunizations for administration to patients by an authorized pharmacist. Finally, the rule describes the supervisory relationship between a prescribing physician and an administering pharmacist.

The new rule does not include provision for waiver or variance from requirements imposed by the rule. The standards established herein have been mutually developed by the Board of Medical Examiners and the Board of Pharmacy Examiners and neither board sees a reason to consider waiver of these minimum requirements. In addition, since each Board is adopting the same rule, a waiver of any part of the rule would require that application for waiver be submitted to each Board and approved with the same terms and conditions by both Boards.

Notice of Intended Action was published in the April 19, 2000, Iowa Administrative Bulletin as **ARC 9790A**. The adopted rule is identical to that published under Notice.

A joint public hearing with the Board of Medical Examiners was held on May 9, 2000. The Iowa Pharmacy Association (IPA), the Iowa Medical Society (IMS), and individual pharmacists indicated support for the proposed rule. The Iowa Osteopathic Medical Association (IOMA), the Polk County Medical Society, and the Iowa Academy of Family Physicians expressed concerns for patient safety and questioned pharmacists' authority to administer immunizations. Written comments submitted by IPA, IMS, the Iowa Nurses' Association, the University of Iowa College of Pharmacy, and individual pharmacists supported adoption of the proposed rule. The Board considered all comments before adopting the rule as published under Notice.

The rule was approved during the November 6, 2000, teleconference meeting of the Board of Pharmacy Examiners.

This rule will become effective on January 3, 2001.

A rule pertaining to the administration of immunizations by pharmacists has also been adopted by the Board of Medical Examiners and is published herein as **ARC 0301B**.

This rule is intended to implement Iowa Code sections 147.76, 155A.3, 155A.4, and 272C.3.

The following amendment is adopted.

Adopt the following new rule 657—8.33(147):

657—8.33(147,155A) Supervision of pharmacists who administer adult immunizations. A physician may prescribe via written protocol adult immunizations for influenza and pneumococcal vaccines for administration by an authorized pharmacist if the physician meets these requirements for supervising the pharmacist.

8.33(1) Definitions.

a. "Authorized pharmacist" means an Iowa-licensed pharmacist who has documented that the pharmacist has successfully completed an educational program meeting the training standards on vaccine administration as provided by an American Council on Pharmaceutical Education (ACPE)-approved provider of continuing pharmaceutical education that:

(1) Requires documentation by the pharmacist of current certification in the American Heart Association or the Red Cross Basic Cardiac Life Support Protocol for health care providers;

(2) Is an evidence-based course that includes study material and hands-on training and techniques for administering vaccines, requires testing with a passing score, complies with current Centers for Disease Control and Prevention guidelines, and provides instruction and experiential training in the following content areas:

PHARMACY EXAMINERS BOARD[657](cont'd)

1. Standards for immunization practices;
2. Basic immunology and vaccine protection;
3. Vaccine-preventable diseases;
4. Recommended immunization schedules;
5. Vaccine storage and management;
6. Informed consent;
7. Physiology and techniques for vaccine administration;
8. Pre- and post-vaccine assessment and counseling;
9. Immunization record management; and
10. Management of adverse events, including identification, appropriate response, documentation, and reporting.

b. "Vaccine" means a specially prepared antigen which, upon administration to a person, will result in immunity and, specifically for the purposes of this rule, shall mean influenza and pneumococcal vaccines.

c. "Written protocol" means a physician's order for one or more patients that contains, at a minimum, the following:

(1) A statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of adult immunizations for influenza and pneumococcus;

(2) A statement identifying the individual authorized pharmacists;

(3) A statement that forbids an authorized pharmacist from delegating the administration of adult immunizations to anyone other than another authorized pharmacist or a registered nurse;

(4) A statement identifying the vaccines that may be administered by an authorized pharmacist, the dosages, and the route of administration;

(5) A statement identifying the activities an authorized pharmacist shall follow in the course of administering adult immunizations, including:

1. Procedures for determining if a patient is eligible to receive the vaccine;

2. Procedures for determining the appropriate scheduling and frequency of drug administration in accordance with applicable guidelines;

3. Procedures for record keeping and long-term record storage including batch or identification numbers;

4. Procedures to follow in case of life-threatening reactions; and

5. Procedures for the pharmacist and patient to follow in case of reactions following administration;

(6) A statement that describes how the authorized pharmacist shall report the administration of adult immunizations, within 30 days, to the physician issuing the written protocols and to the patient's primary care physician if one has been designated by the patient. In case of serious complications, the authorized pharmacist shall notify the physicians within 24 hours and submit a VAERS report to the bureau of immunizations, Iowa department of public health. (VAERS is the Vaccine Advisory Event Reporting System.) A serious complication is one that requires further medical or therapeutic intervention to effectively protect the patient from further risk, morbidity, or mortality.

8.33(2) Supervision. A physician who prescribes adult immunizations to an authorized pharmacist for administration shall adequately supervise that pharmacist. Physician supervision shall be considered adequate if the delegating physician:

a. Ensures that the authorized pharmacist is prepared as described in subrule 8.33(1), paragraph "a";

b. Provides a written protocol that is updated at least annually;

c. Is available through direct telecommunication for consultation, assistance, and direction, or provides physician backup to provide these services when the physician supervisor is not available;

d. Is an Iowa-licensed physician who has a working relationship with an authorized pharmacist within the physician's local provider service area.

8.33(3) Administration of other adult immunizations by pharmacists. A physician may prescribe, for an individual patient by prescription or medication order, other adult immunizations to be administered by an authorized pharmacist.

This rule is intended to implement Iowa Code sections 147.76, 155A.3, 155A.4, and 272C.3.

[Filed 11/9/00, effective 1/3/01]

[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0322B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Barber Examiners hereby amends Chapter 20, "Barber Examiners," and adopts new Chapter 23, "Continuing Education for Barbers," Iowa Administrative Code.

The amendments rescind the current continuing education rules; adopt a new chapter for continuing education; renumber the rules regarding grounds for discipline, examination of board members, reinstatement of an instructor's license, waiver from taking first examination, and license fees; and amend cross references to rules that are no longer in use.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 23, 2000, as **ARC 0069B**. A public hearing was held on September 12, 2000, from 1:30 to 3:30 p.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No public comments were received at the hearing.

Changes from the Notice include the following:

- New paragraph "f" was added to subrule 23.4(1). The paragraph reads as follows:

f. 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);

(5) A summary of the evaluations completed by the licensees.

- The following subparagraph was added to paragraph 23.5(2)"b":

(3) Indication of successful completion of the course.

- In rule 23.8(158,272C), the word "waiver" was changed to "exemption" in the catchwords and the catchwords now read "continuing education exemption for inactive practitioners."

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These amendments were adopted by the Board of Barber Examiners on November 7, 2000.

These amendments will become effective January 3, 2001.

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 amendments [20.12, 20.101 to 20.105, 20.107 to 20.113, 20.200, 20.212, 20.214, Ch 23] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0069B**, IAB 8/23/00.

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[For replacement pages for IAC, see IAC Supplement 11/29/00.]

ARC 0318B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby amends Chapter 200, "Physical Therapy Examiners," and Chapter 202, "Physical Therapist Assistants," and adopts new Chapter 203, "Continuing Education for Physical Therapists and Physical Therapist Assistants," Iowa Administrative Code.

The amendments rescind the current continuing education rules; adopt a new chapter for continuing education; renumber the rules regarding grounds for discipline and supervision; and amend cross references to rules that are no longer in use.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 26, 2000, as **ARC 9998A**. 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.

The following change was made to the Notice of Intended Action. Subrule 200.11(4) was amended to clarify the expectations for the extent of delegation by a physical therapist to a physical therapist assistant.

These amendments were adopted by the Board of Physical and Occupational Therapy Examiners on October 27, 2000.

These amendments will become effective January 3, 2001.

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 amendments [200.3(1), 200.5(2), 200.9 to 200.15, 200.23, 200.24, 202.6(2), 202.7 to 202.15, 202.23, Ch 203] is being omitted. With the exception of the change noted above,

these amendments are identical to those published under Notice as **ARC 9998A**, IAB 7/26/00.

[Filed 11/9/00, effective 1/3/01]
[Published 11/29/00]

[For replacement pages for IAC, see IAC Supplement 11/29/00.]

ARC 0317B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby amends Chapter 201, "Occupational Therapy Examiners," and adopts new Chapter 207, "Continuing Education for Occupational Therapists and Occupational Therapy Assistants," Iowa Administrative Code.

The amendments rescind the current continuing education rules; adopt a new chapter for continuing education; renumber the rules regarding grounds for discipline and supervision; and amend cross references to rules that are no longer in use.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 26, 2000, as **ARC 0001B**. 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. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Board of Physical and Occupational Therapy Examiners on October 27, 2000.

These amendments will become effective January 3, 2001.

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 amendments [201.1, 201.4, 201.5(1), 201.7(2), 201.8 to 201.17, 201.24, Ch 207] is being omitted. These amendments are identical to those published under Notice as **ARC 0001B**, IAB 7/26/00.

[Filed 11/9/00, effective 1/3/01]
[Published 11/29/00]

[For replacement pages for IAC, see IAC Supplement 11/29/00.]

ARC 0321B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby amends Chapter 300, "Board of Speech Pathology and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Audiology Examiners,” and adopts new Chapter 303, “Continuing Education for Speech Pathologists and Audiologists,” Iowa Administrative Code.

The amendments rescind the current continuing education rules, adopt a new chapter for continuing education, and renumber the rule regarding organization of the Board.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 20, 2000, as **ARC 0144B**. A public hearing was held on October 19, 2000, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No public comments were received at the hearing.

The following change was made to the Notice of Intended Action. The word “certification” was changed to “licensure” in the phrase “licensure requirements” in subparagraph 303.3(2)“a”(1). This is a more accurate word for this rule. The subparagraph now reads as follows:

(1) Basic communication processes. Information (beyond the basic licensure requirements) applicable to the normal development and use of speech, language, and hearing, i.e., anatomic and physiologic bases for the normal development and use of speech, language, and hearing; physical bases and processes of the production and perception of speech, language, and hearing; linguistic and psycholinguistic variables related to normal development and use of speech, language, and hearing; and technological, biomedical, engineering, and instrumentation information which would enable expansion of knowledge in the basic communication processes. Any computer course used for continuing education must involve the actual application to the communicatively impaired population.

These amendments were adopted by the Board of Speech Pathology and Audiology Examiners on November 3, 2000.

These amendments will become effective January 3, 2001.

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 [300.8 to 300.11, 301.1 to 301.7, 301.112, Ch 303] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 0144B**, IAB 9/20/00.

[Filed 11/9/00, effective 1/3/01]
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[For replacement pages for IAC, see IAC Supplement 11/29/00.]

ARC 0314B

**PUBLIC SAFETY
DEPARTMENT[661]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 16, “State of Iowa Building Code,” Iowa Administrative Code.

2000 Iowa Acts, chapter 1229, section 21, provides for the Building Code Commissioner to establish fees for the per-

formance of plan reviews by the Department. This amendment provides for the fees.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 4, 2000 as **ARC 0164B**.

A public hearing regarding this amendment was held on October 27, 2000. Comments were received from the American Institute of Architects, Iowa, objecting to the fee schedule proposed in the Notice of Intended Action, and proposing that a fee arrangement more closely reflecting the actual expenses incurred in performing plan reviews be adopted.

The fee schedule adopted here is based upon recommendations received during the public comment period. The schedule is based upon the square footage of the planned structure, and is being adopted in lieu of the fee schedule which was included in the Notice of Intended Action. The fee schedule adopted here is judged to be preferable to that proposed in the Notice of Intended Action, especially in that it is more objective, can be calculated prior to commencing the plan review, and better reflects the actual cost of performing plan reviews. Also provided here is a money-back guarantee if the Building Code Bureau fails to complete a plan review within 60 days. The language contained here regarding the money-back guarantee has been modified from that contained in the Notice of Intended Action to clarify the terms and procedures to be used.

This amendment is intended to implement Iowa Code section 103A.23 as amended by 2000 Iowa Acts, chapter 1229.

This amendment will become effective on January 3, 2001.

The following amendment is adopted.

Amend subrule **16.131(2)** as follows:

Rescind paragraph “c” and adopt in lieu thereof the following **new** paragraph “c”:

c. The fees for completion of building code plan reviews, which shall be reviews for compliance with 661—Chapter 5 and 661—Chapter 16, excluding mechanical, electrical, plumbing, and accessibility provisions, shall be calculated as follows:

| | Preliminary Plan Review Meeting (Optional) | Plan Review Fee | Plan Review Fee Including Optional Preliminary Plan Review Meeting |
|----------------------------|--|-----------------|--|
| AREA IN SQUARE FEET | Cost | Cost | Cost |
| Up to 5,000 | \$75 | \$200 | \$275 |
| 5,001-10,000 | \$100 | \$300 | \$400 |
| 10,001-20,000 | \$125 | \$400 | \$525 |
| 20,001-50,000 | \$150 | \$500 | \$650 |
| 50,001-100,000 | \$200 | \$600 | \$800 |
| 100,001-150,000 | \$200 | \$1,000 | \$1,200 |
| 150,001-200,000 | \$200 | \$1,200 | \$1,400 |
| 200,001-250,000 | \$200 | \$1,400 | \$1,600 |
| 250,001-300,000 | \$250 | \$1,600 | \$1,850 |
| 300,001-350,000 | \$250 | \$1,800 | \$2,050 |
| 350,001-400,000 | \$250 | \$2,000 | \$2,250 |
| 400,001-450,000 | \$300 | \$2,200 | \$2,500 |
| More than 450,000 | \$300 | \$2,400 | \$2,700 |

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Payment of the assigned fee shall accompany each plan when submitted for review. Payment may be made by credit card, or money order, check or draft made payable to the "Iowa Department of Public Safety—Building Code Bureau."

Adopt the following **new** paragraph "d":

d. A person who has submitted a plan for review for which a fee has been assessed pursuant to paragraph "c" is eligible to receive a refund of the fee if the plan has not been approved or rejected within 60 calendar days of its receipt by the building code bureau. A person who believes that a refund is due shall notify the building code commissioner who shall provide a form to the person who submitted the plan for review to request a refund. If the request for refund is approved, the building code commissioner shall cause a check for the amount of the refund to be issued to the individual or organization that originally paid the fee. If the original submission of the plan is incomplete, the fee shall be refunded only if the plan has not been approved or rejected within 60 days of a full and complete submission of the plan. "Approved or rejected within 60 days" means that a letter approving or rejecting the plan has been presented or mailed to the submitter within 60 days of the date of receipt by the building code bureau, within the meaning of "time" as defined in Iowa Code section 4.1.

[Filed 11/9/00, effective 1/3/01]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0313B**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

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

The Building Code Commissioner received a petition for rule making requesting an amendment to 661—Chapter 16. The petition requested that subrule 16.705(3), paragraph "a," be amended to remove any requirement for elevators in newly constructed three-story apartment buildings.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 26, 2000, as **ARC 9987A**. This amendment is identical to the amendment proposed in the Notice of Intended Action.

A public hearing regarding the proposed amendment was held on September 8, 2000. Several persons addressed the hearing in support of the proposed amendment. One individual recommended that the proposed amendment should not be acted upon separately, but as part of a general adoption of federal Americans with Disabilities Act guidelines (ADAAG) as the accessibility rules of the State of Iowa. While there is merit to the suggestion that accessibility rules be adopted as a coordinated package, it is impractical to await adoption of ADAAG by the State of Iowa, for two reasons. One is that ADAAG is currently undergoing substantial revision by the federal government, and the necessary review of those materials once they are finalized in order to de-

termine whether or not their adoption by reference by the State of Iowa is appropriate will take substantial time. Second, the underlying federal statute governing the subject matter with which this amendment deals is the Fair Housing Act, rather than the Americans with Disabilities Act.

This amendment is intended to implement Iowa Code section 103A.7.

This amendment will become effective on January 3, 2001.

The following amendment is adopted.

Amend subrule **16.705(3)**, paragraph "a," by adopting the following **new** exception:

EXCEPTION 4: Elevators are not required in apartment buildings of less than four stories.

[Filed 11/9/00, effective 1/3/01]
[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0323B**REAL ESTATE APPRAISER
EXAMINING BOARD[193F]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 543D.5 and 543D.6, the Real Estate Appraiser Examining Board hereby amends Chapter 10, "Fees," Iowa Administrative Code.

The amendments to Chapter 10 increase registration fees for certified general and certified residential appraisers. Another amendment removes the term "licensed real property appraiser" as the Board no longer issues this type of license.

Notice of Intended Action was published in the August 23, 2000, Iowa Administrative Bulletin as **ARC 0066B**. A public hearing was held on September 12, 2000.

These amendments are identical to those published under Notice.

Waivers from provisions of this rule may be sought pursuant to 193F—Chapter 12.

These amendments were approved during the November 8, 2000, meeting of the Real Estate Appraiser Examining Board.

These amendments will become effective January 3, 2001.

These amendments are intended to implement Iowa Code chapter 543D.

The following amendments are adopted.

Amend rule 193F—10.1(543D) as follows:

193F—10.1(543D) Required fees. The following fee schedule has been adopted by the board for the certified general and certified residential real property appraiser; ~~the licensed real property appraiser~~ and the associate real estate appraiser:

| | |
|--|---------|
| 1. Initial examination application fee | \$100 |
| 2. Examination fee | 95 |
| 3. Reexamination fee | 95 |
| 4. Biennial registration fee | |
| • General real property appraiser | 250 260 |
| • Residential real property appraiser | 225 260 |

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

| | |
|--|-----|
| • Licensed real property appraiser | 225 |
| • Associate real estate appraiser | 150 |
| 5. Reciprocal application fee | 50 |
| 6. Reciprocal registration fee | 250 |
| 7. Reinstatement fee | 100 |
| 8. Reissuance of a certificate or license or replacement of a lost, destroyed or stolen certificate or license | 50 |

[Filed 11/9/00, effective 1/3/01]

[Published 11/29/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/29/00.

ARC 0316B

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue and Finance hereby amends Chapter 17, "Exempt Sales," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXIII, Number 7, page 575, on October 4, 2000, as **ARC 0178B**.

This amendment concerns a new exemption from sales and use tax enacted by 2000 Iowa Acts, chapter 1195, in which the Legislature created an exemption applicable to "information services." The legislation was effective May 15, 2000, retroactive to March 15, 1995. The proposed amendment explains the exemption and illustrates it with a number of specific examples.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective January 3, 2001, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1195, section 3.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [17.36] is being omitted. This rule is identical to that published under Notice as **ARC 0178B**, IAB 10/4/00.

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