

MAR 07 2001

CAPITOL BUILDING
DES MOINES, IA



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

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NUMBER 18

March 7, 2001

Pages 1345 to 1420

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PREFACE

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

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

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

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

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Iowa Administrative Code Supplement - \$425.61 plus \$25.54 sales tax

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Department of General Services
Hoover State Office Building, Level A
Des Moines, IA 50319
Telephone: (515)242-5120**

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CITATION of Administrative Rules

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

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

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

Schedule for Rule Making 2001

| 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. 22 '00 | Jan. 10 '01 | Jan. 30 '01 | Feb. 14 '01 | Feb. 16 '01 | Mar. 7 '01 | Apr. 11 '01 | July 9 '01 |
| Jan. 5 | Jan. 24 | Feb. 13 | Feb. 28 | Mar. 2 | Mar. 21 | Apr. 25 | July 23 |
| Jan. 19 | Feb. 7 | Feb. 27 | Mar. 14 | Mar. 16 | Apr. 4 | May 9 | Aug. 6 |
| Feb. 2 | Feb. 21 | Mar. 13 | Mar. 28 | Mar. 30 | Apr. 18 | May 23 | Aug. 20 |
| Feb. 16 | Mar. 7 | Mar. 27 | Apr. 11 | Apr. 13 | May 2 | June 6 | Sept. 3 |
| Mar. 2 | Mar. 21 | Apr. 10 | Apr. 25 | Apr. 27 | May 16 | June 20 | Sept. 17 |
| Mar. 16 | Apr. 4 | Apr. 24 | May 9 | May 11 | May 30 | July 4 | Oct. 1 |
| Mar. 30 | Apr. 18 | May 8 | May 23 | May 25 | June 13 | July 18 | Oct. 15 |
| Apr. 13 | May 2 | May 22 | June 6 | June 8 | June 27 | Aug. 1 | Oct. 29 |
| Apr. 27 | May 16 | June 5 | June 20 | June 22 | July 11 | Aug. 15 | Nov. 12 |
| May 11 | May 30 | June 19 | July 4 | July 6 | July 25 | Aug. 29 | Nov. 26 |
| May 25 | June 13 | July 3 | July 18 | July 20 | Aug. 8 | Sept. 12 | Dec. 10 |
| June 8 | June 27 | July 17 | Aug. 1 | Aug. 3 | Aug. 22 | Sept. 26 | Dec. 24 |
| June 22 | July 11 | July 31 | Aug. 15 | Aug. 17 | Sept. 5 | Oct. 10 | Jan. 7 '02 |
| July 6 | July 25 | Aug. 14 | Aug. 29 | Aug. 31 | Sept. 19 | Oct. 24 | Jan. 21 '02 |
| July 20 | Aug. 8 | Aug. 28 | Sept. 12 | Sept. 14 | Oct. 3 | Nov. 7 | Feb. 4 '02 |
| Aug. 3 | Aug. 22 | Sept. 11 | Sept. 26 | Sept. 28 | Oct. 17 | Nov. 21 | Feb. 18 '02 |
| Aug. 17 | Sept. 5 | Sept. 25 | Oct. 10 | Oct. 12 | Oct. 31 | Dec. 5 | Mar. 4 '02 |
| Aug. 31 | Sept. 19 | Oct. 9 | Oct. 24 | Oct. 26 | Nov. 14 | Dec. 19 | Mar. 18 '02 |
| Sept. 14 | Oct. 3 | Oct. 23 | Nov. 7 | Nov. 9 | Nov. 28 | Jan. 2 '02 | Apr. 1 '02 |
| Sept. 28 | Oct. 17 | Nov. 6 | Nov. 21 | Nov. 23 | Dec. 12 | Jan. 16 '02 | Apr. 15 '02 |
| Oct. 12 | Oct. 31 | Nov. 20 | Dec. 5 | Dec. 7 | Dec. 26 | Jan. 30 '02 | Apr. 29 '02 |
| Oct. 26 | Nov. 14 | Dec. 4 | Dec. 19 | Dec. 21 | Jan. 9 '02 | Feb. 13 '02 | May 13 '02 |
| Nov. 9 | Nov. 28 | Dec. 18 | Jan. 2 '02 | Jan. 4 '02 | Jan. 23 '02 | Feb. 27 '02 | May 27 '02 |
| Nov. 23 | Dec. 12 | Jan. 1 '02 | Jan. 16 '02 | Jan. 18 '02 | Feb. 6 '02 | Mar. 13 '02 | June 10 '02 |
| Dec. 7 | Dec. 26 | Jan. 15 '02 | Jan. 30 '02 | Feb. 1 '02 | Feb. 20 '02 | Mar. 27 '02 | June 24 '02 |
| Dec. 21 | Jan. 9 '02 | Jan. 29 '02 | Feb. 13 '02 | Feb. 15 '02 | Mar. 6 '02 | Apr. 10 '02 | July 8 '02 |
| Jan. 4 '02 | Jan. 23 '02 | Feb. 12 '02 | Feb. 27 '02 | Mar. 1 '02 | Mar. 20 '02 | Apr. 24 '02 | July 22 '02 |

PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u> | <u>ISSUE DATE</u> |
|---------------------|----------------------------|-------------------|
| 20 | Friday, March 16, 2001 | April 4, 2001 |
| 21 | Friday, March 30, 2001 | April 18, 2001 |
| 22 | Friday, April 13, 2001 | May 2, 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.

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

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

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 |
|--|---|-------------------------------------|
| COMMUNITY ACTION AGENCIES DIVISION[427] | | |
| Waiver rules, ch 8 IAB 2/21/01 ARC 0490B | Director's Office—Second Floor Lucas State Office Bldg. Des Moines, Iowa | March 13, 2001 10 a.m. |
| CORRECTIONS DEPARTMENT[201] | | |
| Waivers and variances, ch 7 IAB 2/21/01 ARC 0494B | Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa | March 13, 2001 11 a.m. to 1 p.m. |
| CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428] | | |
| Waiver rules, ch 9 IAB 2/21/01 ARC 0497B | Administrator's Office—Second Floor Lucas State Office Bldg. Des Moines, Iowa | March 13, 2001 10 a.m. |
| DEAF SERVICES DIVISION[429] | | |
| Waiver rules, ch 10 IAB 2/21/01 ARC 0500B | Administrator's Office—Second Floor Lucas State Office Bldg. Des Moines, Iowa | March 13, 2001 10 a.m. |
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| Nonrefundable fees for licensure and authorization, 14.1(1), 14.1(2), 14.32, 14.121 IAB 2/7/01 ARC 0479B | Conference Room 3 South Grimes State Office Bldg. Des Moines, Iowa | March 8, 2001 1 p.m. |
| Nonrefundable fees for coaching authorization, 19.2, 19.5 IAB 2/7/01 ARC 0482B | Conference Room 3 South Grimes State Office Bldg. Des Moines, Iowa | March 8, 2001 1 p.m. |
| Nonrefundable fees for behind-the- wheel driving instructor authorization, 21.2, 21.5 IAB 2/7/01 ARC 0481B | Conference Room 3 South Grimes State Office Bldg. Des Moines, Iowa | March 8, 2001 1 p.m. |
| Nonrefundable fees for paraeducator certification, 22.5 IAB 2/7/01 ARC 0480B | Conference Room 3 South Grimes State Office Bldg. Des Moines, Iowa | March 8, 2001 1 p.m. |
| ENVIRONMENTAL PROTECTION COMMISSION[567] | | |
| Water quality standards, 61.2(2), 61.3(3), 61.3(5) IAB 2/7/01 ARC 0470B | Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa | March 8, 2001 1 p.m. |

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| Waivers and variances, ch 20 IAB 2/21/01 ARC 0514B | Design and Construction Conference Room—Level A Hoover State Office Bldg. Des Moines, Iowa | March 16, 2001 1 to 2 p.m. |
|---|---|-------------------------------|

HUMAN SERVICES DEPARTMENT[441]

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|--|--|------------------------------|
| Medicaid policy regarding nonpayment for weight loss drugs, 78.1(2) IAB 3/7/01 ARC 0521B (See also ARC 0410B, IAB 1/24/01) | Sixth Floor Conference Room Suite 600, Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa | March 30, 2001 9 a.m. |
| | Administrative Conference Room 417 E. Kaneshville Blvd. Council Bluffs, Iowa | March 28, 2001 10 a.m. |
| | Large Conference Room—Fifth Floor Bicentennial Bldg. 428 Western Davenport, Iowa | March 30, 2001 10 a.m. |
| | Conference Room 104 City View Plaza 1200 University Des Moines, Iowa | March 29, 2001 10 a.m. |
| | Liberty Room, Mohawk Square 22 N. Georgia Ave. Mason City, Iowa | March 28, 2001 10 a.m. |
| | Conference Room 3 120 E. Main Ottumwa, Iowa | March 30, 2001 10 a.m. |
| | Fifth Floor 520 Nebraska St. Sioux City, Iowa | March 29, 2001 12:30 p.m. |
| | Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa | March 28, 2001 10 a.m. |

IOWA FINANCE AUTHORITY[265]

| | | |
|--|--|---------------------------|
| Qualified allocation plan for low- income housing tax credit program, 12.1, 12.2 IAB 3/7/01 ARC 0532B (ICN Network) | Enhanced Classroom, Room 172 STARC Armory Complex Camp Dodge Johnston, Iowa | March 28, 2001 10 a.m. |
| | Administration Building 346 Second Ave. SW Cedar Rapids, Iowa | March 28, 2001 10 a.m. |
| | Media Center, Lewis Central HS 3601 Hwy 275 Council Bluffs, Iowa | March 28, 2001 10 a.m. |

IOWA FINANCE AUTHORITY[265] (Cont'd)
(ICN Network)

| | |
|--|---------------------------|
| Room 107, Technical Center Southwestern Community College 1502 W. Townline Rd. Creston, Iowa | March 28, 2001 10 a.m. |
| Administration Office, Forum Bldg. 2300 Chaney Dubuque, Iowa | March 28, 2001 10 a.m. |
| Room 12, Fort Dodge High School 819 N. 25th St. Fort Dodge, Iowa | March 28, 2001 10 a.m. |
| Room 128, Careers Bldg. NIACC 500 College Dr. Mason City, Iowa | March 28, 2001 10 a.m. |
| Room 60, Larson Hall Muscatine Community College 152 Colorado St. Muscatine, Iowa | March 28, 2001 10 a.m. |
| Videoconferencing and Training Center Indian Hills Community College 651 Indian Hills Dr. Ottumwa, Iowa | March 28, 2001 10 a.m. |
| Room 127B, Building B Western Iowa Tech Community College 4647 Stone Ave. Sioux City, Iowa | March 28, 2001 10 a.m. |
| Waterloo Central Intermediate School 1350 Katoski Dr. Waterloo, Iowa | March 28, 2001 10 a.m. |

LATINO AFFAIRS DIVISION[433]

| | | |
|---|---|---------------------------|
| Waiver rules, ch 8 IAB 2/21/01 ARC 0499B | Administrator's Office—Second Floor Lucas State Office Bldg. Des Moines, Iowa | March 13, 2001 10 a.m. |
|---|---|---------------------------|

LAW ENFORCEMENT ACADEMY[501]

| | | |
|--|---|---------------------------|
| Waivers, ch 16 IAB 3/7/01 ARC 0515B | Conference Room Camp Dodge Johnston, Iowa | March 27, 2001 10 a.m. |
|--|---|---------------------------|

LOTTERY DIVISION[705]

| | | |
|--|-------------------------------------|---------------------------|
| Waiver and variance rules, ch 5 IAB 2/21/01 ARC 0485B | 2015 Grand Ave. Des Moines, Iowa | March 13, 2001 10 a.m. |
|--|-------------------------------------|---------------------------|

NATURAL RESOURCE COMMISSION[571]

| | | |
|--|---|-----------------------------|
| Administration fee for licensing, 15.1 IAB 3/7/01 ARC 0542B | Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa | March 27, 2001 8:30 a.m. |
| Season dates for waterfowl and coot hunting, 91.1, 91.3, 91.6 IAB 3/7/01 ARC 0541B | Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa | April 12, 2001 3 p.m. |
| Wild turkey fall hunting by residents, ch 99 IAB 3/7/01 ARC 0540B | Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa | April 12, 2001 3 p.m. |
| Deer hunting by residents, ch 106 IAB 3/7/01 ARC 0539B | Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa | April 12, 2001 3 p.m. |

PERSONS WITH DISABILITIES DIVISION[431]

| | | |
|--|--|---------------------------|
| Waiver rules, ch 7 IAB 2/21/01 ARC 0491B | Conference Room 208, 2nd Floor Lucas State Office Bldg. Des Moines, Iowa | March 13, 2001 10 a.m. |
|--|--|---------------------------|

PROFESSIONAL LICENSURE DIVISION[645]

| | | |
|--|---|--------------------------------|
| Psychology examiners—licensure, discipline, fees, chs 239, 240; 241.2(1), 241.5; chs 242, 243 IAB 3/7/01 ARC 0533B | Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa | March 29, 2001 9 to 11 a.m. |
|--|---|--------------------------------|

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

| | | |
|--|---|--------------------------|
| Waiver or variance of rules, 1.9 IAB 2/21/01 ARC 0496B | Hearing Room, Second Floor 514 E. Locust St. Des Moines, Iowa | March 13, 2001 1 p.m. |
|--|---|--------------------------|

PUBLIC HEALTH DEPARTMENT[641]

| | | |
|--|---|--------------------------------------|
| Variances and waivers of public health administrative rules, ch 178 IAB 2/21/01 ARC 0508B (ICN Network) | ICN Conference Room Sixth Floor Lucas State Office Bldg. Des Moines, Iowa | March 13, 2001 11 a.m. to 12 noon |
| | Room 13, Attendance Center Iowa Lakes Community College 2111 Hwy 169 North Algona, Iowa | March 13, 2001 11 a.m. to 12 noon |
| | Room 925, Building A Western Iowa Tech Community College 4647 Stone Ave. Sioux City, Iowa | March 13, 2001 11 a.m. to 12 noon |
| | Schindler 130A University of Northern Iowa Cedar Falls, Iowa | March 13, 2001 11 a.m. to 12 noon |

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

| | |
|---|--------------------------------------|
| Room 4 Elk Horn Kimballton High School 4114 Madison St. Elk Horn, Iowa | March 13, 2001 11 a.m. to 12 noon |
| Room 126 Tipton High School 400 E. Sixth St. Tipton, Iowa | March 13, 2001 11 a.m. to 12 noon |
| Keota High School N. Ellis Ave. Keota, Iowa | March 13, 2001 11 a.m. to 12 noon |

STATUS OF AFRICAN-AMERICANS, DIVISION ON THE[434]

| | | |
|---|---|---------------------------|
| Waiver rules, ch 7 IAB 2/21/01 ARC 0498B | Administrator's Office—Second Floor Lucas State Office Bldg. Des Moines, Iowa | March 13, 2001 10 a.m. |
|---|---|---------------------------|

STATUS OF WOMEN DIVISION[435]

| | | |
|--|--|---------------------------|
| Waiver rules, ch 10 IAB 2/21/01 ARC 0501B | Director's Office—Second Floor Lucas State Office Bldg. Des Moines, Iowa | March 13, 2001 10 a.m. |
|--|--|---------------------------|

TRANSPORTATION DEPARTMENT[761]

| | | |
|--|--|---|
| Regulations applicable to carriers, 520.1, 520.2, 520.4(1), 520.6, 520.7 IAB 3/7/01 ARC 0518B | Conference Room, Park Fair Mall 100 Euclid Ave. Des Moines, Iowa | March 29, 2001 10 a.m. (If requested) |
|--|--|---|

VETERANS AFFAIRS COMMISSION[801]

| | | |
|---|--|--|
| Waivers, 4.14, 4.15 IAB 3/7/01 ARC 0530B | Ford Memorial Conference Room Iowa Veterans Home 1301 Summit Marshalltown, Iowa | March 27, 2001 1 p.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]

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| AGENCY | PROGRAM | SERVICE DELIVERY AREA | ELIGIBLE APPLICANTS | SERVICES | APPLICATION DUE DATE | CONTRACT AND PROJECT PERIOD |
|-----------------------------|---|---|---|---|--|--|
| Department of Public Health | Community-Based Programs of Family Planning (FP), Maternal & Child Health (MCH) with a set aside for Dental Health (DH), and Special Supplemental Nutrition Program for Women, Infants and Children (WIC) | MCH, FP and WIC programs are to be delivered in regional service areas as contracted for during federal fiscal year 2001. | Nonprofit and governmental entities within Iowa who already hold a contract for the project period of 10/1/2000 to 9/30/2005 are eligible to apply. | <p>MCH is development of essential public health services for the defined population.</p> <p>MCH includes comprehensive care coordination and prevention service programs.</p> <p>The FP and WIC programs are focused on prevention and direct clinical services.</p> <p>FP, MCH, and WIC serve women, children and their families.</p> | Application due date is on or before 4:30 p.m. CDST, May 18, 2001. | <p><u>Project period</u> 10/1/2000 to 9/30/2005</p> <p><u>Contract period</u> 10/1/2001 to 9/30/2002</p> |

Interested parties can access the RFA beginning March 16, 2001, via the Department of Public Health Web site:
www.idph.state.ia.us/pa/notice/notice.htm

Written correspondence should be sent via U.S. Postal Service, fax or E-mail to:

Janet L. Peterson, RN, MHA
 Division of Family and Community Health
 Iowa Department of Public Health
 Lucas State Office Building
 Des Moines, Iowa 50319-0075
Jpeterse@idph.state.ia.us
 FAX: (515)242-6384

ARC 0520B

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 65, “Administration,” appearing in the Iowa Administrative Code.

The food stamp program is based on federal regulations and statute. The Department adopts administrative rules for the food stamp program only when the state is given an option in the regulations on how to administer the program or when regulations have not been finalized to implement statute.

These proposed amendments adopt two different sets of recently published federal regulations. Federal regulations published October 30, 2000, implement certain nondiscriminatory provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) that affect the food stamp program. Federal regulations published November 21, 2000, implement several provisions of PRWORA and subsequent amendments to these provisions made by the Omnibus Consolidated Appropriations Act of 1996, the Balanced Budget Act of 1997, and the Agricultural Research, Extension, and Education Reform Act of 1998.

The regulations published October 30, 2000, include the following provisions which the Department had previously adopted and implemented using administrative rules. These rules will be rescinded as policy is now contained in the regulations. The regulations:

- Set policies for determining food stamp household composition (rule 441—65.43(234)).
- Exclude from resources a vehicle used to transport fuel for heating and water for home use (subrule 65.30(2)).
- Require the evaluation of vehicles not excluded by determining the fair market value and consideration as a resource of the portion of the value of a vehicle that exceeds \$4650 (subrule 65.30(5)).
- Set the maximum allotment of food stamps at 100 percent of the Thrifty Food Plan (rule 441—65.32(234)).
- Remove the state agency option to exclude up to \$50 a month of child support payments from unearned income (subrule 65.8(8)).

The October 30, 2000, regulations also make the following revisions to policy:

- Add an exemption from parental control when state law defines the person as an adult. Current policy requires a child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than the child’s parent to be included in the household.
- Exclude a vehicle from resources when it is used to produce income.
- Permit the exclusion of the spouse and children of a child in a foster home as members of the foster family’s food stamp household.

The change to exclude a vehicle used for income producing purposes and the change in the definition of parental control to exclude a person that Iowa law defines as an adult are effective March 1, 2001, and may allow for more households to be eligible for food stamps.

The regulations published November 21, 2000, include the following provisions which the Department had previously adopted and implemented using administrative rules. These rules will also be rescinded as policy is now contained in the regulations. The regulations:

- Define “initial month” and “temporary” (rule 441—65.1(234)).
- Establish consequences for failure to appear for an interview (subrule 65.2(1)).
- Remove homelessness as a criterion for receiving expedited service (subrule 65.7(2)).
- Set the excess shelter cap at \$300 (subrule 65.8(11)). Federal regulations at 7 CFR 273.9(d)(ii) now state that Food and Nutrition Service will notify state agencies of the amount of the cap. On January 8, 2001, the United States Department of Agriculture notified Iowa that the cap is to increase to \$340 for newly certified or recertified households on or after March 1, 2001.
- Eliminate the requirement to verify telephone expense (paragraph 65.22(1)“f”).
- Exempt the income of elementary and high school students (subrule 65.29(7)).
- Exclude general assistance vendor payments and payments from HUD or FmHA for utility reimbursements from consideration as income (subrules 65.29(8) and 65.29(9)).
- Set policy governing eligibility of noncitizens (rule 441—65.47(234)).
- Establish policy governing consideration of income and resources of a sponsor of an alien (rule 441—65.48(234)).

The November 21, 2000, regulations also make the following revisions to policy:

- Provide as an option the continuation of computer data exchange systems for verification of income, resources and immigration status (rules 441—65.51(234) and 441—65.52(234)).
- Retain current federal application requirements on contents of the form with some additional language on civil rights added.
- Provide that food stamp application forms that are signed and then faxed to offices can be considered filed applications.
- Require the Department to minimize the information it provides about the household when contacting a collateral contact for verification purposes.
- Provide for the adoption of the option to continue joint processing and single interview requirements for joint FIP and food stamp households (subrules 65.13(2) and 65.13(3)).
- Provide for the adoption of an option to continue counting a pro-rata share of all ineligible aliens’ income and deductions (subrule 65.29(11)).
- Exclude a vehicle from resources if the vehicle is inaccessible because the sale of the vehicle will not produce an estimated return of more than \$1500. In addition, the regulations define significant return as used in the exclusion of other resources as an estimated return of more than \$1500. The regulations exclude from the equity test one vehicle for each adult household member and any other vehicle a household member under the age of 18 drives to commute for work, training, or school or to look for work.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Provide that a standard utility deduction cannot be prorated if the utilities are shared only with eligible and ineligible members of the food stamp household (subrule 65.8(10)).

- Provide that the cost of payments on the principal of the purchase price of capital assets is an allowable cost of producing self-employment income.

The majority of the changes in the November 21, 2000, regulations are effective January 20, 2001, to be implemented no later than June 1, 2001. The change to exclude a vehicle and other resources as inaccessible if the sale of the vehicle or resource will not produce an estimated return of more than \$1500 may allow for more households to be eligible for food stamps. The change to not allow the proration of utility standards if utilities are shared only with ineligible households and the change to allow capital assets may increase benefits for some households.

These regulations also provide state options that can be implemented later. Rule making will be initiated for those options when research is complete and decisions are made. The options selected are as follows:

- The option of not continuing computer data exchanges for verification of income, resources, and immigration status was considered and not selected. The Department has current contracts with agencies that provide this data. The FIP and Medicaid programs require the same exchange of data. Exchange of this data is not an option for FIP and Medicaid. These systems provide verifications to the Department that the client would have to provide if the data exchange ended.

- The option of separate applications, separate application processing, and separate interviews for households applying for both FIP and food stamps was considered. The option was not selected because it does not provide a benefit for the household to have to complete two applications or attend two interviews.

- The current option on counting a pro-rata share of the income and deductions of aliens ineligible both prior to and after PROWRA was selected. This option allows the income to be counted the same way for all ineligible aliens. This option also provides the greatest benefit to the household when considering the other options allowed.

- An option of counting all of an ineligible alien's income and expenses for eligibility and a pro-rata share of the income and expenses for benefits was considered for aliens who were ineligible after PROWRA. The regulations also gave this same option to a household containing a person who was ineligible because the household did not provide documentation of the alien's immigration status. This option was not chosen because it does not benefit the households and the same option was not provided for aliens ineligible before PROWRA.

- An option of only counting income made available to the household by an alien who was ineligible prior to PROWRA was not chosen. This option appears to be of greater benefit to the client than counting a pro-rata share of the income and deductible expenses, but is not. The regulations contained further requirements included in the option that were not a client benefit. Expenses paid by the ineligible alien would not be allowed as deductions from the income. The state would also have to cap this household's benefits at the amount the household would have received if the alien were eligible and included in the household and all of the alien's income and deductions were used. The option was not provided for aliens ineligible after PROWRA and does not provide a benefit to the household.

Subrule 65.7(1) is also being rescinded as the policy on the certification period for expedited households was contained in earlier regulations.

These amendments do not provide for waiver in specified situations because federal food stamp law does not allow for any waivers.

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 March 28, 2001.

These amendments are intended to implement Iowa Code section 234.12.

The following amendments are proposed.

ITEM 1. Amend rule 441—65.1(234) by rescinding the definitions of "initial month" and "temporary."

ITEM 2. Rescind and reserve subrule 65.2(1).

ITEM 3. Amend rule 441—65.3(234) as follows:

441—65.3(234) Administration of program. The food stamp program shall be administered in accordance with the Food Stamp Act of 1977 and in accordance with federal regulation, Title 7, Parts 270 through 282 as amended to ~~December 4, 1994~~ *November 21, 2000*.

A copy of the federal law and regulations may be obtained at no more than the actual cost of reproduction by contacting the Division of Economic Assistance, Department of Human Services, ~~Hoover State Office Building 1305 East Walnut,~~ Des Moines, Iowa 50319-0114, (515)281-3133.

This rule is intended to implement Iowa Code section 234.12.

ITEM 4. Rescind and reserve rule 441—65.7(234).

ITEM 5. Amend rule 441—65.8(234) as follows:

Rescind and reserve subrule 65.8(8).

Amend subrule 65.8(10) as follows:

65.8(10) Sharing utility standards. When a household lives with another individual not participating in the food stamp program, another household participating in the food stamp program, or both, and they share utility expenses, the appropriate utility standard shall be prorated between the food stamp households and the nonparticipating household members who share the expense. The share of the standard shall be determined by considering each food stamp household to be one share of the standard and the other non-food stamp household members who agree to share utility expenses as one share of the standard. When households or individuals share the telephone standard, each must be responsible for a share of the basic fee for telephone service to receive a share of the telephone standard. *When a household shares utility expenses with only ineligible food stamp members, the standard shall not be prorated.*

Rescind and reserve subrule 65.8(11).

ITEM 6. Amend rule 441—65.13(234) as follows:

Amend subrule 65.13(2) as follows:

65.13(2) Public assistance/food stamps. ~~In joint processing of public assistance and food stamps, the certification periods for public assistance households will be assigned to expire at the end of the month in which the public assistance redetermination is due to be processed. The department shall jointly process public assistance and food stamp applications.~~

Adopt the following new subrule 65.13(3):

HUMAN SERVICES DEPARTMENT[441](cont'd)

65.13(3) Single interview for public assistance/food stamps. In joint processing of public assistance and food stamp applications, the department shall conduct a single interview at initial application for both public assistance and food stamp purposes.

ITEM 7. Rescind and reserve subrule **65.22(1)**, paragraph "f."

ITEM 8. Amend rule 441—65.29(234) as follows:

Rescind and reserve subrules **65.29(7)**, **65.29(8)**, and **65.29(9)**.

Adopt the following **new** subrule 65.29(11):

65.29(11) Income of ineligible aliens. The department shall use all but a pro-rata share of ineligible aliens' income and deductible expenses to determine eligibility and benefits of any remaining household members.

ITEM 9. Rescind and reserve subrules **65.30(2)** and **65.30(5)**.

ITEM 10. Rescind and reserve rule **441—65.32(234)**.

ITEM 11. Rescind and reserve rule **441—65.43(234)**.

ITEM 12. Rescind and reserve rule **441—65.47(234)**.

ITEM 13. Rescind and reserve rule **441—65.48(234)**.

ITEM 14. Amend 441—Chapter 65 by adopting the following **new** rules:

441—65.51(234) State income and eligibility verification system. The department shall maintain and use an income and eligibility verification system (IEVS) as specified in 7 CFR 272.8 as amended to November 21, 2000.

441—65.52(234) Systematic alien verification for entitlements (SAVE) program. The department shall participate in the SAVE program established by the Immigration and Naturalization Service (INS) as specified in 7 CFR 272.11 as amended to November 21, 2000, in order to verify the validity of documents provided by aliens applying for food stamp benefits with the central data files maintained by INS.

ARC 0521B**HUMAN SERVICES
DEPARTMENT[441]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby gives Notice of Intended Action that public hearings as set forth below will be held in order to receive oral or written comments on an amendment to subrule 78.1(2), paragraph "a," subparagraph (2), which clarifies Iowa Medicaid policy regarding nonpayment for any drugs used for weight loss. This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on January 24, 2001, as **ARC 0410B**.

These oral presentations are being scheduled at the request of the Administrative Rules Review Committee.

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

| | |
|--|------------|
| Cedar Rapids - March 30, 2001 Cedar Rapids Regional Office Iowa Building - Suite 600 Sixth Floor Conference Room 411 Third Street S.E. Cedar Rapids, Iowa 52401 | 9 a.m. |
| Council Bluffs - March 28, 2001 Administrative Conference Room Council Bluffs Regional Office 417 E. Kanessville Boulevard Council Bluffs, Iowa 51501 | 10 a.m. |
| Davenport - March 30, 2001 Davenport Area Office Bicentennial Building - Fifth Floor Large Conference Room 428 Western Davenport, Iowa 52801 | 10 a.m. |
| Des Moines - March 29, 2001 Des Moines Regional Office City View Plaza Conference Room 104 1200 University Des Moines, Iowa 50314 | 10 a.m. |
| Mason City - March 28, 2001 Mason City Area Office Mohawk Square, Liberty Room 22 North Georgia Avenue Mason City, Iowa 50401 | 10 a.m. |
| Ottumwa - March 30, 2001 Ottumwa Area Office Conference Room 3 120 East Main Ottumwa, Iowa 52501 | 10 a.m. |
| Sioux City - March 29, 2001 Sioux City Regional Office Fifth Floor 520 Nebraska Street Sioux City, Iowa 51101 | 12:30 p.m. |
| Waterloo - March 28, 2001 Waterloo Regional Office Pinecrest Office Building Conference Room 420 1407 Independence Avenue Waterloo, Iowa 50703 | 10 a.m. |

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Office of Policy Analysis at (515)281-8440 and advise of special needs.

ARC 0532B**IOWA FINANCE AUTHORITY[265]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(17), the Iowa Finance Authority proposes to amend Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

These amendments replace the current qualified allocation plan for the low-income housing tax credit program incorporated by reference in rule 12.1(16).

The qualified allocation plan sets forth the purpose of the plan, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the postreservation requirements, the appeal process, and the monitoring compliance component. The plan also establishes the fees for filing an application for low-income housing tax credits and for compliance monitoring. Copies of the qualified allocation plan are available upon request from the Authority and are available electronically on the Authority's Web site. The address for the Authority's Web site is <http://www.ifahome.com>. It is the Authority's intent to incorporate the updated qualified allocation plan by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules. The qualified allocation plan is subject to state and federal requirements that cannot be waived. (See IRC Section 42 and Iowa Code section 16.52.) Moreover, due to the competitive nature of the award of low-income housing tax credits, waiver would create unevenness in the application of the rules and would expose the Authority to liability.

Consistent with Executive Order Number 9, the Authority has considered the regulatory principles identified in this order and finds that the proposed amendments will serve an important public need in furthering the housing policy of the state to encourage the production and availability of affordable housing in Iowa.

The Authority will receive written comments on the proposed amendments until 3:30 p.m. on March 27, 2001. Comments may be addressed to Donna M. Davis, Director, Housing Programs/Deputy Director, Iowa Finance Authority, 100 East Grand, Suite 250, Des Moines, Iowa 50309. Comments may be faxed to Donna Davis at (515)242-4957. Comments may be E-mailed to Donna Davis at donna.davis@ifa.state.ia.us.

The Authority will hold a public hearing on March 28, 2001, to receive public comments on these amendments. The public hearing will be held over the Iowa Communications Network beginning at 10 a.m. with the originating site at the Enhanced Classroom, STARC Armory, Camp Dodge, Johnston, Iowa.

The following are the ten remote ICN sites where members of the public may attend the public hearing and make comments on these amendments:

Cedar Rapids—Cedar Rapids Community School District Administration Building, 346 2nd Avenue SW
Cedar Rapids, Iowa 52404

Council Bluffs—Lewis Central High School Media Center, 3601 Highway 275
Council Bluffs, Iowa 51503

Creston—Southwestern Community College—2 Room Number 107, Technical Center
1501 West Townline Road
Creston, Iowa 50801

Dubuque—Dubuque Community School District Admin. Office, Forum Building
2300 Chaney
Dubuque, Iowa 52001

Fort Dodge—Fort Dodge High School Room Number 12, 819 N. 25th Street
Fort Dodge, Iowa 50501

Mason City—North Iowa Area Community College—2 Room Number 128, Careers Building
500 College Drive
Mason City, Iowa 50401

Muscatine—Muscatine Community College Room Number 60, Larson Hall
152 Colorado Street
Muscatine, Iowa 52761

Ottumwa—Indian Hills Community College—6 Videoconferencing & Training Center
651 Indian Hills Drive
Ottumwa, Iowa 52501

Sioux City—Western Iowa Tech Community College—2 Room Number 127B, Building B
4647 Stone Avenue
Sioux City, Iowa 51106

Waterloo—Waterloo Central Intermediate School 1350 Katoski Drive
Waterloo, Iowa 50701

Members of the public who wish to attend the hearing at the originating site must preregister. Registration forms may be obtained from IFA's Web site at www.ifahome.com.

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

These amendments are intended to implement Iowa Code sections 16.4(3), 16.52, 17A.12, and 17A.16 and IRC Section 42.

The following amendments are proposed.

ITEM 1. Amend rule 265—12.1(16) as follows:

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority *Low-Income Housing Tax Credit Program 2001* Qualified Allocation Plan effective ~~July 14, 2000~~ April 11, 2001, shall be the qualified allocation plan for the distribution of low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 2. Amend rule 265—12.2(16) as follows:

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at <http://www.ifahome.com>. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library. The plan incorporates by reference IRC Section 42 and the regulations in effect as of ~~July 14, 2000~~ *April 11, 2001*. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library and links to these statutes, regulations and rules are on the authority's Web site. Copies are available upon request at no charge from the authority.

ARC 0531B**IOWA FINANCE AUTHORITY[265]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(17), the Iowa Finance Authority proposes to amend Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

This proposed rule making amends certain provisions in the compliance manual for the low-income housing tax credit program.

The compliance manual, which is incorporated by reference in rule 12.3(16), contains the Authority's policies for monitoring compliance in the low-income housing tax credit program (Program). The manual also contains copies of the operative federal regulations, revenue rulings, revenue procedures, technical advice and other information low-income housing tax credit project owners may need as they complete the necessary forms to facilitate compliance monitoring with the Program. The proposed amendments to the compliance manual will bring the manual into conformance with newly issued "Recommended Practices" regarding determination of student eligibility for low-income housing as recommended by the National Council of State Housing Agencies (NCSHA) for state administration of the Program. All other NCSHA "Recommended Practices" have already been included in the existing compliance manual. Copies of the compliance manual are available upon request from the Authority and are available electronically on the Authority's Web site at <http://www.ifahome.com>. It is the Authority's intent to incorporate the amendments to the compliance manual by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules. The compliance manual is subject to federal requirements that cannot be waived. Waiver would result in noncompliance with federal law and could endanger the tax credit available to a particular project. (See IRC Section 42 and Iowa Code section 16.52.)

Consistent with Executive Order Number 9, the Authority has considered the regulatory principles identified in this order and finds that the proposed amendments will serve an

important public need in keeping the rules of the Authority in compliance with the provisions of the Internal Revenue Code and expanding the number of households that are eligible for low-income housing under the Program. The amendments will further the housing policy of the state to encourage the availability of affordable housing in Iowa.

The Authority will receive written comments on the proposed amendments until 3:30 p.m. on March 27, 2001. Comments may be addressed to Donna M. Davis, Director, Housing Programs/Deputy Director, Iowa Finance Authority, 100 East Grand, Suite 250, Des Moines, Iowa 50309. Comments may be faxed to Donna Davis at (515)242-4957. Comments may be E-mailed to Donna Davis at donna.davis@ifa.state.ia.us.

These amendments are intended to implement Iowa Code sections 16.4(3), 16.52, 17A.12, and 17A.16 and Internal Revenue Code Section 42.

The following amendments are proposed.

ITEM 1. Amend rule 265—12.3(16) as follows:

265—12.3(16) Compliance manual. The compliance manual for all low-income housing tax credit projects monitored by the authority for compliance with IRC Section 42, effective ~~December 6, 2000~~ *April 11, 2001*, is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

ITEM 2. Amend rule 265—12.4(16) as follows:

265—12.4(16) Location of copies of the manual. The compliance manual can be reviewed and copied in its entirety on the authority's Web site at <http://www.ifahome.com>. Copies of the compliance manual shall be deposited with the administrative rules coordinator and at the state law library. The compliance manual incorporates by reference IRC Section 42 and the regulations in effect as of ~~December 6, 2000~~ *April 11, 2001*. Additionally, the compliance manual incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and links to these statutes, regulations and rules are on the authority's Web site. Copies are available upon request at no charge.

ARC 0528B**LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 544B.5, the Landscape Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 1, "Description of Organization," and Chapter 2, "Examinations and Registration," Iowa Administrative Code.

The proposed amendments to Chapter 1 establish a process for sealing and certifying documents prepared by a registered landscape architect and outline the process by which an applicant for registration as a landscape architect must document the experience necessary for qualification. Proposed amendments to Chapter 2 establish that the national ex-

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

amination for registration is offered at least annually in this state, clarify the renewal process, increase the fees for renewal of biennial registration and outline new examination fees.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before March 27, 2001. Comments should be addressed to Kay Halloran, Landscape Architectural Examining Board, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to kay.halloran@comm7.state.ia.us.

These amendments are intended to implement Iowa Code sections 544B.8 and 544B.13.

The following amendments are proposed.

ITEM 1. Amend rule 193D—1.1(544B,17A) by rescinding the definition of "proposed decision."

ITEM 2. Rescind subrule 1.7(1) and adopt the following new subrule in lieu thereof:

1.7(1) Individual seal and certificate of responsibility. Every registered landscape architect is required by Iowa law to obtain a seal (or stamp) which shall have the registered landscape architect's name, "REGISTERED LANDSCAPE ARCHITECT," "IOWA," and registration number on it. The diameter of the outside circle shall be approximately 1 3/4 inches. A legible rubber stamp or other facsimile of the seal may be used. The seal (stamp) shall substantially conform to the sample shown below:



Following is a sample of the wording of the landscape architect information block that should be used on each technical submission:

| | |
|-----------------------|--|
| SEAL | I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly registered landscape architect under the laws of the state of Iowa. |
| | Printed or typed name _____ Signature _____ |
| Registration Expires: | Pages or sheets covered by this seal: _____ _____ |

ITEM 3. Amend subrule 2.2(2) as follows:

2.2(2) Evidence ~~Documentary evidence~~. Each applicant shall submit with the formal application for a certificate of registration documentary evidence that the applicant is clearly eligible under the section of Iowa Code chapter 544B upon which the application is based. All documents shall be 8 1/2" x 11". Evidence submitted shall be ~~exemplary of the experience cited~~ representative of the various aspects of the practice of architecture. The board reserves the right to request additional evidence or information from the applicant. The documentary evidence will be returned to the applicant if a written request is submitted. If a written request is not received within six months of the date of board action on the evidence, the evidence will be destroyed.

ITEM 4. Amend rule 193D—2.4(544B,17A), introductory paragraph, as follows:

193D—2.4(544A,17A) Examination of applicants. Examinations shall be conducted by the board at least once annually.

ITEM 5. Amend subrule 2.5(4) by rescinding paragraph "g."

ITEM 6. Amend rule 193D—2.8(544B,17A) as follows:

193D—2.8(544B,17A) Biennial renewal of registration. Original registrations expire June 30 following the date of issuance. Thereafter, the registration period is for two years ending June 30. A renewal notice will be sent in May to each registrant whose registration is about to expire. A complete renewal application, renewal fee, and continuing education report are due in the board office by June 30, or the registration is lapsed but the certificate of registration may be renewed without further penalty if the renewal application, fee and continuing education report are received by the following July 30. The board shall give second notice by restricted certified mail, return receipt requested, to the registrant or licensee who has failed to renew by the July June 30 date. The certificate is shall be renewed without further penalty if the renewal application, renewal fee and continuing education affidavit are received within 30 days of the date of this second notice. If the renewal application, renewal fee and continuing education affidavit are not received within 30 days of the date of second notice, the certificate shall lapse.

This rule is intended to implement Iowa Code section 544B.13.

ITEM 7. Amend rule 193D—2.9(544B,17A) as follows:

193D—2.9(544B,17A) Reinstatement of registration. An application for the reinstatement of a lapsed certificate of registration shall include a description of the professional activities of the applicant during the period of nonregistration. The fee for reinstatement will shall be the current renewal fee, a \$100 penalty, plus continuing education required by the board with a maximum of 36 hours.

ITEM 8. Amend rule 193D—2.10(544B,17A) as follows:

193D—2.10(544B,17A) Fee schedule. The appropriate examination fee or examination exemption filing fee shall accompany the application. Filing fees are not refundable.
Examination fee..... not to exceed \$550 \$1000
Initial examination filing fee..... \$50
Subsequent examination filing fee..... \$35
Proctoring fee..... \$50

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

Examination exemption fee\$300
 (This certificate to be effective to the June 30 which is at least 12 months beyond the date of application.)
 Certificate of registration fee\$15/month
 (This certificate of registration to be effective the day of board action until June 30.)
 Biennial registration fee\$275 \$350

ARC 0515B

LAW ENFORCEMENT ACADEMY[501]

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 80B.11 and 17A.9A, the Iowa Law Enforcement Academy gives Notice of Intended Action to adopt Chapter 16, “Waivers,” Iowa Administrative Code.

By proposing this new chapter, the Iowa Law Enforcement Academy will implement the provisions of Iowa Code section 17A.9A [2000 Iowa Acts, chapter 1176] in considering waiver requests. By so doing, administrative practice before the agency will be facilitated and will be substantially the same in the areas addressed as with all other agencies of state government.

Any interested person may make written comments or suggestions on the proposed amendment on or before March 27, 2001. Such written materials should be sent to Gene W. Shepard, Director, Iowa Law Enforcement Academy, P.O. Box 130, Johnston, Iowa 50131-0130, or faxed to (515) 242-5471.

There will be a public hearing on the proposed amendment on March 27, 2001, at 10 a.m. in the conference room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

This amendment was approved by the Iowa Law Enforcement Academy Council on February 1, 2001.

This amendment is intended to implement Iowa Code section 17A.9A [2000 Iowa Acts, chapter 1176] and Iowa Code chapters 80B and 80D.

The following amendment is proposed.

Adopt the following new chapter:

**CHAPTER 16
WAIVERS**

501—16.1(17A,80B) Definitions. For purposes of this chapter, the following definitions apply:

“Council” means the Iowa law enforcement academy council.

“Waiver” or “variance” means action by the Iowa law enforcement academy council which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances

of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

501—16.2(17A,80B) Scope of chapter.

16.2(1) General. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules 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.

16.2(2) Exclusions. This chapter does not apply to the following minimum standards for Iowa law enforcement officers:

- a. Eighteen years of age at time of appointment, 501—subrule 2.1(2).
- b. Physical fitness, 501—subrule 2.1(6).
- c. Vision requirements, 501—subrule 2.1(9).
- d. Normal hearing, 501—subrule 2.1(10).

501—16.3(17A,80B) Criteria for waiver. In response to a petition completed pursuant to rule 16.5(17A,80B), the Iowa law enforcement academy council may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the council finds, based upon clear and convincing evidence, all of the following:

- 1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- 2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- 3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- 4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

501—16.4(17A,80B) Filing of petition. A petition for a waiver must be in writing addressed to and submitted to the council as follows:

16.4(1) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

16.4(2) Other. If the petition does not relate to a pending contested case, the petition shall be submitted to the director of the academy.

501—16.5(17A,80B) Contents of petition. A petition for waiver shall include the following information where applicable and known to the petitioner:

- 1. The name, address, and telephone number of the person for whom the waiver is being requested and the case number of any related contested case.
- 2. A description of and citation to the specific rule from which the waiver is requested.
- 3. The specific waiver requested, including the precise scope and duration.
- 4. The relevant facts that the petitioner believes would justify a waiver under each of the criteria set out in rule 16.3(17A,80B). This statement shall include a signed certification 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 petitioner and the council relating to the activity affected by the pro-

LAW ENFORCEMENT ACADEMY[501](cont'd)

posed waiver including any notices of violation, contested case hearings, or investigative reports relating to the activity within the past five years.

6. Any information known to the petitioner 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 granting of a waiver.

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

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

10. Signed releases authorizing persons with knowledge regarding the request to furnish the council with information relevant to the waiver.

501—16.6(17A,80B) 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 or in-person meeting between the petitioner and the council or a committee of the council.

501—16.7(17A,80B) Notice. The council shall acknowledge a petition upon or within a reasonable time after receipt. The council shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents are provided to all persons to whom notice is required by any provision of law. 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 was provided.

501—16.8(17A,80B) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to council proceedings for a waiver only when the council so provides by rule or order or is required to do so by statute.

501—16.9(17A,80B) 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 granted.

16.9(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 upon the unique, individual circumstances set out in the petition.

16.9(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 rule.

16.9(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

16.9(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.

16.9(5) Conditions. The council may place any condition or conditions on a waiver that the council finds desirable to protect the public health, safety and welfare.

16.9(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would not be practical. 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.

16.9(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.

16.9(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.

16.9(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.

501—16.10(17A,80B) 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 that the council is authorized or required to keep confidential. The council may accordingly redact confidential information from petitions or orders prior to public inspection.

501—16.11(17A,80B) Summary reports. In compliance with Iowa Code section 17A.9A, semiannually the council shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the 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 and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

501—16.12(17A,80B) Cancellation of a waiver. In addition to any other sanctions that might be available or applicable, 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

LAW ENFORCEMENT ACADEMY[501](cont'd)

3. The subject of the waiver order has failed to comply with all conditions contained in the order.

501—16.13(17A,80B) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

501—16.14(17A,80B) 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.

501—16.15(17A,80B) Judicial review. Judicial review of the council's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A and 80B.

ARC 0542B**NATURAL RESOURCE
COMMISSION[571]****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 455A.5(6)"e," the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 15, "General License Regulations," Iowa Administrative Code.

The proposed amendments establish the requirements for electronic license sales.

Any interested person may make written suggestions or comments on the proposed amendments on or before March 27, 2001. Such written materials should be directed to Judith Pawell, License Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact Judith Pawell at (515)281-7148 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on March 27, 2001, at 8:30 a.m. in the Fourth Floor East Conference Room of the Wallace 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 amendments.

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

These amendments are intended to implement Iowa Code section 455A.5(6)"e."

The following amendments are proposed.

ITEM 1. Amend subrule **15.1(1)** by adopting the following **new** definition in alphabetical order:

Administration fee. Administration fee means the fee collected by the department to pay a portion of the cost of administering the sale of licenses through electronic means.

ITEM 2. Amend rule 571—15.1(483A) by adopting the following **new** subrule:

15.1(7) Administration fee. An administration fee of 50 cents per privilege purchased shall be collected from the purchaser at the time of purchase, except upon the issuance of free landowner deer and turkey licenses, free annual hunting and fishing licenses, free lifetime fishing licenses, and free group home fishing licenses.

ARC 0541B**NATURAL RESOURCE
COMMISSION[571]****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 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules give the regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting. Season dates are adjusted annually to comply with federal law and to ensure that seasons open on a weekend.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 10, 2001. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing April 12, 2001, at 3 p.m. in the Fourth Floor East Conference Room of the Wallace 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 amendments.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

The following amendments are proposed.

ITEM 1. Amend rule 571—91.1(481A), introductory paragraph, as follows:

571—91.1(481A) Ducks (split seasons). Open season for hunting ducks shall be September ~~23~~ 22 to September ~~27,~~ 2000 26, 2001; October ~~14~~ 13 to December ~~7,~~ 2000 6, 2001, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and September ~~23~~ 22 to September ~~27,~~ 2000 26, 2001; October ~~14~~ 13 to December ~~7,~~ 2000 6, 2001, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State High-

NATURAL RESOURCE COMMISSION[571](cont'd)

way 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are one-half hour before sunrise to sunset each day.

ITEM 2. Amend rule 571—91.3(481A) as follows:

571—91.3(481A) Geese. The north goose hunting zone is that part of Iowa north of a line beginning on the Nebraska-Iowa border at State Highway 175, east to State Highway 37, southeast to U.S. Highway 59, south to I-80 and along I-80 to the Iowa-Illinois border. The south goose hunting zone is the remainder of the state. ~~The open season for hunting Canada geese only is September 9 and 10, 2000, west of State Highway 63 in the north goose hunting zone only, except on the Big Marsh Wildlife Area where the season will remain closed.~~ The open season for hunting Canada geese, white-fronted geese and brant, collectively referred to as dark geese, is September ~~30~~ 29 to December 8, ~~2000~~ 7, 2001, in the north goose hunting zone and September ~~30~~ 29 to October ~~15~~ 24 and November ~~4~~ 10 to December 27, ~~2000~~ 26, 2001, in the south goose hunting zone. The open season for hunting white- and blue-phase snow geese and Ross' geese, collectively referred to as light geese, is September ~~30~~ 29, 2001, to January 14, ~~2001~~ 13, 2002, statewide. Light geese may also be taken under the conservation order from the U.S. Fish and Wildlife Service from February ~~15~~ 2, 2002, through April 15, ~~2001~~ 2002. Shooting hours are one-half hour before sunrise to sunset, except that during the conservation order shooting hours will be extended to one-half hour after sunset each day.

91.3(1) Bag limit. Daily bag limit is 2 Canada geese, 2 white-fronted geese, 2 brant, and 20 light geese.

91.3(2) Possession limit. Possession limit is twice the daily bag limit and no possession limit on light geese.

ITEM 3. Amend rule 571—91.6(481A) as follows:

571—91.6(481A) Youth waterfowl hunt. A special youth waterfowl hunt will be held statewide on October ~~7 and 8, 2000~~ 6 and 7, 2001. Youth hunters must be 15 years old or younger. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks, coots and Canada geese. The adult may hunt for any other game birds for which the season is open. The daily bag limits are the same as for the regular waterfowl season, as defined in subrule 91.1(1), except the season for light geese will not be open. The possession limit is the same as the daily bag limit. All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

ARC 0540B

NATURAL RESOURCE
COMMISSION[571]

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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 99, "Wild Turkey Fall Hunting," Iowa Administrative Code, and adopt a new Chapter 99, "Wild Turkey Fall Hunting by Residents."

These rules give the regulations for hunting wild turkeys during the fall and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take and transportation tag requirements. The new chapter changes the procedures for obtaining licenses and requires hunters to register their kill through the electronic licensing system.

Any interested person may make written suggestions or comments on the proposed new chapter prior to April 10, 2001. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 12, 2001, at 3 p.m. in the Fourth Floor East Conference Room of the Wallace 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 amendment.

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

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

The following amendment is proposed.

Rescind 571—Chapter 99 and adopt in lieu thereof the following new chapter:

CHAPTER 99

WILD TURKEY FALL HUNTING BY RESIDENTS

571—99.1(481A) General. When hunting wild turkey, all hunters must have in their possession a valid fall wild turkey hunting license and a valid resident hunting license and must have paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt). No person shall carry or have in possession a fall wild turkey hunting license or transportation tag issued to another person while hunting wild turkey.

571—99.2(481A) Licenses.

99.2(1) Paid combination shotgun-or-archery licenses. Paid combination shotgun-or-archery licenses shall be valid

NATURAL RESOURCE COMMISSION[571](cont'd)

for taking turkeys of either sex in the zone designated on the license. Persons obtaining one paid combination shotgun-or-archery license may obtain one additional paid or free combination shotgun-or-archery license following procedures in 99.9(1)“b” or one paid or free archery-only license as explained in 99.9(2).

99.2(2) Paid archery-only licenses. Paid archery-only licenses shall be valid statewide for taking turkeys of either sex statewide. A person obtaining one paid archery-only license may obtain one paid combination shotgun-or-archery license following procedures in 99.9(1)“b” or one free combination shotgun-or-archery license following procedures in 99.9(2).

99.2(3) Free landowner-tenant licenses. Free combination shotgun-or-archery and free archery-only licenses shall be available to eligible landowners and tenants. Free licenses shall be valid for taking turkeys of either sex on the farm unit of the licensee. No one may obtain more than one free license. A person obtaining one free archery-only license may also purchase one paid combination shotgun-or-archery license following procedures in 99.9(1)“b.” A person obtaining one free combination shotgun-or-archery license may purchase one paid combination shotgun-or-archery license following procedures in 99.9(1)“b” or one paid archery-only license following procedures in 99.9(2).

99.2(4) License limits. No one may obtain more than two fall turkey hunting licenses—two combination shotgun-or-archery licenses or one combination shotgun-or-archery license and one archery-only license.

571—99.3(481A) Seasons. Wild turkey may be taken only during specified periods as follows:

99.3(1) Combination shotgun-or-archery season. The dates for the combination shotgun-or-archery season shall be from the Monday following the second Saturday in October through November 30 of the same year.

99.3(2) Archery-only season. The dates for the fall archery-only wild turkey hunting season shall be the same as the dates for the bow season for deer as defined in 571—Chapter 106.

571—99.4(481A) Zones. Wild turkey may be taken with a combination shotgun-or-archery license only in the following zones:

99.4(1) Zone 1. Zone 1 is that portion of Stephens State Forest west of U.S. Highway 65 in Lucas and Clarke Counties.

99.4(2) Zone 2. Zone 2 is the Shimek State Forest in Lee and Van Buren Counties.

99.4(3) Zone 3. Zone 3 is that portion of the Yellow River State Forest in Allamakee County.

99.4(4) Zone 4. Zone 4 is that portion of Iowa bounded on the north by Interstate Highway 80 and on the west by U.S. Highway 59.

99.4(5) Zone 5. Zone 5 is that portion of Iowa bounded on the east by U.S. Highway 59 and on the north by U.S. Highway 20.

99.4(6) Zone 6. Zone 6 is that portion of Iowa bounded on the south by Interstate Highway 80 and on the west by U.S. Highway 63.

99.4(7) Zone 7. Zone 7 is that portion of Iowa bounded on the north by U.S. Highway 20, on the west by U.S. Highway 59, on the south by Interstate Highway 80 and on the east by U.S. Highway 63.

99.4(8) Zone 8. Zone 8 is that portion of Iowa bounded on the south by U.S. Highway 20, on the east by U.S. Highway 63, and on the west by U.S. Highway 69.

571—99.5(481A) Quotas.

99.5(1) Combination shotgun-or-archery licenses. A limited number of paid combination shotgun-or-archery licenses will be issued by zone as follows:

- a. Zone 1. 50
- b. Zone 2. 50
- c. Zone 3. 50
- d. Zone 4. 2,500
- e. Zone 5. 300
- f. Zone 6. 3,000
- g. Zone 7. 200
- h. Zone 8. 75

99.5(2) Archery-only licenses. The number of archery-only licenses shall not be limited.

99.5(3) Free landowner-tenant licenses. The number of free licenses shall not be limited.

99.5(4) Additional licenses. Additional combination shotgun-or-archery licenses may be added to zone quotas by September 15 if turkey surveys indicate that annual brood production and turkey populations are high enough to warrant additional hunting opportunity. The licenses will be added at the discretion of the natural resource commission upon advice from the fish and wildlife division administrator.

571—99.6(481A) Daily bag, possession and season limits. The daily, season, and possession bag limit is one wild turkey per license.

571—99.7(481A) Shooting hours.

99.7(1) Combination shotgun-or-archery season. Shooting hours shall be from one-half hour before sunrise to sunset each day.

99.7(2) Archery-only season. Shooting hours shall be from one-half hour before sunrise to one-half hour after sunset each day.

571—99.8(481A) Means and method of take.

99.8(1) Permitted weapons. In accordance with the type of license issued, wild turkey may be taken by shotgun and muzzleloading shotgun not smaller than 20-gauge and shooting only shot sizes 2 or 3 nontoxic shot or 4, 5, 6, 7½, or 8 lead or nontoxic shot; and by longbow, recurve or compound bow shooting broadhead or blunthead (minimum diameter 9/16 inch) arrows only. No person may carry or have in possession shotshells containing shot of any size other than 2 or 3 nontoxic shot or 4, 5, 6, 7½, or 8 lead or nontoxic shot while hunting wild turkey. Arrows with chemical or explosive pods are not permitted.

99.8(2) Prohibited devices. The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. “Paraplegic” means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord. “Bait” means grain, fruit, vegetables, nuts or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife.

571—99.9(481A) Procedures to obtain licenses. All paid and free resident fall turkey hunting licenses must be obtained using the electronic licensing system for Iowa (ELSI). Licenses and license applications may be purchased from

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ELSI license agents or by calling the ELSI telephone ordering system.

99.9(1) Licenses with quotas. All licenses that have quotas will be issued through a random drawing. Applications for these licenses may be purchased through ELSI beginning the second Saturday in July through the first Sunday in August. No one may purchase more than one application during the application period.

a. If applications have been sold in excess of the license quota, 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.

b. 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 until the quota has been filled, or until the last day of the hunting period for which that license is valid, or until December 14, whichever occurs first.

99.9(2) Licenses without quotas. Paid and free wild turkey hunting licenses that are not subject to a quota may be obtained 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 or until December 14, whichever occurs first.

99.9(3) If anyone provides false information when obtaining any turkey license, that license and transportation tag and any other turkey hunting license and transportation tag obtained during the same year shall be invalid.

571—99.10(481A) Transportation tag. A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each wild turkey in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the turkey within 15 minutes of the time the turkey is killed or before the carcass is moved in any manner, whichever occurs first. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption.

571—99.11(481A) Harvest reporting system. A harvest report card will be attached to each transportation tag. Each hunter that tags a turkey must fill out and sign the harvest report card after the transportation tag is attached. The completed harvest report card must be taken to any ELSI license agent within 48 hours after the turkey is tagged. The license agent will enter the harvest report information into the ELSI terminal and issue a harvest verification tag. The verification tag must be placed on the turkey and remain there until the turkey is processed for consumption.

571—99.12(481A) Eligibility for free landowner/tenant turkey licenses.

99.12(1) Who qualifies for free turkey hunting license. Owners or tenants of a farm unit, or a member of an owner's or tenant's family that resides with the owner or tenant, are eligible for free turkey licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

99.12(2) Who qualifies as a tenant. A "tenant" is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner's family, including in some circumstances the landowner's spouse or child, or a third party who is not a family member. The tenant does not have to reside on the farm unit.

99.12(3) What "actively engaged in farming" means. Landowners and tenants are "actively engaged in farming" if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or in kind. A farm manager or other third party who operates a farm for a fee or a laborer who works on the farm for a wage and is not a family member does not qualify as a tenant.

99.12(4) Landowners who qualify as active farmers. These landowners:

a. Are the sole operator of a farm unit (along with immediate family members), or

b. Make all decisions about farm operations, but contract for custom farming or hire labor to do some or all of the work, or

c. Participate annually in decisions about farm operations such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or

d. Raise specialty crops from operations such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or

e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or

f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

99.12(5) Landowners who do not qualify. These landowners:

a. Use a farm manager or other third party to operate the farm, or

b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

99.12(6) Where free licenses are valid. A free license is valid only on that portion of the farm unit that is in a zone open to turkey hunting. "Farm unit" means all parcels of land that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. "Agricultural purposes" includes but is not limited to field crops, livestock, horticultural crops (e.g., from nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

99.12(7) How many free licenses may be obtained. The maximum number of free licenses for the fall turkey season is two per farm unit, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner's family may obtain only one license. A tenant or the tenant's family is entitled to only one free license even if the tenant farms land for more than one landowner.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

ARC 0539B**NATURAL RESOURCE
COMMISSION[571]****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 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 106, “Deer Hunting,” and adopt new Chapter 106, “Deer Hunting by Residents,” Iowa Administrative Code.

These rules give the regulations for hunting deer and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking and transportation tag requirements. The new chapter includes changes in shooting hours for regular gun seasons, clarifies the definitions of antlered deer, opens all counties to hunting for deer of either sex during the regular gun seasons, modifies the list of counties open to hunting antlered deer during the special late season, clarifies the restrictions on types of licenses hunters may purchase, explains the new procedures for purchasing deer licenses by electronic methods, requires hunters to register deer they kill through the electronic licensing system, and clarifies that depredation licenses are available only to residents.

Any interested person may make written suggestions or comments on the proposed rules on or before April 10, 2001. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on April 12, 2001, at 3 p.m. in the Fourth Floor East Conference Room of the Wallace 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.

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

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

The following amendment is proposed.

Rescind 571—Chapter 106 and adopt in lieu thereof the following new chapter:

**CHAPTER 106
DEER HUNTING BY RESIDENTS**

571—106.1(481A) Licenses. When hunting deer, all hunters must have in their possession a valid deer hunting license and a valid resident hunting license and must have paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt). No person while hunting deer

shall carry or have in possession any license or transportation tag issued to another person.

106.1(1) Bow season license. Paid bow licenses shall be valid for taking any deer statewide during the bow season, except that bow season licenses for hunting antlerless deer shall be valid only in one county in the special antlerless zone.

106.1(2) Regular gun season license. Paid regular gun season licenses shall be valid for any deer, antlerless deer or antlered deer depending on the season, county or zone hunted. Licenses shall be valid statewide for the season designated on the license, except that regular gun season licenses for hunting antlerless deer shall be valid only in one county in the special antlerless zone. In seasons, counties, or zones in which only antlered deer may be taken, antlered deer shall be defined as those deer having at least one antler 3 inches or longer.

106.1(3) Muzzleloader season license. Paid muzzleloader season licenses shall be valid during one of the muzzleloader seasons for any deer, antlerless deer or antlered deer depending on the season, county or zone hunted. Licenses shall be valid statewide for the season designated on the license, except that muzzleloader season licenses for hunting antlerless deer shall be valid only in one county in the special antlerless zone. In seasons, counties, or zones in which only antlered deer may be taken, an antlered deer is defined as a deer having at least one antler 3 inches or longer.

106.1(4) Special late season license. Paid special late season deer licenses will be valid only for hunting antlerless deer during the special late season in one of the counties in the special antlerless zone.

106.1(5) Free licenses for landowners and tenants. Free licenses for eligible landowners and tenants shall be available for the youth/disabled hunter season, early and late muzzleloader seasons, or first and second regular gun seasons. These licenses shall be valid for hunting any deer in the season(s) designated on the license and only on the farm unit of the landowner/tenant. A second free license valid for taking only antlerless deer in the special late season may be issued to landowners and tenants who have a portion of their farm unit in a county open during that season. The second free license shall be valid only in that portion of the farm unit located in a county open during the special late season.

571—106.2(481A) Season dates. Deer may be taken only during the following seasons:

106.2(1) Bow season. Deer may be taken by bow and arrow in accordance with the type of license issued from October 1 through the Friday before the first Saturday in December and from the Monday following the third Saturday in December through January 10 of the following year, except that special regulations may apply in deer population management areas (571—Chapter 105).

106.2(2) Regular gun seasons. Deer may be taken by gun only in accordance with the type, season and zone designated on the license from the first Saturday in December and continuing for five consecutive days (first regular gun season) or from the second Saturday in December and continuing for nine consecutive days (second regular gun season).

106.2(3) Muzzleloader seasons. Deer may be taken by muzzleloader in accordance with the type, season and zone designated on the license from the Saturday closest to October 14 and continuing for nine consecutive days (early muzzleloader season) or from the Monday following the third Saturday in December through January 10 of the following year (late muzzleloader season).

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106.2(4) Special late season. Antlerless deer may be taken by shotgun, muzzleloading rifle, handgun or bow as permitted in 571—106.7(481A) from January 11 through January 17. All participants must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for taking deer with a firearm shall apply.

571—106.3(481A) Shooting hours. Legal shooting hours shall be from one-half hour before sunrise to one-half hour after sunset in all seasons.

571—106.4(481A) Limits.

106.4(1) Bow season. The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.4(2) Muzzleloader seasons. The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.4(3) Regular gun seasons. The bag limit is one deer for each hunter in the party who has a valid deer transportation tag. The possession limit is one deer per license. "Possession" shall mean that the deer is in the possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

106.4(4) Special late season. The daily bag and possession limit is one deer per license. Tagging requirements are the same as for the regular gun seasons.

106.4(5) Maximum annual possession limit. The maximum annual possession limit for a resident deer hunter is one deer for each legal license and transportation tag obtained.

571—106.5(481A) Areas open to hunting.

106.5(1) Paid deer licenses. Hunters shall be restricted to the type of deer they shoot based on the season, dates, county or zone in which they hunt.

- a. Bow season. Any deer may be taken in all counties.
- b. Muzzleloader seasons. Any deer may be taken in all counties.
- c. Regular gun seasons. Any deer may be taken in all counties.

106.5(2) Paid antlerless deer licenses.

a. Paid antlerless deer licenses for the bow season, second regular gun season and late muzzleloader season shall be valid only for antlerless deer and only in the following counties (special antlerless zone): Adair, Montgomery, Page, Fremont, Adams, Taylor, Union, Ringgold, Clarke, Decatur, Lucas, Wayne, Monroe, Appanoose, Wapello, Davis, Jefferson, Van Buren, Henry, Lee and Washington. An antlerless deer is defined as a deer without a visible antler or with no antler longer than 7 inches.

b. Paid antlerless deer licenses for the special late season shall be valid only for antlerless deer and only in the following counties: Davis, Van Buren, Ringgold, Taylor, Adams, Union, Fremont, Page and Montgomery. An antlerless deer is defined as a deer without a visible antler or with no antler longer than 7 inches.

106.5(3) Free landowner/tenant licenses. Free landowner/tenant licenses shall be valid for any deer. Free regular gun season licenses shall be valid for both the first and second regular gun seasons.

106.5(4) Closed areas. There shall be no open seasons for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly. There shall be no open seasons for hunting deer on all portions of rights-of-way on Interstate Highways 29, 35, 80 and 380.

571—106.6(481A) License quotas and restrictions. Certain types of deer licenses will be restricted in the number issued or in the types of other deer licenses which may be purchased.

106.6(1) Bow season. An unlimited number of statewide bow licenses may be issued. A person who purchases a bow license may purchase the following additional licenses: one statewide gun license; up to two antlerless licenses for the bow, second regular gun or late muzzleloader season; and up to two antlerless licenses for the special late season.

106.6(2) Regular gun seasons. An unlimited number of statewide licenses will be available for both the first and second regular gun seasons.

a. A person obtaining a paid license for the first regular gun season shall be eligible to purchase the following additional licenses: a statewide bow license; up to two antlerless licenses for the bow and late muzzleloader seasons; and up to two antlerless licenses for the special late season. No person obtaining a paid license for the first regular gun season shall be eligible to obtain a paid license for the second regular gun season.

b. A person obtaining a paid license for the second regular gun season shall be eligible to purchase the following additional licenses: a statewide bow license; up to two antlerless licenses for the bow, second regular gun or late muzzleloader season; and up to two antlerless licenses for the special late season.

106.6(3) Muzzleloader seasons.

a. Early muzzleloader season. No more than 7,500 paid statewide licenses will be sold. Fifty additional licenses will be issued through and will be valid only for the Iowa Army Ammunition Plant. No one may purchase more than one paid license for the early muzzleloader season. A hunter obtaining a paid early muzzleloader season license shall not be eligible to purchase any other statewide gun season license but may purchase the following additional licenses: a statewide bow license; up to two antlerless bow licenses; and up to two antlerless licenses for the special late season.

b. Late muzzleloader season. An unlimited number of statewide licenses may be issued for the late muzzleloader season. A person obtaining a paid late muzzleloader season license may purchase the following additional licenses: a statewide bow license; up to two antlerless licenses for the bow, second regular gun or late muzzleloader season; and up to two antlerless licenses for the special late season.

106.6(4) Free landowner/tenant licenses. A person obtaining a free landowner/tenant license may purchase any combination of paid bow and gun licenses available to persons who are not eligible for landowner/tenant licenses as explained in 571—106.13(481A).

106.6(5) Antlerless-only licenses. Paid antlerless-only licenses will be available to eligible persons by county as follows:

Adams, 500; Appanoose, 600; Clarke, 300; Davis, 800; Decatur, 800; Fremont, 200; Jefferson, 400; Lucas, 200; Monroe, 500; Ringgold, 800; Taylor, 800; Union, 400; Van Buren, 800; Wapello, 400; Wayne, 300; Adair, 200; Page, 200; Montgomery, 200; Washington, 300; Henry, 300; and Lee, 300.

106.6(6) Special late season licenses. Paid antlerless licenses for the special late season will be available in counties designated in subrule 106.5(2) and are included in the quotas established in subrule 106.6(5). A person may obtain up to two paid antlerless licenses for the special late season regardless of any other paid or free gun or bow licenses the person may have obtained.

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571—106.7(481A) Method of take. Permitted weapons and devices vary according to the type of season.

106.7(1) Bow season. Except as provided in 571—15.5(481A), only recurve, compound or longbows with broadhead arrows will be permitted for taking deer during the bow season. Arrows with chemical or explosive pods are not permitted.

106.7(2) Regular gun seasons. Only 10-, 12-, 16- and 20-gauge shotguns shooting single slugs and muzzleloaders and handguns as described in 106.7(3) will be permitted for taking deer during the regular gun seasons.

106.7(3) Muzzleloader seasons. Only muzzleloading rifles will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloader, handgun or bow. Muzzleloading rifles are defined as flintlock or percussion cap lock muzzleloaded rifles and muskets of not less than .44 and not larger than .775 caliber, shooting single projectiles only. Centerfire handguns must be .357 caliber or larger shooting straight-walled cartridges propelling an expanding-type bullet (no full-metal jacket) and complying with all other requirements provided in Iowa Code section 481A.48. Revolvers, pistols and black powder handguns must have a 4-inch minimum barrel length. There can be no shoulder stock or long-barrel modifications to handguns. Black powder handguns must be .44 caliber or larger, shooting single projectiles only.

106.7(4) Prohibited weapons and devices. The use of dogs, domestic animals, bait, rifles other than muzzleloaded, handguns except as provided in 106.7(2) and 106.7(3), crossbows except as otherwise provided, automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetables, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to carry or have in possession a rifle other than a muzzleloading rifle that meets the requirements of 106.7(3) or to carry or have in possession a handgun during the bow and early muzzleloader seasons.

106.7(5) Discharge of firearms from roadway. No person shall discharge a shotgun shooting slugs or muzzleloader from a highway during the regular gun seasons in all counties and parts of counties north of Highway 30 and west of Highway 63. "Highway" means the way between property lines open to the public for vehicle traffic as defined in Iowa Code section 321.1(78).

571—106.8(481A) Procedures to obtain licenses. All paid and free resident deer hunting licenses must be obtained using the electronic licensing system for Iowa (ELSI). Licenses and license applications may be purchased from ELSI license agents or by calling the ELSI telephone ordering system.

106.8(1) Licenses with quotas. All licenses that have quotas will be issued through a random drawing. Applications for these licenses may be purchased through ELSI beginning the second Saturday in July through the first Sunday in August. No one may purchase more than one application for the early muzzleloader season during the application pe-

riod. Persons eligible for antlerless licenses may purchase no more than one application for the bow, second regular gun or late muzzleloader season and one application for the special late season during the application period.

a. If applications have been sold in excess of the license quota, 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.

b. 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 until the quota has been filled, or until the last day of the hunting period for which that license is valid, or until the final day any license for the current year may be purchased, whichever occurs first.

106.8(2) Licenses without quotas. Paid and free deer hunting licenses that are not subject to a quota may be obtained 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 or until the final day any licenses for the current year may be obtained, whichever occurs first.

106.8(3) If anyone provides false information when obtaining any deer license, that license and transportation tag and any other deer hunting license and transportation tag obtained during the same year shall be invalid.

571—106.9(481A) Transportation tag. A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each deer in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the deer within 15 minutes of the time the deer is killed or before the carcass is moved in any manner, whichever occurs first. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to the deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility or until the deer has been processed for consumption.

571—106.10(481A) Harvest reporting system. A harvest report card will be attached to each transportation tag. Each hunter that tags a deer must fill out and sign the harvest report card after the transportation tag is attached. The completed harvest report card must be taken to any ELSI license agent within 48 hours after the deer is tagged. 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 deer and remain there until the deer is processed for consumption. A deer carcass or part of a carcass may not be taken to a locker plant for processing unless the proper verification tag is attached.

571—106.11(481A) Youth deer and severely disabled hunts.

106.11(1) Licenses.

a. Youth deer hunt. A special youth deer license may be issued to any Iowa resident who is at least 12 years old but not over 15 years old on September 1. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free license for which the youth's family is eligible.

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The youth must possess a valid hunter safety certificate to obtain a license.

Each participating youth must be accompanied by an adult who possesses a regular hunting license and has paid the habitat fee (if the adult is normally required to have a hunting license and to pay the habitat fee to hunt). Only one adult may participate for each youth hunter. The accompanying adult must not possess a firearm or bow and must be in direct company of the youth at all times. A person may obtain only one youth deer license but may also obtain one of the following additional licenses: one statewide bow or statewide gun license; up to two antlerless licenses for the bow, second regular gun or late muzzleloader season; and up to two antlerless licenses for the special late season.

b. Severely disabled hunt. Any severely disabled Iowa resident meeting the requirements of Iowa Code section 321L.1(8) may be issued one license to hunt deer during the youth season. A person applying for this license must either possess a disabilities parking permit or provide a completed form from the department of natural resources. The form must be signed by a physician verifying that the person's disability meets the criteria defined in Iowa Code section 321L.1(8). A person between 16 and 65 years of age must also possess a regular hunting license and have paid the habitat fee to obtain a license (if normally required to have a hunting license and to pay the habitat fee to hunt). A severely disabled person obtaining this license may obtain one additional statewide bow license.

106.11(2) Season dates. Deer of either sex may be taken statewide during the 16-day period that ends on the first Sunday in October.

106.11(3) Shooting hours. Legal shooting hours will be one-half hour before sunrise to one-half hour after sunset each day regardless of weapon used.

106.11(4) Limits and license quotas. An unlimited number of licenses may be issued. The daily and season bag and possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.11(5) Method of take and other regulations. Deer may be taken with shotgun, bow or muzzleloaded rifles as permitted in 571—106.7(481A). All participants must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for obtaining licenses or hunting deer shall apply.

106.11(6) Procedures for obtaining licenses. Paid and free youth licenses and licenses for severely disabled hunters may be obtained through ELSI beginning the second Saturday after the close of the initial application period for other deer licenses through the last day of the youth season.

571—106.12(481A) Deer depredation management. Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

106.12(1) Method of take and other regulations. Legal weapons and restrictions will be governed by 571—106.7(481A). For deer shooting permits only, there are no shooting hour restrictions. The producer or designee must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122.

106.12(2) Eligibility. Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nurseries, and commercially grown nuts) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.

b. Excessive damage is defined as crop losses exceeding \$1,000 in a single growing season, or the likelihood that damage will exceed \$1,000 if preventive action is not taken, or a documented history of at least \$1,000 damage annually in previous years.

106.12(3) Depredation management plans. Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage sustained from deer. If damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a written depredation management plan will be developed by the field employee in consultation with the producer.

a. The goal of the management plan will be to reduce damage to below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans written for producers of typical agricultural crops may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, temporary fencing, allowing more hunters, increasing the take of antlerless deer, and other measures that may prove effective.

(2) Depredation plans written for producers of high-value horticultural crops may include all of the measures in (1) above, plus permanent fencing where necessary. Fencing will not be required if the cost of a fence exceeds \$1,000.

(3) Depredation permits to shoot deer may be issued to Iowa residents only to temporarily reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

b. Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the field employee of the wildlife bureau and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

106.12(4) Depredation permits. Three types of permits may be issued under a depredation management plan.

a. Deer depredation licenses. Deer depredation licenses may be sold to resident hunters only for the regular deer license fee for use during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued in blocks of five licenses up to the number specified in the management plan.

(2) Depredation licenses may be sold to individuals designated by the producer as having permission to hunt. No individual may obtain more than two depredation licenses. Li-

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censes will be sold by designated department field employees.

(3) A depredation license issued to the producer or producer's family member may be the one free license for which the producer family is eligible annually.

(4) Depredation licenses will be valid only for hunting antlerless deer, unless otherwise specified in the management plan, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(5) Hunters may keep any deer legally tagged with a depredation license.

(6) All other regulations for the hunting season specified on the license will apply.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation) and to other agricultural producers and on areas such as airports where public safety may be an issue.

(1) Deer shooting permits will be issued at no cost to the applicant.

(2) The applicant or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops will allow taking deer from August 1 through March 31. Permits issued for August 1 through August 31 shall be valid only for taking antlered deer. Permits issued for September 1 through March 31 may be valid for taking any deer, antlerless deer, or antlered deer, depending on the nature of the damage. Permits available to other agricultural producers will allow taking deer from September 1 through October 31.

(4) Permits issued due to public safety concerns may be used for taking any deer, as necessary, to address unpredictable intrusion which could jeopardize public safety. Permits may be issued for an entire year (January 1 through December 31) if the facility involved maintains a deerproof fence.

(5) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

(6) Antlers from all deer recovered must be turned over to the conservation officer to be disposed of according to department rules.

(7) Shooters must wear blaze orange and comply with all other applicable laws and regulations pertaining to shooting and hunting.

c. Agricultural depredation permits. Agricultural depredation permits will be issued to a landowner or designated tenant who is a resident of Iowa who has sustained at least \$1,000 of damage to agricultural crops if the resident is cooperating with the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to reduce crop damage by deer or has an approved DNR deer depredation plan.

(1) Agricultural depredation permits will be issued to the resident landowner or designated tenant at no cost and shall be valid only on the farm unit where the damage is occurring.

(2) Permits issued to the resident landowner or designated tenant shall allow the taking of antlerless deer from September 1 through November 30. The number of permits issued to individual landowners or tenants will be determined by a department depredation biologist and will be part of the deer depredation management plan.

(3) Deer taken on these permits must be taken by the resident landowner or the designated tenant only.

(4) Times, places, and other restrictions will be specified on the permit.

(5) Shooters must wear blaze orange and comply with all other applicable laws and regulations.

d. Deer depredation licenses and shooting permits will be valid only on the land where damage is occurring or the immediately adjacent property. Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

e. Depredation licenses, agricultural depredation permits and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

f. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd.

106.12(5) Disposal. It shall be the producer's responsibility to see that all deer are field dressed, tagged with a DNR salvage tag, and removed immediately from the field. Dead deer must be handled for consumption, and the producer must coordinate through the local conservation officer the disposal of deer offered to the public. Charitable organizations will have the first opportunity to take deer offered to the public. No producer shall keep more than two deer taken under special depredation permits. By express permission from a DNR enforcement officer, the landowner may dispose of deer carcasses through a livestock sanitation facility.

571—106.13(481A) Eligibility for free landowner/tenant deer licenses.

106.13(1) Who qualifies for free deer hunting license. Owners or tenants of a farm unit, or a member of an owner's or tenant's family who resides with the owner or tenant, are eligible for free deer licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

106.13(2) Who qualifies as a tenant. A "tenant" is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner's family, including in some circumstances the landowner's spouse or child, or a third party who is not a family member. The tenant does not have to reside on the farm unit.

106.13(3) What "actively engaged in farming" means. Landowners and tenants are "actively engaged in farming" if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or in kind. A farm manager or other third party who operates a farm for a fee or a laborer who works on the farm for a wage and is not a family member does not qualify as a tenant.

106.13(4) Landowners who qualify as active farmers. These landowners:

a. Are the sole operator of a farm unit (along with immediate family members), or

b. Make all decisions about farm operations, but contract for custom farming or hire labor to do some or all of the work, or

c. Participate annually in decisions about farm operations such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or

d. Raise specialty crops from operations such as orchards, nurseries, or tree farms that do not necessarily pro-

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duce annual income but require annual operating decisions about maintenance or improvements, or

e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or

f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

106.13(5) Landowners who do not qualify. These landowners:

a. Use a farm manager or other third party to operate the farm, or

b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

106.13(6) Where free licenses are valid. A free license is valid only on that portion of the farm unit that is in a zone open to deer hunting. "Farm unit" means all parcels of land that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. "Agricultural purposes" includes but is not limited to field crops, livestock, horticultural crops (e.g., from nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

106.13(7) How many free licenses may be obtained. The maximum number of free licenses for the youth/disabled season, bow season, regular gun seasons or muzzleloader seasons is two per farm unit, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner's family may obtain only one license. A tenant or the tenant's family is entitled to only one free license even if the tenant farms land for more than one landowner. An additional free license for the special late season may be issued to eligible landowners and tenants as described in subrule 106.1(5).

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.24.

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PROFESSIONAL LICENSING AND REGULATION DIVISION[193]

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 546.2, the Professional Licensing and Regulation Division hereby gives Notice of Intended Action to adopt new Chapter 6, "Investigatory Subpoenas," and Chapter 7, "Contested Cases," Iowa Administrative Code.

Proposed Chapter 6 outlines a process by which the boards within the Division may issue subpoenas during the investigation of a disciplinary case. Proposed Chapter 7 identifies procedures to be followed by the boards when conducting a contested case hearing.

The proposed chapters will replace chapters or parts of chapters that are identical and currently appear in each individual Board's Administrative Code chapter. These new

chapters are proposed in response to Governor Vilsack's Executive Order Number 8.

Consideration will be given to all written suggestions or comments on the proposed chapters received on or before March 27, 2001. Comments should be addressed to Glenda Loving, Professional Licensing and Regulation Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, or faxed to (515) 281-7411. E-mail may be sent to glenda.loving@comm7.state.ia.us.

These amendments are intended to implement Iowa Code chapters 17A, 252J, 261, 272C, 542B, 542C, 543B, 543D, 544A, and 544B.

The following amendments are proposed.

ITEM 1. Adopt **new** 193—Chapter 6 as follows:

**CHAPTER 6
INVESTIGATORY SUBPOENAS**

193—6.1(17A,272C,542B,542C,543B,543D,544A,544B) Investigatory subpoena authority. Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), all boards, as defined in rule 193—7.1(17A,542B,542C,543B,543D,544A,544B), have the authority to issue subpoenas to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with the investigation of a licensee disciplinary proceeding, or otherwise necessary for the board to determine whether to commence a contested case. When such an investigation involves licensee discipline, the board may subpoena such evidence whether or not privileged or confidential under law. To ensure consistency in procedure, all boards will issue investigatory subpoenas according to the uniform procedures set forth in rule 6.2(17A,272C,542B,542C,543B,543D,544A,544B). Given the range of investigative options otherwise utilized by each board, additional detail on investigative procedures is provided separately in each board's individual rules.

193—6.2(17A,272C,542B,542C,543B,543D,544A,544B) Investigatory subpoena procedures.

6.2(1) The board's executive secretary or designee may, upon the written request of a board investigator or on the secretary's own initiative, subpoena books, papers, records, and other real evidence which the secretary determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

6.2(2) A written request for a subpoena or the executive secretary's written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of the reasons that the documents sought to be subpoenaed are necessary for the board to deter-

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mine whether it should institute a contested case proceeding; and

d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 6.2(1) have been satisfied.

6.2(3) Each subpoena shall contain the following:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records or other real evidence requested;

c. The date, time and location for production, or inspection and copying;

d. The time within which a motion to quash or modify the subpoena must be filed;

e. The signature, address and telephone number of the executive secretary or designee;

f. The date of issuance;

g. A return of service.

6.2(4) Any person who is aggrieved or adversely affected by compliance with the subpoena who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

6.2(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

6.2(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 193—7.31(17A) and 7.32(17A), provided that all of the time frames are reduced by one-half.

6.2(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

These rules are intended to implement Iowa Code chapters 17A, 272C, 542B, 542C, 543B, 543D, 544A and 544B.

ITEM 2. Adopt **new** 193—Chapter 7 as follows:

CHAPTER 7
CONTESTED CASES

193—7.1(17A,542B,542C,543B,543D,544A,544B) Definitions. Except where otherwise specifically defined by law:

“Board” includes the engineering and land surveying examining board (Iowa Code chapter 542B), the accountancy examining board (Iowa Code chapter 542C), the real estate commission (Iowa Code chapter 543B), the real estate appraiser examining board (Iowa Code chapter 543D), the architectural examining board (Iowa Code chapter 544A), and the landscape architectural examining board (Iowa Code chapter 544B).

“Contested case” means any adversary proceeding before a board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 542B, 542C, 543B, 543D, 544A, or 544B; an adversary proceeding requested by a nonlicensee pursuant to Iowa Code section 542B.27 or 544A.15; or any other proceeding designated a contested case by any provision of law.

“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 by rule or in the order.

“License” means a license, registration, certificate, permit or other form of practice permission required by Iowa Code chapter 542B, 542C, 543B, 543D, 544A, or 544B.

“Party” means the state, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent, or an intervenor.

“Presiding officer” means the board, a panel of board members, or an administrative law judge assigned to render a proposed decision in a nondisciplinary contested case.

193—7.2(17A,542B,542C,543B,543D,544A,544B,546) Scope and applicability. This chapter applies to contested cases conducted by all boards in the division.

193—7.3(17A,272C) Probable cause. In the event the board finds there is probable cause for taking disciplinary action against a licensee, the board shall order a contested case hearing commenced by the filing and service of a statement of charges and notice of hearing.

193—7.4(17A,272C) Informal settlement. The board, board staff or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board and the licensee agree to a settlement of the case, a statement of charges shall be filed simultaneously with a consent order. By electing to sign a consent order, the licensee waives all rights to a hearing and all attendant rights. The consent order shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 7.30(17A,272C). Matters not involving licensee discipline which may culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 7.42(546,272C).

193—7.5(17A) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense. The statement of charges shall be attached to the notice of hearing. The statement of charges and notice of hearing are public records open for public inspection under Iowa Code chapter 22.

193—7.6(17A,272C) Notice of hearing.

7.6(1) Contents of notice of hearing. Unless waived, all contested cases shall commence with the service of a notice of hearing fixing the time and place for hearing. The notice, including any attached statement of charges, shall contain those items specified in Iowa Code section 17A.12(2) and the following:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved;

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4. A short and plain statement of the matters asserted;
5. Identification of all parties including the name, address and telephone number of the assistant attorney general designated as prosecutor for the state and the respondent's counsel where known;
6. Reference to the procedural rules governing conduct of the contested case proceeding;
7. Reference to the procedural rules governing informal settlement after charges are filed;
8. Identification of the board or a panel of board members as the presiding officer, or statement that the presiding officer will be an administrative law judge from the department of inspections and appeals;
9. If applicable, notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 7.10(17A,272C), that the presiding officer be an administrative law judge from the department of inspections and appeals; and
10. A statement requiring the respondent to submit an answer of the type specified in rule 7.9(17A,272C) within 20 days after service of the notice of hearing.

11. If applicable, notification of the licensee's right to request a closed hearing in a licensee disciplinary proceeding.

7.6(2) Service of notice of hearing. Service of notice of hearing on a licensee to commence a contested case which may affect the licensee's continued licensure, such as a licensee disciplinary case or challenge to the renewal of a license, shall be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the licensee or the licensee's duly authorized legal representative. Service of the notice of hearing to commence all other contested cases may additionally be made by certified mail, return receipt requested.

193—7.7(13,272C) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

193—7.8(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 board action in question.

The request for a contested case proceeding shall state the name and address of the requester; identify the specific board action which is disputed; describe issues of material fact in dispute; 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. If the board grants the request, the board shall issue a notice of hearing. If the board denies the request, the board shall issue a written order specifying the basis for the denial.

193—7.9(17A,272C) Form of answer.

7.9(1) The answer shall contain the following information:

- a. The name, address and telephone number of the respondent and the respondent's counsel, if any; and
- b. A specific statement admitting or denying each allegation in the notice of hearing and statement of charges.

7.9(2) The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the case, including explanations, remarks or statements of mitigating circumstances.

193—7.10(17A,272C) Presiding officer.

7.10(1) The presiding officer in all licensee disciplinary contested cases shall be the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code subsections 272C.6(1) and (2). When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 7.10(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

7.10(2) In cases which do not pertain to licensee discipline, the board may act as presiding officer or may notify the parties that an administrative law judge will act as presiding officer at hearing and issue a proposed decision. The use of an administrative law judge as presiding officer is only an option in cases which do not pertain to licensee discipline because only the board may conduct licensee discipline hearings pursuant to Iowa Code section 272C.6. Any party to a nondisciplinary case 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 the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board 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. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

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 interboard appeal.

g. The request was not timely filed.

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

7.10(3) The board 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 granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision in a nondisciplinary contested case shall have a J.D. degree unless waived by the board.

7.10(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

7.10(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 7.31(17A) and 7.32(17A). A party must timely seek intra-agency ap-

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peal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

7.10(6) Unless otherwise provided by law, board members, when reviewing a proposed decision of a panel of the board or an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

193—7.11(17A) Time requirements.

7.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

7.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. 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.

193—7.12(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 board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193—7.13(17A,272C) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

193—7.14(17A) Disqualification.

7.14(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, director 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.

7.14(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 board 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 subrule 7.28(9).

7.14(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.

7.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.14(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.

7.14(5) 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.

7.14(6) 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 7.31(17A) and seek a stay under rule 7.34(17A).

193—7.15(17A) Consolidation—severance.

7.15(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.

7.15(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193—7.16(17A) Amendments. Any notice of hearing or statement of charges may be amended before a responsive

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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.

193—7.17(17A) Service and filing of pleadings and other papers.

7.17(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 prosecutor for the state, simultaneously with their filing. Except for the original notice of hearing and statement of charges, 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. A notice of hearing and statement of charges shall be served by the board as provided in subrule 7.6(2). Once a specific administrative law judge has been assigned to a case, copies of all prehearing motions shall also be served on the administrative law judge.

7.17(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.

7.17(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 board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

7.17(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is received by the board. If a document required to be filed within a prescribed period or on or before a particular date is received by the board after such period or such date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing.

7.17(5) Proof of mailing. Proof of mailing includes either a legible United States Postal Service nonmetered postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially 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 (insert board title) 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) _____

7.17(6) Electronic service. The presiding officer may by order permit service or filing of particular documents by facsimile, E-mail or similar electronic means, unless precluded by a provision of law. In the absence of such an order, facsimile or electronic transmission shall not satisfy service or filing requirements, but may be used to supplement service or filing when rapid notice is desirable.

193—7.18(17A) Discovery.

7.18(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.

7.18(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 7.18(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

7.18(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193—7.19(17A,272C) Issuance of subpoenas in a contested case.

7.19(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. Subpoenas shall be issued by the executive secretary or designee upon written request. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;
- Adequate safeguards have been established to prevent unauthorized disclosure;
- An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

7.19(2) A request for a subpoena shall include the following information, as applicable:

- The name, address and telephone number of the person requesting the subpoena;
- The name and address of the person to whom the subpoena shall be directed;
- The date, time, and location at which the person shall be commanded to attend and give testimony;
- Whether the testimony is requested in connection with a deposition or hearing;
- A description of the books, papers, records or other real evidence requested;
- The date, time and location for production, or inspection and copying; and
- In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 7.19(1) have been satisfied.

7.19(3) Each subpoena shall contain, as applicable:

- The caption of the case;
- The name, address and telephone number of the person who requested the subpoena;
- The name and address of the person to whom the subpoena is directed;
- The date, time, and location at which the person is commanded to appear;

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- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records or other real evidence the person is commanded to produce;
- g. The date, time and location for production, or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address and telephone number of the executive secretary or designee;
- j. The date of issuance;
- k. A return of service.

7.19(4) The executive secretary or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

7.19(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

7.19(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

7.19(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 7.31(17A) and 7.32(17A), provided that all of the time frames are reduced by one-half.

7.19(8) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

193—7.20(17A) Motions.

7.20(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.

7.20(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 board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

7.20(3) The presiding officer may schedule oral argument on any motion. If the board requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 7.31(17A).

7.20(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five 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 board or an order of the presiding officer.

7.20(5) 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 provisions of this rule or any other provision of law governing the procedure in contested cases.

7.20(6) Motions for summary judgment must be filed and served at least 20 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 10 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 15 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 rule 7.33(17A) and appeal pursuant to rule 7.32(17A).

193—7.21(17A,272C) Prehearing conference.

7.21(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 ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date. The board shall set a prehearing conference in all licensee disciplinary cases and provide notice of the date and time in the notice of hearing. Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

7.21(2) Each party shall bring the following to the prehearing conference:

a. A final list of the witnesses who 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.

7.21(3) In addition to the requirements of subrule 7.21(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.

7.21(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 prehearing conference.

193—7.22(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

7.22(1) A written application for a continuance shall:

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- 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 board may waive notice of such requests for a particular case or an entire class of cases.

7.22(2) In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance and 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.

7.22(3) The board's executive secretary or an administrative law judge may enter an order granting an uncontested application for a continuance. Upon consultation with the board chair or chair's designee, the board's executive secretary or an administrative law judge may deny an uncontested application for a continuance, or rule on a contested application for continuance.

193—7.23(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing upon written notice filed with the board and served on all parties. Unless otherwise ordered by the board, a withdrawal shall be with prejudice.

193—7.24(17A) Intervention.

7.24(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds 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.

7.24(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.

7.24(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.

7.24(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.

193—7.25(17A,272C) Hearings. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or other evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions.

7.25(1) Examination of witnesses. All witnesses shall be sworn or affirmed by the presiding officer or the court reporter, and shall be subject to cross-examination. Board members and the administrative law judge have the right to examine witnesses at any stage of a witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

7.25(2) Public hearing. The hearing shall be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public.

7.25(3) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the board for at least five years from the date of decision.

7.25(4) Order of proceedings. Before testimony is presented, the record shall show the identities of any board members present, the identity of the administrative law judge, the identities of the primary parties and their representatives, and the fact that all testimony is being recorded. In contested cases initiated by the board, such as licensee discipline, hearings shall generally be conducted in the following order, subject to modification at the discretion of the board:

- a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.
- b. The assistant attorney general representing the state interest before the board shall make a brief opening statement which may include a summary of charges and the names of any witnesses and documents to support such charges.
- c. Each respondent shall be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).
- d. The presentation of evidence on behalf of the state.
- e. The presentation of evidence on behalf of the respondent(s).
- f. Rebuttal evidence on behalf of the state, if any.

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g. Rebuttal evidence on behalf of the respondent(s), if any.

h. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

The order of proceedings shall be tailored to the nature of the contested case. In license reinstatement hearings, for example, the respondent will generally present evidence first because the respondent is obligated to present evidence in support of the respondent's application for reinstatement pursuant to rule 7.38(17A,272C). In license denial hearings, the state will generally first establish the basis for the board's denial of licensure, but thereafter the applicant has the burden of establishing the conditions for licensure pursuant to rule 7.39(546,272C).

7.25(5) Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

7.25(6) Immunity. The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

7.25(7) Sequestering witnesses. The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses.

193—7.26(17A) Evidence.

7.26(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.

7.26(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

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

7.26(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 shall be provided to opposing parties. Copies should also be furnished to members of the board. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

7.26(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and 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.

7.26(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.

7.26(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

193—7.27(17A) Default.

7.27(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.

7.27(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.

7.27(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 board action unless, within 15 days 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 7.32(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 affidavit(s) must be attached to the motion.

7.27(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.

7.27(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.

7.27(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.

7.27(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal 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 7.31(17A).

7.27(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.

7.27(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

7.27(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 7.34(17A).

193—7.28(17A) Ex parte communication.

7.28(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by

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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 board 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 7.14(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.

7.28(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.

7.28(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

7.28(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 7.17(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.

7.28(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

7.28(6) The executive secretary 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 7.28(1).

7.28(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties 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 7.22(17A).

7.28(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.

7.28(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.

7.28(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 board. Violation of ex parte communication prohibitions by board personnel shall be reported to the division administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

193—7.29(17A) Recording costs. Upon request, the board shall provide a copy of the whole record 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.

193—7.30(17A,272C) Final decisions, publication and client notification.

7.30(1) Final decision. When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive secretary. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to the licensee's or other respondent's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by interoffice mail or first-class mail to the prosecutor and counsel of record.

7.30(2) Publication of decisions. Final decisions of the board, including consent agreements and consent orders, are public documents, are available to the public and may be disseminated as provided in Iowa Code chapter 22 by the board or others. Final decisions relating to licensee discipline shall be published in the professional licensing and regulation division's newsletter and may be transmitted to the appropriate professional association(s), national associations, other states, and news media, or otherwise disseminated. The board may, in its discretion, issue a formal press release.

7.30(3) Notification of clients. Within 15 days (or such other time period specifically ordered by the board) of the licensee's receipt of a final decision of the board, whether entered by consent or following hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee shall notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within 30 days of receipt of the board's final order, the licensee shall file with the board copies of the notices sent.

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Compliance with this requirement shall be a condition for an application for reinstatement.

193—7.31(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board 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 the interlocutory order at the time of the issuance of a final decision 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 date for compliance with the order or the date of hearing, whichever is earlier.

193—7.32(17A) Appeals and review.

7.32(1) Proposed decision. Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. All licensee disciplinary decisions must be issued by the board. A proposed disciplinary decision issued by a panel of the board must be acted upon by the full board in order to become a final decision. In nondisciplinary cases, a proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

7.32(2) Appeal by party. Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

7.32(3) Review. The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

7.32(4) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. 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 which is being appealed;
- 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.

7.32(5) 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 board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

7.32(6) Scheduling. The board shall issue a schedule for consideration of the appeal.

7.32(7) 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 board may resolve the appeal on the briefs or pro-

vide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

7.32(8) Record. The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

193—7.33(17A) Applications for rehearing.

7.33(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

7.33(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 board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 7.33(3), the applicant requests an opportunity to submit additional evidence.

7.33(3) Additional evidence. A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

7.33(4) Time of filing. The application shall be filed with the board within 20 days after issuance of the final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for rehearing is deemed filed on the date it is received by the board unless the provisions of rule 7.17(4) apply.

7.33(5) 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 board shall serve copies of the application on all parties.

7.33(6) Disposition. An application for rehearing shall be deemed denied unless the board grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the board.

7.33(7) Proceedings. If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

193—7.34(17A) Stays of board actions.

7.34(1) When available.

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition

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shall state the reasons justifying a stay or other temporary remedy.

7.34(2) When granted. In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5)"c."

7.34(3) Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

193—7.35(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 practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

193—7.36(17A) Emergency adjudicative proceedings.

7.36(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 United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18A 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 board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board 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 board is necessary to avoid the immediate danger.

7.36(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 board'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 board;
- (3) Certified mail to the last address on file with the board;
- (4) First-class mail to the last address on file with the board; or
- (5) Electronic service. Fax or E-mail notification may be used as the sole method of delivery if the person required to

comply with the order has filed a written request that board orders be sent by fax or E-mail and has provided a fax number or E-mail address for that purpose.

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

7.36(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

7.36(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board 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 board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

193—7.37(17A,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

7.37(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

7.37(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 7.33(6).

193—7.38(17A,272C) Reinstatement.

7.38(1) The term "reinstatement" as used in this rule shall include both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license.

7.38(2) Any person whose license has been revoked or suspended by the board, or who voluntarily surrendered a license in a disciplinary proceeding, may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension, or order accepting the voluntary surrender.

7.38(3) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender of a license.

7.38(4) All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board.

7.38(5) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to

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determine that the basis of revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with subrule 7.30(3) must also be established. The burden of proof to establish such facts shall be on the respondent.

7.38(6) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not fewer than a majority of the board. This order will be published as provided for in subrule 7.30(2).

193—7.39(546,272C) Hearing on license denial. If the board denies an application for an initial, reciprocal or comity license, the executive secretary shall send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the board denies an application to renew an existing license, the provisions of rule 7.40(546,272C) shall apply.

7.39(1) An applicant who is aggrieved by the denial of an application for licensure and who desires to contest the denial must request a hearing before the board within 30 calendar days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors that the applicant contends were made by the board, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the board shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant.

7.39(2) The board, in its discretion, may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as presiding officer. The applicant may request that an administrative law judge act as presiding officer and render a proposed decision pursuant to rule 7.10(17A,272C). A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to rule 7.32(17A).

7.39(3) License denial hearings are contested cases open to the public. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

7.39(4) The board, after a hearing on license denial, may grant or deny the application for licensure. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for licensure might be granted, if applicable.

7.39(5) The notice of license denial, request for hearing, notice of hearing, record at hearing and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, collateral organizations and other persons or entities.

7.39(6) Judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

193—7.40(546,272C) Denial of application to renew license. If the board denies a timely and sufficient application to renew a license, a notice of hearing shall be issued to commence a contested case proceeding.

7.40(1) Hearings on denial of an application to renew a license shall be conducted according to the procedural rules applicable to contested cases. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 7.39(2) and 7.39(4) to 7.39(6) shall generally apply, although license denial hearings which are in the nature of disciplinary actions will be subject to all laws and rules applicable to such hearings.

7.40(2) Pursuant to Iowa Code section 17A.18(2), an existing license shall not terminate or expire if the licensee has made timely and sufficient application for renewal until the last day for seeking judicial review of the board's final order denying the application, or a later date fixed by order of the board or the reviewing court.

7.40(3) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

- a. Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;
- b. Signed by the licensee if submitted in paper form or certified as accurate if submitted electronically;
- c. Fully completed; and
- d. Accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

7.40(4) The administrative processing of an application to renew an existing license shall not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

193—7.41(546,272C) Recovery of hearing fees and expenses. The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated statutes and rules enforced by the board. Payment shall be made directly to the professional licensing and regulation division of the department of commerce pursuant to rule 193—2.1(272C).

7.41(1) The board may assess the following costs under this rule:

- a. For conducting a disciplinary hearing, an amount not to exceed \$75.
- b. All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal to the full board from a proposed panel decision, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable in the circumstances.
- c. All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs shall include, but not be limited to, the

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cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses shall be guided by Iowa Code section 622.69. The cost for expert witnesses shall be guided by Iowa Code section 622.72. Mileage costs shall not be governed by Iowa Code section 625.2. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.

d. All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the services of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost shall include a reasonable expert witness fee. The expert witness fee shall not exceed the expert's customary hourly or daily rate, and shall include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

7.41(2) When imposed in the board's discretion, hearing fees (not exceeding \$75) shall be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule shall be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

a. When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by a majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have to the end of the sixth month after the date the state of Iowa paid the expenditures to assess the licensee for such expenditure. In order to rely on this provision, however, the final disciplinary order must notify the licensee that fees and expenses will be assessed once known.

7.41(3) Any party may object to the fees, costs or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within 10 days of any subsequent order establishing the amount of the assessment. A party's failure to timely object shall be deemed a failure to exhaust administrative remedies. Orders which impose fees, costs or expenses shall notify the licensee of the time frame in which objections must be filed in order to exhaust administrative remedies.

7.41(4) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

7.41(5) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall constitute a violation of an order of the board, shall be grounds for discipline, and shall be considered prima facie evidence of a violation of Iowa Code section 272C.3(2)"a." However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.

193—7.42(546,272C) Settlement after notice of hearing.

7.42(1) Settlement negotiations after the notice of hearing is served may be initiated by the licensee or other respondent, the prosecuting assistant attorney general, the board's executive secretary, or the board chair or chair's designee.

7.42(2) The board chair or chair's designee shall have authority to negotiate on behalf of the board but shall not have the authority to bind the board to particular terms of settlement.

7.42(3) The respondent is not obligated to participate in settlement negotiations. The respondent's initiation of or consent to settlement negotiation constitutes a waiver of notice and opportunity to be heard during settlement negotiation pursuant to Iowa Code section 17A.17 and rule 7.28(17A). Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or chair's designee, and the designated board member is not disqualified from participating in the adjudication of the contested case.

7.42(4) Unless designated to negotiate, no member of the board shall be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal settlement shall be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive secretary to have ex parte communications with the board related to the terms of settlement. If the board fails to approve the consent order, it shall be of no force and effect to either party and shall not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement which the respondent is free to accept or reject.

7.42(5) If the board and respondent agree to a consent order, the consent order shall constitute the final decision of the board. By electing to resolve a contested case through consent order, the respondent waives all rights to a hearing and all attendant rights. A consent order in a licensee disciplinary case shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 7.30(17A,272C).

193—7.43(252J) Certificates of noncompliance. The board shall suspend or revoke a certificate of registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, this rule shall apply.

7.43(1) The notice required by Iowa Code section 252J.8 shall be served upon the registrant by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the registrant may accept service personally or through authorized counsel.

7.43(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by section 252J.8, shall be 60 days following service of the notice upon the registrant.

7.43(3) The board's executive secretary is authorized to prepare and serve the notice required by section 252J.8 and is directed to notify the registrant that the certificate of registration will be suspended, unless the registration is already suspended on other grounds. In the event a registration is on suspension, the executive secretary shall notify the registrant of the board's intent to revoke the certificate of registration.

7.43(4) Registrants shall keep the board informed of all court actions, and all child support recovery unit actions taken under or in connection with chapter 252J, and shall pro-

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vide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

7.43(5) All board fees for license renewal or reinstatement must be paid by registrants before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to chapter 252J.

7.43(6) In the event a registrant files a timely district court action following service of a board notice pursuant to sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

7.43(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant or applicant when the certificate of registration is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

193—7.44(261) Suspension or revocation of a certificate of registration—student loan. The board shall suspend or revoke a certificate of registration upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

7.44(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the registrant may accept service personally or through authorized counsel.

7.44(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the registrant.

7.44(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126, and is directed to notify the licensee that the certificate of registration will be suspended, unless the certificate of registration is already suspended on other grounds. In the event a certificate of registration is on suspension, the executive secretary shall notify the registrant of the board's intention to revoke the certificate of licensure.

7.44(4) Registrants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

7.44(5) All board fees required for registration renewal or registration reinstatement must be paid by registrants and all continuing education requirements must be met before a certificate of registration will be renewed or reinstated after the

board has suspended or revoked a license pursuant to Iowa Code chapter 261.

7.44(6) In the event a registrant timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

7.44(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant when the certificate of registration is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 17A, 252J, 272C, 542B, 542C, 543B, 543D, 544A, and 544B and Iowa Code sections 261.126 and 261.127.

ARC 0533B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby gives Notice of Intended Action to adopt new Chapter 239, "Board of Psychology Examiners"; rescind Chapter 240, "Board of Psychology Examiners," and adopt a new Chapter 240, "Licensure of Psychologists"; amend Chapter 241, "Continuing Education for Psychologists"; adopt new Chapter 242, "Discipline for Psychologists"; and adopt new Chapter 243, "Fees," Iowa Administrative Code.

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

The Division revised these rules according to Executive Order Number 8. The Division sent 13 letters to the public for comment and five 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.

Any interested person may make written comments on the proposed amendments no later than March 29, 2001, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on March 29, 2001, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas

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State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code section 147.76 and chapters 17A, 154B and 272C.

The following amendments are proposed.

ITEM 1. Adopt **new** 645—Chapter 239 as follows:

CHAPTER 239

BOARD OF PSYCHOLOGY EXAMINERS

645—239.1(154B) General definitions.

“Board” means the board of psychology examiners.

“Law” means chapters 147 and 154B of the Code of Iowa.

“License expiration date” means June 30 of even-numbered years.

645—239.2(154B) Availability of information.

239.2(1) All information regarding rules, forms, time and place of meetings, minutes of meetings, record of hearings, and examination results are available to the public between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

239.2(2) Information may be obtained by writing to the Board of Psychology Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All official correspondence shall be in writing and directed to the board at this address.

645—239.3(154B) Organization and proceedings.

239.3(1) A chairperson, vice-chairperson, and secretary shall be elected at the first meeting of each fiscal year.

239.3(2) Four board members actually present constitute a quorum.

239.3(3) The board shall hold an annual meeting and at least three interim meetings and may hold additional meetings called by the chairperson or by a majority of the board's members. The chairperson shall designate the date, place, and time prior to each meeting of the board. Notice of time and place of all meetings shall be given to board members by the secretary at least 14 days before the meeting is to be held. However, in case of emergency requiring the board to meet before such notice can be given, notification may be given no later than 24 hours before the meeting. The board shall follow the latest edition of Robert's Rules of Order Revised at its meeting whenever any objection is made as to the manner in which it proceeds at a meeting.

239.3(4) All issues, requests, or submissions to the board will be considered. However, official action will be taken only in response to written requests.

239.3(5) The board shall have both formal and informal procedures for use when appropriate in conducting the business of the board. Procedures may involve, but are not limited to, hearings for individuals, questions of legal policy, inquiries concerning board policies or decisions, or other board business. Informal procedures shall be preferred unless either the board or requesting party requests a formal procedure. When a formal procedure is elected, a full transcript or audio tape recording of the procedure shall be made.

These rules are intended to implement Iowa Code chapters 17A, 147, and 154B.

ITEM 2. Rescind 645—Chapter 240 and adopt the following **new** 645—Chapter 240 in lieu thereof:

CHAPTER 240
LICENSURE OF PSYCHOLOGISTS

645—240.1(154B) Definitions. For purposes of these rules, the following definitions shall apply:

“Board” means the board of psychology examiners.

“Certified health service provider in psychology” means a person who works in a clinical setting, is licensed to practice psychology and who has a doctoral degree in psychology. A person certified as a health service provider in psychology shall be deemed qualified to diagnose or evaluate mental illness and nervous disorders.

“Lapsed license” means a license that a person has failed to renew as required, or the license of a person who failed to meet stated obligations for renewal within a stated time.

“Licensee” means any person licensed to practice as a psychologist or health service provider in psychology in the state of Iowa.

“Organized health service training program” means a training program designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose is ensuring breadth and quality of training.

“Recognized health service setting” means a setting in which the delivery of direct preventive, assessment, and therapeutic intervention services are provided to individuals whose growth, adjustment or functioning is actually impaired or is demonstrably at high risk of impairment. The delivery of the aforementioned services includes, but is not limited to, the diagnosis or evaluation and treatment of mental illness and nervous disorders, excluding those mental illnesses and nervous disorders which are established as primarily of biological etiology with the exception of the treatment of the psychological and behavioral aspects of those mental illnesses and nervous disorders.

“Supervisor” means a licensed psychologist who meets the qualifications stated in these rules.

“Testing service” means Professional Examination Service (PES).

645—240.2(154B) Requirements for licensure.

240.2(1) The following criteria shall apply to licensure:

a. An applicant shall complete a board-approved application packet. Application forms may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to Board of Psychology Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

b. An applicant shall 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 board.

c. Each application shall be accompanied by the appropriate fees (exclusive of the test administration fee) payable by check or money order to the Board of Psychology Examiners. The fees are nonrefundable.

d. No application will be considered by the board until:

(1) Official copies of academic transcripts sent directly from the school to the board of psychology examiners have been received by the board;

(2) Satisfactory evidence of the candidate's qualifications has been supplied in writing on the prescribed forms by the candidate's supervisors;

(3) A Statement of Competency form, which may be obtained from the board of psychology examiners, has been submitted; and

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(4) Verifications of licenses from other states have been sent directly from those states to the board office.

e. The candidate shall take written and oral examinations required by the board pursuant to these rules.

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

g. Incomplete applications that have been on file in the board office for more than two years shall be:

(1) Considered invalid and shall be destroyed; or

(2) Maintained upon written request of the candidate.

The candidate is responsible for requesting that the file be maintained.

h. Notification of eligibility for licensure shall be sent to the licensee by the board.

240.2(2) The following criteria shall apply to the written examination:

a. The licensee shall complete an approved application form for the Examination for Professional Practice in Psychology (EPPP) available from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to Board of Psychology Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

b. The application shall be accompanied by a check or money order for the Examination for Professional Practice in Psychology fee made payable to PES.

c. The board shall notify PES of eligible candidates for the EPPP.

d. An "authorization-to-test" letter containing a toll-free number to call for scheduling the examination shall be sent to each eligible candidate by PES.

e. The board of psychology examiners shall mail examination results to the candidates.

f. If a retake is necessary, candidates must reapply to the board of psychology examiners and wait at least 60 days before an appointment to test may be scheduled.

g. The EPPP examination can be taken a total of only four times in this state or in any other state or jurisdiction.

240.2(3) The following criteria shall apply to the oral examination:

a. A candidate shall be eligible to schedule the oral examination after:

(1) Passing the EPPP written examination;

(2) Completing the supervised professional experience pursuant to 645—240.5(154B); and

(3) Completing the statement of competency.

b. The board of psychology examiners shall notify the candidate by regular mail of eligibility to sit for the oral examination.

c. The oral examination shall be conducted by the licensed members of the board pursuant to Iowa Code section 147.21.

d. The applicant shall schedule the examination with the board of psychology examiners.

e. If a retake is necessary, the candidate must wait at least six months before an appointment to retest may be scheduled.

f. Candidates shall receive written notification of the results of the examination from the board of psychology examiners.

645—240.3(154B) Educational qualifications. A new applicant for licensure to practice as a psychologist shall possess a doctoral degree in psychology.

240.3(1) The degree in psychology shall be granted by an institution accredited by the North Central Association of Colleges and Secondary Schools or an equivalent accrediting association or entity in other regions of the United States; or

240.3(2) The doctoral degree in psychology shall be granted through a professional psychology program that is accredited by the North Central Association of Colleges and Secondary Schools or an equivalent accrediting association or entity in other regions of the United States; or

240.3(3) The program from which the doctoral degree in psychology is granted must meet the following requirements:

a. The program must be accredited by the American Psychological Association and recognized as meeting the requirements of a professional psychology program.

b. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. A program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

c. The psychology program must stand as a recognizable, coherent organizational entity within the institution.

d. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

e. The program must be an integrated, organized sequence of study.

f. There must be an identifiable psychology faculty on site sufficient in size to ensure that the ratio of faculty to students is adequate for instruction. The faculty must also have sufficient breadth in order to ensure that the scope of knowledge in psychology provides for adequate instruction. There must be a psychologist responsible for the program.

g. The program must have an identifiable body of students who are matriculated in that program for a degree.

h. The program must include supervised practicum, internship, and field or laboratory training appropriate to the practice of psychology.

i. The curriculum shall encompass a minimum of three academic years of graduate study.

j. The program shall require a minimum of one year's residency at the educational institution granting the doctoral degree.

k. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (five or more graduate quarter hours) in each of these four substantive content areas:

(1) Biological bases of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology;

(2) Cognitive-affective bases of behavior: learning, thinking, motivation, and emotion;

(3) Social bases of behavior: social psychology, group processes, organizational and systems theory; and

(4) Individual differences: personality theory, human development, and abnormal psychology.

l. In addition, all professional education programs in psychology shall include course requirements in specialty areas.

240.3(4) Foreign-trained psychologists shall:

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a. Provide an equivalency evaluation of their educational credentials by one of the following: International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, California 90231-3665, telephone (310)258-9451, Web site www.ierf.org, or E-mail info@ierf.org; or International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, Florida 33777, telephone (727)549-8555. The professional curriculum must be equivalent to that stated in these rules. The candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a psychology program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

645—240.4(154B) Title designations.

240.4(1) Applicants for licensure who have met educational requirements but have not yet passed the EPPP may be designated "psychology associate" or "associate in psychology." The title "psychology associate" or "associate in psychology" shall not be used except in the person's employment and supervision that meet the requirements of subrule 240.5(2).

240.4(2) Applicants for licensure who have passed the EPPP and who are fulfilling the experience requirements specified herein for licensure may be designated "psychology resident" or "resident in psychology." The designation of "resident" shall not be used except in the employment and supervised experience that meet the requirements of subrule 240.5(2).

240.4(3) Notwithstanding other provisions of these rules, applicants for licensure who are engaged in organized health service training programs as specified in rule 645—240.6(154B) may be designated "psychology intern" or "intern in psychology" during their time in training.

240.4(4) Persons licensed in another state who are in the process of seeking licensure in Iowa and who are being supervised until obtaining an Iowa license may use the designation "Licensed Psychologist, (name of state)" for a period of up to one year from the date of application.

645—240.5(154B) Supervised professional experience.

240.5(1) The supervised professional experience shall:

- Be 12 months full-time or a minimum of 1800 hours;
- Apply the principles of psychology;
- Be supervised by a licensed psychologist as specified in rule 240.2(154B) or 240.9(154B);
- Be performed competently as attested to by the supervisor;
- Have the fees and receipt of payment schedule remain the sole domain of the employing agency or supervising psychologist.

240.5(2) Requirements.

- To meet the requirements of the supervised professional experience, the supervisee must:
 - Meet a minimum of one hour per week, face to face and individually with the supervisor;
 - Have training that is appropriate to the functions to be performed;
 - Work in the same physical setting as the supervisor unless otherwise approved by the board;
 - Offer work in the name of the supervising psychologist;

(5) Begin the experience after all academic requirements for the doctoral degree are met and when all degree requirements are verified in writing;

(6) Not apply professional employment that occurs prior to meeting the doctoral academic requirements to the supervised professional experience;

(7) Compute part-time employment on a prorated basis for the supervised professional experience; and

(8) Have the background, training, and experience that is appropriate to the functions performed.

b. To meet the requirements of the supervised professional experience, the supervisor must:

(1) Be a licensed psychologist as specified in rule 240.2(154B) or 240.9(154B);

(2) Complete the supervision form provided by the board;

(3) Meet a minimum of one hour per week, face to face and individually with the supervisee;

(4) Provide training that is appropriate to the functions to be performed;

(5) Work in the same physical setting as the supervisee unless otherwise approved by the board;

(6) Have work offered in the name of the supervising psychologist;

(7) Have no more than three full-time persons associated with the supervisor as listed on the supervisor report form obtained from the board;

(8) Not provide group supervision as part of this experience;

(9) Not supervise any psychological practice or permit the supervisor's supervisee to engage in any psychological practice which the supervisor cannot perform competently; and

(10) Be responsible for determining competency of the work performed by the supervisee and the designation of the title of the supervisee.

240.5(3) Employment experience which is offered to satisfy one provision of the law may not be simultaneously offered to satisfy the educational provisions of the law. For example, employment experiences which are part of the required preparation for the doctoral degree will be applicable only to the doctorate degree requirements and may not be simultaneously offered to satisfy the supervised professional experience requirement.

240.5(4) Professional employment experience acquired by the applicant between the time all requirements were fulfilled for the doctoral degree and the time of the actual conferral of the degree may be credited toward the professional employment experience requirements for licensing, provided that the date of completion of all degree requirements is verified in writing by an appropriate academic official. Verification must come directly to the board from the academic official.

240.5(5) Persons providing psychological services who are not licensed by the board of psychology examiners shall be under the direct and continuing administrative and professional direction of a psychologist licensed by the board.

645—240.6(154B) Certified health service provider in psychology.

240.6(1) Requirements for the health service provider in psychology. The applicant shall:

- Have at least two years of clinical experience in a recognized health service setting or meet the standards of the National Register of Health Service Providers in Psychology. Two years of clinical experience means two years of supervised experience in health service in psychology, of

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which at least one year is in an organized health service training program as defined in 240.6(2) and one year is postdoctoral.

b. Complete the application and provide all supporting documentation to the board.

c. Pay the health service provider fee payable by check or money order to the Board of Psychology Examiners.

The certificate shall be renewed biennially at the same time as the psychology license renewal fees are due.

240.6(2) Requirements of the health service training program. The organized health service training program shall:

a. Have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who holds an active license from the state board of examiners in psychology in the state in which the program exists.

b. Have two or more psychologists on the staff as supervisors, at least one of whom holds an active license as a psychologist from the state board of examiners in psychology in the state in which the program exists.

c. Have supervision which is provided by a staff member of the organized health service training program or by an affiliate of the organized health service training program who carries clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one or more psychologists.

d. Provide training in a range of assessment and treatment activities conducted directly with patients seeking psychological services.

e. Have a minimum of 375 hours of trainees' time in direct patient contact.

f. Include a minimum of two hours per week (regardless of whether the internship is completed in one year or two) of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. There must also be at least two additional hours per week in learning activities such as case conferences involving a case in which the intern is actively involved; seminars dealing with clinical issues; cotherapy with a staff person including discussion; group supervision; additional individual supervision.

g. Have training that is at the postclerkship, postpracticum, and postexternship level.

h. Have a minimum of two interns at the internship level of training during any period of training.

i. Designate for internship-level trainees titles such as "intern," "resident," "fellow," or other designation of trainee status.

j. Have a written statement or brochure which describes the goals and content of the internship, states clear expectations for quantity and quality of trainees' work and is made available to prospective interns.

k. Provide a minimum of 1800 hours of training experience that shall be completed within 24 consecutive months and no less than 12 months.

645—240.7(154B) Exemption to licensure. Psychologists residing outside the state of Iowa and intending to practice in Iowa under the provisions of Iowa Code section 154B.3(5) shall file a summary of intent to practice and provide verification of the license from the other jurisdiction. The summary shall be submitted to and approved by the board prior to practice in Iowa. The exemption shall be valid for:

1. 10 consecutive business days; or
2. 15 business days in any 90-day period.

The summary and supporting documentation shall be accompanied by a check or money order for the processing fee

for exemption to licensure pursuant to 645—Chapter 243. The fee is nonrefundable and shall be submitted payable to the Board of Psychology Examiners.

645—240.8(154B) Psychologists' supervision of unlicensed persons in a practice setting. The supervising psychologist shall:

1. Be vested with administrative control over the functioning of assistants in order to maintain ultimate responsibility for the welfare of every client. When the employer is a person other than the supervising psychologist, the supervising psychologist must have direct input into administrative matters.

2. Have sufficient knowledge of all clients, including face-to-face contact when necessary, in order to plan effective service delivery procedures. The progress of the work shall be monitored through such means as will ensure that full legal and professional responsibility can be accepted by the supervisor for all services rendered. Supervisors shall also be available for emergency consultation and intervention.

3. Provide work assignments that shall be commensurate with the skills of the supervisee. All procedures shall be planned in consultation with the supervisor.

4. Work in the same physical setting as the supervisee, unless other individual arrangements are approved by the board of psychology examiners.

5. Make public announcement of services and fees; contact with laypersons or the professional community shall be offered only by or in the name of the supervising psychologist. Titles of unlicensed persons must clearly indicate their supervised status.

6. Provide specific information to clients when an unlicensed person delivers services to those clients, including disclosure of the unlicensed person's status and information regarding the person's qualifications and functions.

7. Inform clients of the possibility of periodic meetings with the supervising psychologist at the client's, the supervisee's, or the supervisor's request.

8. Provide for setting and receipt of payment that shall remain the sole domain of the employing agency or supervising psychologist.

9. Establish and maintain a level of supervisory contact consistent with established professional standards, and be fully accountable in the event that professional, ethical or legal issues are raised.

10. Provide a detailed job description in which functions are designated at varying levels of difficulty, requiring increasing levels of training, skill and experience. This job description shall be made available to representatives of the board and service recipients upon request.

11. Be responsible for the planning, course, and outcome of the work. The conduct of supervision shall ensure the professional, ethical, and legal protection of the client and of the unlicensed persons.

12. Maintain an ongoing record of supervision which details the types of activities in which the unlicensed person is engaged, the level of competence in each, and the type and outcome of all procedures.

13. Countersign all written reports and communications as "Reviewed and Approved" by the supervising psychologist.

645—240.9(154B) Licensure by endorsement. An applicant who has been a licensed psychologist under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;
2. Pays the licensure fee;
3. Shows evidence of licensure requirements that are similar to those required in Iowa;
4. Provides official copies of academic transcripts and the EPPP score to the board;
5. Supplies satisfactory evidence of the candidate's qualifications in writing on the prescribed forms by the candidate's supervisors. If verification of professional experience is not available, the board may consider submission of documentation from the state in which the applicant is currently licensed or equivalent documentation of supervision;
6. Takes the oral examination required by the board; and
7. Provides verification of licenses from other states that have been sent directly from those states to the board office.

645—240.10(147) Licensure by reciprocal agreement. The board may enter into a reciprocal agreement with the District of Columbia or any state, territory, province or foreign country with equal or similar requirements for licensure in psychology. The applicant shall take the oral examination for the state of Iowa as administered by the board.

645—240.11(147) License renewal.

240.11(1) The biennial license renewal period for a license to practice psychology shall begin on July 1 of even-numbered years and end on June 30 of the next even-numbered year. All licensees shall renew on a biennial basis.

240.11(2) A renewal of license application and continuing education report form to practice psychology 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 fee(s) on or before the renewal date.

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

b. Individuals who were issued their initial licenses within six months of the license renewal date will not be required to renew their licenses 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 psychology shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

240.11(3) Late renewal. If the renewal fee(s), 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.

240.11(4) When all requirements for license renewal are met, the licensee shall be sent a license renewal card by regular mail.

645—240.12(272C) Exemptions for inactive practitioners.

240.12(1) A licensee who is not engaged in practice in 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 good standing in order to apply for exempt, inactive status, and must apply prior to the license expiration date.

240.12(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—241.9(272C).

240.12(3) Licensees whose licenses are reinstated within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

240.12(4) 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 bienniums |
|--|---|---|---|---|
| Submits written application for reinstatement to the board | Required | Required | Required | Required |
| Pays renewal fee(s) | \$140 | \$280 | \$420 | \$560 |
| Pays the reinstatement fee | \$50 | \$50 | \$50 | \$50 |
| Furnish evidence of full-time practice in another state of the U.S. or the District of Columbia and completion of continuing education | Current valid license and at least 40 hours of continuing education | Current valid license and at least 80 hours of continuing education | Current valid license and at least 80 hours of continuing education | Current valid license and at least 80 hours of continuing education |
| OR | | | | |
| Furnishes evidence of completion of approved continuing education. Continuing education hours must be completed within the two most recent bienniums prior to the date of application for reinstatement. | 40 hours | 80 hours | 80 hours | 80 hours |
| Total fees and continuing education hours required for reinstatement: | \$190 and 40 hours | \$330 and 80 hours | \$470 and 80 hours | \$610 and 80 hours |

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645—240.13(272C) Lapsed licenses.

240.13(1) If the renewal fee(s) and continuing education report are received more than 30 days after the license expiration date, the license shall be considered lapsed. An application for reinstatement must be filed with the board accompanied by the reinstatement fee, the renewal fee(s) 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.

240.13(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 psychology. Practicing without a license may be cause for disciplinary action.

240.13(3) In order to reinstate a lapsed license, licensees shall comply with all requirements for reinstatement of a lapsed license as outlined in 645—241.5(272C).

240.13(4) After reinstatement of the lapsed license, the licensee shall renew at the next scheduled renewal cycle.

240.13(5) 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 bienniums |
|---|--|--------------------|--------------------|--------------------|
| Submits written application for reinstatement and statement of competence to the board | Required | Required | Required | Required |
| Pays renewal fee(s) | \$140 | \$280 | \$420 | \$560 |
| Pays late fee | \$50 | \$50 | \$50 | \$50 |
| Pays the reinstatement fee | \$50 | \$50 | \$50 | \$50 |
| Provides evidence of satisfactory completion of continuing education requirements during the period since the license lapsed | 40 hours | 80 hours | 80 hours | 80 hours |
| Total fees and continuing education hours required for reinstatement: | \$240 and 40 hours | \$380 and 80 hours | \$520 and 80 hours | \$660 and 80 hours |

645—240.14(17A,147,272C) License denial.

240.14(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.

240.14(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 chapters 17A and 272C.

These rules are intended to implement Iowa Code chapters 17A, 147, and 272C.

ITEM 3. Amend subrule 241.2(1) as follows:

241.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of even-numbered years and ending on June 30 of even-numbered years. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 40 hours of continuing education approved by the board. For the 2001 2002 renewal cycle only, 50 hours of continuing education will be due by June 30, 2002. Continuing education credit earned from December 31, 2000 2001, through June 30, 2001 2002, may be used for either the 2001 2002 renewal cycle or the following biennium. The licensee may use the earned continuing education credit hours only once. Credit may not be duplicated for both compliance periods. This applies for the renewal biennium of 2001 2002 and for the following renewal biennium. Continuing education hours will return to 40 hours each biennium at the end of this prorated compliance period.

ITEM 4. Amend rule 241.5(272C), numbered paragraph "3," as follows:

3. Pays all the ~~penalty late fees fee~~ which have been assessed by the board for failure to renew;

ITEM 5. Adopt **new** 645—Chapter 242 as follows:

**CHAPTER 242
DISCIPLINE FOR PSYCHOLOGISTS**

645—242.1(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 645—13.1(272C), including civil penalties in an amount not to exceed \$1,000, when the board determines that a licensee is guilty of any of the following acts or offenses:

242.1(1) All grounds listed in Iowa Code section 147.55 which are:

- a. Fraud in procuring a license.
- b. Professional incompetency.
- c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession, or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
- d. Habitual intoxication or addiction to the use of drugs.
- e. Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect that licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
- f. Fraud in representations as to skill or ability.
- g. Use of untruthful or improbable statements in advertisements.
- h. Willful or repeated violations of the provisions of Iowa Code chapter 147.

242.1(2) Violation of the rules promulgated by the board.

242.1(3) Personal disqualifications:

- a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

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b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

242.1(4) Practicing the profession while the license is suspended.

242.1(5) Revocation, suspension, or other disciplinary action taken by a licensing authority of the District of Columbia or another state, territory, or country; or failure by the licensee to report in writing to the Iowa board of psychology examiners the revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.

242.1(6) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

242.1(7) Prohibited acts consisting of the following:

a. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

b. Permitting another person to use the licensee's license for any purpose.

c. Practice outside the scope of a license.

d. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.

e. Verbally or physically abusing clients.

f. Any sexual intimidation or sexual relationship between a psychologist and a client.

242.1(8) Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying clients' records.

242.1(9) Failure to report a change of name or address within 30 days after it occurs.

242.1(10) Submission of a false report of continuing education or failure to submit the annual report of continuing education.

242.1(11) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

242.1(12) Failure to comply with a subpoena issued by the board.

242.1(13) Failure to report to the board as provided in 645—Chapter 13 any violation by another licensee of the reasons for disciplinary action as listed in this rule.

242.1(14) Failure to comply with the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association, as published in the December 1992 edition of American Psychologist, effective December 1, 1992, which are hereby adopted by reference. Later amendments or editions of the Ethical Principles of Psychologists and the Code of Conduct are not included in this rule. Copies of the Ethical Principles of Psychologists and the Code of Conduct may be obtained by contacting the Director, Office of Ethics, American Psychological Association, 750 First Street N.E., Washington, D.C. 20002-4242.

This rule is intended to implement Iowa Code sections 147.76, 147.55(3), 272C.4 and 272C.10.

ITEM 6. Adopt **new** 645—Chapter 243 as follows:

CHAPTER 243
FEES

645—243.1(147,154B) License fees. All fees are nonrefundable.

243.1(1) Licensure fee for license to practice psychology, licensure by endorsement, or licensure by reciprocity is \$100.

243.1(2) Biennial license renewal fee is \$140 for each biennium.

243.1(3) Late fee for failure to renew before expiration is \$50.

243.1(4) Reinstatement fee for a lapsed license or an inactive license is \$50.

243.1(5) Duplicate license fee is \$10.

243.1(6) Verification of license fee is \$10.

243.1(7) Returned check fee is \$15.

243.1(8) Disciplinary hearing fee is a minimum of \$75.

243.1(9) Processing fee for exemption to licensure is \$50.

243.1(10) The fee for the Examination for Professional Practice in Psychology is \$450.

243.1(11) Certification fee for a health service provider is \$50.

243.1(12) Biennial renewal fee for certification as a certified health service provider in psychology is \$50.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 154B and 272C.

ARC 0535B

SECRETARY OF STATE[721]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 554D.120(3), the Office of the Secretary of State and the Information Technology Department, in consultation with the Office of the Attorney General and the Department of General Services, have formed a task force comprised of representatives from each of the named entities to develop enterprise-wide uniform rules for the acceptance of electronic records and electronic signatures in accordance with the statute.

Iowa Code chapter 554D, the Uniform Electronic Transaction Act, became effective on July 1, 2000. The Act was passed to facilitate written communications by electronic means, promote electronic commerce by eliminating barriers to the use of electronic records and signatures, promote the legal and business infrastructure necessary to implement secure electronic commerce, facilitate electronic filings with state and local governmental entities and promote efficient delivery of government services by use of electronic records. See Iowa Code section 554D.102.

In addition, Iowa Code section 554D.120(2) generally mandates that state executive branch agencies be ready to send and accept electronic records and otherwise create, store, communicate, process and use electronic records and signatures by July 1, 2003.

Prior to proposing specific rules that will provide a uniform framework for state executive branch agencies to accept, send and use electronic records and signatures, the task force has determined that it would be beneficial to solicit and receive input from the public, regulated entities, state agen-

SECRETARY OF STATE[721](cont'd)

cies and instrumentalities, political subdivisions, and other interested persons on various topics related to the acceptance of electronic records and electronic signatures as well as other related matters.

The task force hereby solicits comments on the following topics:

- Scope and application of the rules.
- Sending and receiving electronic records.
- Errors in transmission of electronic records.
- Electronic signatures and electronic notaries.
- Security procedures to be applied to the sending and receiving of electronic records and electronic signatures.
- Storage and retrieval of electronic records.
- Methods to insure government's ability to audit electronic records kept and maintained by regulated entities.

Rules drafted or adopted pursuant to Iowa Code section 554D.120 will relate only to transactions between governmental entities and private persons or private entities. The rules will not govern or affect the ability of private parties to a transaction to contract for other or different means or methods of accepting electronic records.

Persons and entities who wish to comment on the proposed rule-making topics may do so by sending written or electronic comments to Rob Berntsen, Secretary of State's Office, Hoover State Office Building, 2nd Floor, Des Moines, Iowa 50319; E-mail: rberntsen@sos.state.ia.us; telefax (515)242-5253. Comments concerning the proposed rules will be accepted until 4:30 p.m. on April 20, 2001.

ARC 0518B**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 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR), Parts 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

Commercial vehicles transporting goods in interstate commerce are subject to the Federal Motor Carrier Safety Regulations on the effective dates specified in the Federal Register. Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the Federal Hazardous Materials Regulations on the effective dates specified in the Federal Register. The adoption of the federal regulations by the Department will extend the enforcement of the regula-

tions to commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the Federal Register to allow a period for public comment, and, after adoption, the final regulations are again published in the Federal Register. Each year a revised edition of 49 CFR is published incorporating all of the final regulations adopted during the year. Although revised editions of 49 CFR are usually dated October or November, the publication is not actually available in Iowa for several months after that date.

The amendments to the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations that have become final and effective since the 1999 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

Amendments to the Federal Motor Carrier Safety
Regulations and Federal Hazardous Materials Regulations

Parts 171 and 172 (FR Volume 64, No. 217, Page 61219, 11-10-99)

This final rule amends the hazardous materials regulations to correct editorial errors, improve clarity and make minor regulatory changes.

Part 107 (FR Volume 65, No. 30, Page 7297, 02-14-00)

This final rule amends the statutorily mandated registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. It expands the criteria for persons required to register to include materials that require placarding (except those activities of farmers directly in support of farming operations).

Part 172 (FR Volume 65, No. 30, Page 7310, 02-14-00)

This final rule amends the hazardous materials regulations by revising the "List of Hazardous Substances and Reportable Quantities" that appears in Appendix A, "Hazardous Substances other than Radionuclides," to the hazardous materials table. These changes allow shippers and carriers to comply with all applicable hazardous materials regulations.

Part 391 (FR Volume 65, No. 84, Page 25285, 5-1-00)

This final rule makes technical amendments to the Federal Motor Carrier Regulations concerning qualifications of drivers who have loss or impairment of limbs by changing the designated official who authorizes and signs the skill performance evaluation certificate for such drivers, and removes the reference to "waiver."

Part 390 (FR Volume 65, No. 107, Page 35287, 6-2-00)

This final rule revises the marking requirements for commercial motor vehicles. This rule eliminates the marking regulations of the former Interstate Commerce Commission, and requires motor carriers to apply markings that conform to the new requirements. It requires that commercial motor vehicles be marked with the legal name of the business entity that owns or controls the motor carrier operation, or the "doing business as" name. The motor carriers will be allowed two years to comply with the requirements to affix the U.S. DOT number to both sides of their commercial motor vehicles and five years to comply with the additional requirements to display the legal name or a single trade name on the commercial motor vehicles currently in their fleet.

Parts 107, 171, 172, 173, 177, 178 and 180 (FR Volume 65, No. 161, Page 50450, 8-18-00)

This final rule amends the hazardous materials regulations to update, clarify and improve regulatory requirements and provide relief from certain requirements where feasible.

TRANSPORTATION DEPARTMENT[761](cont'd)

Parts 107, 171, 172, 173, 174, 176, 177, 178, 179 and 180 (FR Volume 65, No. 190, Page 58614, 9-29-00)

This final rule corrects editorial errors, makes minor regulatory changes and improves the clarity of certain hazardous materials regulations.

The other amendments to this chapter are due to the following:

- In Item 1, an Internet address was added as a source for reviewing a copy of the regulations.
- In Item 2, an applicability statement was added concerning hazardous materials regulations. Also, a new paragraph was added to comply with Iowa Code section 321.449 [2000 Iowa Acts, chapter 1134, section 3] which requires the Department to adopt rules concerning the hours of service for drivers of vehicles operating for hire and designed to transport more than eight persons, including the driver.
 - In Items 3, 4 and 6, the word "Supplement" was removed since the 2001 Iowa Code is available.
 - In Item 5, subrule 520.6(1) was amended to clarify the requirement to complete repairs on out-of-service vehicles. Also, subrule 520.6(2) was rescinded due to changes in Iowa Code section 321.208A. This subrule is duplicative and no longer necessary.

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways. Granting additional exceptions for drivers and the motor carrier industry in Iowa would adversely impact the safety of the traveling public in Iowa.

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 amendment, 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 March 27, 2001.

A meeting to hear requested oral presentations is scheduled for March 29, 2001, at 10 a.m. in the DOT Conference Room at Park Fair Mall, 100 Euclid Avenue, Des Moines.

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

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be received by the Director's Staff Division at the address listed in this Notice no later than 32 days after publication of this Notice in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

ITEM 1. Amend subrule **520.1(1)**, paragraphs "a," "b" and "d," as follows:

- a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 390-399 (October 1, ~~1999~~ 2000).

- b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~1999~~ 2000).

- d. Copies of regulations. Copies of the federal regulations may be reviewed at the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

ITEM 2. Amend subrule 520.1(2) as follows:

520.1(2) Carriers subject to regulations.

- a. Operators of commercial vehicles, as defined in Iowa Code section 321.1, are subject to the ~~federal regulations~~ *Federal Motor Carrier Safety Regulations* adopted in this rule unless exempted under Iowa Code section 321.449 or 321.450.

- b. ~~Rescinded IAB 9/16/92, effective 10/21/92~~ *Operators of vehicles transporting hazardous materials in commerce are subject to the Federal Hazardous Materials Regulations adopted in this rule unless exempted under Iowa Code section 321.450.*

- c. *Operators of vehicles for hire, designed to transport more than 8 persons, but fewer than 16, including the driver, must comply with 49 CFR Part 395 of the Federal Motor Carrier Safety Regulations. However, the provisions of 49 CFR Part 395 shall not apply to vehicles offered to the public for hire that are used principally in intracity operation and are regulated by local authorities.*

ITEM 3. Amend rule **761—520.2(321)** by amending the following definitions:

"Any requirements which impose any restrictions upon a person" as used in Iowa Code ~~Supplement~~ section 321.449(6) means the requirements in 49 CFR Parts 391 and 395.

"Driver age qualifications" as used in Iowa Code ~~Supplement~~ section 321.449(3) means the age qualifications in 49 CFR 391.11(b)(1).

"Driver qualifications" as used in Iowa Code ~~Supplement~~ section 321.449(2) means the driver qualifications in 49 CFR Part 391.

"Hours of service" as used in Iowa Code ~~Supplement~~ section 321.449(2) means the hours of service requirements in 49 CFR Part 395.

"Record-keeping requirements" as used in Iowa Code ~~Supplement~~ section 321.449(2) means the record-keeping requirements in 49 CFR Part 395.

"Rules adopted under this section concerning physical and medical qualifications" as used in Iowa Code ~~Supplement~~ section 321.449(5) and Iowa Code section 321.450, unnumbered paragraph 2, means the regulations in 49 CFR 391.11(b)(6) and 49 CFR Part 391, Subpart E.

"Rules adopted under this section for a driver of a commercial vehicle" as used in Iowa Code ~~Supplement~~ section 321.449 means the regulations in 49 CFR Parts 391 and 395.

ITEM 4. Amend subrule 520.4(1) as follows:

- 520.4(1)** Pursuant to Iowa Code section 321.450, unnumbered paragraph 3, "retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products and pesticides to farm customers within a 100-air-mile radius of their retail place of business" are exempt from 49 CFR 177.804; and, pursuant to Iowa Code ~~Supplement~~ section 321.449(4), they are exempt from 49 CFR Parts 391 and 395. However, pursuant to Iowa Code section 321.449, the retail dealers and their employees under the specified conditions are subject to the regulations in 49 CFR Parts 390, 392, 393, 396 and 397.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 5. Amend rule 761—520.6(307,321) as follows:

761—520.6(307,321) Out-of-service order.

520.6(1) A person shall not operate a commercial vehicle or transport hazardous material in violation of an out-of-service order issued by an Iowa peace officer. An out-of-service order for noncompliance shall be issued when either the vehicle operator is not qualified to operate the vehicle or the vehicle is unsafe to be operated until necessary required repairs are made. The out-of-service order shall be consistent with the North American Uniform Out-of-Service Criteria issued by the Federal Motor Carrier Safety Administration.

~~**520.6(2)** Notwithstanding Iowa Code sections 321.449 and 321.450, an operator of a commercial motor vehicle for which a commercial driver's license is required shall be subject to the 24-hour out-of-service provisions of Iowa Code section 321.208A.~~

This rule is intended to implement Iowa Code sections 307.12, 321.3, 321.208A, 321.449, and 321.450.

ITEM 6. Amend rule 761—520.7(321), introductory paragraph, as follows:

761—520.7(321) Driver's statement. A "driver" as used in Iowa Code Supplement section 321.449(5) and Iowa Code section 321.450, unnumbered paragraph 2, shall carry at all times a notarized statement of employment. The statement shall include the following:

NOTICE—USURY

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

| | |
|--|-------|
| February 1, 2000 — February 29, 2000 | 8.25% |
| March 1, 2000 — March 31, 2000 | 8.75% |
| April 1, 2000 — April 30, 2000 | 8.50% |
| May 1, 2000 — May 31, 2000 | 8.25% |
| June 1, 2000 — June 30, 2000 | 8.00% |
| July 1, 2000 — July 31, 2000 | 8.50% |
| August 1, 2000 — August 31, 2000 | 8.00% |
| September 1, 2000 — September 30, 2000 | 8.00% |
| October 1, 2000 — October 31, 2000 | 7.75% |
| November 1, 2000 — November 30, 2000 | 7.75% |
| December 1, 2000 — December 31, 2000 | 7.75% |
| January 1, 2001 — January 31, 2001 | 7.75% |
| February 1, 2001 — February 28, 2001 | 8.00% |
| March 1, 2001 — March 31, 2001 | 7.25% |

ARC 0530B

**VETERANS AFFAIRS
COMMISSION[801]**

**Notice of Termination
and
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 35A.3(2), the Commission of Veterans Affairs hereby gives Notice of Intended Action to amend Chapter 4, "Agency Procedure for Rule Making," Iowa Administrative Code.

The Commission terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on March 8, 2000, as **ARC 9706A**. The Commission has decided that the proposed rules should not be adopted and that a new rule making on the same subject should be initiated.

The intent of the proposed amendment is to incorporate into agency procedure for rule making the Uniform Waiver Rule outlined in Executive Order Number 11 and printed in the Iowa Administrative Bulletin to increase the flexibility of administrative rule enforcement as applied to compelling individual cases.

Any interested person may make written suggestions or comments on the proposed amendment on or before March 27, 2001. Such written materials should be directed to Jack J. Dack, Commandant, Iowa Veterans Home, 1301 Summit, Marshalltown, Iowa 50158-5485, or faxed to (641) 753-4278. E-mail may be sent to jdack@dhs.state.ia.us. Persons who wish to convey their views orally should contact the Commandant's office at (641)753-4309 at the Iowa Veterans Home.

If requested in writing, a public hearing on the proposed amendment will be held on March 27, 2001, at 1 p.m. in Ford Memorial Conference Room at the Iowa Veterans Home 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. Any persons who intend to attend the public hearing and have special requirements, such as hearing or mobility impairments, should contact the Iowa Veterans Home to advise of specific needs. If no written or oral requests for a public hearing are received, the public hearing will be canceled without further notice.

This amendment is intended to implement Iowa Code chapters 17A and 35D and Executive Order Number 11.

The following amendment is proposed.

Amend 801—Chapter 4 by adopting **new** rules 801—4.14(35D) and 801—4.15(35D) as follows:

801—4.14(35D) Uniform waiver rule.

4.14(1) To the extent a waiver or variance is consistent with applicable statute, constitutional provision, or other provision of law, the commission of veterans affairs may issue an order, in response to the timely filing of a completed petition or on its own motion, granting a waiver or variance, in whole or in part, from the requirements of a rule under the jurisdiction of said commission, as applied to the circumstances of a specified person, if the commission finds clear and convincing evidence of all of the following:

- a. The application of the rule to the person at issue would result in undue hardship to that person; and
- b. The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law; and
- c. The waiver of the rule in the specific case would not prejudice the substantial legal rights of any person; and
- d. Substantially equal protection of public health, safety and welfare will be afforded by a means other than that prescribed in the rule for which the waiver or variance is requested.

The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the chairperson of the commission of veterans affairs

VETERANS AFFAIRS COMMISSION[801](cont'd)

based on the unique, individual circumstances set out in the petition and upon consideration of all relevant factors.

4.14(2) A waiver or variance, if granted, shall be drafted by the commission so as to provide the narrowest exception possible to the provisions of the rule. The commission may place any condition on a waiver or variance that the commission finds desirable to protect the public health, safety and welfare. A waiver or variance shall not be permanent, unless the petitioner can show that a temporary waiver or variance would be impracticable. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the agency, a waiver or variance may be renewed if the agency finds that all of the factors set out in sub-rule 4.14(1) remain valid.

4.14(3) The burden of persuasion rests with the person who petitions the commission for the waiver or variance of a rule.

4.14(4) This uniform waiver rule shall not preclude the commission from granting waivers or variances in other contexts or on the basis of other standards if the statute or other rules authorize it to do so and the commission deems it appropriate to do so.

801—4.15(35D) Procedures for granting waivers.

4.15(1) Any person may file a petition with the commission of veterans affairs requesting a waiver or variance, in whole or in part, of a commission rule on the grounds that the application of the rule to the particular circumstances of that person justifies a waiver under this uniform waiver rule. The commission chairperson shall receive written petitions.

4.15(2) A petition for a waiver or variance shall include the following information where applicable and known to the person requesting the waiver or variance:

a. The name, address, and case number or state identification number of the entity or person for whom a waiver or variance is requested.

b. A description and citation of the specific rule from which a waiver or variance is requested.

c. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

d. The relevant facts that the petitioner believes would justify a waiver or variance. 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 or variance.

e. A history of the commission's action relative to the petitioner.

f. Any information regarding the commission's treatment of similar cases, if known.

g. The name, address, and telephone number of any person inside or outside state government who would be adversely affected by the granting of the petition or who otherwise possesses knowledge of the matter with respect to the waiver or variance request.

h. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information pertaining to the waiver or variance.

4.15(3) The procedural guidelines stated under the Iowa Administrative Procedure Act, Iowa Code chapter 17A, shall govern the form, filing, timing and contents of petitions

for the waivers of rules and the procedural rights of persons in relation to such petitions.

4.15(4) The commission shall acknowledge a petition upon receipt. The petitioner shall serve notice on all persons to whom notice is required by any provision of law and provide a written statement to the commission attesting that notice has been served.

4.15(5) Prior to issuing an order granting or denying a waiver or variance request, the commission may request additional information from the petitioner relative to the application and surrounding circumstances.

4.15(6) An order granting or denying a request for waiver or variance shall be in writing and 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 that action is based, and a description of the precise scope and operative period of the waiver or variance if one is issued. The commission shall grant or deny a petition for the waiver or variance of all or a portion of a rule 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 waiver petition has been filed in a contested case proceeding, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the commission to grant or deny such a petition within the required time period shall be deemed a denial of that petition by the commission.

4.15(7) Within seven days of its issuance, any order issued under the uniform waiver rule 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.

4.15(8) Subject to the provisions of Iowa Code section 17A.3(1)"e," the commission shall maintain a record of all orders granting and denying requests for waivers or variances under this uniform waiver rule. The records shall be indexed by rule and available for public inspection.

4.15(9) Semiannually, the commission shall prepare a report identifying the rules for which a waiver or variance has been granted or denied, the number of times a waiver or variance was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, a general summary of the reasons justifying the commission's actions on the waiver or variance request and, to the extent practicable, detailing the extent to which the granting of a waiver or variance has affected the general applicability of the rule itself and established a precedent for additional waivers or variances. Copies of this report shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

4.15(10) The provisions of rules 4.14(35D) and 4.15(35D) shall not apply to rules that define the meaning of a statute or other provisions of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition and do not authorize the commission to waive any requirement created or duty imposed by statute.

4.15(11) After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is invoked.

ARC 0519B

CORRECTIONS DEPARTMENT[201]

Adopted and Filed

Pursuant to the authority of Iowa Code section 692A.13A, the Department of Corrections adopts amendments to Chapter 38, "Sex Offender Management and Treatment," Iowa Administrative Code.

These amendments provide for the risk assessment and appeal process for offenders within 45 days of release from custody or upon placement on probation, parole, or work release.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0339B** on December 13, 2000.

A public hearing was held on January 2, 2001. One person attended the hearing, and no other written or oral comments were received.

The following changes from the Notice have been made. In subrule 38.3(1), the words "but not limited to" were omitted in reference to documents that will be reviewed. Paragraph 38.3(3)"a" was revised to clarify that risk assessments for an offender being released from an institution should be forwarded to the Division of Criminal Investigation within 45 days prior to the offender's release.

The Department of Corrections Board adopted these amendments on January 18, 2001.

These amendments will become effective on April 11, 2001.

These amendments are intended to implement Iowa Code section 692A.13A.

The following amendments are adopted.

ITEM 1. Amend rule **201—38.2(692A,903B)** by adopting the following **new** definitions in alphabetical order:

"Aggravated offense" means a conviction for any of the following offenses:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
3. Sexual abuse in the third degree in violation of Iowa Code section 709.4, subsection 1.
4. Lascivious acts with a child in violation of Iowa Code section 709.8, subsection 1.
5. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
6. Burglary in the first degree in violation of Iowa Code section 713.3, subsection 1, paragraph "d."
7. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
8. Murder, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.

"Criminal offense against a minor" means any of the following criminal offenses or conduct:

1. Kidnapping of a minor, except for the kidnapping of a minor in the third degree committed by a parent.
2. False imprisonment of a minor, except if committed by a parent.
3. Any indictable offense involving sexual conduct directed toward a minor.
4. Solicitation of a minor to engage in an illegal sex act.
5. Use of a minor in a sexual performance.
6. Solicitation of a minor to practice prostitution.
7. Any indictable offense against a minor involving sexual contact with the minor.

8. An attempt to commit an offense enumerated in this rule.

9. Incest committed against a minor.

10. Dissemination and exhibition of obscene material to minors in violation of Iowa Code section 728.2.

11. Admitting minors to premises where obscene material is exhibited in violation of Iowa Code section 728.3.

12. Stalking in violation of Iowa Code section 708.11, subsection 3, paragraph "b," subparagraph (3), if the factfinder determines by clear and convincing evidence that the offense was sexually motivated.

13. Sexual exploitation of a minor in violation of Iowa Code section 728.12, subsection 2 or 3.

14. An indictable offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs "1" through "13" of this definition.

"Offender" means a person who is required to register with the Iowa sex offender registry.

"Other relevant offense" means any of the following offenses:

1. Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.
2. Rental or sale of hard-core pornography in violation of Iowa Code section 728.4.
3. Indecent exposure in violation of Iowa Code section 709.9.
4. A criminal offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs "1" through "3" of this definition if committed in this state.

"Sexual exploitation" means sexual exploitation by a counselor or therapist under Iowa Code section 709.15.

"Sexually violent offense" means any of the following indictable offenses:

1. Sexual abuse as defined under Iowa Code section 709.1.
2. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
3. Sexual misconduct with offenders in violation of Iowa Code section 709.16.
4. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.
5. A criminal offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs "1" through "4" of this definition if committed in this state.

ITEM 2. Rescind rule 201—38.3(692A) and adopt the following **new** rule in lieu thereof:

201—38.3(692A) Sex offender risk assessment.

38.3(1) Risk assessment instrument. All required risk assessments shall be conducted utilizing the "Iowa Sex Offender Risk Assessment Instrument and Companion Guide" as approved by the department of corrections (DOC), division of criminal investigation of the department of public safety (DCI), and the department of human services. Upon request, these documents will be made available by the department of corrections. The risk assessment score will be determined following a review of the following documents which may include: presentence investigation report, court documents, clinical assessments, treatment records, polygraph reports, plethysmograph reports, employee records, school records, military records, and child protection services records of the department of human services. The risk

CORRECTIONS DEPARTMENT[201](cont'd)

assessment score is used to determine the level of risk for community notification purposes as follows:

a. The assessed individual is "low risk" to the community.

b. The assessed individual is "at risk" to the community.

38.3(2) Offenses requiring completion of risk assessment. The department of corrections, department of human services, and the division of criminal investigation of the department of public safety shall complete the risk assessment on all offenders under each agency's authority in accordance with the requirements of Iowa Code section 692A.13A.

A risk assessment shall be conducted on all offenders who have a conviction of a criminal offense against a minor, an aggravated offense, sexual exploitation, an other relevant offense, or a sexually violent offense in this state or in another state, or in a federal, military, tribal, or foreign court, or on a person required to register in another state under the state's sex offender registry. The risk assessment should be completed within 45 days prior to release from custody or upon placement on probation, parole, or work release.

38.3(3) Risk assessment completion procedures.

a. Institution risk assessments. Risk assessments should be conducted on offenders being released from the institution. These risk assessments should be forwarded to DCI within 45 days prior to the offender's release from the institution. Risk assessments conducted for any other purpose should not be forwarded to DCI.

b. Judicial district risk assessments. Judicial district departments should complete risk assessments on probation offenders within 45 days of receipt of the case and forward the assessments to DCI. Additional risk assessments conducted during the supervision period should not be forwarded to DCI unless the offender's risk level has changed. This also applies when the offender is discharged. When any offender is revoked or discharged, DCI should be notified that the offender is either incarcerated or no longer under supervision in the community.

c. Parole/work release risk assessments. Risk assessments should be conducted by the institution prior to the offender's release. Community supervision officers are not required to conduct reassessments unless they believe the risk level has changed. If the risk assessment is not included in the parole/work release packet, the officer should contact the institution for a copy. If, for some reason, a risk assessment was not completed prior to release, the risk assessment shall be completed by the supervising probation/parole officer in conjunction with institution staff.

38.3(4) Notification of right to appeal.

a. When a risk assessment has been completed, the department of corrections shall notify, or cause to be notified, the offender of the finding by providing to the offender copies of the risk assessment and the "Notice of Risk Assessment Findings" and "Appeal Form."

b. Judicial district department of correctional services shall notify the offender by personal service or certified mail of the risk assessment finding. The notification shall include the risk assessment and the "Notice of Risk Assessment Findings" and "Appeal Form." No additional notice is required.

Notice is deemed provided even if the offender refuses delivery or if mail is undeliverable because the offender has not complied with registry requirements to provide a current address. If the notice is returned to DOC as undeliverable, the assessment shall be forwarded to the DCI sex offender registry within 48 hours.

The notice shall contain the following information:

(1) A copy of the completed risk assessment.
 (2) The result of the risk assessment.
 (3) A description of the scope of affirmative public notification, which may result from the risk assessment.

(4) That unless a written appeal is received on or before the date mentioned in the notice, affirmative public notification may take place at any time thereafter while the person remains a registrant.

(5) That the offender may appeal the risk assessment decision by filing a written appeal and mailing or serving it on the department of corrections at an address prescribed on the notice, so that it is received on or by the date mentioned in the notice.

(6) That if appeal is made and received by the department by 4:30 p.m. on or by the date mentioned in the notice there will be no affirmative public notification until and unless the result of the risk assessment is affirmed or is modified through the appeal process.

(7) That the appeal shall be in writing, shall fully address each issue challenged, and shall be limited to the following issues:

1. Whether the risk assessment factors have been properly applied; or

2. Accuracy of the information relied upon to support the assessment findings; or

3. Errors in the procedure.

(8) That if the department does not receive a written appeal within the time guidelines set forth in this rule the department shall notify the division of criminal investigation of the results of the risk assessment by providing a copy of the risk assessment and "Notice of Risk Assessment Findings/Public Notification" to the division of criminal investigation.

38.3(5) Appeal process.

a. When the department receives a written appeal, the department shall refer the matter to a designated presiding officer. The department shall submit all written documents supporting the initial findings to the presiding officer with the written appeal. The presiding officer may review the appeal at any time within the 14 calendar days and at any location. The presiding officer shall issue a written response within 14 calendar days affirming, reversing, or modifying the result of the risk assessment. A copy of the response shall be promptly mailed to each party. The response itself shall remain confidential. Under Iowa Code chapter 17A, neither the risk assessment nor the appeal process is a contested case and does not require a personal hearing. The presiding officer's decision shall constitute final agency action.

b. The department shall have the burden of proof by a preponderance of the evidence to support the result of the risk assessment.

c. Upon disposition of the appeal, all information including the risk assessment, "Notice of Risk Assessment Findings/Public Notification" and appeal information, and any other documentation shall be forwarded within seven calendar days to the department of public safety sex offender registry program.

38.3(6) Public notification. Affirmative public notification procedures are published in department of public safety rules, 661—Chapter 8.

38.3(7) Training requirements. All agency personnel conducting sex offender risk assessments shall complete the training program as developed and provided cooperatively by the responsible agencies.

38.3(8) Reporting requirements. Assessment completion and notification of results to the department of public safety sex offender registry program shall be completed within 45

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days of anticipated release or supervision placement as follows:

- a. Submission of completed original "Iowa Sex Offender Risk Assessment."
- b. Form F-1 (Notification of Sex Offender Risk Assessment Findings/Public Notification).
- c. Forms F-2 and F-3 if applicable (Appeal and Appeal Response forms).
- d. Pertinent assessment/appeal findings documentation.
- e. Forward to:
 - Iowa Division of Criminal Investigation
 - Attn: Iowa Sex Offender Registry
 - Wallace State Office Building
 - Des Moines, Iowa 50319
 - (515)281-4976 or fax (515)281-4898

38.3(9) Records maintenance.

a. Original sex offender registration and risk assessment documents shall be sent to the department of public safety sex offender registry program.

b. Copies of the sex offender registration and risk assessment documents shall be permanently maintained in the offender master file maintained by the responsible agency.

38.3(10) Additional rules. Department of public safety rules regarding the Iowa sex offender registry are published in Division III of 661—Chapter 8.

[Filed 2/12/01, effective 4/11/01]
[Published 3/7/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/7/01.

ARC 0522B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends 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.

The Council on Human Services adopted these amendments February 14, 2001. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on November 29, 2000, as **ARC 0310B**.

These 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. However, if a provider receives a payment for child care assistance in excess of the amount approved by the Department and fails to report it, that failure shall be considered a provider error subject to recoupment.

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 nonexempt state payments to the client or provider, including 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(17A,217).

Eight public hearings were held around the state. Only one person attended. The following revisions were made to the Notice of Intended Action in response to comments from the public and from the Administrative Rules Review Committee.

The definition of "agency error" in rule 441—170.1(234) was deleted as the term is not used in the rules. The definition of "client error" in rule 441—170.1(234) was revised in response to public comments by deleting the word "may" in numbered paragraphs "1" and "2" and by changing the wording of numbered paragraph "3" for clarity. The definition of "provider" in rule 441—170.1(234) was not adopted as the term is already defined in current rules. The definition of "provider error" in rule 441—170.1(234) was revised in response to comments from the Administrative Rules Review Committee to include as a provider error subject to recoupment failure of the provider to report the receipt of child care assistance payments in excess of that approved by the Department.

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

These amendments shall become effective May 1, 2001. The following amendments are adopted.

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

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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:

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:

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

"Client error" means and may result from:

1. False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances which affect eligibility or the amount of assistance received;

2. Failure to timely report changes in income, resources, or other circumstances which affect eligibility or the amount of assistance received;

3. Failure to timely report the receipt of child care units in excess of the number approved by the department;

4. 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 error" means and may result from:

1. Presentation for payment of any false or fraudulent claim for services or merchandise;

2. Submittal of false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled;

3. Failure to report the receipt of a child care assistance payment in excess of that approved by the department;

4. 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

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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.

[Filed 12/14/01, effective 5/1/01]

[Published 3/7/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/7/01.

ARC 0523B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 217.6 and 249A.4 and 2000 Iowa Acts, chapter 1228, section 13, subsection 1, and section 44, the Department of Human Services hereby amends Chapter 51, "Eligibility," Chapter 52, "Payment," and Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

These amendments implement the annual adjustment in the maximum amount of resources to be attributed to the community spouse and the amount used for determining the community spouse's maintenance needs and the following changes to the State Supplementary Assistance Program:

- Pass along the January 1, 2001, Supplemental Security Income (SSI) cost-of-living adjustment increases.

The Department received confirmation from the Department of Health and Human Services (DHHS) that the social security cost-of-living increase which became effective January 1, 2001, is established at 3.5 percent. The Department has decided to pass along this increase to recipients of State Supplementary Assistance. Therefore, the SSI increase of \$18 for an individual results in an increase in the total allowance in a family life home from \$594.20 to \$612.20. Individuals in family life homes will receive the same personal needs allowance as residents in residential care facilities. The benefit rate for an essential person increased by \$9 from \$257 to \$266 resulting in the same increase for a dependent person.

- Increase the personal needs allowance for residents of residential care facilities. The Seventy-eighth General As-

sembly in 2000 Iowa Acts, chapter 1228, section 13, subsection 1, required the Department to increase the personal needs allowance for residents of residential care facilities (RCFs) by the same percentage and at the same time as federal Supplemental Security Income and federal social security benefits are increased due to a recognized increase in the cost of living. At present, residents of RCFs receive a total personal needs allowance of \$73, of which \$66.80 is for personal expenses and \$5.48 is for Medicaid copayment expenses. A 3.5 percent increase in the personal expenses part of the allowance increases that part of the allowance to \$69.14. This amount added to the average copayment expense of \$5.90 totals \$75.04. Thus, the personal needs allowance is rounded to \$75 effective January 1, 2001.

The maximum amount of resources to be attributed to a community spouse and the maintenance needs of a community spouse are indexed annually by the consumer price index. The Department has received confirmation from DHHS that the maximum amount of resources to be attributed to the community spouse has increased from \$84,120 to \$87,000 and the maintenance needs of the community spouse have increased from \$2,103 to \$2,175.

These amendments were previously Adopted and Filed Emergency and published in the January 10, 2001, Iowa Administrative Bulletin as **ARC 0374B**. Notice of Intended Action to solicit comments on that submission was published in the January 10, 2001, Iowa Administrative Bulletin as **ARC 0373B**.

These amendments are identical to those published under Notice of Intended Action.

The amendments dealing with the cost-of-living increases do not provide for any waivers in specified situations because the amendments confer a benefit on those affected and were mandated by the General Assembly for all. There is no provision to provide a waiver of the attribution amounts as everyone should be subject to the same amounts set by these amendments. Individuals may request an exception of the attribution amounts under the Department's general rule on exceptions at rule 441—1.8(17A,217).

The Council on Human Services adopted these amendments February 14, 2001.

These amendments are intended to implement Iowa Code sections 249.3, 249.4, and 249A.4 and 2000 Iowa Acts, chapter 1228, section 13, subsection 1.

These amendments shall become effective May 1, 2001, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 51.4(1) as follows:

51.4(1) Income. Income of a dependent relative shall be less than ~~\$257~~ \$266. When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

ITEM 2. Amend rule 441—51.7(249) as follows:

441—51.7(249) Income from providing room and board. In determining profit from furnishing room and board or providing family life home care, ~~\$257~~ \$266 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

ITEM 3. Amend rule 441—52.1(249) as follows:

Amend subrules 52.1(1) and 52.1(2) as follows:

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52.1(1) Protective living arrangement. The following assistance standards have been established for state supplementary assistance for persons living in a protective living arrangement:

Family life home certified under rules in 441—Chapter 111.

| | | |
|----------------------------|----------------------------|--------------------|
| \$521.20 | \$537.20 | care allowance |
| 73.00 | 75.00 | personal allowance |
| <u>\$594.20</u> | <u>\$612.20</u> | Total |

52.1(2) Dependent relative. The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

- a. Aged or disabled client and a dependent relative \$769 \$796
- b. Aged or disabled client, eligible spouse, and a dependent relative . . \$1026 \$1062
- c. Blind client and a dependent relative \$791 \$818
- d. Blind client, aged or disabled spouse, and a dependent relative . . \$1048 \$1084
- e. Blind client, blind spouse, and a dependent relative \$1070 \$1106

Amend subrule 52.1(3), paragraph "a," subparagraph (2), as follows:

(2) Effective ~~January 1, 2000~~ January 1, 2001, a \$73 \$75 allowance to meet personal expenses and Medicaid copayment expenses.

ITEM 4. Amend subrule 75.5(3), paragraph "d," as follows:

d. Method of attribution. The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized and community spouse as of the first moment of the first day of the month of the spouse's first entry to a medical facility. However, if one-half of the resources is less than \$24,000, then \$24,000 shall be protected for the community spouse. Also, when one-half of the resources attributed to the community spouse exceeds ~~\$84,120~~ \$87,000, the amount over ~~\$84,120~~ \$87,000 shall be attributed to the institutionalized spouse. (The maximum limit shall be indexed annually by the consumer price index.)

If the institutionalized spouse has transferred resources to the community spouse under a court order for the support of the community spouse, the amount transferred shall be the amount attributed to the community spouse if it exceeds the specified limits above.

ITEM 5. Amend subrule 75.16(2), paragraph "d," subparagraph (3), as follows:

(3) Needs of spouse. The maintenance needs of the spouse shall be determined by subtracting the spouse's gross income from ~~\$2,103~~ \$2,175. (This amount shall be indexed for inflation annually according to the consumer price index.)

However, if either spouse established through the appeal process that the community spouse needs income above ~~\$2,103~~ \$2,175, due to exceptional circumstances resulting in significant financial duress, an amount adequate to provide additional income as is necessary shall be substituted.

Also, if a court has entered an order against an institutionalized spouse for monthly income to support the community spouse, then the community spouse income allowance shall not be less than this amount.

[Filed 2/14/01, effective 5/1/01]

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ARC 0524B

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," and Chapter 61, "Refugee Service Program," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments February 14, 2001. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on December 13, 2000, as ARC 0338B.

These amendments make the following revisions to the refugee cash assistance and service programs to correspond with revised federal regulations:

- The definition of "refugee" is modified to agree with the Immigration and Nationality Act.
- Policy governing available services is revised to clarify that all services provided to the refugee and family have self-sufficiency as the goal and to add assistance in obtaining Employment Authorization Documentation as an available service.
- Policy regarding limitations on eligibility is revised to provide that citizenship and naturalization services, in addition to referral and interpretation services, may be provided to the extent feasible past the first 60 months of resettlement in accordance with federal requirements.
- Policy governing application for services is revised to expand consumer access.

These amendments do not provide for waiver in specified situations because federal law governing refugees does not allow for any waivers.

The following revisions were made to the Notice of Intended Action following further review by staff:

In rule 441—61.7(217) the proposed substitution of the word "refugee" for "person" was not adopted. Referral and interpretation services are available to persons who are not refugees.

A new Item 6 was added amending subrule 61.8(1), paragraph "i," to agree with other changes made in this rule making.

These amendments are intended to implement Iowa Code section 217.6.

These amendments shall become effective May 1, 2001. The following amendments are adopted.

ITEM 1. Rescind subrule 60.1(1) and adopt the following new subrule in lieu thereof:

60.1(1) Immigration status. A refugee is a person whose immigration status is one of the following statuses as issued by the United States Immigration and Naturalization Service:

- a. Granted asylum under Section 208 of the Immigration and Nationality Act.
- b. Admitted as a refugee under Section 207 of the Act.
- c. Paroled as a refugee or asylee under Section 212(d)(5) of the Act.

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d. Cuban and Haitian entrants in accordance with requirements in 45 CFR Part 401, as amended to March 22, 2000.

e. Certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1988, as contained in Section 101(e) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Public Law 100-461).

f. Admitted for permanent residence, provided the individual previously held one of the statuses identified above.

ITEM 2. Amend rule 441—61.1(217), definition of “refugee,” as follows:

“Refugee” means a person whose immigration status is one of the following statuses as issued by the United States Immigration and Naturalization Service:

1. Granted asylum under Section 208 of the Immigration and Nationality Act.

~~2. Admitted as a conditional entrant under Section 203(a)(7) of the Act.~~

~~3. Admitted as a refugee under Section 207 of the Act.~~

~~4. Admitted with an immigration status that entitled the person to refugee assistance prior to enactment of the Refugee Act of 1980.~~

~~5. Admitted for permanent residence, provided the person previously held one of the statuses identified in “1” to “4” above.~~

~~6. Admitted as an Amerasian to the United States from Vietnam in immigrant status or as a U.S. citizen, but who is statutorily eligible for the same benefits as refugees.~~

~~7. Paroled as a refugee or asylee under Section 212(d)(5) of the Act, provided that the person has been issued an I-94 immigration document that specifically states “paroled as a refugee” or “paroled as an asylee.” Individuals admitted or paroled under Section 212(d)(5) whose I-94 immigration document includes the words “humanitarian” or “public interest parolee” (PIP) are not eligible for refugee-specific services, refugee cash assistance, or refugee medical assistance.~~

~~8. Admitted as a spouse or minor child of an alien previously admitted to the United States as an asylee or as a Visa 92 beneficiary whose immigration documentation is inscribed with the words “Visa 92” and is also generally inscribed with the words “Section 208.”~~

~~9. Admitted as a spouse or minor child of an alien previously admitted to the United States as a refugee or a Visa 93 beneficiary whose immigration documentation is inscribed with the words “Visa 93” and is also generally inscribed with the words “Section 207.”~~

4. Cuban and Haitian entrants in accordance with requirements in 45 CFR Part 401, as amended to March 22, 2000.

5. Certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1988, as contained in Section 101(e) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Public Law 100-461).

6. Admitted for permanent residence, provided the individual previously held one of the statuses identified above.

ITEM 3. Amend rule 441—61.5(217) as follows:
Amend the introductory paragraph as follows:

441—61.5(217) Services of the department available for refugees. ~~The department’s direct services~~ *All services provided to the refugee and family have self-sufficiency as the goal. Direct and contracted services may include, but are not limited to, the areas of following:*

Amend subrule 61.5(11) by adopting the following new paragraph “k”:

k. Assistance in obtaining employment authorization documentations (EADs).

ITEM 4. Amend subrule 61.6(2) as follows:

61.6(2) Limitations on eligibility. ~~Services, except referral and interpretation services, are limited to refugees who have been in the United States 60 months or less. Services as described in rule 441—61.5(217) may be provided in the first 60 months of resettlement. Referral, interpretation, citizenship, and naturalization services may be provided to the extent feasible past 60 months of resettlement for refugees, except that refugees who are receiving employability services, as defined in 441—subrule 61.5(12) 61.5(11), as part of an employability plan, as of September 30, 1995, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the United States. In any case, services shall first be provided for those refugees who are in the first two years of resettlement and who are in need of assistance in securing self-sufficiency.~~

ITEM 5. Amend rule 441—61.7(217) as follows:

441—61.7(217) Application for services. Any person wishing to do so shall have an opportunity to apply for services by contacting the bureau ~~in Des Moines or any of its affiliated offices~~ either *in person*, by telephone, by fax, or in writing, or ~~contact~~ *by contacting* any of the bureau staff members. The bureau shall determine the eligibility of each person for services. Applicants for refugee cash assistance shall automatically be considered as applicants for services. The bureau shall ensure that refugee women have the same opportunities as refugee men to participate in all services, including job placement services.

ITEM 6. Amend subrule 61.8(1), paragraph “i,” as follows:

i. The person requesting service has been in the United States more than 60 months and the services requested do not include referral, or interpretation, *citizenship, or naturalization* services.

[Filed 2/14/01, effective 5/1/01]

[Published 3/7/01]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/7/01.

ARC 0525B**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 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments February 14, 2001. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on December 13, 2000, as **ARC 0344B**.

These amendments implement the following changes to the Home- and Community-Based Services (HCBS) waiver programs:

- Home-delivered meals, nutritional counseling, home and vehicle modification, and personal emergency response system are added as service options to the Ill and Handicapped waiver.

- Adult day service providers enrolled to provide consumer-directed attendant care services are no longer required to submit a detailed cost report.

- Persons with durable power of attorney for medical care are added to the list of people who can agree to consumer-directed attendant care services on behalf of a consumer, in accordance with the Code of Iowa. Definitions are added to all waivers for "attorney in fact under a durable power of attorney for health care" and "guardian."

- Who may be a home and vehicle modification service provider is redefined under the Brain Injury, Elderly, Mental Retardation, and Physical Disability waivers to add community businesses as a provider type and to make language in all waivers similar. Who may be a nursing provider is redefined under the Mental Retardation waiver to be agencies that are certified to participate in the Medicare program as home health agencies. Who may be a family counseling and treatment provider and a behavioral programming provider in the Brain Injury waiver is expanded.

- The definition of "qualified brain injury professional" is moved from 441—subrule 77.39(21) to rule 441—83.81(249A).

- Policy governing consumer-directed attendant care services for all waivers is revised to allow the assistance of consumers with job-related tasks at the direction of the Health Care Financing Administration.

- Policy is revised to require only quarterly, instead of monthly, usage of service to remain eligible for the Elderly waiver.

- The monthly maximum on transportation is eliminated for the Elderly waiver to make the waiver more functional for consumers and more like the other waivers that have transportation as a service.

- Policy is added to the Ill and Handicapped waiver and revised under the Brain Injury, Elderly, Mental Retardation, and Physical Disability waivers to specifically define covered home and vehicle modifications. Only the modifications listed will be covered.

- The terms "individual comprehensive plan" and "case plan" are replaced by "service plan" throughout the rules.

- Supported employment services in the Mental Retardation and Brain Injury waivers are redefined to meet the needs of the consumers served. Policy regarding reimbursement rates and payment methodology is also revised.

- Policy is revised under the Ill and Handicapped waiver to no longer require children under the age of 21 to be ineligible for Supplemental Security Income to be eligible for the waiver. Interim medical monitoring and treatment services are added to the list of alternative services a person must access per calendar quarter to remain eligible for the Ill and Handicapped waiver. In-home health-related care may now be used in conjunction with the Ill and Handicapped waiver.

- Policy governing the 180-day process for accessing payment slots under the Ill and Handicapped and Mental Retardation waivers is revised to allow quicker access to the waivers and to reduce the number of exceptions to policy.

- Policy governing eligibility in the Mental Retardation waiver is revised to provide that persons need only have a diagnosis of mental retardation, rather than a primary diagnosis of mental retardation, to qualify for the waiver. Consumers in the Mental Retardation waiver also no longer need to have their names placed on a referral list.

- Policy allowing persons who are receiving the Medically Needy program to qualify for the Brain Injury waiver is removed as that policy has not been approved by the Health Care Financing Administration. Currently there are no persons on the Brain Injury waiver who qualify by being Medically Needy recipients.

These amendments do not provide for waivers in specified situations because access to services is simplified and, therefore, increased. Persons may request a waiver of specific policy under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Eight public hearings were held around the state. Twenty-one persons attended. The following revisions were made to the Notice of Intended Action in response to public comments:

The introductory paragraph and paragraph "a" of subrules 78.34(9), 78.37(9), 78.41(4), 78.43(5), and 78.46(2) were amended to remove inconsistencies. The introductory paragraph and paragraph "a" for each of the above-mentioned subrules now read as follows:

"Home and vehicle modifications. Covered home and vehicle modifications are those physical modifications to the consumer's home or vehicle listed below that directly address the consumer's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the consumer and enable the consumer to function with greater independence in the home or vehicle.

"a. Modifications that are necessary or desirable without regard to the consumer's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, roof repair, or adding square footage to the residence, are excluded except as specifically included below. Repairs are also excluded."

A new subparagraph (24) was added to each of the above-mentioned subrules to allow bath chairs to be included under home and vehicle modifications.

A sentence was added at the end of subrule 83.2(1), paragraph "g," and subrule 83.61(1), paragraph "e." The requirement that the consumer use one unit of service within the initial 180 days overrides the requirement to use one unit per calendar quarter. The new sentence reads as follows: "The

HUMAN SERVICES DEPARTMENT[441](cont'd)

calendar quarter requirement applies after the requirement that the initial access of the waiver be within 180 days."

Subparagraph 83.2(2)"a"(3) was revised to delete the word "homemaker" as homemaker service is not available under Medicaid.

Rule 441—83.7(249A) was revised by adding the word "Medicaid" for consistency with subrule 83.2(2), paragraph "a." The last sentence of the rule now reads as follows: "The service plan shall also list all nonwaiver Medicaid services."

In addition, following review by staff, subrule 79.1(2), basis of reimbursement provider categories of "HCBS brain injury waiver service providers" and "HCBS MR waiver service providers," "supported employment" provider groupings, were revised to make the provider groupings consistent with the service descriptions. Entries for the provider groupings now read as follows:

Supported employment:

| | | |
|---------------------------------|---|--|
| Activities to obtain a job | Fee schedule | \$500 per unit not to exceed \$1,500 per calendar year |
| Supports to maintain employment | Retrospectively limited prospective rates. See 79.1(15) | Maximum of \$32.64 per hour for all activities other than personal care and services in an enclave setting. Maximum of \$18.49 per hour for personal care. Maximum of \$5.78 per hour for services in an enclave setting. Total not to exceed \$2,772 per month. Maximum of 40 units per week. |

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

These amendments shall become effective May 1, 2001.

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 [amendments to Chs 77 to 79 and 83] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0344B**, IAB 12/13/00.

[Filed 2/14/01, effective 5/1/01]
[Published 3/7/01]

[For replacement pages for IAC, see IAC Supplement 3/7/01.]

ARC 0529B

LABOR SERVICES DIVISION[875]

Adopted and Filed

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

The principal reasons for the amendments are to change the safety standards reference dates to match updated and current standards; clarify the subrule relating to safety testing; require dormant facilities to meet safety standards of new installations; clarify procedures and policies on testing for special inspector license; disallow special inspectors to perform initial inspections; adopt rules for the installation of limited-use/limited-application elevators, rack and pinion elevators, inclined elevators, screw columns elevators, and permanent elevators used for construction; rescind rules relating to new installations of handicapped restricted use elevators and adopt rules for existing handicapped restricted use elevators; require all existing facilities to maintain conformance to safety standards applicable when installed; update standards for maintenance, repair, and alterations; rescind Chapter 74 relating to existing escalators, moving walks, and dumbwaiters and move those rules into Chapter 73; reiterate that owners are responsible for payment of fees; restrict temporary permits to those for elevators for construction purposes; clarify safety standards for existing facilities and modifications of existing facilities; adopt appeal procedure and deadline for variances; make minor clarifying and technical corrections; protect workers and members of the public from unsafe elevators, escalators, and moving walks, and implement legislative intent.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 18, 2000, as **ARC 0198B**.

These amendments do not contain a provision for waiver of these rules because there are existing waiver provisions in Chapter 77, "Variances."

These amendments have not been changed from the Notice of Intended Action.

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

These amendments will become effective April 11, 2001.

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 [amendments to Chs 71 to 73, 76 and 77; rescind Ch 74] is being omitted. These amendments are identical to those published under Notice as **ARC 0198B**, IAB 10/18/00.

[Filed 2/15/01, effective 4/11/01]
[Published 3/7/01]

[For replacement pages for IAC, see IAC Supplement 3/7/01.]

ARC 0534B**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.

The Board of Medical Examiners approved the amendment during a meeting held via telephone conference call on February 7, 2001.

This rule is adopted because the standard was already adopted by the Board pursuant to a contested case decision on chelation therapy. A 1998 amendment to Iowa Code chapter 17A, the Iowa Administrative Procedures Act, requires the Board, "as soon as feasible and to the extent practicable," to adopt rules which embody standards that the Board applies to the law it administers. The adopted rule allows M.D.s or D.O.s to utilize EDTA chelation therapy for heavy metal poisoning. In addition, M.D.s or D.O.s may use EDTA chelation therapy to treat other medical conditions if the patients and treatment are under clinical investigation as described in the rule.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 27, 2000, as **ARC 0356B**. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code sections 147.55 and 148.6.

This amendment will become effective on April 11, 2001.

The following **new** rule is adopted.

653—13.4(147,148,150) Standards of practice—chelation therapy. Chelation therapy or disodium ethylene diamine tetra acetic acid (EDTA) may only be used for the treatment of heavy metal poisoning or in the clinical setting when a licensee experienced in clinical investigations conducts a carefully controlled clinical investigation of its effectiveness in treating other diseases or medical conditions under a research protocol that has been approved by an institutional review board of the University of Iowa or Des Moines University—Osteopathic Medical Center.

This rule is intended to implement Iowa Code chapters 147, 148, and 150.

[Filed 2/16/01, effective 4/11/01]

[Published 3/7/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/7/01.

ARC 0536B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 15, "General License Regulations," Iowa Administrative Code.

This amendment updates the license definition list by eliminating some licenses which are no longer offered and including those licenses which were not included previously. The Electronic Licensing Committee of the Department requested this amendment.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 1, 2000, as **ARC 0240B**. No comments were received during the comment period or at the public hearing held November 22, 2000. There are no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code section 483A.24(9).

This amendment will become effective April 11, 2001.

The following amendment is adopted.

Rescind subrule 15.1(1) and adopt in lieu thereof the following **new** subrule:

15.1(1) Definitions. For the purposes of Iowa Code chapter 483A, the following definitions are used:

Hunting license. A hunting license is defined as the following licenses in Iowa Code section 483A.1.

1. Hunting licenses—legal residents except as otherwise provided. (Section 483A.1(2)"a")

2. Hunting licenses—nonresidents' hunting license. (Section 483A.1(2)"d")

3. Hunting preserve license.

4. Free annual hunting and fishing licenses for persons who are disabled or are 65 years of age or older and qualify for low-income status as defined in Iowa Code section 483A.24(14).

5. Veteran's lifetime hunting and fishing license as defined in Iowa Code section 483A.24(13).

License seller. License seller means a retail business establishment, an office of a government entity, or a nonprofit corporation designated by the director to issue licenses to the public. For the purposes of Chapter 15, "license sellers" shall be synonymous with "depositories" as used in Iowa Code chapter 483A.

[Filed 2/16/01, effective 4/11/01]

[Published 3/7/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/7/01.

ARC 0537B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 23, "Wildlife Habitat Promotion with Local Entities Program," Iowa Administrative Code.

These amendments are intended to refine the grant review process by clarifying project eligibility and by slightly modifying the application rating system.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 1, 2000, as **ARC 0239B**. A public hearing to receive comments was held on November 22, 2000, in Des Moines. No public comments were received at the hearing. Two written comments were received during the public comment period. The Iowa Association of County Conservation Boards and the County Conservation

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Directors Association both submitted letters supportive of the rule changes. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code section 483A.3.

These amendments shall become effective April 11, 2001. The following amendments are adopted.

ITEM 1. Amend rule 571—23.5(483A), introductory paragraph, as follows:

571—23.5(483A) Eligibility for cost-sharing assistance. No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant has received a written waiver of retroactivity from the ~~commission~~ director, prior to its initiation. A project shall not be eligible for cost sharing unless public hunting and trapping will be allowed; however, the review and selection committee may recommend for commission approval projects with restrictions on hunting and trapping under exceptional circumstances, like such as waterfowl refuges. Only the following types of project expenditures will be eligible for cost-sharing assistance.

ITEM 2. Amend subrule 23.6(2) as follows:

23.6(2) Time of submission. Applications for funds shall be reviewed and selected for funding during January and July of each year. Applications must be received in acceptable form by the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319, by the close of business on the last business day of May for consideration at the ~~July~~ summer review and the last business day of November for the ~~January~~ winter review. Upon timely notice to eligible recipients, additional selection periods may be scheduled if necessary to expedite the distribution of these funds. In emergencies, local entities can obtain a waiver so that acquisition projects may be approved for retroactive payments, provided that funds are available and the project meets all other criteria.

ITEM 3. Amend subrule 23.7(3) as follows:

23.7(3) Application rating system. The committee will apply a numerical rating system to each grant application which is considered for fund assistance. The following criteria, with a weight factor for each, will be considered:

- Wildlife habitat needs 2
- Existing or potential habitat quality 3
- Cost-effectiveness 2 1
- Species diversity 1

Each criterion will be given a score of from 1 to 10 which is then multiplied by the weight factor. Three additional criteria will be considered in the rating system:

a. to c. No change.

All points will be totaled for each application and those applications receiving the highest scores will be selected for fund assistance to the extent of the allotment for each semi-annual period, except that any project scoring a total of not more than 50 45 points will not be funded.

[Filed 2/16/01, effective 4/11/01]
[Published 3/7/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/7/01.

ARC 0538B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 94, "Nonresident Deer Hunting," Iowa Administrative Code.

These amendments implement the Department's electronic licensing procedures, provide for collection of harvest information, and allow severely disabled nonresidents to apply for special deer hunting season licenses.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 27, 2000, as **ARC 0364B**. No public comments were received during the public comment period or at the public hearing. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 481A.38 and 481A.48.

These amendments shall become effective April 11, 2001.

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 [94.8, 94.10, 94.11] is being omitted. These amendments are identical to those published under Notice as **ARC 0364B**, IAB 12/27/00.

[Filed 2/16/01, effective 4/11/01]
[Published 3/7/01]

[For replacement pages for IAC, see IAC Supplement 3/7/01.]

ARC 0517B

PERSONNEL DEPARTMENT[581]

Adopted and Filed

Pursuant to the authority of Iowa Code section 97A.5, the Board of Trustees of the Iowa Department of Public Safety Peace Officers' Retirement, Accident and Disability System hereby amends Chapter 24, "Peace Officers' Retirement, Accident and Disability System," Iowa Administrative Code.

Several amendments to Iowa Code chapter 97A, which establishes the Public Safety Peace Officers' Retirement, Accident and Disability System, were contained in legislation enacted during the 2000 session of the Iowa General Assembly in 2000 Iowa Acts, chapter 1077. Amendments to the rules regarding the membership and method of election of trustees stem directly from statutory changes. Additional amendments to the rules reflect current operating procedures of the system, including the rescission of some obsolete language.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 4, 2000, as **ARC 0150B**. A public hearing on these proposed amendments was held on October 27, 2000. No comments were received at the hearing or otherwise. One change from the Notice has been

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made. Existing rule 24.3(97A) was retained and renumbered as 24.4(97A).

These amendments are intended to implement Iowa Code chapter 97A.

These amendments will become effective on May 1, 2001.

The following amendments are adopted.

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 [24.1 to 24.31] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 0150B**, IAB 10/4/00.

[Filed 2/7/01, effective 5/1/01]

[Published 3/7/01]

[For replacement pages for IAC, see IAC Supplement 3/7/01.]

ARC 0516B**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.22, 17A.301, 147.76, and 272C.3, the Board of Pharmacy Examiners hereby amends Chapter 1, "Purpose and Organization," Chapter 3, "License Fees, Renewal Dates, Fees for Duplicate Licenses and Certification of Examination Scores," Chapter 4, "Pharmacist-Intern Registration and Minimum Standards for Evaluating Practical Experience," Chapter 6, "General Pharmacy Licenses," Chapter 7, "Hospital Pharmacy Licenses," Chapter 15, "Correctional Facility Pharmacy Licenses," Chapter 16, "Nuclear Pharmacy," and Chapter 19, "Nonresident Pharmacy Licenses," and adopts new Chapter 34, "Rules for Waivers and Variances," Iowa Administrative Code.

The amendments rescind the Board's current rule regarding procedures for petitions for waiver or variance from rules, adopt new rules regarding petitions for waiver or variance from provisions of Board rules, and change references directing persons to the appropriate rules. Executive Order Number 11 directs state rule-making authorities to adopt rules regarding waivers and variances from rules of the authority, and Iowa Code section 17A.9A includes requirements imposed on rule-making authorities regarding the grant of such waivers and variances. These amendments implement the requirements of the Executive Order and new Iowa Code section 17A.9A.

Notice of Intended Action was published in the October 18, 2000, Iowa Administrative Bulletin as **ARC 0192B**. The adopted amendments differ from those published under Notice only in that references to 2000 Iowa Acts, House File 2206, have been changed to Iowa Code section 17A.9A.

The amendments were approved during the January 30, 2001, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on April 11, 2001.

These amendments are intended to implement Iowa Code sections 17A.9A, 17A.22, 22.2, 124.301, 126.17, 147.76, 155A.2, 205.11, 205.13, 272C.3, and 272C.4.

The following amendments are adopted.

ITEM 1. Rescind rule **657—1.3(17A,124,126,147,155A,205,272C)**.

ITEM 2. Amend rule **657—3.4(155A)**, introductory paragraph; subrule **4.6(1)**; rule **657—6.3(155A)**, introductory paragraph; rule **657—6.4(155A)**; subrule **6.5(3)**; rule **657—7.3(155A)**, introductory paragraph; rule **657—7.4(155A)**, numbered paragraph "4"; rule **657—15.2(124,126,155A)**; rule **657—15.3(124,126,155A)**, introductory paragraph; rule **657—15.4(124,126,155A)**; rule **657—16.5(155A)**, introductory paragraph; rule **657—16.6(155A)**, introductory paragraph; and rule **657—19.6(155A)**, introductory paragraph, by striking references to "rule 657—1.3(17A,124,126,147,155A,205,272C)" and inserting in lieu thereof "657—Chapter 34."

ITEM 3. Adopt **new 657—Chapter 34** as follows:

CHAPTER 34

RULES FOR WAIVERS AND VARIANCES

657—34.1(17A) Definition. For purposes of this chapter, a "waiver" or "variance" means action by the board which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person or business on the basis of the particular circumstances of that person or business. For simplicity, the term "waiver" shall include both a waiver and a variance and the term "person" shall include both a person and a business.

657—34.2(17A,124,126,147,155A,205,272C) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

657—34.3(17A,124,126,147,155A,205,272C) Applicability of chapter. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

657—34.4(17A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 34.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

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657—34.5(17A,124,126,147,155A,205,272C) Filing of petition. A petition for a waiver shall be submitted in writing to the board as follows:

34.5(1) License, registration, or permit application. If the petition relates to a license, registration, or permit application, the petition shall be made in accordance with the application requirements for the license, registration, or permit in question.

34.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

34.5(3) Other. If the petition does not relate to a license, registration, or permit application or to a pending contested case, the petition may be submitted to the board's executive secretary/director.

657—34.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the petitioner:

1. The name, address, and telephone number of the person for whom a waiver is requested and the case number of any related contested case.

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

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

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 34.4(17A). This shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity, license, registration, or permit affected by the proposed waiver. This history shall include a description of each affected license, registration, or permit held by the petitioner and any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, registration, or permit within the last five years.

6. Any information known to the petitioner regarding the board's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of the waiver.

8. The name, address, and telephone number of any person who would be adversely affected by the granting of a petition for waiver.

9. The name, address, and telephone number of any person with knowledge of facts relevant to the proposed waiver.

10. Signed releases authorizing persons with knowledge regarding the request to furnish the board with information relevant to the proposed waiver.

657—34.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive secretary/director, a committee of the board, or a quorum of the board.

657—34.8(17A) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, 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. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

657—34.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case. Those provisions shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

657—34.10(17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains. The order shall include a statement of the relevant facts and reasons upon which the action is based and a description of the precise scope and duration of the waiver if one is issued.

34.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board upon consideration of all relevant factors. The board shall evaluate each petition for a waiver based on the unique, individual circumstances set out in the petition.

34.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

34.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

34.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

34.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

34.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for the waiver continue to exist.

34.10(7) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

34.10(8) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

34.10(9) Service of order. Within seven days of its issuance, any order issued under these rules shall be transmitted to the petitioner or the person to whom the order per-

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tains and to any other person entitled to such notice by any provision of law.

657—34.11(17A,22) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and made available for public inspection as provided in Iowa Code section 17A.3. Petitions for waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

657—34.12(17A) Summary reports. The board shall semi-annually prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, and a citation to the statutory provisions implemented by these rules. The report shall include a general summary of the reasons justifying the board's actions on waiver requests and, if practicable, shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

657—34.13(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. That the petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. That the alternative means for ensuring adequate protection of the public health, safety and welfare after issuance of the waiver order have been demonstrated to be insufficient; or
3. That the subject of the waiver order has failed to comply with all conditions contained in the order.

657—34.14(17A,124,126,147,155A,205,272C) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

657—34.15(17A,124,126,147,155A,205,272C) Defense. After the board issues an order granting a waiver, the order is a defense for the person to whom the order pertains, within the terms and the specific facts indicated therein, in any proceeding in which the rule in question is sought to be invoked.

657—34.16(17A) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code sections 17A.9A, 17A.22, 22.2, 124.301, 126.17, 147.76, 155A.2, 205.11, 205.13, 272C.3, and 272C.4.

[Filed 2/7/01, effective 4/11/01]

[Published 3/7/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/7/01.

ARC 0526B**PROFESSIONAL LICENSING AND
REGULATION DIVISION[193]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 546.2, the Professional Licensing and Regulation Division adopts new Chapter 5, "Waivers and Variances from Rules," Iowa Administrative Code.

New Chapter 5 outlines a uniform process for the granting of waivers or variances from rules adopted by all boards of the Division. This chapter is adopted in response to Governor Vilsack's Executive Order Number 11 and Iowa Code section 17A.9A [2000 Iowa Acts, chapter 1176].

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0351B** on December 27, 2000. The Division adopted these rules on January 31, 2001.

Public comments concerning the proposed rules were accepted through January 16, 2001. No public comments were received. These rules are identical to those published under Notice.

This amendment is intended to implement Iowa Code chapter 546 and section 17A.9A.

These rules will become effective April 11, 2001.

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 5] is being omitted. These rules are identical to those published under Notice as **ARC 0351B**, IAB 12/27/00.

[Filed 2/15/01, effective 4/11/01]

[Published 3/7/01]

[For replacement pages for IAC, see IAC Supplement 3/7/01.]

| AGENCY | RULE | DELAY |
|--------------------------------------|--|--|
| Professional Licensure Division[645] | 40.1, 40.8 to 40.24, 40.36 to 40.41, 40.51, 40.52, 40.62 to 40.67, 40.69 to 40.73, Chs 43, 44 [IAB 12/27/00, ARC 0367B] | Effective date of January 31, 2001, delayed 70 days by the Administrative Rules Review Committee at its meeting held January 29, 2001. [Pursuant to §17A.4(5)] |
| | 281.3(1) [IAB 1/10/01, ARC 0398B] | Delay lifted by the Administrative Rules Review Committee at its meeting held February 9, 2001, effective February 10, 2001. Effective date of February 14, 2001, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 9, 2001. [Pursuant to §17A.4(5)] |



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA
IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

***EXECUTIVE ORDER NUMBER SEVENTEEN**

- WHEREAS,** Children living in single parent households are more likely to be living in poverty; and
- WHEREAS,** Fatherless children are at a significantly greater risk for drug and alcohol abuse; and
- WHEREAS,** Fatherless children are twice as likely to drop out of school; and
- WHEREAS,** The vast majority of homeless and runaway children are from fatherless homes; and
- WHEREAS,** Iowans intuitively understand that children need to receive the support and guidance of both parents; and
- WHEREAS,** The absence of one parent from a child's life can place that child at greater risk of health, emotional, educational; and behavioral problems associated with the child's development; and
- WHEREAS,** For most children, the absent parent is the father:

NOW, THEREFORE, I, THOMAS J. VILSACK, Governor of the State of Iowa, by the power vested in me under the laws and the constitution of the State of Iowa do hereby order the creation of the **TASK FORCE FOR RESPONSIBLE FATHERHOOD.**

I. Purpose. The purpose of the Task Force is to further the understanding of the importance of two parents being actively involved in the lives of a child, with particular emphasis of fathers. The Task Force is charged with the following:

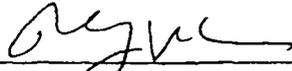
1. Identify promising best practices that support and engage both parents in the emotional and financial support of their children;
2. Identify obstacles that impede or prevent the involvement of fathers in the lives of their children;
3. Raise public awareness of the consequences the absence of the father causes in a child's life;
4. Make recommendations for policy and practice both within and without state government that sustain and re-engage fathers in their children's lives; and
5. Report its findings and recommendations to the Governor by March 31, 2002.

II. Organization. The Task Force shall be appointed by the Governor. It is comprised of the following members:

| | |
|-------------------------|----------------|
| Elaine Szymoniak, Chair | Des Moines |
| Harry Brod | Cedar Falls |
| Tom Klaus | Carlisle |
| Nancylee Ziese | Cedar Rapids |
| Ana Lopez-Dawson | Reasnor |
| Odell McGhee | Des Moines |
| Matt Mohrfeld | Fort Madison |
| Cindy Schulte | State Center |
| Mike Carver | Urbandale |
| Phyllis Mulkey | Mason City |
| Joseph Cress | Bettendorf |
| K.D. Burkett | New Providence |
| Carol Reed | Fort Dodge |

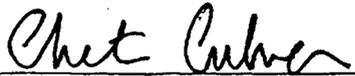


IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done in Des Moines, Iowa, this 13th day of February in the year of our Lord Two Thousand One.



Thomas J. Vilsack
Governor

ATTEST:



Chester J. Culver
Secretary of State

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