

JUL 10 2002

CAPITOL BUILDING
DES MOINES, IA



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXV
July 10, 2002

NUMBER 1
Pages 1 to 88

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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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STEPHANIE A. HOFF, Assistant Editor (515)281-8157
Fax: (515)281-4424

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Des Moines, IA 50319
Telephone: (515)242-5120**

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| 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 |
|----------------------------------|------------------------|--------------------------------------|--|-------------------------------|-------------------------|--|---|
| Jan. 4 '02 | Jan. 23 '02 | Feb. 12 '02 | Feb. 27 '02 | Mar. 1 '02 | Mar. 20 '02 | Apr. 24 '02 | July 22 '02 |
| Jan. 18 | Feb. 6 | Feb. 26 | Mar. 13 | Mar. 15 | Apr. 3 | May 8 | Aug. 5 |
| Feb. 1 | Feb. 20 | Mar. 12 | Mar. 27 | Mar. 29 | Apr. 17 | May 22 | Aug. 19 |
| Feb. 15 | Mar. 6 | Mar. 26 | Apr. 10 | Apr. 12 | May 1 | June 5 | Sept. 2 |
| Mar. 1 | Mar. 20 | Apr. 9 | Apr. 24 | Apr. 26 | May 15 | June 19 | Sept. 16 |
| Mar. 15 | Apr. 3 | Apr. 23 | May 8 | May 10 | May 29 | July 3 | Sept. 30 |
| Mar. 29 | Apr. 17 | May 7 | May 22 | May 24 | June 12 | July 17 | Oct. 14 |
| Apr. 12 | May 1 | May 21 | June 5 | June 7 | June 26 | July 31 | Oct. 28 |
| Apr. 26 | May 15 | June 4 | June 19 | June 21 | July 10 | Aug. 14 | Nov. 11 |
| May 10 | May 29 | June 18 | July 3 | July 5 | July 24 | Aug. 28 | Nov. 25 |
| May 24 | June 12 | July 2 | July 17 | July 19 | Aug. 7 | Sept. 11 | Dec. 9 |
| June 7 | June 26 | July 16 | July 31 | Aug. 2 | Aug. 21 | Sept. 25 | Dec. 23 |
| June 21 | July 10 | July 30 | Aug. 14 | Aug. 16 | Sept. 4 | Oct. 9 | Jan. 6 '03 |
| July 5 | July 24 | Aug. 13 | Aug. 28 | Aug. 30 | Sept. 18 | Oct. 23 | Jan. 20 '03 |
| July 19 | Aug. 7 | Aug. 27 | Sept. 11 | Sept. 13 | Oct. 2 | Nov. 6 | Feb. 3 '03 |
| Aug. 2 | Aug. 21 | Sept. 10 | Sept. 25 | Sept. 27 | Oct. 16 | Nov. 20 | Feb. 17 '03 |
| Aug. 16 | Sept. 4 | Sept. 24 | Oct. 9 | Oct. 11 | Oct. 30 | Dec. 4 | Mar. 3 '03 |
| Aug. 30 | Sept. 18 | Oct. 8 | Oct. 23 | Oct. 25 | Nov. 13 | Dec. 18 | Mar. 17 '03 |
| Sept. 13 | Oct. 2 | Oct. 22 | Nov. 6 | Nov. 8 | Nov. 27 | Jan. 1 '03 | Mar. 31 '03 |
| Sept. 27 | Oct. 16 | Nov. 5 | Nov. 20 | Nov. 22 | Dec. 11 | Jan. 15 '03 | Apr. 14 '03 |
| Oct. 11 | Oct. 30 | Nov. 19 | Dec. 4 | Dec. 6 | Dec. 25 | Jan. 29 '03 | Apr. 28 '03 |
| Oct. 25 | Nov. 13 | Dec. 3 | Dec. 18 | Dec. 20 | Jan. 8 '03 | Feb. 12 '03 | May 12 '03 |
| Nov. 8 | Nov. 27 | Dec. 17 | Jan. 1 '03 | Jan. 3 '03 | Jan. 22 '03 | Feb. 26 '03 | May 26 '03 |
| Nov. 22 | Dec. 11 | Dec. 31 | Jan. 15 '03 | Jan. 17 '03 | Feb. 5 '03 | Mar. 12 '03 | June 9 '03 |
| Dec. 6 | Dec. 25 | Jan. 14 '03 | Jan. 29 '03 | Jan. 31 '03 | Feb. 19 '03 | Mar. 26 '03 | June 23 '03 |
| Dec. 20 | Jan. 8 '03 | Jan. 28 '03 | Feb. 12 '03 | Feb. 14 '03 | Mar. 5 '03 | Apr. 9 '03 | July 7 '03 |
| Jan. 3 '03 | Jan. 22 '03 | Feb. 11 '03 | Feb. 26 '03 | Feb. 28 '03 | Mar. 19 '03 | Apr. 23 '03 | July 21 '03 |

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER

SUBMISSION DEADLINE

ISSUE DATE

3

Friday, July 19, 2002

August 7, 2002

4

Friday, August 2, 2002

August 21, 2002

5

Friday, August 16, 2002

September 4, 2002

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

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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 |
|--------|------------------|--------------------------|
|--------|------------------|--------------------------|

CITY DEVELOPMENT BOARD[263]

| | | |
|---|---|--------------------------|
| General, chs 1 to 11 IAB 7/10/02 ARC 1809B | Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa | August 8, 2002 9 a.m. |
|---|---|--------------------------|

DENTAL EXAMINERS BOARD[650]

| | | |
|---|---|------------------------------|
| Practice of dentistry, 1.1 IAB 7/10/02 ARC 1808B | Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa | July 30, 2002 2 to 3 p.m. |
| Dental licensure by credentials, 11.3(2) IAB 7/10/02 ARC 1806B | Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa | July 30, 2002 2 to 3 p.m. |
| Resident license; faculty permit holders; fees, 13.1, 13.2, 15.2 IAB 7/10/02 ARC 1807B | Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa | July 30, 2002 2 to 3 p.m. |

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

| | | |
|--|---|----------------------------|
| Iowa community development block grant program, 23.2, 23.4(5), 23.5(9), 23.6 to 23.10, 23.13, 23.14(1), 23.15(12) IAB 7/10/02 ARC 1812B | First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa | July 30, 2002 1:30 p.m. |
| Housing fund, 25.5, 25.7, 25.8(7), 25.9(6) IAB 7/10/02 ARC 1811B | First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa | July 30, 2002 2:30 p.m. |

EDUCATIONAL EXAMINERS BOARD[282]

| | | |
|--|--|-----------------------------------|
| Requirements for a substitute authorization, 14.143 IAB 6/12/02 ARC 1667B | ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | July 10, 2002 10 to 11:30 a.m. |
| | ICN Room, AEA 4 1382 Fourth Ave. NE Sioux Center | July 10, 2002 10 to 11:30 a.m. |
| | ICN Room, First Floor Cedar Falls High School 1015 Division St. Cedar Falls, Iowa | July 10, 2002 10 to 11:30 a.m. |
| | ICN Room North High School 626 W. 53rd St. Davenport, Iowa | July 10, 2002 10 to 11:30 a.m. |

EDUCATIONAL EXAMINERS BOARD[282] (Cont'd)

| | |
|--|-----------------------------------|
| Room 153 Mason City High School 1700 Fourth SE Mason City, Iowa | July 10, 2002 10 to 11:30 a.m. |
|--|-----------------------------------|

EDUCATION DEPARTMENT[281]

| | | |
|---|--|-----------------------------------|
| Open enrollment, 17.2 to 17.5, 17.7, 17.8, 17.10, 17.11 IAB 6/26/02 ARC 1741B | Conference Room 2 South Grimes State Office Bldg. Des Moines, Iowa | July 16, 2002 1 p.m. |
| Fees for instructional course for drinking drivers, 21.32, 21.33 IAB 6/26/02 ARC 1744B | Conference Room 2 South Grimes State Office Bldg. Des Moines, Iowa | July 16, 2002 2 p.m. |
| Fee for school bus inspection, 43.30 IAB 6/26/02 ARC 1748B | Conference Room 2 South Grimes State Office Bldg. Des Moines, Iowa | July 16, 2002 3 p.m. |
| Charter schools, ch 68 IAB 6/26/02 ARC 1746B (ICN Network) | ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | August 20, 2002 3:30 to 5 p.m. |
| | Southwestern Community College 2300 Fourth St. Red Oak, Iowa | August 20, 2002 3:30 to 5 p.m. |
| | AEA 7 3712 Cedar Heights Dr. Cedar Falls, Iowa | August 20, 2002 3:30 to 5 p.m. |
| | Buena Vista College 610 W. Fourth St. Storm Lake, Iowa | August 20, 2002 3:30 to 5 p.m. |
| | Indian Hills Community College 112 S. Court St. Fairfield, Iowa | August 20, 2002 3:30 to 5 p.m. |

ENVIRONMENTAL PROTECTION COMMISSION[567]

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| Stationary source categories, 22.100 IAB 6/12/02 ARC 1710B | Conference Rooms 3 and 4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa | July 11, 2002 10:30 a.m. |
| Storm water regulations, 60.2, 60.3, 64.3(4), 64.13, 64.15(2), 64.16(3) IAB 7/10/02 ARC 1778B | Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | August 16, 2002 9 a.m. |
| Animal feeding operations— construction permits and fees, 65.9(1), 65.16(6) IAB 7/10/02 ARC 1772B (See also ARC 1795B herein) | Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | August 6, 2002 1 p.m. |

GENERAL SERVICES DEPARTMENT[401]

| | | |
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| Use and scheduling of capitol complex facilities—sound, 3.4(14) IAB 6/26/02 ARC 1730B | Director's Conference Room, Level A Hoover State Office Bldg. Des Moines, Iowa | July 16, 2002 1 to 2 p.m. |
|---|--|------------------------------|

HUMAN SERVICES DEPARTMENT[441]

| | | |
|--|---|-------------------------------|
| Medicaid reimbursement for prescription drugs, 79.1(8) IAB 6/26/02 ARC 1763B | First Floor Southeast Conference Rm. Hoover State Office Bldg. Des Moines, Iowa | July 18, 2002 9 to 10 a.m. |
|--|---|-------------------------------|

| | | |
|---|---|-------------------------|
| Child care centers, 109.1 to 109.3, 109.6(6) IAB 6/26/02 ARC 1766B | Second Floor Conference Room 126 South Kellogg St. Ames, Iowa | July 17, 2002 9 a.m. |
|---|---|-------------------------|

| | |
|---|--------------------------|
| Seventh Floor Conference Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa | July 16, 2002 10 a.m. |
|---|--------------------------|

| | |
|---|-------------------------|
| ICN Conference Room 417 E. Kaneshville Blvd. Council Bluffs, Iowa | July 16, 2002 9 a.m. |
|---|-------------------------|

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|--|--------------------------|
| Third Floor Conference Room Bicentennial Bldg. 428 Western Ave. Davenport, Iowa | July 17, 2002 10 a.m. |
|--|--------------------------|

| | |
|--|-------------------------|
| Conference Room 102 City View Plaza 1200 University Ave. Des Moines, Iowa | July 16, 2002 9 a.m. |
|--|-------------------------|

| | |
|--|-------------------------|
| Third Floor Conference Room Nesler Center Eighth and Main Dubuque, Iowa | July 16, 2002 9 a.m. |
|--|-------------------------|

| | |
|--|--------------------------|
| Third Floor Conference Room J 822 Douglas St. Sioux City, Iowa | July 17, 2002 10 a.m. |
|--|--------------------------|

| | |
|--|--------------------------|
| Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa | July 16, 2002 10 a.m. |
|--|--------------------------|

| | | |
|---|---|-------------------------|
| Family and group child care homes, 110.1 to 110.36 IAB 6/26/02 ARC 1767B | Second Floor Conference Room 126 South Kellogg St. Ames, Iowa | July 17, 2002 9 a.m. |
|---|---|-------------------------|

| | |
|---|--------------------------|
| Seventh Floor Conference Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa | July 16, 2002 10 a.m. |
|---|--------------------------|

| | |
|---|-------------------------|
| ICN Conference Room 417 E. Kaneshville Blvd. Council Bluffs, Iowa | July 16, 2002 9 a.m. |
|---|-------------------------|

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

| | |
|--|--------------------------|
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| Third Floor Conference Room J 822 Douglas St. Sioux City, Iowa | July 17, 2002 10 a.m. |
| Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa | July 16, 2002 10 a.m. |

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|--|---|-------------------------|

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| | | |
|--|--|----------------------------------|
| Qualified allocation plan, 12.1, 12.2 IAB 6/26/02 ARC 1731B (ICN Network) | Main Conference Room, Second Floor 200 East Grand Ave. Des Moines, Iowa | July 16, 2002 9 to 11:30 a.m. |
| | Fort Dodge Public Library 424 Central Ave. Fort Dodge, Iowa | July 16, 2002 9 to 11:30 a.m. |
| | Revere Room Grant Wood AEA 10 4401 Sixth St. SW Cedar Rapids, Iowa | July 16, 2002 9 to 11:30 a.m. |
| | Room 3, Continuing Education Bldg. Iowa Western Community College - 3 2700 College Rd. Council Bluffs, Iowa | July 16, 2002 9 to 11:30 a.m. |
| | Room 107, Technical Center Southwestern Community College - 2 1501 W. Townline Rd. Creston, Iowa | July 16, 2002 9 to 11:30 a.m. |

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

| | |
|--|----------------------------------|
| Kimberly Center 1002 W. Kimberly Davenport, Iowa | July 16, 2002 9 to 11:30 a.m. |
| Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa | July 16, 2002 9 to 11:30 a.m. |
| Room 153 Mason City High School 1700 Fourth SE Mason City, Iowa | July 16, 2002 9 to 11:30 a.m. |
| Videoconferencing and Training Ctr. Indian Hills Community College - 6 651 Indian Hills Dr. Ottumwa, Iowa | July 16, 2002 9 to 11:30 a.m. |
| Room 127B, Building B Western Iowa Tech. Comm. College - 2 4647 Stone Ave. Sioux City, Iowa | July 16, 2002 9 to 11:30 a.m. |
| Classroom A, Gerard Hall Allen College 1950 Heath St. Waterloo, Iowa | July 16, 2002 9 to 11:30 a.m. |

MEDICAL EXAMINERS BOARD[653]

| | | |
|--|--|-------------------------|
| Tests for English proficiency, 10.4(3), 17.4(1) IAB 7/10/02 ARC 1798B | Suite C 400 SW Eighth St. Des Moines, Iowa | July 31, 2002 2 p.m. |
|--|--|-------------------------|

NATURAL RESOURCE COMMISSION[571]

| | | |
|--|---|------------------------------|
| Controlled waterfowl hunting, 53.2, 53.3 IAB 5/29/02 ARC 1656B | Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | July 10, 2002 10 a.m. |
| Wildlife importation, transportation and disease monitoring, ch 104 IAB 7/10/02 ARC 1777B | Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa | July 30, 2002 1 to 4 p.m. |

PROFESSIONAL LICENSURE DIVISION[645]

| | | |
|--|---|-------------------------------|
| Mortuary science examiners, ch 99 IAB 7/10/02 ARC 1782B | Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa | July 31, 2002 9 to 11 a.m. |
| Massage therapy examiners, ch 130 IAB 6/26/02 ARC 1715B | Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa | July 16, 2002 9 to 11 a.m. |

PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)

| | | |
|---|---|-------------------------------|
| Respiratory care examiners, ch 260 IAB 7/10/02 ARC 1780B | Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa | July 30, 2002 9 to 11 a.m. |
| Athletic training examiners, ch 350, 351.1 IAB 7/10/02 ARC 1783B | Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa | July 31, 2002 9 to 11 a.m. |

PUBLIC SAFETY DEPARTMENT[661]

| | | |
|--|---|----------------------------|
| Sex offender registry, 8.303(2), 8.304(6) IAB 6/26/02 ARC 1728B (See also ARC 1761B) | Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | July 25, 2002 9:30 a.m. |
|--|---|----------------------------|

SUBSTANCE ABUSE COMMISSION[643]

| | | |
|--|---|------------------------------------|
| Licensure standards for substance abuse treatment programs, amendments to ch 3 IAB 6/26/02 ARC 1757B | Conference Room 518 Lucas State Office Bldg. Des Moines, Iowa | July 23, 2002 1 to 2:15 p.m. |
| Licensure standards for correctional facilities, ch 6 IAB 6/26/02 ARC 1758B | Conference Room 518 Lucas State Office Bldg. Des Moines, Iowa | July 23, 2002 2:30 to 3:30 p.m. |

TRANSPORTATION DEPARTMENT[761]

| | | |
|---|--|---|
| Highways; right-of-way and environment, amendments to chs 40, 110, 111, 132, 136, 143, 160, 161, 170, 172 to 174; rescind ch 128 IAB 6/26/02 ARC 1724B | Third Floor Conference Room Administration Bldg. 800 Lincoln Way Ames, Iowa | July 18, 2002 10 a.m. (If requested) |
| Improvements and maintenance on primary road extensions, 150.1 to 150.4 IAB 7/10/02 ARC 1779B | Third Floor Conference Room Administration Bldg. 800 Lincoln Way Ames, Iowa | August 1, 2002 10 a.m. (If requested) |
| Special permits for operation and movement of vehicles and loads of excess size and weight, 511.7 to 511.9, 511.12 IAB 7/10/02 ARC 1770B | DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa | August 1, 2002 10 a.m. (If requested) |
| Motorcycle rider education, 635.1 to 635.5 IAB 6/26/02 ARC 1723B | DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa | July 18, 2002 10 a.m. (If requested) |

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

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

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

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

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

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

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INFORMATION TECHNOLOGY DEPARTMENT[471]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 1809B

CITY DEVELOPMENT BOARD[263]

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 368.10, the City Development Board hereby gives Notice of Intended Action to rescind Chapter 1, “General,” and adopt new Chapter 1, “Organization and Administration”; rescind Chapter 2, “Initial Board Proceedings on Petitions for Involuntary Boundary Changes,” and adopt new Chapter 2, “Agency Procedure for Rule Making”; rescind Chapter 3, “Committee Proceedings on Petitions for Involuntary Boundary Change,” and adopt new Chapter 3, “Petitions for Rule Making”; renumber Chapter 4, “Board Proceedings on Petitions for Involuntary Boundary Change After Committee Approval,” as Chapter 10 and adopt new Chapter 4, “Declaratory Orders”; renumber Chapter 5, “Islands—Identification and Annexation,” as Chapter 11 and adopt new Chapter 5, “Fair Information Practices”; rescind Chapter 6, “Public Records and Fair Information Practices,” and adopt new Chapter 6, “Waiver and Variance Rule”; and adopt new Chapter 7, “Voluntary Annexation,” Chapter 8, “Petitions for Involuntary City Development Action,” and Chapter 9, “Committee Proceedings on Petitions for Involuntary City Development Action,” Iowa Administrative Code.

The rules in Chapters 1 to 6 describe the proceedings before the City Development Board related to the city boundary change process. These proposed amendments rescind the existing Chapters 1, 2, 3 and 6, renumber existing Chapters 4 and 5 as new Chapters 10 and 11 and adopt new Chapters 1 to 9. These amendments are proposed to provide guidance regarding statutory changes that have occurred since the rules were last amended and to clarify proceedings before the Board related to existing statutory requirements.

Any interested person may make written suggestions or comments on these proposed amendments prior to August 8, 2002. Such written materials should be directed to the City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, or faxed to (515)242-4809.

Also, there will be a public hearing on August 8, 2002, at 9 a.m. in the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa. Persons may present their views either orally or in writing at the public hearing. At the hearing, persons will be asked to provide their names and addresses for the record and to confine any remarks to the proposed rules.

Anyone who plans to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the City Development Board at (515)242-4746 and advise of the special needs.

These amendments are intended to implement Iowa Code chapter 368.

The following amendments are proposed.

ITEM 1. Rescind 263—Chapters 1 to 3 and adopt the following **new** chapters in lieu thereof:

CHAPTER 1

ORGANIZATION AND ADMINISTRATION

263—1.1(368) Description. The primary function of the city development board is to supervise city development actions, including annexations, consolidations, discontinuances, incorporations and severances for the state of Iowa, pursuant to the provisions of Iowa Code chapter 368. The board shall receive annexation moratorium agreements filed by cities and accept involuntary petitions and voluntary applications for incorporation, consolidation, discontinuance and boundary adjustment of a city; review these submissions for compliance with statutory and rule requirements; and approve, deny, or dismiss or conduct or initiate further action on each submission. The board shall also accept and act upon petitions for rule making and declaratory orders, pursuant to Iowa Code sections 17A.7 and 17A.9. To this end, the board has adopted these rules, which shall be applicable to all proceedings and transactions of the board, to clarify the board’s intent and applicable procedures.

This rule is intended to implement Iowa Code section 368.10.

263—1.2(368) Office of the board. All official communications, including submissions and requests, should be addressed to City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

263—1.3(368) Membership and quorum requirements. The board is made up of five members appointed by the governor pursuant to Iowa Code section 368.9. The board shall annually elect from its members a chairperson and vice-chairperson at the first regular meeting of the calendar year. A quorum of the board shall be three members, and a quorum must be present in order for the board to take action upon formal motions.

263—1.4(368) Meetings. The board shall conduct regular meetings at least every other month at the offices of the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa, or at such other location as the board may designate.

The chairperson or the chairperson’s designee shall prepare an agenda for each meeting listing matters to be addressed. Copies of the agenda shall be posted at the Iowa department of economic development at least 24 hours prior to each meeting and shall be made available to all interested persons upon request.

Meetings of the board shall be conducted and minutes maintained in compliance with Iowa Code chapter 21.

These rules are intended to implement Iowa Code sections 368.10 and 17A.3(1).

CHAPTER 2

AGENCY PROCEDURE FOR RULE MAKING

The city development board hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

263—2.3(17A) Public rule-making docket.

2.3(2) Anticipated rule making. In lieu of the words “(commission, board, council, director)”, insert “city development board”.

263—2.4(17A) Notice of proposed rule making.

CITY DEVELOPMENT BOARD[263](cont'd)

2.4(3) Copies of notices. In lieu of the words “(specify time period)”, insert “one year”.

263—2.5(17A) Public participation.

2.5(1) Written comments. In lieu of the words “(identify office and address)”, insert “City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309”.

2.5(5) Accessibility. In lieu of the words “(designate office and phone number)”, insert “the city development board at (515)242-4746”.

263—2.6(17A) Regulatory analysis.

2.6(2) Mailing list. In lieu of the words “(designate office)”, insert “City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309”.

263—2.11(17A) Concise statement of reasons.

2.11(1) General. In lieu of the words “(specify the office and address)”, insert “City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309”.

263—2.13(17A) Agency rule-making record.

2.13(2) Contents. In lieu of the words “(agency head)”, insert “city development board”.

These rules are intended to implement Iowa Code chapter 17A.

CHAPTER 3

PETITIONS FOR RULE MAKING

The city development board hereby adopts, with the following exceptions and amendments, rules of the Governor’s Task Force on Uniform Rules on Agency Procedure relating to petitions for rule making which are printed in the first volume of the Iowa Administrative Code.

263—3.1(17A) Petition for rule making. In lieu of the words “(designate office)”, insert “City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309”.

In lieu of the words “(AGENCY NAME)” as the caption of the petition form, insert “BEFORE THE CITY DEVELOPMENT BOARD”.

263—3.3(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309”.

These rules are intended to implement Iowa Code section 17A.7.

ITEM 2. Renumber **263—Chapter 4** as **263—Chapter 10** and adopt the following **new 263—Chapter 4**:

CHAPTER 4

DECLARATORY ORDERS

The city development board hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

263—4.1(17A) Petition for declaratory order. In lieu of the words “(designate agency)”, insert “city development board”. In lieu of the words “(designate office)”, insert “City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309”.

In lieu of the words “(AGENCY NAME)” as the caption on the petition form, insert “BEFORE THE CITY DEVELOPMENT BOARD”.

263—4.2(17A) Notice of petition. In lieu of the words “ ___ days (15 or less)”, insert “15 days”.

263—4.3(17A) Intervention.

4.3(1) In lieu of the words “ ___ days”, insert “15 days”.

263—4.5(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309”.

These rules are intended to implement Iowa Code section 17A.9.

ITEM 3. Renumber **263—Chapter 5** as **263—Chapter 11** and adopt the following **new 263—Chapter 5**:

CHAPTER 5

FAIR INFORMATION PRACTICES

The city development board hereby adopts, with the following exceptions and amendments, the rules of the Governor’s Task Force on Uniform Rules on Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

263—5.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of the words “(official or body issuing these rules)”, insert “city development board”.

263—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “city development board”. In lieu of the words “(insert agency name and address)”, insert “City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309”.

5.3(2) Office hours. In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays”.

5.3(7) Fees.

c. Supervisory fee. In lieu of the words “(specify time period)”, insert “one-half hour”.

263—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words “(designate office)”, insert the words “City Development Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309”.

These rules are intended to implement Iowa Code chapter 22.

ITEM 4. Adopt **new 263—Chapters 6 to 9** as follows:

CHAPTER 6

WAIVER AND VARIANCE RULES

263—6.1(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 entity on the basis of the particular circumstances of that person or entity. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

CITY DEVELOPMENT BOARD[263](cont'd)

263—6.2(17A) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

263—6.3(17A) Applicability. 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.

263—6.4(17A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 6.6(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.

263—6.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

6.5(1) Pending matters. If the petition relates to a pending petition or application for city development action, the petition requesting a waiver shall be filed in the pending proceeding, using the caption of that matter.

6.5(2) Other. If the petition does not relate to a pending matter, the petition may be submitted to the board chairperson.

263—6.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is requested, and the case number of any related city development proceeding.
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 6.4(17A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the activity affected by the proposed waiver, including a description of each related city development action by the requester within the past five years.
6. Any information known to the requester regarding the board's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition, including all parties to the proceeding if the petition relates to a matter pending before the board.

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

263—6.7(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 director, a committee of the board, or a quorum of the board.

263—6.8(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.

263—6.9(17A) 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 pending city development action, and shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

263—6.10(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, 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.

6.10(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. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

6.10(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.

6.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

6.10(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.

6.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable under the existing circumstances.

CITY DEVELOPMENT BOARD[263](cont'd)

6.10(6) 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 90 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a pending city development action, the board shall grant or deny the petition no later than the time at which the final decision in that matter is issued.

6.10(7) 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.

6.10(8) 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.

263—6.11(17A) Public availability. All orders granting or denying waiver petitions shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for waivers 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.

263—6.12(17A) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

263—6.13(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. 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;

2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

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

263—6.14(17A) 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.

263—6.15(17A) Defense. After the board 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.

263—6.16(17A) Judicial review. Judicial review of the 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 section 17A.9A.

CHAPTER 7

VOLUNTARY ANNEXATION

263—7.1(368) When board approval required. Applications for voluntary annexation of territory within another city's urbanized area and voluntary annexation requests including some property without the owner's consent must be approved by both the city receiving the territory and the city development board.

263—7.2(368) Contents of request. A request for board approval of an application for voluntary annexation of territory within another city's urbanized area shall be initiated pursuant to Iowa Code section 368.7 and shall include the following:

7.2(1) Landowner's application. Written application(s) for annexation of the territory must include:

a. A request for annexation of identified property, dated and signed by all owners of record or their authorized representatives;

(1) In the event that voluntary annexation is sought for a parcel of land which is being sold on contract, the contract seller and the contract buyer must both approve the annexation application;

(2) In the event that property for which annexation is sought is owned by a business organization or entity other than a natural person or persons, documentation establishing that the applicant is authorized to act on behalf of the owner shall be provided with the application.

b. A legal description of the property for which annexation is sought; and

c. A map of the property for which annexation is sought.

7.2(2) Documentation of the city's approval of the application. The following documentation must be included in a city's request for board approval of a voluntary annexation application:

a. A general statement of the proposal, briefly describing the current and expected use of the annexation territory, any services which the city currently provides to the territory, and the reasons for the property owners' request for annexation, if known.

b. A statement indicating whether the annexation territory is subject to an existing moratorium agreement and, if so, whether the proposed annexation is consistent with the terms of that agreement.

c. A complete legal description of the territory for which application is made, including the right-of-way to the center line of all secondary roads adjoining the annexation territory, unless a 28E agreement between the county and the city allowing exclusion of the right-of-way is in place and a copy of the agreement is included with the application, as required by Iowa Code section 368.1(14).

d. Prior to approval of a voluntary annexation application by the city council, the city shall provide a copy of the landowner's annexation application and the legal description of the entire annexation territory to the county auditor with a request that the auditor verify the accuracy and completeness of the legal description and verify current ownership of the parcel(s) involved. The auditor's response shall be included in the city's filing with the board. If the auditor fails to re-

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spond to the request within 14 days, the city may provide a copy of the request and a statement indicating that no response was received in lieu of the auditor's verification.

e. A map clearly showing the entire boundary of the existing city, the entire annexation territory, adjacent roadways, and the relationship of the territory to the annexing city and, if the annexation territory is within the urbanized area of another city, the relationship of the territory to the neighboring city. More than one map may be submitted if necessary to provide all of the required information to the board.

f. A statement indicating whether state-owned property or county-owned road right-of-way has been included in the proposal pursuant to Iowa Code section 368.5 and, if so, certification that the city has complied with the notice requirement of that section.

g. Certification that the city has complied with the notice requirements of Iowa Code section 368.7(3), including proof of mailing of the application and affidavit of publication of the required public notice, and, if railway right-of-way is included, certification of notice to the owner as required by Iowa Code section 368.7(1). For purposes of calculating the required period of notice, "business days" shall include Monday through Friday of each week, excluding "legal holidays" as set forth in Iowa Code section 4.1(34).

h. The city may, but is not required to, include a provision for transition of the imposition of city taxes against property within the annexation territory. The provision shall not allow greater exemption for taxation than the tax exemption formula schedule provided under Iowa Code section 427B.3, subsections 1 through 5, and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

i. A resolution of the council of the city to which the application for annexation is directed approving the application. If the council opts to provide for transition of the imposition of city taxes, the terms of the transition shall be included in the resolution.

7.2(3) Additional information to accompany requests which include land area without the consent of the owner(s). In addition to the information which must be filed pursuant to subrule 7.2(2), a city's request that includes property without the consent of the owner(s) must provide the following additional information within the application submitted to the board:

a. The names and addresses of all owners of land included without the owners' consent and a legal description of all land owned by each nonconsenting owner;

b. Prior to filing the annexation application, the city shall provide a copy of the legal description and map of the annexation territory and the list of property owners identified by the city to the county auditor with a request that the auditor verify the accuracy and completeness of the legal description and verify current ownership of the parcel(s) involved. A copy of the auditor's response shall be included in the application. If the auditor fails to respond to the request within 14 days, the city may provide a copy of the request and a statement indicating that no response was received in lieu of the auditor's verification;

c. The acreage of each parcel or parcels owned by each voluntary applicant and nonconsenting landowner, the acreage of any railroad right-of-way included pursuant to Iowa Code section 368.7(1), and the acreage of any state- or county-owned property included pursuant to Iowa Code section 368.5;

d. A calculation showing the percentage of the territory for which voluntary annexation applications have been received by the city and the percentage of territory included without the consent of the owner(s), prepared in a manner consistent with subrule 7.8(2);

e. A map indicating the relationship of the parcels included without the consent of the owner(s) to the rest of the territory and to the city;

f. Certification that the city has complied with the notice and public hearing requirements of Iowa Code section 368.7(1). For purposes of calculating the required period of notice, "business days" shall include Monday through Friday of each week, excluding "legal holidays" as set forth in Iowa Code section 4.1(34); and

g. A statement in the city council's resolution approving the annexation which sets forth the reason(s) that land is included in the proposal without the consent of the owner(s).

263—7.3(368) Filing of request. A city seeking board approval of a voluntary annexation application shall file the original and 15 copies of its request and all supporting documentation. The request will be deemed filed with the board on the date it is received by board staff. The board shall return a file-stamped copy of the request to the filing city.

263—7.4(368) Staff review of filing. Within two weeks of a city's filing of a request for approval of a voluntary annexation, board staff shall review the request to determine whether the city has included all of the information required by rule 7.2(368). If the request is found to be incomplete, staff shall notify the filing city, identifying the required item(s) omitted and offering the city an opportunity to provide the omitted information prior to submission of the request to the board.

263—7.5(368) Submission to the board by staff—notice. A request for the voluntary annexation of property within an urbanized area will be submitted to the board for consideration at the first board meeting conducted 31 or more days after the filing of the request. The board shall provide notice of all meetings at which the board will consider the city's request by regular mail to the filing city, each city whose boundary is within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, each affected public utility, and the regional planning authority which includes the territory.

263—7.6(368) Amendment of application.

7.6(1) No addition of territory. After a request for approval of an application for voluntary annexation has been filed with the board, it may not be amended to include additional territory.

7.6(2) Deletion of territory. A city may, upon its own motion or at the request of the board, seek amendment of an application for voluntary annexation to delete one or more of the parcels included in the proposal as filed with the board.

a. A motion to amend an application for voluntary annexation may be made at any time prior to issuance of the board order approving or denying the application.

b. The board shall provide notice of a proposed amendment by regular mail to all owners of land included in the application, each city whose boundary is within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, each affected public utility, the regional planning authority which includes the territory, and all other parties of record in the board proceeding.

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c. A party to the proceeding may file a resistance to the motion to amend within 14 days of the date of service of notice of the proposed amendment.

d. The board may grant a request to amend an application if it determines that the request serves the public interest.

263—7.7(368) Board proceedings on unanimous voluntary applications when no voluntary application or petition for involuntary annexation or incorporation of common territory is received within 30 days of the initial filing.

7.7(1) Applicability. If all territory included within the city's application is included upon application of the owner, by notice to the owner of railway right-of-way pursuant to Iowa Code section 368.7(1), or by notice to the Iowa attorney general or a county attorney pursuant to Iowa Code section 368.5, the application shall be processed pursuant to this rule.

7.7(2) Initial board review. The board shall review each request for approval of an application for voluntary annexation of territory within an urbanized area to determine compliance with the requirements of Iowa Code chapter 368 and these rules.

7.7(3) Information considered. The board shall provide any interested person or party an opportunity to submit written comment on the application prior to or at the time of board consideration of the request for approval. The board may:

a. Allow an opportunity for oral comment on the application;

b. Consider public documents; and

c. Request additional information from affected cities, counties or persons, including any of the information required to be included in a petition for involuntary city development action.

7.7(4) Criteria. The board may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code sections 368.16 and 368.17, in acting on an application for voluntary annexation.

7.7(5) If the request is found to be incomplete, the board may request further information from the applicant or the filing city or may dismiss the request, stating in its order the reason(s) for the dismissal.

7.7(6) If annexation of the territory is statutorily barred pursuant to Iowa Code section 368.17, the board shall deny the application, stating in its order the reason(s) for the denial.

7.7(7) If the board approves an application for voluntary annexation of territory within the urbanized area of another city, the board shall issue a written decision and file the decision with the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and all other parties of record in the board's proceeding. Upon expiration of the time for appeal, the board shall file with the secretary of state and record with the county recorder of each county containing a portion of the city or territory involved copies of the board's proceedings, as required by Iowa Code section 368.20(2).

7.7(8) If the board denies an application, it shall issue an order setting forth the reason(s) for the denial and shall provide a copy to the filing city.

263—7.8(368) Board proceedings on voluntary annexation requests which include land area without the consent of the land owner(s).

7.8(1) General rule. Territory comprising not more than 20 percent of the total land area of a voluntary annexation may be included without the consent of the owner(s) to avoid creating an island or to create more uniform boundaries.

7.8(2) Calculation of proportion of land area included without the consent of the owner(s).

a. Only contiguous land area may be considered for purposes of calculating the amount of the land area which may be included without the owner's consent.

b. Territory owned by the state and territory within road right-of-way owned by the county, included pursuant to Iowa Code section 368.5, and railway right-of-way included in a voluntary annexation proposal pursuant to Iowa Code section 368.7(1) shall be included in the calculation of the total annexation area for purposes of calculating the amount of land area which may be included without the owner's consent.

7.8(3) Board action on proposal. The board shall review the request to determine compliance with the requirements of Iowa Code chapter 368 and these rules.

a. If the request is found to be incomplete, the board may request further information from the applicant or the filing city or may dismiss the request.

b. If the request is found to be in proper form and to contain all required information, the board will conduct a public hearing on the request, providing notice of the meeting by regular mail sent at least ten days prior to the hearing to all owners of land included in the annexation proposal, the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority containing a portion of the territory, each affected public utility, and the state department of transportation.

The board hearing shall be conducted informally. Representatives of the city requesting the annexation shall be given an opportunity to explain the proposal, the city's reason for including property without the consent of the owner(s), and any other information the city believes will assist the board in acting on the proposal. The county, all owners of property within the territory proposed for annexation, the regional planning authority, affected public utilities, and any other person affected by the annexation will be provided an opportunity to submit information to the board. The board may request additional information from the city, county or other persons, including any of the information required to be included in a petition for involuntary city development action.

c. The board shall consider whether the proposal serves the public interest and may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code sections 368.16 and 368.17, in acting on a request for voluntary annexation which includes the property of nonconsenting owners. The board may not approve a request for voluntary annexation of territory which includes the property of nonconsenting owners unless the board finds that the land of the nonconsenting owners was included in order to (1) avoid creating an island, or (2) create more uniform boundaries.

d. A request for voluntary annexation of territory which includes the property of nonconsenting owners shall not be approved unless four members of the board vote in favor of the proposal.

e. If the board approves a request for voluntary annexation of territory which includes the property of nonconsent-

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ing owners, the board shall issue a written decision and file the decision with the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and any other party of record in the board proceeding. Upon expiration of the time for appeal, the board shall file with the secretary of state and record with the county recorder of each county containing a portion of the city or territory involved copies of the board's proceedings, as required by Iowa Code section 368.20(2).

f. If the board denies the request, an order shall be issued setting forth the reasons for the denial, and a copy shall be provided to the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and any other party of record in the board's proceeding.

263—7.9(368) Board proceedings on voluntary applications when one or more voluntary applications or involuntary petitions for annexation of common territory are received within 30 days of the initial filing.

7.9(1) Initial board review. The board shall review the application(s) and petition(s) to determine compliance with the requirements of Iowa Code chapter 368 and these rules.

7.9(2) Dismissal. If an application or petition does not meet the requirements of Iowa Code chapter 368 or these rules, the board may dismiss the application or petition or request additional information from the applicant or petitioner. If only one application or petition remains before the board following such dismissal, the board will proceed on that filing as if no competing application or petition had been filed.

7.9(3) Hearing. If competing application(s) and petition(s) are found to be in proper form, the board will consider the voluntary application(s). The board may appoint a local committee pursuant to Iowa Code section 368.14 and shall conduct a public hearing pursuant to the procedure set forth in paragraph 7.8(3)"b" for hearings on voluntary applications including property without the consent of the owner(s).

7.9(4) Criteria for decision. Within 90 days of receipt of the application, the board or committee shall meet to assess the application and evidence received at the public hearing. If the application meets the applicable requirements of Iowa Code chapter 368, the board or committee shall approve the application unless the board makes one of the following findings by a preponderance of the evidence:

- a. The application was filed in bad faith;
- b. The application as filed is contrary to the best interests of the citizens of the urbanized area; or
- c. The city that received the application cannot, within a reasonable period of time, meet its obligation to provide services to the territory to be annexed sufficient to meet the needs of the territory.

7.9(5) Decision if approved. If the board or committee approves a voluntary application considered under Iowa Code subsection 368.7(4), the board shall issue a written decision and file the decision with the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and any other party to the board's proceeding. Upon expiration of the time for appeal, the board shall file with the secretary of state and record with the county recorder of each county containing a portion of the city or territory involved copies of the

board's proceedings, as required by Iowa Code section 368.20(2).

7.9(6) Decision if statutorily barred. If annexation of the territory is statutorily barred under Iowa Code section 368.17, the board or committee shall deny the application, stating in its order the reason(s) for the denial. An annexation request denied pursuant to this rule may not be converted to an involuntary petition, pursuant to subrule 7.9(7).

7.9(7) Action if not approved. If the application is not approved or is denied pursuant to subrule 7.9(6), the board shall issue an order setting forth its reason(s) for failing to approve the application and requiring conversion of the application into an involuntary petition. The city shall within 30 days withdraw its application or convert its application into an involuntary petition containing all information required to be included in such petitions by Iowa Code section 368.11 and these rules.

7.9(8) Following conversion of the application into an involuntary petition, the board shall order appointment of a special local committee to consider the application and all pending petitions for annexation of common territory, pursuant to Iowa Code section 368.14A. Committee appointments shall be made by resolution of the appropriate governing bodies within 45 days of issuance of the board's order. Each resolution shall state that the local representative selected is a qualified elector of the city or territory represented or, if none of the qualified electors of the territory will accept the appointment or the territory has no resident qualified electors, that the representative owns property within the territory. Copies of the resolutions shall be submitted to the board. In the event a city or county fails to timely notify the board of appointment of its local representative, the committee may conduct its proceedings in the absence of that local representative so long as a quorum is present.

7.9(9) The special local committee shall conduct a public hearing to receive evidence and comment on all applications and petitions pending before it. The order of presentation shall be determined by the committee prior to commencement of the hearing. The hearing shall be conducted in accordance with the rules for committee proceedings set forth in 263—Chapter 9.

7.9(10) The committee shall, within a reasonable time following conclusion of the public hearing, meet to determine appropriate means to resolve the common territory issues among the applications and petitions before it.

a. The committee shall resolve common territory issues by amending one or more of the pending proposals.

b. Upon resolution of the common territory issues, the committee shall proceed with consideration of each resulting petition in accordance with Iowa Code sections 368.16 and 368.17 and these rules.

7.9(11) The committee shall issue a separate decision setting forth its findings and conclusions relating to each of the petitions. The committee shall file its decision with the board and promptly notify the parties of the decision, as required by Iowa Code section 368.19.

7.9(12) Upon receipt of a committee decision approving all or a portion of a petition, the board shall complete the procedural steps set forth within 263—Chapter 10.

263—7.10(368) Costs. The cost of recording the board order, if the annexation is approved, shall be borne by the city to which territory is annexed.

These rules are intended to implement Iowa Code section 368.7.

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CHAPTER 8
PETITIONS FOR INVOLUNTARY CITY
DEVELOPMENT ACTION

263—8.1(368) Board and committee action required. All petitions filed pursuant to Iowa Code section 368.11 requesting involuntary city development action, including incorporation, discontinuance, annexation, severance, or consolidation, must be reviewed by the city development board and, if in proper form, acted upon by a local committee established pursuant to Iowa Code section 368.14 or 368.14A.

263—8.2(368) Initiation of petition. A petition for involuntary city development action may be initiated, pursuant to Iowa Code sections 368.11 and 368.13, by a city council, a county board of supervisors, a regional planning authority, 5 percent of the qualified electors of a city or territory involved in the proposal, or the city development board. When a proposal for city development action is initiated by the city development board, the board may require a city to submit a petition or may formulate its own petition.

263—8.3(368) Contents of the petition. The body or bodies initiating the petition shall be known as the petitioner(s). The petition shall be prefaced by an introductory statement in the following general form:

We, the [city council of _____] [county board of supervisors of _____ county] [regional planning authority for _____] [certain qualified electors of _____] do hereby petition the city development board of the state of Iowa for an [incorporation] [discontinuance] [boundary change], more specifically described as [description of proposed action], and involving land described as [complete legal description].

In addition, the petition shall contain the following information, as required by Iowa Code section 368.11:

8.3(1) General statement of proposal. The general statement of proposal shall be an overview of the proposal, briefly describing the characteristics of the city and territory and the reasons for the corporate boundary change.

8.3(2) Moratorium. The petition shall contain a statement indicating whether a territory proposed for annexation is subject to an existing moratorium agreement and, if so, whether the proposed annexation is consistent with the terms of the agreement.

8.3(3) Map. The map shall clearly show all boundaries of the city and the entire annexation territory, adjacent roadways, the relationship of the territory to the city, and all geographic features deemed relevant to the proposed action. In cases of incorporation, a map of the proposed city boundary shall be provided. In cases of discontinuance or consolidation, a map of the existing city or cities shall be provided. Where land use patterns are expected to be pertinent to consideration of the proposal, the petitioner may be requested to present graphic material representing existing and anticipated use of the territory.

8.3(4) Legal description. The petition shall include a complete legal description of the territory proposed for annexation, severance, incorporation, discontinuance, or consolidation. In cases of annexation, the description of the right-of-way of secondary roads, included as required by Iowa Code section 368.1(14), shall be provided. Prior to filing the petition, the city shall provide a copy of the legal description, map of the territory and list of property owners identified by the city to the county auditor, including the right-of-way of secondary roads, which is included as re-

quired by Iowa Code section 368.1(14), with a request that the auditor verify the accuracy and completeness of the legal description and verify current ownership of the parcel(s) involved. The auditor's response shall be included in the petition.

8.3(5) Assessed valuations. The assessed valuation and classification assigned for tax purposes (agricultural, residential, commercial, etc.) for each parcel of platted and unplatted land within the territory shall be included. This information shall be verified in writing by the city or county assessor.

8.3(6) Property owners. The name and address of each owner of property within the territory.

8.3(7) Population density. Population density in terms of persons per acre for annexation or persons per square mile for incorporation, discontinuance, severance or consolidation. Population density shall be delineated for the existing city, the territory, and for the resulting city if the proposal is approved.

8.3(8) Potential growth in population. If the petition seeks annexation, consolidation or incorporation, projected population growth for the city and the territory shall be provided. Population projections shall be for a 10- or 20-year period and may be taken from an existing comprehensive plan or may be calculated based on relevant data if no comprehensive plan exists.

8.3(9) Residential and commercial development regulation and projections. The petition shall include a description of current and proposed zoning regulations that apply to the annexation territory. Projected development and land use patterns shall be described under the assumption of continuation of existing land use regulations and under the assumption of land use regulations that would be applied after the annexation, if approved. Residential, commercial, and industrial development projections shall be provided based on population projections for the city and territory.

In the case of annexation, the amount of vacant developable land within the existing corporate limits and within the territory, as well as an estimate of the amount of developable land needed to accommodate future growth, shall be provided.

8.3(10) Description of topography. Topographical information shall be in map and narrative form. Maps shall include both the city and territory and shall consist of contour lines at ten-foot intervals as may be taken from contour maps of the United States Geological Survey or any other source acceptable to the board. A narrative description of the area's topography shall accompany the maps and identify flood plains, drainage areas, drainage ways, slopes and bluffs. In petitions seeking annexation or incorporation, the narrative shall also address topography as it relates to development of urban uses and the extension of municipal services.

8.3(11) Plans for disposal of assets, assumption of liabilities, and provision of services including the following information:

a. Petitions for annexation, consolidation and incorporation shall include a description of existing municipal services and facilities, including but not limited to water supply, sewage disposal, police and fire protection, and street and road maintenance. The petition shall also include information regarding the city's proposal for providing municipal services, including but not limited to water supply, sewage disposal, street and road maintenance, and police and fire protection to the territory, proposed new city, or consolidated city, and the estimated cost of providing said services.

b. In cases of annexation, the petition shall include a statement of the capability of the existing city sewage sys-

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tem, water system, transportation infrastructure, park and recreation system, and police, fire, and public works departments to accommodate the increased demand resulting from addition of the territory to the city and the demand which will result from projected development in the territory. The petition shall also include an analysis of existing bonding capacity and bonded indebtedness, and the assets the city may receive that will offset the cost of providing municipal services, including property tax, increase in municipal bonding capacity, state and federal shared revenues, special assessment policies, revenue bonds, user fees, and federal funds where applicable.

c. In cases of incorporation, a statement of the capability of the proposed city to develop a sewage system, water system, transportation infrastructure, park and recreation system, and police, fire, and public works departments to accommodate the territory proposed for incorporation, and an explanation of the assets the proposed city may receive that will offset the cost of providing municipal services, including property tax, increase in municipal bonding capacity, state and federal shared revenues, special assessment policies, revenue bonds, user fees, and federal funds where applicable.

d. Petitions for severance and discontinuance shall include a statement of the adequacy of sewage disposal, water supply, police and fire protection, and other municipal services being provided to the territory by the city; a statement of the capability and intent of the county in which the city or territory is located to assume responsibility for police protection, street and road maintenance and repair, and other services; and an analysis of the capability of the township fire district to provide fire protection.

e. Petitions for discontinuance shall include an inventory of all real estate, funds, and personal property owned by the city and all existing liabilities of the city, and a proposal for disposition of all assets and satisfaction or assumption of all liabilities.

8.3(12) Effect of the proposal and possible alternative proposals. At a minimum, the petition shall include a description of the effect that approval of the proposal will have on the cost and adequacy of services and facilities and a description of the effect of disapproval of the proposal on the cost and adequacy of services and facilities.

8.3(13) Effect of proposal on adjacent areas. The petition shall include documentation of the amount of revenue lost or gained by any city, township, or county affected by the proposal. Consideration shall be given to property tax, state shared revenues, federal revenue sharing, and any other major sources of revenue.

8.3(14) Service agreements. The petition shall identify services which may be provided through agreement with township fire districts, rural water and sanitary districts, and proposed agreements with any county or city for police protection, ambulance service, or any other service deemed to be of importance to the proposed boundary adjustment and shall present examples of existing service agreements.

8.3(15) Shared roads. The petition shall include a proposed formal agreement between affected municipal corporations and counties for the maintenance and improvement and traffic control of any road that is divided as a result of an incorporation or a boundary adjustment.

8.3(16) Name of proposed city. A petition for incorporation or consolidation shall state the name of the proposed resulting city.

8.3(17) Transition of taxation. In cases of annexation the city may, but is not required to, include a provision for transi-

tion for the imposition of city taxes against property within the annexation territory. The provision shall not allow greater exemption for taxation than the tax exemption formula schedule provided under Iowa Code section 427B.3, subsections 1 through 5, and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

8.3(18) Islands. The petition shall state whether approval of the proposal will create an island of unincorporated area.

8.3(19) Location of the territory. Petitions for annexation, incorporation, and consolidation shall include the following information:

a. Annexation. Petitions for annexation shall state whether the territory is adjoining the city to which annexation is proposed and whether any of the territory is in an existing city.

b. Incorporation. Petitions for incorporation shall state whether any of the territory to be incorporated is in an existing city or within two miles of the boundary of an existing city. If all or a portion of the area proposed for incorporation is within two miles of another city, the petition must include documentation that a petition for annexation of substantially the same territory has been dismissed, disapproved, or voted upon unfavorably within five years prior to filing of the petition.

c. Consolidation. Petitions for consolidation shall state whether all of the affected cities are contiguous.

263—8.4(368) Preliminary notice and public meeting. A petitioner initiating an involuntary city development proceeding shall comply with the applicable notice, publication, and public meeting requirements contained in Iowa Code section 368.11. For purposes of calculating the required period of notice, "business days" shall include Monday through Friday of each week, excluding "legal holidays" as set forth in Iowa Code section 4.1(34). Proof of substantial compliance with these requirements, including copies of certified mail receipts, certification of publication of notice of the meeting, minutes of the public meeting and copies of the documents received at the meeting, shall accompany each petition for involuntary city development action filed with the board.

263—8.5(368) Filing and service.

8.5(1) Filing. The original and 15 copies of a petition shall be filed with the board. A petition will be deemed filed with the board on the date it is received by board staff. The board shall return a file-stamped copy of the petition to the petitioner.

8.5(2) Service. Within seven days of the filing of a petition with the board the petitioner shall serve notice of the filing, including a copy of the petition, upon the council of each city for which a discontinuance, annexation, severance or consolidation is proposed; the board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed, or severed; and the regional planning authority for the area involved.

8.5(3) Proof of service. The petitioner shall file proof of compliance with the service requirement of subrule 8.5(2) with the board.

263—8.6(368) Costs. All costs which are incurred in drafting a petition, preparing supporting documents, mailing and publishing notices and other preliminary proceedings and the cost of recording, if the proposal is approved, shall be borne by the petitioner(s).

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263—8.7(368) Staff review of petition. Within two weeks of the filing of a petition for involuntary city development action, board staff shall review the request to determine whether the city has filed all of the information required by rule 8.3(368). If the request is found to be incomplete, staff shall notify the petitioner, identifying the required item(s) omitted and offering the petitioner an opportunity to provide the omitted information prior to submission of the petition to the board.

263—8.8(368) Submission of petition to the board—notice. Petitions will be submitted to the board at the first meeting conducted 31 days or more after filing of the petition. The board shall provide the petitioner with notice of all meetings at which the board will consider or act upon the petition.

263—8.9(368) Board review of petition. Upon submission of a petition, the board shall review the petition for substantial compliance with Iowa Code section 368.11 and rules 8.3(368) through 8.5(368). In conducting this review, the board will presume that factual assertions made within the petition are accurate. The board may, however, request and examine appropriate public records or request additional information from the petitioner if deemed necessary to its review.

The board may waive any requirement of these rules upon finding the requirement inapplicable to the petition under review.

263—8.10(368) Board action on petition. On the basis of its review of the petition, the board shall accept the petition for further proceedings or dismiss the petition.

8.10(1) Acceptance. The board shall accept for further proceedings any petition that it finds to be in substantial compliance with the filing requirements of Iowa Code section 368.11 and these rules and not subject to dismissal pursuant to Iowa Code section 368.12.

8.10(2) Dismissal. A petition may be dismissed by the board only upon finding one of the statutory grounds for dismissal set forth in Iowa Code section 368.12. In cases of dismissal, the board shall issue an order indicating the reasons for the dismissal, providing copies to the petitioner and all parties to the proceeding.

263—8.11(368) Formation of local committee. If the petition is accepted by the board for further proceedings, the board shall direct the appointment of local representatives to serve with the board as a city development committee as required by Iowa Code section 368.14. Committee appointments shall be made by resolutions of the appropriate governing bodies within 45 days of issuance of the board's order. The resolutions shall state that the local representative selected is a qualified elector of the city or territory represented or, if none of the qualified electors of the territory will accept the appointment or the territory has no resident qualified electors, that the representative owns property within the territory. Copies of the resolutions and the address and telephone number of each local representative shall be promptly submitted to the board. In the event a city or county fails to timely notify the board of appointment of its local representative, the committee may conduct its proceedings in the absence of that local representative so long as a quorum is present.

These rules are intended to implement Iowa Code chapter 368.

CHAPTER 9

COMMITTEE PROCEEDINGS ON PETITIONS FOR INVOLUNTARY CITY DEVELOPMENT ACTION

263—9.1(368) Formation of committee. Following board acceptance of a petition for boundary adjustment and the appointment of local representatives as specified in Iowa Code section 368.14 and rule 263—8.11(368), the board shall expand to a committee which shall have jurisdiction to conduct proceedings consistent with Iowa Code sections 368.16 through 368.19. If all or a portion of the petition is approved by the committee, the board retains concurrent jurisdiction to subpoena witnesses and documents for use in the proceedings and to conduct proceedings consistent with Iowa Code sections 368.19 through 368.21.

The parties shall be notified of the formation of the committee and directed to file all motions, pleadings, and submissions relating to the petition with the committee, in care of the office of the board.

263—9.2(368) Meetings. Meetings of the committee shall be conducted in compliance with Iowa Code chapter 21.

9.2(1) Scheduling. Committee hearings shall be scheduled by the board and may be tentatively scheduled at the time the petition is accepted. Board staff shall verify the availability of local representatives to participate on the scheduled hearing date and will notify the board if the local representatives are not all available on the date initially selected by the board.

9.2(2) Quorum. A quorum of the committee consists of three board members and one local representative or, if the number of local representatives exceeds two, three board members and at least one-half of the appointed local representatives. A quorum must be present in order for the committee to conduct a meeting or hearing.

9.2(3) Chairperson. The chairperson of the city development board, or the chairperson's designee, shall serve as chairperson of all committee proceedings.

9.2(4) Notice. Notice of the time, place, and purpose of each meeting shall be provided by regular mail to all parties, posted at the office of the city development board, and made available to all interested persons upon request. Notice of a committee public hearing will also be published as required by Iowa Code section 368.15.

9.2(5) Minutes. Minutes of all committee meetings shall be kept pursuant to Iowa Code chapter 21. The minutes of any committee meeting, but not including public hearings held pursuant to Iowa Code section 368.15, shall serve as the record of the meeting. The record of public hearing proceedings shall be in accordance with subrule 9.10(5).

9.2(6) Telephone and electronic proceedings. The committee chairperson may, on the chairperson'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 committee chairperson 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. Objections, if any, shall be filed with the committee and served on all parties at least three business days in advance of the hearing.

263—9.3(368) Parties to proceedings. An individual, group, organization or governmental agency may become a party to a case by filing a separate written appearance identifying one person upon whom the board may serve all orders,

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correspondence, or other documents. The written appearance may be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed. If filed after docketing, the appearance shall include reference to the applicable docket numbers. The city for which the boundary adjustment is proposed, any city whose urbanized area contains the territory, and any county or regional planning authority which contains the territory will be considered to be a party without filing an appearance.

263—9.4(368) Filing of documents. Once a party has filed an appearance, it shall serve any document that it files on the board or committee on all other parties and such filing shall contain proof of service. All parties may request reproducible documents to the proceedings that were filed on the board or committee prior to said parties' admittance and shall pay for said documents at a rate of 10 cents for each page. After a party has been admitted, any document filed on the board or committee by that party but not served on all other parties may be taken note of by the board or committee and, if so noted, all parties shall be given a copy of the document and shall have an opportunity to comment on said document either orally or in writing as the board or committee so specifies. Any document filed on the board or committee by those who are not parties or who are not properly seeking to be admitted as parties may be taken note of by the board or committee and, if so noted, all parties shall be given a copy of the document and shall have an opportunity to comment on said document either orally or in writing as the committee so specifies. Those who are not parties or who are not properly seeking to be admitted as parties shall receive reproducible documents to the proceedings only upon written request to the committee chairperson, and the cost of the reproduction may be charged to the requesting party at the rate of 10 cents for each page. Except as otherwise provided by law, a document is deemed filed at the time it is received by the staff of the board.

9.4(1) Form of motions.

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

b. 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 the committee.

c. In ruling on a motion, the committee may consider a failure to respond within the required time period as evidence of a lack of objection to the motion.

9.4(2) Proof of service.

a. 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)

b. Electronic service. The committee chairperson may by order permit service or filing of a particular document by facsimile, E-mail or similar electronic means, unless precluded by a provision of law. In the absence of such an order, a 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.

9.4(3) Time requirements.

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

b. For good cause, the committee 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 committee shall afford all parties an opportunity to be heard or to file written arguments.

263—9.5(17A) Ex parte communication.

9.5(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following filing of a petition, there shall be no communication, directly or indirectly, between the board or committee members 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 committee members from communicating with each other. Nothing in this provision is intended to preclude the committee members from seeking the advice or help of board staff or persons other than those with a personal interest in, 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 a committee member any ex parte communications they have received of a type that the committee member would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

9.5(2) Prohibitions on ex parte communications commence with the receipt of a petition for board members and with appointment to a committee for local representatives and continue for as long as the case is pending.

9.5(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

9.5(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 263—9.4(368) 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.

9.5(5) Committee members in a pending contested case may communicate with each other without notice or opportunity for parties to participate, provided that a quorum of the committee is not present.

9.5(6) The board's staff or other persons may be present in deliberations or otherwise advise the committee members 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 9.5(1).

9.5(7) Communications with the committee members 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 committee members when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 263—9.9(368).

9.5(8) Disclosure of prohibited communications. A committee member who receives a prohibited ex parte communication during the pendency of a case must initially deter-

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mine if the effect of the communication is so prejudicial that the committee member should be disqualified. If the committee member 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 committee member received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the committee member 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.

9.5(9) Promptly after being assigned to serve as committee member, a committee member 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 a petition or similar document need not be separately disclosed by the committee member as long as such documents have been or will shortly be provided to the parties.

9.5(10) The committee 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 committee.

263—9.6(17A) Disqualification.

9.6(1) A committee member 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 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 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.

9.6(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 in-

formation 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 committee member in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 9.5(9) and 9.6(3).

9.6(3) In a situation in which a committee member 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.

9.6(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 9.6(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.

9.6(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.

263—9.7(368) Prehearing activities.

9.7(1) Prehearing conference. An informal conference of parties may be ordered at the discretion of the committee chairperson or at the request of any party prior to a hearing in any proceeding. A written request for prehearing conference or an order for prehearing conference on the committee chairperson'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.

a. Notice of a prehearing conference shall be provided as described in 9.2(4).

b. A prehearing conference may be ordered for the purpose of formulating issues and considering:

- (1) The simplification of issues.
- (2) The necessity or desirability of amending the petition or other filings for the purpose of clarification, amplification or limitation.
- (3) The possibility of making admissions of certain averments of fact or stipulations thereof, for the purpose of avoiding unnecessary proof.
- (4) The procedure at the hearing.
- (5) The propriety of prior mutual exchange of prepared testimony and exhibits between or among the parties.
- (6) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

c. Recordation. Action agreed upon at the conference shall be made a part of the record in such manner as may be prescribed by the committee chairperson at the close of the conference.

9.7(2) Discovery. Parties involved in involuntary boundary adjustment proceedings shall follow the discovery procedures specified in the Iowa Rules of Civil Procedure. At the public hearings, such evidence may be introduced and entered into the record if the evidence would otherwise be admissible.

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a. Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the committee chairperson, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. 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 committee. 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 9.4(3). The committee may rule on the basis of the written motion and any response, or may order argument on the motion.

c. Interrogatories, depositions and other documents and evidence discovered shall not be submitted to the committee prior to the public hearings. Evidence obtained in discovery may be used in the boundary adjustment proceeding if that evidence would otherwise be admissible in that proceeding.

9.7(3) Subpoenas. Witnesses who are subpoenaed are entitled to the same fees as are subpoenaed witnesses in the district court of Iowa. These fees shall be paid by the party at whose insistence the testimony is to be given. Service of subpoenas shall be in like manner as provided by law for service of subpoenas in the district court of Iowa.

a. Subpoenas shall be issued by the board's administrator or designee upon written request. Subpoenas issued may compel the attendance of witnesses at depositions 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.

b. A request for a subpoena shall include the following information, as applicable:

- (1) The name, address and telephone number of the person requesting the subpoena;
- (2) The name and address of the person to whom the subpoena shall be directed;
- (3) The date, time, and location at which the person shall be commanded to attend and give testimony;
- (4) Whether the testimony is requested in connection with a deposition or hearing;
- (5) A description of the books, papers, records or other real evidence requested;
- (6) The date, time and location for production, or inspection and copying.

c. Each subpoena shall contain, as applicable:

- (1) The caption of the case;
- (2) The name, address and telephone number of the person who requested the subpoena;
- (3) The name and address of the person to whom the subpoena is directed;
- (4) The date, time, and location at which the person is commanded to appear;
- (5) Whether the testimony is commanded in connection with a deposition or hearing;
- (6) A description of the books, papers, records or other real evidence the person is commanded to produce;
- (7) The date, time, and location for production, or inspection and copying;
- (8) The time within which a motion to quash or modify the subpoena must be filed;
- (9) The signature, address and telephone number of the board's administrator or designee;
- (10) The date of issuance;

(11) A return of service.

d. The board's administrator or designee shall mail or provide the subpoenas to the requesting party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena and providing copies of the subpoena to all parties to the proceeding.

e. 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.

f. Upon receipt of a timely motion to quash or modify a subpoena, the board may issue a decision. 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 may schedule oral argument or hearing by telephone or in person.

263—9.8(368) Notice of public hearings. Notices shall comply with 9.2(4).

9.8(1) Notice of the public hearing shall include:

- a. A statement of the time, place and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved; and
- d. A short and plain statement of the matters asserted.

9.8(2) Notice of the public hearing shall comply with Iowa Code section 362.3 and Iowa Code chapter 21.

263—9.9(368) Continuance. Hearings or proceedings relating to matters which are within the jurisdiction of the committee may be continued by the committee and notice thereof shall be given to all parties. Prior to the commencement of the hearing or other proceeding, a party may, upon written motion to the committee, request a continuance. Copies of said written motion must include proof of service upon all parties to the proceedings. All parties shall have an opportunity to file resistances to said motion and the committee may, in its discretion, allow the parties to present oral arguments relative to the motion pursuant to rule 263—9.4(368). A party may, during said hearing or proceeding, but not ex parte, request a continuance. All parties shall have an opportunity to comment on a request for a continuance made at the hearing either orally or in writing as specified by the committee.

9.9(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

9.9(2) An oral application for a continuance may be made if the committee 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 committee. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

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9.9(3) In determining whether to grant a continuance, the committee 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.

9.9(4) The board's administrator may enter an order granting an uncontested application for a continuance. Upon consultation with the committee chairperson or the chairperson's designee, the board's administrator may deny an uncontested application for a continuance, or rule on a contested application for continuance.

9.9(5) If a hearing is continued prior to the commencement of the hearing, notice of the continued hearing will be given as required in rule 263—9.8(368).

263—9.10(368) Public hearings.**9.10(1) General provisions.**

a. Public hearings shall be held on dates and locations determined by the board. However, whenever possible, the public hearings shall be held in or near the locale so affected. The hearing shall be held in a place open to the public.

b. The board shall, prior to serving notice, designate a suitable place to make the petition or plan available for public inspection. The board shall ensure that the petition or plan is available on or before the date of notice and publication.

c. Before testimony is presented, the record shall show the identity of the committee members present, identity of the assistant attorney general and board staff, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. The chairperson may also outline any ground rules and time limitations to allow all parties an opportunity to speak. The committee chairperson or assistant attorney general representing the committee may make a brief opening statement, which may include a summary of actions taken by the committee prior to the hearing.

d. The committee chairperson shall be in control of the proceedings and shall have the authority to admit or exclude testimony or other evidence and to rule on all motions and objections.

e. The committee shall listen to testimony and arguments from all those concerned and shall be free to ask questions of anyone at any point during any hearing.

f. Legal counsel shall be at the discretion and expense of any party to the proceedings.

g. Parties appearing before the committee should select one or two persons to serve as primary spokespersons for their positions.

h. Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated either orally or in writing, shall be accompanied by a short statement of the grounds of such objections, and shall be included in the record. No such objection shall be deemed waived by further participation by the objector in the hearing or proceeding.

i. The committee may adjourn a hearing for good cause from time to time, upon request of either party or legal counsel representing the committee, for the purpose of a fair hearing.

j. Decorum. The committee chairperson shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

9.10(2) Format of public hearings. The format of the public hearings will generally follow the procedure outlined below. However, the committee chairperson may tailor the format to the nature of the case. The petitioners shall have the burden of proof and shall present their evidence first. Other parties in the case will present their evidence following the petitioners as determined by the committee chairperson. The format will generally permit each party an opportunity to make an opening statement, including the names of any witnesses to be called to explain the party's basic arguments, and to present testimony, evidence and exhibits in support of the party's arguments.

a. After each party's presentation, questions may be asked of the presenters by members of the committee. Then the other parties may ask questions and cross-examine witnesses. Then others who are not parties may ask questions of the presenters.

b. After the cross-examination and questioning are completed, there will be a comment period during which those who are not parties may make comments expressing their views regarding the petition. Those who wish to comment need not preregister with the committee prior to the hearing, but need only to sign up at the time of the hearing. The committee chairperson may limit the length of the comments when a large number of people wish to testify.

c. After the comment period, the parties will be offered an opportunity for rebuttal to evidence presented during the hearing. The petitioner will have the final opportunity for rebuttal.

At the conclusion of all presentation of evidence, each party shall be permitted an opportunity for a closing statement summarizing its arguments.

d. Failure to appear.

(1) If a party to a hearing fails to appear, that party shall be deemed to have waived opportunity for the hearing or to participate in the hearing unless there is a show of good cause for such failure.

(2) If a petitioner fails to appear at a proceeding, the hearing may be dismissed or postponed at the discretion of the committee, or the committee may approve the petition on the basis of verified proof and affidavits, if any, filed in the case, which shall be considered as having been offered in evidence at the hearing by the petitioner.

9.10(3) Testimony at hearings. At the public hearing, evidence may be presented in narrative form or question and answer form for each witness at the discretion of the committee chairperson.

a. At the public hearing, all parties shall be allowed the opportunity to cross-examine witnesses and be given an opportunity for rebuttal.

b. The committee members have the right to examine witnesses at any stage of the witnesses' testimony. The committee chairperson may limit questioning in a manner consistent with law.

9.10(4) Evidence. Rules of evidence shall be those set forth in the Iowa administrative procedure Act. The committee shall observe the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. 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.

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a. The committee chairperson shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

b. 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 committee chairperson may rule on the objection at the time it is made or may reserve a ruling until the written decision.

c. 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 committee chairperson, 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.

d. Individuals unable to attend a public hearing may submit written comments to the committee. Written comments shall become part of the permanent file of the hearing.

e. Documentary evidence. When any material or relevant matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. If, in the judgment of the committee, such immaterial or irrelevant matter would unnecessarily encumber the record, such book, paper or document will not be received in evidence as a whole, but the material or relevant portions thereof, if otherwise admissible, may be read into the record or a true copy thereof supplied in the form of an exhibit.

f. The committee may take note of appropriate public documents and records of a general scientific or technical nature by notice to all parties involved, limiting the time within which such parties may object to the accuracy of the facts sought to be proved from such documents or records.

g. 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 shall also be furnished to members of the committee. All exhibits admitted into evidence shall be appropriately marked and the original exhibit shall be made part of the record. Written or printed materials shall be in sufficient quantity to supply one copy for each member of the committee and one copy for all other parties to the proceedings.

h. Stipulation of facts is encouraged. The committee chairperson may make decisions based on stipulated facts.

i. At any stage of the hearing or after the close of the hearing but prior to decision, the committee may call for further evidence to be presented by the parties concerned. All parties shall be given a copy of said additional evidence and shall have an opportunity to comment on said evidence either orally or in writing as the committee so specifies.

9.10(5) Record of public hearing.

a. Recording of oral proceedings. Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters.

b. Any party requesting a certified shorthand or court reporter shall make arrangements for such attendance and expense.

c. The board administrator shall prepare an official record of all proceedings, including testimony and exhibits.

Testimony taken by a mechanical recording device may be incorporated by reference if a transcript is not made. Tapes, stenographic notes, or transcription of the oral proceedings will be retained by the board for five years following the decision or until the case is resolved, whichever is later.

d. 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. A reasonable amount will be charged to cover the cost of providing a duplicate tape to the requesting party. 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.

9.10(6) Posthearing brief. The committee shall allow ten days after the final public hearing within which the parties may file briefs.

a. Unless otherwise ordered by the committee chairperson, initial briefs shall be filed simultaneously by all parties. Briefs shall contain a concise statement of the case. Arguments shall be based on evidence introduced during the proceeding and shall specify the portions of the record where the evidence is found. No new evidence may be included in the posthearing briefs absent a request from the committee and compliance with paragraph 9.10(4)"i." The initial brief of the party who bears the burden of proof shall include all arguments it intends to offer in its brief in support of its case and against the record case of the adverse party or parties.

b. Reply briefs shall also be filed simultaneously, but only by those parties filing initial briefs, on a schedule set by the committee chairperson. A reply brief shall be confined to refuting arguments made in the brief of an adverse party.

c. A copy of such briefs shall be given to the committee and all parties and shall be accompanied by written evidence of service upon all parties.

d. A party's failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the board from deciding the issue on the basis of evidence appearing in the record.

e. The committee chairperson may set a date and time for oral argument (including a time limit for argument), either in addition to or in lieu of briefs, when in the chairperson's discretion to do so is deemed necessary or in the public interest. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.

263—9.11(368) Committee decision.

9.11(1) Deliberation. After the final public hearing and filing of briefs, the committee will meet to decide whether or not to approve the petition. The meeting will be an open meeting pursuant to Iowa Code section 21.3.

a. Notice of the meeting will be provided pursuant to 9.2(4).

b. The committee may consider all information and arguments presented at the public hearing and in the briefs that were filed.

c. No additional oral or written testimony will be taken or considered.

d. The committee may conduct its deliberations in closed session, but shall announce its decision in open session.

e. Within 90 days after the final public hearing, the committee shall approve or disapprove the petition or plan and shall file its written decision for record.

f. The committee may amend the petition or plan prior to approving it.

CITY DEVELOPMENT BOARD[263](cont'd)

g. Decisions shall always be in writing and rendered at a time following the hearing. The decision shall include:

- (1) Identification of parties and basic issues.
- (2) Summary of findings of fact.
- (3) Summary of conclusions of law.
- (4) Ruling.
- (5) Reasons for ruling.
- (6) Order for implementation of the decision.

9.11(2) Committee decisions, orders, or rulings shall be signed by the chairperson. Any city development board staff person authorized by the chairperson may sign decisions, orders, or rulings of the board or committee after the chairperson has reviewed the decision, order or ruling and has given consent to sign. Copies of the written decision shall be transmitted to the parties by certified mail.

9.11(3) A request for a decision which seeks only a change in the effective date shall be made by motion filed, served and acted upon in a like manner as other motions.

263—9.12(368) Appeal of a committee decision.

9.12(1) An appeal of a committee decision or the legality of an election on the proposed boundary adjustment may be initiated by any party to the proceedings or any resident or owner of land in the territory or the city for which the boundary adjustment is proposed, by filing a petition seeking judicial review of the decision pursuant to Iowa Code sections 17A.19 and 368.22.

9.12(2) A petition challenging the committee's decision must be filed within 30 days of the date of the committee's decision to approve or disapprove the boundary adjustment. A petition challenging the legality of the election must be filed within 30 days of the publication of the election results.

9.12(3) Appeal of approval of a petition or plan does not stay the election.

9.12(4) Within 30 days of being notified of the filing of an appeal, the board's staff shall transmit a certified copy of the agency record to the reviewing court. The record of an involuntary boundary adjustment proceeding shall include the following as applicable:

- a. The original petition or plan and any amendment;
- b. Proofs of service and publication of required public hearing notices;
- c. All pleadings filed with the board and committee and any answers or rulings on the pleadings;
- d. The public hearing transcript and all evidence received at public hearing;
- e. All evidence received or considered and all other submissions;
- f. All briefs and documents filed on the board or committee by parties to the proceedings and all other filings made by those who are not parties;
- g. Public documents taken note of by the board or committee;
- h. The committee's findings of fact, conclusions of law and determination;
- i. The board's election order;
- j. Certification and proof of publication of election results;
- k. The board's final order.

By stipulation of all parties to the appeal, the record of the case may be shortened.

263—9.13(368) Rehearing procedures.

9.13(1) Any party to a boundary adjustment proceeding may file an application for rehearing of the committee decision to approve or disapprove a proposed boundary adjustment.

9.13(2) The application for rehearing shall be filed within 20 days of the date of the committee decision. The date of the committee decision is the date it is mailed or the date of delivery if service is by another means, unless the date is specified in the order.

9.13(3) The party applying for rehearing shall transmit a copy of the application for rehearing to all parties to the proceeding on the date of filing with the committee. If the application does not contain a certificate of service, the board shall file copies of the application on all parties, with the time for response beginning then.

9.13(4) Contents of application.

a. An application for rehearing shall specify the findings of fact and conclusions of law claimed to be erroneous and include a brief statement of the grounds of error.

b. The application shall state whether the applicant desires reconsideration of all or part of the committee decision on the existing record and whether on the basis of paragraph 9.13(4)"c," the applicant requests an opportunity to provide additional evidence.

c. A party may request the taking of additional evidence only by establishing:

- (1) The facts or other evidence arose after the original proceeding;
- (2) The party offering such evidence could not reasonably have provided such evidence at the original proceeding; or

(3) The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

d. No further hearing will be granted when it is apparent that the added evidence will merely be cumulative.

e. Any party may object to or resist an application for rehearing by filing a resistance with the committee within ten days of the filing of the application.

f. Disposition of an application for rehearing. The committee may grant or deny an application with or without a hearing on the application.

(1) The application for rehearing shall be deemed denied unless the committee grants the application within 20 days of its filing.

(2) An order granting or denying an application for rehearing is deemed issued on the date it is mailed by the committee, or the date it is received if another method of delivery is used.

(3) If the committee grants an application for rehearing, the committee may schedule oral argument or rehearing on the application if additional evidence will be received. If additional evidence will not be received, the committee may issue a ruling without oral argument or hearing. The committee 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.

(4) If the committee denies an application, the committee shall proceed as if no application had been filed.

These rules are intended to implement Iowa Code sections 17A.11, 17A.17 and 368.14 to 368.17.

ARC 1808B**DENTAL EXAMINERS BOARD[650]****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 Dental Examiners hereby gives Notice of Intended Action to amend Chapter 1, “Definitions,” Iowa Administrative Code.

This amendment updates the definition of “practice of dentistry” to include the statutory definition and the rendering of other dental decisions, including diagnosing, treatment planning, determining the appropriateness of proposed dental care, or engaging in other acts that constitute the practice of dentistry.

This amendment is not subject to waiver because it includes a definition only.

Any interested person may make written comments or suggestions on the proposed amendment on or before July 30, 2002. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on July 30, 2002, from 2 to 3 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. 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 person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

This amendment was approved at the June 7, 2002, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

The following amendment is proposed.

Amend rule **650—1.1(153)**, definition of “practice of dentistry,” as follows:

“Practice of dentistry” as defined in Iowa Code section 153.13 includes the rendering of professional services in this state as an employee or independent contractor or the rendering of any dental decisions, including diagnosing, treatment planning, determining the appropriateness of proposed dental care, or engaging in acts that constitute the practice of dentistry.

The following classes of persons shall also be deemed to be engaged in the practice of dentistry:

1. Persons publicly professing to be dentists, dental surgeons, or skilled in the science of dentistry, or publicly professing to assume the duties incident to the practice of dentistry.

2. Persons who perform examinations, diagnosis, treatment, and attempted correction by any medicine, appliance, surgery, or other appropriate method of any disease, condition, disorder, lesion, injury, deformity, or defect of the oral cavity and maxillofacial area, including teeth, gums, jaws, and associated structures and tissue, which methods by

education, background, experience, and expertise are common to the practice of dentistry.

ARC 1806B**DENTAL EXAMINERS BOARD[650]****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 Dental Examiners hereby gives Notice of Intended Action to amend Chapter 11, “Licensure to Practice Dentistry or Dental Hygiene,” Iowa Administrative Code.

For an applicant for dental licensure by credentials, this amendment decreases the required number of years of active practice in another state. The amendment also eliminates the requirement that the state from which the applicant comes must also extend licensure without examination to Iowa dental applicants. The purpose of the amendment is to encourage additional applicants for dental licensure by credentials and to make the rule equitable with the rule for a dental hygiene license by credentials. The amendment implements 2002 Iowa Acts, House File 2547.

This rule will be subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendment on or before July 30, 2002. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on July 30, 2002, from 2 to 3 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. 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 person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

This amendment was approved at the June 7, 2002, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code section 153.21 as amended by 2002 Iowa Acts, House File 2457, section 16.

The following amendment is proposed.

Amend subrule 11.3(2) as follows:

11.3(2) Applications must be filed with the board along with:

a. Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board.

b. Evidence of successful completion of Parts I and II of the examination of the Joint Commission on National Dental Examinations, with resulting scores, or evidence of having passed a written examination during the last ten years that is comparable to the examination given by the Joint Commission on National Dental Examinations.

DENTAL EXAMINERS BOARD[650](cont'd)

c. A statement of any dental examinations taken by the applicant, with resulting scores.

d. Evidence of a current, valid license to practice dentistry in another state, territory or district of the United States issued upon clinical examination.

e. Certification by a state board of dentistry, or equivalent authority, from a state in which applicant has been licensed for at least ~~five~~ *three* years immediately preceding the date of application and evidence of having engaged in the practice of dentistry in that state for ~~five~~ *three* years immediately preceding the date of application or evidence of ~~five~~ *three* years of practice satisfactory to the board.

f. Certification by the state board of dentistry, or equivalent authority, from each state in which applicant has engaged in the practice of dentistry, that the applicant has not been the subject of final or pending disciplinary action.

g. A statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, complaints, judgments, settlements, or criminal charges.

~~h. Evidence that the state, territory or district from which the applicant comes extends licensure without examination to Iowa dentists who hold a current license, graduated from an accredited dental school, and have had five consecutive years in the practice. Submission of a copy of the dental licensing law and regulations of the jurisdiction will satisfy this requirement. When the applicant does not meet the requirements for licensure by credentials specified in this paragraph, the board will accept successful completion of a national specialty examination in lieu thereof.~~

h. The nonrefundable application fee for licensure by credentials as specified in 650—Chapter 15 of these rules shall be made payable to the Iowa State Board of Dental Examiners.

i. Evidence that the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.

j. Evidence of successful completion of the jurisprudence examination administered by the board of dental examiners.

k. A photograph of the applicant suitable for positive identification.

renewal fee for a dental license. The amendments implement 2002 Iowa Acts, House File 2547.

These rules will be subject to waiver at the sole discretion of the Board in accordance with the rules adopted governing the issuance of waivers or variances. However, renewal fees are not subject to waiver pursuant to 650—15.5(17A,147,153,272C).

Any interested person may make written comments or suggestions on the proposed amendments on or before July 30, 2002. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on July 30, 2002, from 2 to 3 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the June 7, 2002, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code section 153.22 as amended by 2002 Iowa Acts, House File 2547, section 17.

The following amendments are proposed.

ITEM 1. Amend rule 650—13.1(153) as follows:

650—13.1(153) Resident dentist license.

13.1(1) A dentist or dental hygienist seeking permission to practice as a resident, intern or graduate student in a board-approved teaching or educational institution offering specialty oriented courses shall be required to make application to the board on official board forms and furnish to the board the following:

a. A signed written statement from the dean or designated administrative officer of the institution in which the applicant seeks to enroll.

b. A signed written statement of a dentist who holds an active Iowa license or faculty permit and who proposes to exercise supervision and direction over said applicant, specifying in general terms the time and manner thereof.

c. Satisfactory evidence of graduation from an accredited school of dentistry or other school approved by the board.

~~d. All applicants shall be required to furnish to the board such~~ Such additional information as the board may deem necessary to enable it to determine the proficiency, character, education or experience of such applicant.

e. Applications must be signed and verified as to the truth of the statements contained therein, and all questions must be completely answered.

f. The appropriate fee as specified in 650—Chapter 15 of these rules.

13.1(2) If approved by the board, a resident dentist license shall allow the licensee to serve as a resident, intern, or graduate student dentist or dental hygienist, under the supervision of a practitioner who holds an active Iowa license or faculty permit, at the University of Iowa College of Dentistry or at an institution approved by the board.

13.1(3) If a resident dentist licensee leaves the service of such institution during the tenure of residency, internship or graduate study, the license shall be returned immediately to

ARC 1807B

DENTAL EXAMINERS BOARD[650]

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 Dental Examiners hereby gives Notice of Intended Action to amend Chapter 13, "Special Licenses," and Chapter 15, "Fees," Iowa Administrative Code.

These amendments allow dental hygienists enrolled in an appropriate program to seek a resident license. The amendments also change the renewal period for faculty permit holders from an annual to a biennial renewal period and adjust the number of continuing education hours accordingly. In addition, a biennial renewal fee of \$240 for a faculty permit holder is proposed, which is consistent with the biennial

DENTAL EXAMINERS BOARD[650](cont'd)

the board and the authority granted by the board to the licensee shall be automatically canceled.

13.1(4) The resident dentist license shall be valid for one year and may be renewed annually during such period of time as the dental resident is continuously enrolled in a graduate dental education program.

13.1(5) No examination or continuing education shall be required for this license.

13.1(6) The resident dentist licensee shall be subject to all applicable provisions of the law and the rules of the board. Any violations of these laws or rules or the failure of the licensee to perform and progress satisfactorily or receive effective supervision as determined by the board shall be grounds for revocation of the license after proper notice and hearing.

This rule is intended to implement Iowa Code section 153.22.

ITEM 2. Amend subrule 13.2(3) as follows:

13.2(3) A faculty permit shall expire on ~~the first day of July following the date of issuance~~ *June 30 of every even-numbered year* and may, at the sole discretion of the board, be renewed on a *yearly biennial* basis.

ITEM 3. Amend subrule 13.2(6) as follows:

13.2(6) Faculty permit holders are required to obtain ~~15~~ *30* hours of continuing education in accordance with the guidelines in 650—Chapter 25 for renewal of the faculty permit. ~~A report of continuing education hours earned in the previous fiscal year shall be submitted by the permit holder at the time of renewal.~~

ITEM 4. Adopt **new** subrules 15.2(9) and 15.2(10) as follows:

15.2(9) The fee for renewal of a faculty permit is \$240.

15.2(10) The fee for renewal of a resident license is \$40.

ARC 1812B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 23, “Iowa Community Development Block Grant Program,” Iowa Administrative Code.

The proposed amendments make technical changes to bring the rules up to date concerning the Department; increase the maximum grant amounts for public works projects for communities with populations under 2,500; increase the required minimum wage needed to request economic development set-aside funds; and target funding under the contingency fund for “bold possibilities” as defined in Item 1.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 30, 2002. Interested persons may submit written or oral comments by contacting Rose Wazny, Community Development Division, Iowa De-

partment of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on July 30, 2002, at 1:30 p.m. at the above address in the IDED northwest conference room on the first floor. Individuals interested in providing comments at the hearing should contact Rose Wazny by 4 p.m. on July 29, 2002, to be placed on the hearing agenda.

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

The following amendments are proposed.

ITEM 1. Amend rule **261—23.2(15)** by adopting the following **new** definitions in alphabetical order:

“**Bold possibilities**” means projects that meet one of the goals of IOWA 2010.

“**IOWA 2010**” means the goals and objectives outlined in the report dated November 1, 2000, issued by the governor’s strategic planning council.

ITEM 2. Amend subrule 23.4(5) as follows:

23.4(5) Contingency funds. IDED reserves the right to allocate up to 5 percent of funds for projects dedicated to addressing threats to public health and safety and ~~opportunities that would be foregone without immediate assistance for~~ *bold possibilities*.

ITEM 3. Amend subrule 23.5(9) as follows:

23.5(9) Applicants shall certify their compliance with the following:

1. to 7. No change.

8. 24 CFR Part 58, ~~as revised April 1, 1997~~, and the National Environmental Policy Act of 1969;

9. to 13. No change.

~~14. Department of Defense Reauthorization Act of 1986;~~

~~15 14.~~ Fair Labor Standards Act;

~~16 15.~~ Hatch Act;

~~17 16.~~ Prohibition on the Use of Excessive Force and Barring Entrance;

~~18 17.~~ Drug-Free Workplace Act;

~~19 18.~~ Government wide Restriction on Lobbying;

~~20 19.~~ Single Audit Act;

~~21 20.~~ State of Iowa Citizen Participation Plan; and

~~22 21.~~ Other relevant regulations as noted in the CDBG management guide.

ITEM 4. Amend subrule 23.6(2) as follows:

23.6(2) Grant ceilings. Maximum grant awards are as follows:

1. Applicants with populations of fewer than 1,000 shall apply for no more than ~~\$250,000~~ *\$300,000*.

2. Applicants with populations of 1,000 to 2,499 shall apply for no more than ~~\$400,000~~ *\$500,000*.

3. Applicants with populations of 2,500 to 14,999 shall apply for no more than \$600,000.

4. Applicants with populations of 15,000 to 49,999 shall apply for no more than \$800,000.

However, no recipient shall receive more than \$1,000 per capita based on the total population within the recipient’s jurisdiction. If a county applies on behalf of one or more unincorporated communities within its jurisdiction, the \$1,000 per capita ceiling shall pertain to any project benefiting all residents of the unincorporated community or communities, not the entire unincorporated population of the county applying. Applicants shall use one of the following for population figures to determine the applicable grant ceilings: ~~1990~~ *2000* census figures, special census figures or adjusted figures based on annexation completed in accordance with statutory

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

requirements in Iowa Code chapter 368. County populations shall be calculated for unincorporated areas only to determine applicable grant ceilings.

a. to c. No change.

ITEM 5. Amend subrule 23.6(3) as follows:

23.6(3) Water and sewer fund application procedure. IDEED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDEED.

a. Application forms shall be available upon request from IDEED, ~~Bureau of Community Facilities and Services~~ *Community Development Division*, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4825 4711.

b. Applicants shall submit a preapplication for review by IDEED staff by a deadline established by IDEED, ~~which shall be no earlier than 60 days after the announcement of availability of funds.~~

c. and d. No change.

e. IDEED shall provide ~~by mail~~ full application forms and instructions to the selected applicants ~~with the invitation to apply.~~

f. Full applications shall be submitted by a deadline established by IDEED, ~~which shall be no later than 50 days after IDEED issues the invitations to apply.~~

g. and h. No change.

i. ~~Applications~~ *Applicants* selected to receive awards shall be notified by letter from the IDEED director by a date determined by IDEED, ~~which shall be no later than 90 days after the application due date.~~

ITEM 6. Amend subrule 23.6(4) as follows:

23.6(4) Community facilities and services fund application procedure. Each year, IDEED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDEED.

a. Application forms shall be available upon request from IDEED, ~~Bureau of Community Facilities and Services~~ *Community Development Division*, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4825 4711.

b. Applicants shall submit a preapplication for review by IDEED staff by a deadline established by IDEED, ~~which shall be no earlier than 60 days after the announcement of availability of funds.~~

c. No change.

d. IDEED shall provide ~~by mail~~ full application forms and instructions to the selected applicants ~~with the invitation to apply.~~

e. Full applications shall be submitted by a deadline established by IDEED, ~~which shall be no earlier than 50 days after IDEED issues the invitation to apply.~~

f. No change.

g. ~~Applications~~ *Applicants* selected to receive awards shall be notified by letter from the IDEED director by a date determined by IDEED, ~~which shall be no later than 90 days after the application due date.~~

ITEM 7. Amend paragraph 23.7(1)“c” as follows:

c. The average starting wage of jobs to be created or retained by a proposed project shall meet or exceed the ~~greater lowest of 75 80 percent of the average county wage scale of \$7.00 an hour, 80 percent of the average regional wage, or \$10.60 an hour.~~

ITEM 8. Amend subrule 23.7(2) as follows:

23.7(2) Application procedure. Application forms and instructions shall be available upon request from IDEED, ~~Bureau of Business Financing~~ *Business Development Division*, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4825 4819. An original and two copies of completed applications with required attachments shall be submitted to the same address. IDEED shall accept EDSA applications at any time and shall review applications on a continuous basis. IDEED shall take action on submitted applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denying the applicant's request for funding or requesting additional information from the applicant for consideration before a final decision is made.

ITEM 9. Amend subrule 23.8(2) as follows:

23.8(2) Application procedure. Application forms and instructions shall be available upon request from IDEED, ~~Bureau of Business Financing~~ *Business Development Division*, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4819. An original and one copy of completed applications with required attachments shall be submitted to the same address. IDEED shall accept PFSA applications at any time and shall review applications on a continuous basis. IDEED shall take action on submitted applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denying the applicant's request for funding or requesting additional information from the applicant for consideration before a final decision is made.

ITEM 10. Amend subrule 23.9(2) as follows:

23.9(2) Application procedure. Application forms and instructions shall be available upon request from IDEED, ~~Bureau of Community Facilities and Services~~ *Community Development Division*, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4819 4783. An original and five copies of completed applications shall be submitted to the same address. IDEED shall accept career link applications at any time and shall review applications on a continuous basis until all program funds are obligated or the program is discontinued.

ITEM 11. Amend rule 261—23.10(15) as follows:

261—23.10(15) Requirements for the contingency fund. The contingency fund is reserved for communities experiencing a threat to public health, safety or welfare that necessitates immediate corrective action sooner than can be accomplished through normal community development block grant procedures, or communities ~~responding to an immediate community development opportunity that necessitates action sooner than can be accomplished through normal funding procedures addressing bold possibilities.~~ Up to 5 percent of CDBG funds may be used for this purpose.

23.10(1) Application procedure. Those local governments applying for contingency funds shall submit a written request to IDEED, ~~Division of Community and Rural Development~~ *Community Development Division*, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the situation, the project budget including the amount of the request from IDEED, projected use of funds and an explanation of the reason that the situation cannot be remedied through normal CDBG funding procedures.

23.10(2) Application review. Upon receipt of a request for contingency funding, IDEED shall determine whether the project is eligible for funding and notify the applicant of its

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

determination. A project shall be considered eligible if it meets the following criteria:

- a. No change.
- b. Projects to address ~~an exceptional opportunity~~ *bold possibilities*.

(1) ~~A significant opportunity exists for the state that otherwise would be forgone if not addressed immediately. The project addresses one of the goals of IOWA 2010.~~

(2) ~~The opportunity is such that it was neither possible to apply to the CDBG program in a previous normal application time frame, nor is it possible to apply in a future normal CDBG application time frame. The project provides a beneficial impact on the standard of living and quality of life of proposed beneficiaries.~~

(3) ~~The project meets the funding standard established by the funding criteria set forth in this rule. The project can be ready to proceed and be completed in a timely manner.~~

(4) ~~Applicants can provide adequate information to IDED on total project design and cost as requested. The project leverages the maximum amount of local funds possible.~~

(5) ~~The project will continue to remain viable after CDBG assistance.~~

(6) ~~The project meets the funding standards established by the funding criteria set forth in this rule.~~

(7) ~~The applicant provides adequate information to IDED on total project design and costs as requested.~~

23.10(3) and **23.10(4)** No change.

ITEM 12. Rescind and reserve rule **261—23.13(15)**.

ITEM 13. Amend subrule 23.14(1) as follows:

23.14(1) Application procedure. Communities in need of disaster recovery funds shall submit a written request to IDED, ~~Bureau of Community Facilities and Services Community Development Division~~, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the community's problem, the amount of funding requested, projected use of funds, the amount of local funds to be provided and the percent of low- and moderate-income persons benefiting from the project.

ITEM 14. Amend subrule 23.15(12) as follows:

23.15(12) Appeals process for findings of noncompliance. Appeals shall be entertained in instances where it is alleged that IDED staff participated in a decision that was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals shall be addressed to the division administrator of the ~~division of community and rural development~~ *community development division*. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director shall make the final decision on all appeals.

ARC 1811B

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

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

The proposed amendments make changes in technical language, including the updating of all references to census data from 1990 to 2000.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 30, 2002. Interested persons may submit written or oral comments by contacting Rose Wazny, Community Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on July 30, 2002, at 2:30 p.m. at the above address in the IDED northwest conference room on the first floor. Individuals interested in providing comments at the hearing should contact Rose Wazny by 4 p.m. on July 29, 2002, to be placed on the hearing agenda.

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

The following amendments are proposed.

ITEM 1. Amend rule 261—25.5(15), introductory paragraph, as follows:

261—25.5(15) Application procedure. All potential housing fund applicants are encouraged, but not required, to complete and submit a HART form describing the proposed housing activity prior to the submittal of a formal application. If the proposal is determined to be appropriate for housing fund assistance, IDED shall inform the applicant of the appropriate application procedure by mail. ~~The HART process, if undertaken, should be completed prior to or as early as possible in the application process.~~

ITEM 2. Amend rule 261—25.7(15) as follows:

261—25.7(15) Application review criteria. IDED shall evaluate applications and make funding decisions based on general ~~project activity~~ *activity* criteria, need, impact, feasibility, and ~~project activity~~ *activity* administration based upon the specific type of ~~project activity~~ *activity*. The ~~project activity~~ *activity* criteria shall be a part of the application. A workshop will be held at least 60 days prior to the application deadline to provide information, materials, and technical assistance to potential applicants.

25.7(1) As applicable, the review criteria for homeowner assistance applications shall include the following:

- a. General criteria.
 1. ~~Project Activity~~ *Activity* objectives.
 2. Total number of units ~~and number of assisted units~~.
 3. ~~Project activities~~ *Activities* and cost estimates.
 4. If new construction, availability of necessary infrastructure and utilities.
 5. Form(s) of assistance (grants, loans, amounts).

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6. Type(s) of assistance (e.g., mortgage buy-down, down payment, closing costs, and rehabilitation).
 7. Median purchase price for single-family housing in the community.
 8. Initial purchase price or after rehabilitation value per assisted unit.
 9. Mortgage lender participation documentation and underwriting standards.
 10. Methodology to determine maximum amount of conventional financing affordable to buyer.
 11. Selection criteria for participants.
 12. Methodology to ensure that the property will be the buyer's principal residence.
 13. Assurance of compliance with HUD lead-based paint hazard regulations.
 14. Compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999) and standards, codes, and ordinances described in 25.4(1)"c."
 15. ~~Project Activity~~ time line.
 - b. Need, impact and feasibility criteria.
 1. Number and percentage of low- and moderate-income persons in the applicant community.
 2. Evidence and documentation of need for the ~~project activity~~.
 3. Percentage of need to be met through the ~~project activity~~.
 4. Reasons mortgage applications have been denied by local lenders.
 5. Housing costs, housing supply, condition of available housing, and vacancy rates.
 6. If acquisition for new construction, documentation of need for new units.
 7. Recent or current housing improvement activities.
 8. Description of current and ongoing comprehensive community development efforts.
 9. Publicity promoting the proposed ~~project activity~~.
 10. Number of potential participants and the method by which they were identified.
 11. New businesses or industrial growth in the past five years.
 12. Local involvement and financial support.
 13. ~~Property values compared to 1990 in project location (percent change)~~.
 14. ~~Number of households compared to 1990 in project location (percent change)~~.
 15. ~~Population compared to 1990 in project location (percent change)~~.
 16. ~~13. Overall vacancy rate of owner-occupied units in the community (percent change)~~.
 - c. Administrative criteria.
 1. Plan for ~~project activity~~ administration.
 2. Previous ~~project activity~~ management experience.
 3. Budget for administration.
 4. Resale and or recapture provisions, terms, and enforcement procedures.
 5. Prior funding received and performance targets completed.
- 25.7(2) As applicable, the review criteria for owner-occupied housing rehabilitation applications shall include the following:
 - a. General criteria.
 1. ~~Project Activity~~ objectives.
 2. Area of benefit and reason for ~~applicant~~ selection.
 3. Condition of infrastructure in the ~~project activity~~ area served.
 4. Form of assistance to homeowners (grants, loans, amounts).
 5. Homeowner contribution methodology.
 6. Selection criteria for participants.
 7. Method to determine that the property is the homeowner's principal residence.
 8. Compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999).
 9. Assurance of compliance with HUD lead-based paint hazard regulations.
 10. Plans for properties infeasible to rehabilitate.
 11. If relocation is included, estimate of available suitable replacement housing.
 12. Documentation of local lender participation and lender's underwriting criteria.
 13. Intended use of program income.
 14. ~~Project Activity~~ time line.
 - b. Need, impact and feasibility criteria.
 1. Evidence of need for the ~~project activity~~.
 2. Percentage of need to be met through the ~~project activity~~.
 3. Number and percentage of low- and moderate-income persons in the community.
 4. Housing costs, housing supply, condition of available housing, vacancy rate in ~~project the activity~~ area served.
 5. Other recent or current housing improvement activities in the ~~project activity~~ area served.
 6. Ongoing comprehensive community development efforts in the ~~project activity~~ area served.
 7. New businesses or industries in the past five years in the ~~city of the project location~~ community.
 8. Local ~~involvement and financial~~ support ~~documentation~~.
 9. Financial contribution to the ~~project activity~~ from other sources (with underwriting criteria).
 10. ~~Property values compared to 1990 in project location (percent change)~~.
 11. ~~Number of households compared to 1990 in project location (percent change)~~.
 12. ~~Population compared to 1990 in project location (percent change)~~.
 13. ~~10. Overall vacancy rate of owner-occupied units in the community (percent change)~~.
 - c. Administrative criteria.
 1. Plan for ~~project activity~~ administration.
 2. Previous ~~project activity~~ management experience.
 3. Budget for administration.
 4. List of prior CDBG and HOME funding.
 5. If application is for a continuation of a prior ~~project activity~~, list of performance targets completed.
 - 25.7(3) As applicable, the review criteria for rental housing assistance applications shall include the following:
 - a. General criteria.
 1. ~~Project Activity~~ objectives.
 2. Total number of units and number of assisted units.
 3. ~~Project activities~~ ~~Activities~~ and cost estimates.
 4. Eligibility criteria for renters of assisted units (income, age, disability, other).
 5. Rationale for ~~project activity~~ location.
 6. Availability and condition of infrastructure; availability of utilities.
 7. Zoning compliance.
 8. Environmental issues.
 9. Potential tenant displacement including estimated Uniform Relocation Act (URA) costs.
 10. Accessibility.

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

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

~~13~~ 12. Project Activity time line.

b. Need, impact and feasibility criteria.

1. Evidence of need for the project activity.

2. Percentage of need to be met through this project activity.

3. Number and percentage of low- and moderate-income persons in the community.

4. Housing costs, housing supply, condition of available housing, vacancy rate in project the activity area served.

5. If new construction, documentation of need for new construction.

6. Other recent or current housing improvement activities in the project activity area served.

7. Ongoing comprehensive community development efforts in the project activity area served.

8. New businesses or industries in the past five years in the city of the project location community.

9. Local involvement and financial support.

10. Opposition to the project activity and plans to alleviate concerns.

11. Financial contribution to the project activity from other sources (including all underwriting criteria).

12. Reason for "gap" in the project activity financing; justification for housing fund request amount.

~~13. Property values compared to 1990 in project location (percent change).~~

~~14. Number of households compared to 1990 in project location (percent change).~~

~~15. Population compared to 1990 in project location (percent change).~~

~~16~~ 13. Overall vacancy rate of owner-occupied rental units in the community (percent change).

c. Administrative criteria.

1. Plan for project activity administration and management.

2. Previous administrative experience.

3. Plan to ensure long-term affordability.

4. Plan for annual certification of tenant eligibility and compliance with Section 8 Housing Quality Standards.

5. Previous CDBG- and HOME-funded housing projects activities and current status.

6. Applicant's other rental housing projects activities and addresses.

25.7(4) As applicable, the review criteria for tenant-based rental assistance applications shall include the following:

a. General criteria.

1. Project Activity objectives.

2. Rationale for amount of assistance per recipient beneficiary.

3. Selection criteria for participants.

4. Form of assistance (grants, loans).

5. Use of assistance (rental and security deposits, rent assistance).

6. Length of time of assistance.

7. Portability of rental assistance.

8. Rent calculation.

b. Need, impact and feasibility criteria.

1. Number and percentage of low- and moderate-income persons in the applicant community.

2. Percentage of income potential recipients beneficiaries are currently paying for rent.

3. Area rental housing costs.

4. Availability of affordable rental housing.

5. Public housing authority waiting list.

6. Documentation of other indicators of need for Tenant-based Rental Assistance (TBRA).

7. Percentage of need to be met through this project activity.

8. Alternatives to the proposed project activity that were considered.

9. Coordination of this project activity with other housing assistance.

10. Other providers of TBRA in the community.

11. Description of efforts to obtain additional funding from other sources for TBRA.

12. Evidence of community local involvement and financial support.

13. Opposition to project activity and method to address it.

14. Economic indicators in community (unemployment rate, increase/decrease opportunity).

15. Project Activity time line.

~~16. Property values compared to 1990 in project location (percent change).~~

~~17. Number of households compared to 1990 in project location (percent change).~~

~~18. Population compared to 1990 in project location (percent change).~~

~~19~~ 16. Overall vacancy rate of rental units in the community (percent change).

c. Administrative criteria.

1. Plans for administering the project activity.

2. Description of previous administrative experience.

3. Budget for administration.

4. Plan for annual certification of tenant eligibility and compliance with Section 8 HQS.

5. Prior CDBG and HOME housing grants.

6. Prior projects activities funded with performance targets completed.

ITEM 3. Amend subrule 25.8(7) as follows:

25.8(7) The maximum per unit housing fund subsidy for all project activity types except new construction rental units is \$24,999. The maximum per unit housing fund subsidy for new construction rental units is \$50,000 per unit. Additional funds may be used to pay the direct administration, carrying costs and the cost of lead hazard reduction.

ITEM 4. Amend subrule 25.9(6) as follows:

25.9(6) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alterations of the funded activities affecting the scope, location, objectives or scale of the approved activity. Amendments shall be requested in writing by the CEO of the recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between the recipient and IDED.

EMERGENCY MANAGEMENT DIVISION

NOTICE—AVAILABILITY OF HAZARDOUS MATERIALS PLANNING AND TRAINING GRANTS

The Iowa Emergency Response Commission and the Iowa Emergency Management Division announce the availability of funding for planning and training grants to support implementation of Title III of the Superfund Amendments and Reauthorization Act of 1986 (also known as the Emergency Planning and Community Right-to-Know Act, or EPCRA).

These grants are made possible through the Hazardous Materials Emergency Preparedness (HMEP) Program, which is funded by fees collected by the U.S. Department of Transportation from registered shippers and carriers of certain hazardous materials. Grant funds also include state and local matching dollars.

Grant application packages will be sent to all Local Emergency Planning Committees (LEPCs) in Iowa in July of 2002. The Iowa Emergency Management Division must receive completed applications no later than Friday, September 20, 2002.

**** THE ONLY ELIGIBLE APPLICANTS FOR THESE GRANTS ****
**** ARE DESIGNATED LOCAL EMERGENCY PLANNING ****
**** COMMITTEES (LEPCs) IN THE STATE OF IOWA. ****

If you have questions about these grants, contact Dan Lee of the Iowa Emergency Management Division at (515) 281-3231.

ENVIRONMENTAL PROTECTION COMMISSION

NOTICE—INTERIM MATRIX CONFINEMENT FEEDING OPERATIONS

Pursuant to the Acts of the Seventy-ninth General Assembly, 2002 Regular Session, Senate File 2293, section 63, the Department of Natural Resources gives Notice that it will commence use of the interim matrix on July 10, 2002. After providing this Notice, the Department is authorized to use the interim matrix in evaluating applications for permits to construct confinement feeding operation structures. The notice previously published in the June 12, 2002, Iowa Administrative Bulletin announcing a June 18, 2002, effective date was subject to approval of rule-making documents by the Environmental Protection Commission. However, that approval did not occur, necessitating this notice.

ARC 1778B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.103A, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 60, “Wastewater Treatment and Disposal,” and Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

These proposed amendments implement the phase II changes in the storm water regulations recently adopted by the Environmental Protection Agency which the state of Iowa is required to adopt and enforce. The changes include requiring smaller construction sites to be covered by a storm water permit and requiring more cities to obtain permit coverage.

Proposed amendments to Chapter 60 modify the definition of “storm water discharge associated with industrial activity” by adding the definitions in the latest Federal Register notice and add a definition for “storm water discharge associated with small construction activity” in which the amount of ground disturbance is greater than or equal to 1 acre and less than 5 acres. Also, a definition for “small municipal separate storm sewer system” has been added. These amendments are identical to changes required in the Code of Federal Regulations, 40 CFR 122.

The proposed amendments to Chapter 60 also add a form required for the MS4 application and two forms regarding General Permit No. 5 for discharges from mining and processing facilities.

Proposed amendments to Chapter 64 set March 10, 2003, as the date by which small municipalities and small construction projects must obtain permit coverage, eliminate the exemption from storm water permitting for facilities and projects owned or operated by municipalities with a population of less than 100,000, and remove the dates by which group applicants must submit a Notice of Intent. Group applications are no longer accepted by the Department. The amendments to Chapter 64 also adopt by reference the amendments to the Code of Federal Regulations published in the Federal Register December 8, 1999. The amendments to the CFR require the Department to adopt these changes to the storm water rules to be effective no later than March 10, 2003. Also, the amendments to Chapter 64 describe which municipal separate storm sewer systems are required to obtain permit coverage and set the criteria by which permits for small construction activity may be waived.

The proposed amendments to Chapter 64 also add permit fees for the small municipal separate storm sewer systems identical to those for other individual storm water permits, delete the “money back guarantee” pilot project for storm water permit authorizations which expired June 30, 2001, and delete paragraphs which amended the storm water general permits during the last five-year general permit cycle. These amendments have been incorporated into the general

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permits that are now being renewed. After the general permits have been renewed effective October 1, 2002, it will no longer be necessary for the amendments to appear in the Iowa Administrative Code.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 16, 2002. Written comments should be directed to Storm Water Coordinator, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895.

Also, there will be a public hearing on August 16, 2002, at 9 a.m. in the Fifth Floor Conference Room of the Wallace State Office Building at which time people may present their views either orally or in writing. At the hearing, people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Anyone who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 455B, division I.

The following amendments are proposed.

ITEM 1. Amend rule **567—60.2(455B)**, definition of “storm water discharge associated with industrial activity,” unnumbered paragraph and paragraph “10,” as follows:

For the categories of industries identified in paragraphs “1” to “9” and “11,” the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. To qualify for this exclusion, a storm-resistant shelter is not required for: drums, barrels, tanks and similar containers that are tightly sealed with bands or otherwise secured and have no taps or valves, are not deteriorated and do not leak; adequately maintained vehicles used in material handling; and final products other than products that would be mobilized in storm water discharge. The term excludes areas located on plant lands separate from the plant’s industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated) that meet the description of the facilities listed in paragraphs “1” to “11” of this definition include those facilities designated under 40 CFR 122.26(a)(1)(v) as amended through ~~June 15, 1992~~ *December 8, 1999*. The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this definition:

10. Construction activity including clearing, grading and excavation activities except operations that result in the disturbances of less than ~~5 acres~~ *1 acre* of total land area which are not part of a larger common plan of development or sale;

ITEM 2. Amend rule **567—60.2(455B)** by adopting the following **new** definitions in alphabetical order:

“Small municipal separate storm sewer system” means all separate storm sewer systems that are owned or operated by

the United States, the state of Iowa, or a city, town, county, district, association or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act that discharges to waters of the United States or of the state of Iowa, and that have a population of less than 100,000 people as determined by the 1990 census. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas such as individual buildings.

“Storm water discharge associated with small construction activity” means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than 1 acre and less than 5 acres. Small construction activity also includes the disturbance of less than 1 acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb an area equal to or greater than 1 acre and less than 5 acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

2. Any other construction activity designated by the director based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

ITEM 3. Amend subrule **60.3(2)** by adopting the following **new** paragraphs “l” and “m”:

l. Notice of Discontinuation From Coverage Under General Permit No. 5 542-8038.

m. Information Required to Accompany Application for the Municipal Separate Storm Sewer System (MS4) Permit 542-8039.

ITEM 4. Amend subrule **60.3(3)** by adopting the following **new** paragraph “i”:

i. General Permit No. 5, “Discharge from Mining and Processing Facilities,” Annual Monitoring Report 542-8035.

ITEM 5. Amend subrule **64.3(4)**, paragraph “b,” subparagraphs (1) through (4), as follows:

(1) For existing storm water discharge associated with industrial activity, with the exception of discharges identified in subparagraphs (2) and (4) (3) of this paragraph, on or before October 1, 1992;

(2) For any *existing* storm water discharge associated with industrial activity from a facility or construction site that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, ~~NPDES storm water permit application requirements are reserved until a later date and as requirements are established by the U.S. Environmental Protection Agency in 40 CFR 122.26 (as amended through June 15, 1992) on or before March 10, 2003;~~

For purposes of this subparagraph, municipality means city, town, borough, county, parish, district, association, or other public body created by or under state law. The entire

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population served by the public body shall be used in the determination of the population.

(3) For any existing storm water discharge associated with small construction activity on or before March 10, 2003.

(4) For storm water discharge associated with industrial activity which initiates operation after October 1, 1992, with the exception of discharges identified in subparagraphs (2) and (3) of this paragraph, at least 24 hours prior to the date operation is scheduled to begin.

~~(4) Storm water discharge associated with industrial activity from any facility that is owned or operated by a municipality that has participated in a timely Part 1 group application and where either the group application is rejected or the municipally owned or operated facility is denied participation in the group application by EPA, shall submit a Notice of Intent in accordance with the requirements of this part on or before the 180th day following the date on which the group is rejected or the denial is made, or October 1, 1992, whichever is later.~~

ITEM 6. Rescind rule 567—64.13(455B) and adopt the following new rule in lieu thereof:

567—64.13(455B) Storm water discharges.

64.13(1) The following is adopted by reference: 40 CFR 122.26 as promulgated November 16, 1990 (55 FR 47990), and amended March 21, 1991 (56 FR 12098), April 2, 1992 (57 FR 11394), and December 8, 1999 (64 FR 68838).

64.13(2) Small municipal separate storm sewer systems.

a. For any discharge from a regulated small municipal separate storm sewer system (MS4), the permit application must be submitted no later than March 10, 2003, if designated under this subrule.

b. All MS4s located in urbanized areas as defined by the latest decennial census or which serve 10,000 people or more and all MS4s located outside urbanized areas and where the average population density is 1,000 people/square mile or more are regulated small MS4s unless waiver criteria established by the department are met and a waiver has been granted by the department.

c. Permit coverage requirements for MS4s located in urbanized areas and serving 1,000 or more people and fewer than 10,000 people may be waived if the following requirements are met:

(1) The department has evaluated all waters of the United States that receive a discharge from the MS4 and, for all such waters, the department has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established total maximum daily load (TMDL) that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern. The pollutants of concern include biochemical oxygen demand, sediment or a parameter that addresses sediment (total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4.

(2) The department has determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses or other significant water quality impacts including habitat and biological impacts.

d. Permit coverage requirements for MS4s located in urbanized areas and serving fewer than 1,000 people may be waived if the following requirements are met:

(1) The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program.

(2) The MS4 discharges any pollutants that have been identified as a cause of impairment of any water body to which the MS4 discharges and the department has determined that storm water controls are not needed based upon wasteload allocations that are a part of an EPA approved or established TMDL that addresses the pollutants of concern.

e. Permit coverage requirements for MS4s located outside of urbanized areas and serving 10,000 or more people may be waived if the following criterion is met:

The MS4 is not discharging pollutants to a water body designated by the department as impaired which are the cause of the impairment.

f. Should conditions under which the initial waiver was granted change, the waiver may be rescinded by the department and permit coverage may be required.

g. MS4 applications shall, at a minimum, demonstrate in what manner the applicant will develop, implement and enforce a storm water management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. The manner in which the permittee will address the following items must be addressed in the application: public education and outreach on storm water impacts, public involvement and participation, illicit discharge detection and elimination, construction site storm water runoff control, postconstruction storm water management in new development and redevelopment, and pollution prevention for municipal operations. Measurable goals which the applicant intends to meet and dates by which the goals will be accomplished shall be included with the application.

64.13(3) Waivers for storm water discharge associated with small construction activity. The director may waive the otherwise applicable requirements in a general permit for storm water discharge from small construction activities as defined in 567—Chapter 60 when:

a. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than 5 during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997; or

b. Storm water controls are not needed based on a TMDL approved or established by the EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The pollutant(s) of concern includes sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity.

ITEM 7. Rescind subrule **64.15(2)** and adopt the following new subrule in lieu thereof:

64.15(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective October 1, 1997, to October 1, 2002.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

a. Part I, provision B, section 1, paragraph A of General Permit No. 2 is amended to read as follows:

Except for discharges identified under Parts I.B.2. and I.B.3., this permit may authorize the discharge of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale that will result in the disturbance of one or more acres of total land area),

b. Part VIII, under the definition: Storm water discharge associated with industrial activity, paragraph (x) of General Permit No. 2 is amended to read as follows:

Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than one acre of total land area which is not part of a larger common plan of development or sale.

ITEM 8. Amend subrule 64.16(3), paragraph "b," subparagraph (2), as follows:

(2) For storm water discharge discharges from large and medium municipal separate storm sewers sewer systems (systems serving a population of 100,000 or more).

Annual Permit Fee \$300 (per year)
or

Five-year Permit Fee \$1,250

ITEM 9. Rescind and reserve subrule 64.16(4).

ARC 1772B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.200 and 2002 Iowa Acts, Senate File 2293, section 71, the Environmental Protection Commission hereby proposes to amend Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

These amendments modify construction permit requirements for confinement feeding operations as a result of 2002 Iowa Acts, Senate File 2293, enacted on April 29, 2002. Senate File 2293 provides the Department of Natural Resources with the authority to establish, assess and collect a construction application fee and a manure management plan filing fee, which shall not exceed \$250 each. Senate File 2293 also provides that the Department shall not approve a construction application and a manure management plan unless the applicant has paid the construction application fee and manure management plan filing fee.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 6, 2002. Written comments should be directed to Sara Smith, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794.

Also, there will be a public hearing on August 6, 2002, at 1 p.m. in the Fifth Floor Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, people

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 those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 1795B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 455B.200A and 2002 Iowa Acts, Senate File 2293, section 43.

ARC 1793B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

Pursuant to Iowa Code section 56.6(5), a county central committee is prohibited from dissolving as a committee but may request inactive status. A committee granted inactive status is not required to file disclosure reports. The proposed amendment makes the procedure for inactive status applicable to any political party, reflects the current Board procedure concerning a political organization that gains or loses political party status, and provides the proper process for a political committee (PAC) to disband.

The proposed amendment does not include a waiver provision as the requirement for inactive status is mandated by statute.

Any interested person may make written comments on the proposed amendment on or before July 30, 2002. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

The proposed amendment is intended to implement Iowa Code section 56.6(5).

The following amendment is proposed.

Rescind rule 351—4.52(56,68B) and adopt the following **new** rule in lieu thereof:

351—4.52(56) Request for inactive status by county central committees—procedure.

4.52(1) Request for inactive status. If a county central committee of any political party temporarily disbands because it has no officers and has ceased to function, the committee may file a request for inactive status with the board. A committee has ceased to function when it holds no administrative, organizational, or candidate meetings or fundraisers, and when it has made no expenditures for a period of three months. The request must be in writing and filed by the for-

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mer chairperson or treasurer of the committee. The request shall include a certification by the appropriate state party pursuant to subrule 4.52(2). Once the board grants inactive status, the requirement to file campaign disclosure reports will be waived.

4.52(2) Certification by state party. A request for inactive status shall include a written certification by an officer of the respective state party. The certification shall state the date of the central committee's last meeting or function, the date of its last financial transaction, the name and address of the financial institution in which the central committee's funds are on deposit, and the fund balance.

4.52(3) Return to active status. In order for a county central committee to return to active status, the committee shall file an amended statement of organization disclosing the information required by Iowa Code section 56.5. The committee shall also verify the fund balance. Campaign disclosure reports will be due on the next report due date following return to active status and for each reporting period thereafter.

4.52(4) Political organizations granted party status. A political organization that is certified as a political party by meeting the requirements of Iowa Code section 43.2 shall provide the board with the name of any county that will not be organizing a county central committee. A county subsequently organizing a county central committee may do so by filing a statement of organization pursuant to Iowa Code section 56.5.

4.52(5) Loss of party status. The board shall automatically classify as a political committee (PAC) any political organization that loses its status as a political party by failing to meet the requirements of Iowa Code section 43.2. The board shall automatically classify as a political committee (PAC) any county central committee that operated under the former political party. A political committee that no longer desires to be active is not eligible to apply for inactive status, but may dissolve by complying with the requirements of Iowa Code section 56.6(5) and rule 351—4.110(56,68B).

4.52(6) Failure to comply. A person violating the provisions of this rule may be subject to disciplinary action by the board including the assessment of civil penalties for not filing reports or for late filing of reports.

This rule is intended to implement Iowa Code section 56.6(5).

ARC 1794B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 11, "Personal Financial Disclosure," Iowa Administrative Code.

Iowa Code section 68B.35 requires certain executive branch officials and employees to file personal financial disclosure statements. The Board has implemented a new procedure for determining which persons are required to file the

statements and noticed this new procedure (see **ARC 1702B**, IAB 7/12/02). Currently, rule 351—11.3(68B) allows a person who occupies a listed position to request an exemption from the requirement to file a statement. The filing exemption will no longer be necessary under the new procedure. The proposed amendment rescinds the rule, as it will no longer be needed.

The proposed amendment does not provide for waiver, as the obligation on the regulated community is being rescinded.

Any interested person may make written comments on the proposed amendment on or before July 30, 2002. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68B.35.

The following amendment is proposed.

Rescind and reserve rule **351—11.3(68B)**.

ARC 1769B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to rescind Chapter 14, "Agency Procedure for Rule Making," and to adopt new Chapter 14, "Board Procedure for Rule Making," Iowa Administrative Code.

The Board previously adopted by reference the Agency Procedure for Rule Making segment of the Uniform Rules on Agency Procedure. The proposed amendment rescinds the chapter adopted by reference and adopts a new chapter on the Board's procedure for rule making. The Board believes that all of the Board's rules should be located in one place in the Iowa Administrative Code and that the regulated community should not have to search other parts of the Iowa Administrative Code for applicable rules. The proposed amendment, using the uniform rules as a model, is tailored to the Board.

The proposed amendment does not contain a waiver provision, as the rules are required by statute.

Any interested person may make written comments on the proposed amendment on or before July 30, 2002. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code chapter 17A.

The following amendment is proposed.

Rescind 351—Chapter 14 and adopt the following new chapter in lieu thereof:

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

CHAPTER 14
BOARD PROCEDURE FOR RULE MAKING

351—14.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

351—14.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter by causing notice to be published in the Iowa Administrative Bulletin. Notice shall include the subject matter and indicate where, when, and how persons may comment.

351—14.3(17A) Public rule-making docket.

14.3(1) Docket maintained. The board shall maintain a current public rule-making docket.

14.3(2) Anticipated rule making. The docket shall list each anticipated rule-making proceeding. A proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for review by the board. The docket shall contain a listing of the precise subject matter that may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of the board’s rules administrator with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects for which public comment is desired.

14.3(3) Pending rule-making proceedings. The docket shall list each pending rule-making proceeding. A proceeding is pending from the time it is commenced by publication in the Iowa Administrative Bulletin of a Notice of Intended Action to the time it is terminated by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule’s becoming effective. For each proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any board determinations with respect thereto;
- h. Any known timetable for board decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

351—14.4(17A) Notice of proposed rule making.

14.4(1) Contents. At least 35 days before the adoption of a rule the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

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

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

14.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference that are contained in subrule 14.12(2) of this chapter.

14.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the board a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the board for Notices of Intended Action. The request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

351—14.5(17A) Public participation.

14.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule and should be submitted to the board’s rules administrator at 514 E. Locust, Suite 104, Des Moines, Iowa 50309, or the person designated in the Notice of Intended Action.

14.5(2) Oral proceedings. The board may schedule an oral proceeding on a proposed rule. The board shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a state-

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ment that the association has at least 25 members and the address and telephone number of the person signing that request.

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

14.5(3) Conduct of oral proceedings.

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

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

c. Presiding officer. A member of the board or the board's executive director shall preside at the oral proceeding on a proposed rule. The presiding officer and the board's executive director shall jointly prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding. This memorandum shall not be prepared if the board determines that such a memorandum is unnecessary because the board members will personally listen to or read the entire transcript of the oral proceeding.

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

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

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

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

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

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

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

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

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

14.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

14.5(5) Accessibility. The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the board's executive director at (515)281-3489 in advance to arrange access or other needed services.

351—14.6(17A) Regulatory analysis.

14.6(1) Definition of small business. A "small business" is defined in Iowa Code section 17A.4A(7).

14.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the board's small business impact list by making a written application addressed to the board's executive director. The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The board may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The board may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

14.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the board shall mail notice of the adopted rule to registered busi-

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nesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

14.6(4) Qualified requesters for regulatory analysis—economic impact. The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A after a proper request from:

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

14.6(5) Qualified requesters for regulatory analysis—business impact. The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A after a proper request from:

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

14.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis the board shall adhere to the time lines described in Iowa Code section 17A.4A(4).

14.6(7) Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

14.6(8) Contents of concise summary. The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4).

14.6(9) Publication of a concise summary. The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

14.6(10) Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)"a," unless a written request expressly waives one or more of the items listed in the section.

14.6(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)"b."

351—14.7(17A,25B) Fiscal impact statement.

14.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities that contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

14.7(2) If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

351—14.8(17A) Time and manner of rule adoption.

14.8(1) Time of adoption. The board shall not adopt a rule until the period for making written submissions and oral

presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

14.8(2) Consideration of public comment. Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

14.8(3) Reliance on board expertise. Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

351—14.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

14.9(1) The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

14.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

14.9(3) The board shall commence a rule-making proceeding within 60 days of its receipt of a petition seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee within three days of its issuance.

14.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

351—14.10(17A) Exemptions from public rule-making procedures.

14.10(1) Omission of notice and comment. To the extent the board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a rule, the board

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may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

14.10(2) Public proceedings on rules adopted without them. The board may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 14.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 14.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 14.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

351—14.11(17A) Concise statement of reasons.

14.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the board's agency rules administrator at 514 E. Locust, Suite 104, Des Moines, Iowa 50309. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

14.11(2) Contents. The concise statement of reasons shall contain:

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

14.11(3) Time of issuance. After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

351—14.12(17A) Contents, style, and form of rule.

14.12(1) Contents. Each rule adopted by the board shall contain the text of the rule and, in addition:

- a. The date the board adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4, or the board in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4, or the board in its discretion decides to include such reasons; and

g. The effective date of the rule.

14.12(2) Incorporation by reference. The board may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board finds that the incorporation of its text in the board's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board's proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this board, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

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

14.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board. The board will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

14.12(4) Style and form. In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

351—14.13(17A) Board rule-making record.

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14.13(1) Requirement. The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

14.13(2) Contents. The board rule-making record shall contain:

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

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

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

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

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

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

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

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

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

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

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

14.13(3) Effect of record. Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

14.13(4) Maintenance of record. The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 14.13(2)“g,” “h,” “i,” or “j.”

351—14.14(17A) Filing of rules. The board shall file each rule it adopts in the office of the administrative rules coordi-

nator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.

351—14.15(17A) Effectiveness of rules prior to publication.

14.15(1) Grounds. The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

14.15(2) Special notice. When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term “all reasonable efforts” requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 14.15(2).

351—14.16(17A) General statements of policy.

14.16(1) Compilation, indexing, public inspection. The board shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11)“a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

14.16(2) Enforcement of requirements. A general statement of policy subject to the requirements of this subsection shall not be relied on by the board to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 14.16(1) are satisfied. This provision is inapplicable to the

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extent necessary to avoid imminent peril to the public health, safety, or welfare.

351—14.17(17A) Review by board of rules.

14.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board shall conduct a formal review of the rule to determine whether a new rule should be adopted or the rule should be amended or repealed. The board may refuse to conduct a review if it has conducted such a review of the rule within five years prior to the filing of the request.

14.17(2) In conducting the formal review, the board shall prepare a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the board's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the board or granted by the board. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board's report shall be sent to the administrative rules review committee and the administrative rules coordinator and shall be available to the public.

These rules are intended to implement Iowa Code chapter 17A.

ARC 1798B**MEDICAL EXAMINERS
BOARD[653]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76, 148.7 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 10, "Resident, Special and Temporary Physician Licensure," and Chapter 17, "Licensure of Acupuncturists," Iowa Administrative Code.

The Board approved the proposed amendments to Chapter 10 and Chapter 17 during a telephone conference call on June 19, 2002.

The proposed amendment in Item 1 allows the Test of English as a Foreign Language (TOEFL) as an alternative to the Test of Spoken English (TSE) for testing English proficiency in international medical graduates seeking special licensure.

The proposed amendment in Item 2 allows an acupuncturist applicant who took the licensure examination in a language other than English to prove English proficiency using the Test of English as a Foreign Language (TOEFL) as an alternative to the Test of Spoken English (TSE).

Any interested person may present written comments on these proposed amendments not later than July 31, 2002, at

4 p.m. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or E-mail at ann.mowery@ibme.state.ia.us.

There will be a public hearing on July 31, 2002, at 2 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 148 and 148E.

The following amendments are proposed.

ITEM 1. Amend subparagraph **10.4(3)"a"(4)** as follows:

(4) Demonstrate proficiency in English by providing a valid ECFMG certificate or verification of a ~~minimum score of 50~~ *passing score* on the TSE, the Test of Spoken English, or TOEFL, the Test of English as a Foreign Language, examination administered by the Educational Testing Service. *A passing score on TSE is a minimum of 50. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL that was administered on a Friday or Saturday (formerly special or international administration), or a minimum overall score of 213 on the computer-administered TOEFL;*

ITEM 2. Amend subparagraph **17.4(1)"c"(2)** as follows:

(2) An applicant who passed NCCAOM written or practical examination components in a language other than English shall ~~achieve a minimum score of 50 on~~ *pass* the Test of Spoken English (TSE) or the Test of English as a Foreign Language (TOEFL) examination administered by the Educational Testing Service. *A passing score on TSE is a minimum of 50. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL that was administered on a Friday or Saturday (formerly special or international administration), or a minimum overall score of 213 on the computer-administered TOEFL.*

ARC 1777B**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 104, "Wildlife Importation and Transportation," and adopt a new Chapter 104, "Wildlife Importation, Transportation and Disease Monitoring," Iowa Administrative Code.

These rules give the regulations for importing, transporting and monitoring captive cervid herds for licensed game breeders and shooting preserves. The new chapter changes the procedures for importing and transporting cervids into Iowa and outlines a mandatory chronic wasting disease monitoring program.

Any interested person may make written suggestions or comments on the proposed new rules on or before July 30,

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2002. Such written materials should be directed to Chief, Wildlife Bureau, 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 July 30, 2002, from 1 to 4 p.m. in the Fourth Floor East Conference Room, Wallace State Office Building, Des Moines, 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 a public hearing and have special requirements such as those related to 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.47, 481A.62, and 484B.12.

The following amendment is proposed.

Rescind 571—Chapter 104 and adopt in lieu thereof the following new chapter:

CHAPTER 104

WILDLIFE IMPORTATION, TRANSPORTATION
AND DISEASE MONITORING**571—104.1(481A) Definitions.**

“Accredited veterinarian” means a veterinarian approved by the deputy administrator of veterinary services, Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1, of the Code of Federal Regulations, revised as of January 1, 2000, to perform functions required by cooperative state/federal animal disease control and eradication programs.

“Adjacent herd” means one of the following:

1. A herd of Cervidae occupying premises that border an affected herd, including herds separated by roads or streams.

2. A herd of Cervidae occupying premises that were previously occupied by an affected herd within the past four years as determined by the department.

“Affected herd” means a cervid herd from which any animal has been diagnosed as affected with chronic wasting disease (CWD) and which has not been in compliance with the control program for CWD as described in rules 571—104.2(481A) through 571—104.23(481A).

“Approved laboratory” means an American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory or the National Veterinary Services Laboratory, Ames, Iowa.

“Brucellosis” means bovine brucellosis.

“Certificate” means an official document, issued by a state veterinarian or federal animal health official or an accredited veterinarian at the point of origin, containing information on the individual identification of each animal being moved, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, and any other information required by the department.

“Certificate of veterinary inspection” means an approved certificate of veterinary inspection which is a legible record accomplished on an official form of the state or province of origin, issued by a licensed, accredited veterinarian and approved by the livestock sanitary official of the state or prov-

ince of origin; or an equivalent form of the U.S. Department of Agriculture issued by a federally employed veterinarian.

“Certified CWD cervid herd” means a herd of Cervidae that has met the qualifications for and has been issued a certified CWD cervid herd certificate signed by the department.

“Cervidae” or “cervids” means any member of the Cervidae family, whether free ranging or captive, except those classified as farm deer by Iowa Code section 481A.1(20)“h.” This includes any sperm or eggs from deer belonging to the genus *odocoileus*. Only members of the species *dama dama* (fallow deer), *cervus nippon* (sika deer), and captive *cervus elaphus* (elk and red deer) are not included.

“Cervid CWD surveillance identification program” or “CCWDSI program” means a CWD surveillance program that requires identification and laboratory diagnosis on all deaths of Cervidae over six months of age including, but not limited to, deaths by slaughter, hunting, illness, and injury. A copy of approved laboratory reports shall be maintained by the owner for purposes of completion of the annual inventory examination for recertification. Such diagnosis shall include examination of brain and any other tissue as directed by the department. If there are deaths for which tissues were not submitted for laboratory diagnosis due to postmortem changes or unavailability, the department shall determine compliance.

“Cervid herd” means a group of Cervidae or one or more groups of Cervidae maintained on common ground or under common ownership or supervision that are geographically separated but can have interchange or movement.

“CWD” means chronic wasting disease.

“CWD affected” means a designation applied to Cervidae diagnosed as affected with CWD based on laboratory results, clinical signs, or epidemiological investigation.

“CWD exposed” or “exposed” means a designation applied to Cervidae that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals or contact with animals from a CWD affected herd in the past four years.

“CWD suspect” means a designation applied to Cervidae for which laboratory evidence or clinical signs suggest a diagnosis of CWD but for which laboratory results are inconclusive.

“Department” means the department of natural resources or its designee.

“Designated epidemiologist” means a person who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the department.

“Endemic area” means an area or portion of a state or province where CWD or TB has been confirmed in either wild or captive cervids. The endemic area shall be determined by the state veterinarian or designee of the state or province of the cervid’s origin.

“Group” means one or more Cervidae.

“Herd of origin” means a cervid herd or any farm or other premises where the animals were born or where they currently reside.

“Herd plan” means a written herd management and testing plan that is designed by the herd owner, the owner’s veterinarian, if requested, and a designated epidemiologist to identify and eradicate CWD from an affected, exposed, or adjacent herd.

“Monitored CWD cervid herd” means a herd of Cervidae that is in compliance with the CCWDSI program as defined in this rule. Monitored herds are defined as one-year, two-year, three-year, and four-year monitored herds in accor-

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dance with the time in years such herds have been in compliance with the CCWDSI program.

“Permit” means an official document that is issued by the department or USDA area veterinarian-in-charge or an accredited veterinarian for movement of affected, suspect, or exposed animals.

“Quarantine” means an imposed restriction prohibiting movement of cervids to any location without specific written permits.

“State” means any state of the United States; the District of Columbia; Puerto Rico; the U.S. Virgin Islands; or Guam.

“TB” means bovine tuberculosis.

“Trace back” means the process of identifying the herd of origin of CWD positive animals, including herds that were sold for slaughter.

571—104.2(481A) Chronic wasting disease in captive cervids.

104.2(1) Testing required. A person who keeps captive cervids in this state shall have chronic wasting disease tests performed on the following:

a. Any captive cervid that dies or is killed on the premises. A person trained and authorized shall collect the test sample before any part of the carcass is removed from the herd premises and shall submit the sample for testing at an approved laboratory. This paragraph does not apply to cervids less than six months old.

b. Any captive cervid that is shipped to slaughter from the herd premises. A person trained and authorized shall collect the test sample after the cervid is slaughtered and shall submit the sample for testing at an approved laboratory. This paragraph does not apply to cervids less than six months old.

104.2(2) Moving live captive cervids from herds in this state. A person shall not move a live captive cervid from a herd in this state unless the movement complies with this rule.

104.2(3) Collecting test samples. One of the following persons shall collect a test sample and submit it for testing:

a. A certified veterinarian.
b. An employee of the department.
c. A person approved by the department. Before a person collects a test sample, that person shall complete training approved by the department. The person shall comply with standard veterinary procedures when collecting a test sample.

104.2(4) Reporting disease findings. Whenever any person receives a laboratory test result that is positive for chronic wasting disease, that person shall immediately report that result to the department. The person shall report by telephone, fax or other rapid means within one day after receiving the test result and shall report in writing within ten days. The person shall provide a copy of the test result to the owner of the tested cervid. This reporting requirement applies to any laboratory test result for chronic wasting disease. Telephone and fax reports should be made to the following telephone numbers: (515)281-7127 or fax (515)281-6794. Written reports should be sent to: Iowa Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319-0034, ATTN: Wildlife Bureau.

571—104.3(481A) Chronic wasting disease in captive cervids—herd monitoring program. A person who keeps captive cervids in this state may enroll the herd in the cervid CWD surveillance identification (CCWDSI) program under this rule. A person shall not move a live captive cervid from a herd in this state unless the herd is enrolled in the CCWDSI program under this rule. To enroll a herd in the CCWDSI pro-

gram under this rule, a person shall complete and submit a form as provided by the department. No person may enroll a herd in this program prior to October 15, 2002.

571—104.4(481A) Identification of animals. Beginning January 1, 2003, as part of the CCWDSI program, each captive cervid must be identified with two individual permanent identifications that are unique identifying numbers or marks and that can be a combination of any two of the following: ear tag, tattoo, microchip or other permanent identifier. One tag or mark shall be used to identify the herd premises, and the other tag or mark shall uniquely identify the individual animal. Licensed hunting preserves are exempt from this requirement except in regard to those cervids purchased or otherwise acquired after October 15, 2002.

571—104.5(481A) Supervision of the CCWDSI program. The department will conduct an annual inventory of Cervidae in a herd enrolled in the CCWDSI program.

571—104.6(481A) Surveillance procedures. For cervid herds enrolled in this mandatory certification program, surveillance procedures shall include the following:

104.6(1) Slaughter establishments. All slaughtered Cervidae over six months of age must have brain tissue submitted at slaughter and examined for CWD by an approved laboratory. This brain tissue sample will be obtained by the department or accredited veterinarian on the premises at the time of slaughter.

104.6(2) Cervid herds. All cervid herds must be under continuous surveillance for CWD as defined in the CCWDSI program.

571—104.7(481A) Official cervid CWD tests. The following are recognized as official cervid tests for CWD:

1. Histopathology.
2. Immunohistochemistry.
3. Western blot.
4. Negative stain electron microscopy.
5. Bioassay.
6. Any other tests performed by an approved laboratory to confirm a diagnosis of CWD.

571—104.8(481A) Investigation of CWD affected animals identified through surveillance. Trace back must be performed for all animals diagnosed at an approved laboratory as affected with CWD. All herds of origin and all adjacent herds having contact with affected animals as determined by the CCWDSI program must be investigated epidemiologically. All herds of origin, adjacent herds, and herds having contact with affected animals or exposed animals must be quarantined.

571—104.9(481A) Duration of quarantine. Quarantines placed in accordance with these rules shall be removed as follows:

1. For herds of origin, quarantines shall be removed after four years of compliance with rules 571—104.2(481A) through 571—104.23(481A).

2. For herds having contact with affected or exposed animals, quarantines shall be removed after four years of compliance with rules 571—104.2(481A) through 571—104.23(481A).

3. For adjacent herds, quarantines shall be removed as directed by the department in consultation with a designated epidemiologist.

571—104.10(481A) Herd plan. The herd owner, the owner's veterinarian, if requested, and a designated epidemiolo-

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gist shall develop a plan for eradicating CWD in each affected herd. The plan must be designed to reduce and then eliminate CWD from the herd, to prevent spread of the disease to other herds, and to prevent reintroduction of CWD after the herd becomes a certified CWD cervid herd. The herd plan must be developed and signed within 60 days after the determination that the herd is affected. The plan must address herd management and adhere to rules 571—104.2(481A) through 571—104.23(481A). The plan must be formalized as a memorandum of agreement between the owner and program officials, must be approved by the department, and must include plans to obtain certified CWD cervid herd status.

571—104.11(481A) Identification and disposal requirements. Affected and exposed animals must remain on the premises where they are found until they are identified and disposed of in accordance with direction from the department.

571—104.12(481A) Cleaning and disinfecting. Premises must be cleaned and disinfected under department supervision within 15 days after affected animals have been removed.

571—104.13(481A) Methods for obtaining certified CWD cervid herd status. Certified CWD cervid herd status must include all Cervidae under common ownership. They cannot be commingled with other cervids that are not certified, and a minimum geographic separation of 30 feet between herds of different status must be maintained in accordance with the USDA Uniform Methods and Rules as defined in APHIS manual 91-45-011, revised as of January 22, 1999. A herd owner may qualify a herd for status as a certified CWD cervid herd by one of the following means:

104.13(1) Purchasing a certified CWD cervid herd. Upon request and with proof of purchase, the department shall issue a new certificate in the new owner's name. The anniversary date and herd status for the purchased animals shall be the same as for the herd to which the animals are added; or if part or all of the purchased herd is moved directly to premises that have no other Cervidae, the herd may retain the certified CWD status of the herd of origin. The anniversary date of the new herd is the date of the most recent herd certification status certificate.

104.13(2) Complying with the CCWDSI program. Upon request and with proof by records, a herd owner shall be issued a certified CWD cervid herd certificate by complying with the CCWDSI program for a period of four years.

571—104.14(481A) Recertification of CWD cervid herds. A herd is certified for 12 months. Annual inventories conducted by the department are required every 9 to 15 months from the anniversary date. For continuous certification, adherence to the provisions in these rules and all other state laws and rules pertaining to raising cervids is required. A herd's certification status is immediately terminated and a herd investigation shall be initiated if CWD affected or exposed animals are determined to originate from that herd.

571—104.15(481A) Movement into a certified CWD cervid herd.

104.15(1) Animals originating from certified CWD cervid herds may move into another certified CWD cervid herd.

104.15(2) Animals originating from noncertified herds that are moving into certified CWD cervid herds cannot be certified until they remain in the certified CWD cervid herd for four years.

104.15(3) Animals originating from CWD monitored herds cannot be certified until a combination of the years in

CWD monitored status and the years present in the certified CWD herd totals four years.

571—104.16(481A) Movement into a monitored CWD cervid herd.

104.16(1) Animals originating from a monitored CWD cervid herd may move into another monitored CWD cervid herd of the same status.

104.16(2) Animals originating from a herd which is not a monitored CWD cervid herd or from a lower status monitored CWD cervid herd will progress annually in status level on an individual animal basis until completion of CWD certification.

571—104.17(481A) Recognition of monitored CWD cervid herds. The department shall issue a monitored CWD cervid herd certificate including CWD monitored herd status as CWD monitored Level A during the first calendar year, CWD monitored Level B during the second calendar year, CWD monitored Level C during the third calendar year, CWD monitored Level D during the fourth calendar year, and CWD certification at the fifth year and thereafter.

571—104.18(481A) Recognition of certified CWD cervid herds. The department shall issue a certified CWD cervid herd certificate when the herd first qualifies for recertification. The department shall issue a renewal form annually.

571—104.19(481A) Intrastate movement requirements.

104.19(1) All intrastate movements of Cervidae other than to a state-inspected or federally inspected slaughter establishment shall be accompanied by an intrastate movement certificate of veterinary inspection signed by a licensed, accredited veterinarian.

104.19(2) Such intrastate movement certificate shall include all of the following:

- a. Consignor's name and address.
- b. Consignee's name and address.
- c. Individual identification of each animal as prescribed in 571—104.4(481A).
- d. The following statement: "There has been no diagnosis, signs, or epidemiological evidence of CWD in this herd for the past year."

571—104.20(481A) Import requirements.

104.20(1) All Cervidae transported into Iowa must be accompanied by all of the following:

- a. An official certificate of veterinary inspection.
- b. A permit number requested by the licensed, accredited veterinarian signing the certificate and issued by the state veterinarian prior to movement.
- c. One of the following statements must appear on the certificate:

"All Cervidae on this certificate have been part of the herd of origin for at least one year or were natural additions to this herd. There has been no diagnosis, signs, or epidemiological evidence of CWD in this herd for the past five years"; or

"All Cervidae on this certificate originate from a CWD monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, signs, or epidemiological evidence of CWD in this herd for the past five years."

104.20(2) All cervids transported into Iowa must be in compliance with the uniform methods and rules set forth in U.S. Department of Agriculture, Animal and Plant Health Inspection Service bulletins 91-45-001, "Tuberculosis Eradication in Cervidae," (effective February 3, 1989), 91-45-005 (effective May 15, 1994, including 1996 amend-

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ments) and 91-45-12, "Brucellosis in Cervidae," (effective September 30, 1998).

104.20(3) Animal health officials of the state of origin must have access to herd records for the past five years including records of cervid deaths and causes of death.

104.20(4) If the Cervidae listed on the certificate are enrolled in a CWD program, the anniversary date and program status for each individual animal must be listed.

571—104.21(481A) Prohibited movement of live cervids and cervid carcasses.

104.21(1) Live cervids. A person shall not directly or indirectly transport or cause to be transported into the state of Iowa any live, adult cervid originating from outside this state unless the cervid originated from a herd certified to be free of CWD and TB by a state agency delegated the authority to make such a certification.

104.21(2) Cervid carcasses. The importation into Iowa of cervid carcasses from a CWD endemic area is prohibited, except for the meat from which all bones have been removed, the cape (skin), and antlers. Antlers may be attached to a clean skull plate from which all brain tissue has been removed.

571—104.22(481A) Purchase of cervids by newly established cervid breeding facilities and hunting preserves. For a period of one year from May 9, 2002, a cervid breeding facility or shooting preserve that is licensed after May 9, 2002, may purchase cervids only within the state of Iowa.

571—104.23(481A) Inspection. The department may inspect any shipment of cervids and accompanying certificate of veterinary inspection or shipment documentation. The department may quarantine or destroy any cervids that are found to be infected with CWD or TB.

These rules are intended to implement Iowa Code sections 481A.47, 481A.62 and 484B.12.

ARC 1782B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby gives Notice of Intended Action to adopt new Chapter 99, "Administrative and Regulatory Authority for the Board of Mortuary Science Examiners," Iowa Administrative Code.

The proposed amendment adopts new rules concerning the purpose of the Board, organization and proceedings of the Board, official communication, office hours, and public meetings.

The Division revised these rules in accordance with Executive Order Number 8. Division staff and Board members had input on these rules. Decisions were made based on need, clarity, intent and statutory authority, cost and fairness.

Any interested person may make written comments on the proposed amendment no later than July 31, 2002, addressed

to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on July 31, 2002, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code section 147.76 and chapters 17A, 156, and 272C.

The following new chapter is proposed.

CHAPTER 99**ADMINISTRATIVE AND REGULATORY AUTHORITY
FOR THE BOARD OF MORTUARY SCIENCE
EXAMINERS****645—99.1(17A) Definitions.**

"Board" means the board of mortuary science examiners.

"Board office" means the office of the administrative staff.

"Department" means the department of public health.

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

"License" means a license to practice as a funeral director in the state of Iowa.

"Licensee" means a person licensed to practice as a funeral director in the state of Iowa.

645—99.2(17A) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 17A, 147, 156 and 272C with regard to the practice of mortuary science. The mission of the board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and the rules of the licensure board. Responsibilities include, but are not limited to:

99.2(1) Licensing of qualified applicants by examination, renewal, endorsement, and reciprocity.

99.2(2) Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

99.2(3) Imposing discipline on licensees as provided by statute or rule.

645—99.3(17A,147,272C) Organization of board and proceedings.

99.3(1) The board is composed of seven members appointed by the governor and confirmed by the senate.

99.3(2) The members of the board shall include four members who are licensed to practice mortuary science, one member owning, operating, or employed by a crematory, and two members not licensed to practice mortuary science and not a crematory owner, operator, or employee who shall represent the general public.

99.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after April 30 of each year.

99.3(4) The board shall hold at least one meeting annually.

99.3(5) A majority of the members of the board shall constitute a quorum.

99.3(6) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

shall be conducted in accordance with Robert's Rules of Order, Revised.

99.3(7) The division of professional licensure shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter, but shall be reimbursed for all costs incurred from funds appropriated to the board.

99.3(8) The board has the authority to:

a. Develop and implement a program of continuing education to ensure continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.

d. Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all discussion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

e. Investigate alleged violations of statutes or rules that relate to the practice of mortuary science upon receipt of a complaint or upon the board's own initiation. The investigation will be based on information or evidence received by the board.

f. Initiate and impose licensee discipline.

g. Monitor licenses that are restricted by a board order.

h. Perform any other function authorized by a provision of law.

645—99.4(17A) Official communications.

99.4(1) All official communications, including submissions and requests, may be addressed to the Board of Mortuary Science Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

99.4(2) Notice of change of address. Each licensee shall notify the board in writing of a change of the licensee's current mailing address within 30 days after the change of address occurs.

99.4(3) Notice of change of name. Each licensee shall notify the board of any change of name within 30 days after changing the name. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

645—99.5(17A) Office hours. The board office is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

645—99.6(17A) Public meetings. Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office.

99.6(1) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person later in the meeting when a particular topic comes before the board should be made at the time of the public comment period and will be granted at the discretion of the chairperson. No more

than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise.

99.6(2) Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

These rules are intended to implement Iowa Code chapters 17A, 147, and 156.

ARC 1780B**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 Respiratory Care Examiners hereby gives Notice of Intended Action to rescind Chapter 260, "Board of Respiratory Care Examiners," and adopt new Chapter 260, "Administrative and Regulatory Authority for the Board of Respiratory Care Examiners," Iowa Administrative Code.

The proposed amendment rescinds the current rules about the organization and purpose of the Board and adopts new rules on the purpose of the Board, organization and proceedings of the Board, official communications, office hours, and public meetings.

These rules were revised in accordance with Executive Order Number 8. Staff and Board members had input on these rules. Decisions were made based on need, clarity, intent and statutory authority, cost and fairness.

Any interested person may make written comments on the proposed amendment no later than July 30, 2002, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on July 30, 2002, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code section 147.76 and chapters 17A, 152B and 272C.

The following amendment is proposed.

Rescind 645—Chapter 260 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 260
ADMINISTRATIVE AND REGULATORY AUTHORITY
FOR THE BOARD OF RESPIRATORY CARE
EXAMINERS**

645—260.1(17A) Definitions.

"Board" means the board of respiratory care examiners.

"Board office" means the office of the administrative staff.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“Department” means the department of public health.

“Disciplinary proceeding” means any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

“License” means a license to practice respiratory care.

“Licensee” means a person licensed to practice respiratory care.

645—260.2(17A) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 17A, 147, 152B and 272C with regard to the practice of respiratory care. The mission of the board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and rules of the licensure board. Responsibilities include, but are not limited to:

260.2(1) Licensing qualified applicants by examination, renewal, endorsement, and reciprocity.

260.2(2) Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

260.2(3) Imposing discipline on licensees as provided by statute or rule.

645—260.3(17A,147,272C) Organization of board and proceedings.

260.3(1) The board is composed of five members appointed by the governor and confirmed by the senate.

260.3(2) The members of the board shall include one licensed physician with training in respiratory care, three respiratory care practitioners who have practiced respiratory care for a minimum of six years immediately preceding their appointment to the board and who are recommended by the Iowa Society of Respiratory Care, and one member not licensed to practice medicine or respiratory care who shall represent the general public.

260.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after April 30 of each year.

260.3(4) The board shall hold at least one meeting annually.

260.3(5) A majority of the members of the board shall constitute a quorum.

260.3(6) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board’s proceedings shall be conducted in accordance with Robert’s Rules of Order, Revised.

260.3(7) The professional licensure division shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter, but shall be reimbursed for all costs incurred from funds appropriated to the board.

260.3(8) The board has the authority to:

a. Develop and implement a program of continuing education to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.

d. Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all discus-

sion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

e. Investigate alleged violations of statutes or rules that relate to the practice of respiratory care upon receipt of a complaint or upon the board’s own initiation. The investigation will be based on information or evidence received by the board.

f. Initiate and impose licensee discipline.

g. Monitor licenses that are restricted by a board order.

h. Perform any other function authorized by a provision of law.

645—260.4(17A) Official communications.

260.4(1) All official communications, including submissions and requests, may be addressed to the Board of Respiratory Care Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

260.4(2) Notice of change of address. Each licensee shall notify the board in writing of a change of the licensee’s current mailing address within 30 days after the change of address occurs.

260.4(3) Notice of change of name. Each licensee shall notify the board of any change of name within 30 days after changing the name. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

645—260.5(17A) Office hours. The board office is open for public business from 8 a.m. to 4:30 p.m., Monday through Friday of each week, except holidays.

645—260.6(17A) Public meetings. Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office.

260.6(1) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person later in the meeting when a particular topic comes before the board should be made at the time of the public comment period and will be granted at the discretion of the chairperson. No more than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise.

260.6(2) Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

These rules are intended to implement Iowa Code chapters 17A, 147, 152B and 272C.

ARC 1783B**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 Athletic Training Examiners hereby gives Notice of Intended Action to rescind Chapter 350, “Board of Athletic Training Examiners,” and adopt new Chapter 350, “Administrative and Regulatory Authority for the Board of Athletic Training Examiners,” and to amend Chapter 351, “Licensure of Athletic Trainers,” Iowa Administrative Code.

The proposed amendments rescind the current rules about the organization and purpose of the Board and adopt new rules on the purpose of the Board, organization and proceedings of the Board, official communication, office hours, and public meetings. Definitions relating to the practice of athletic training are moved from Chapter 350 to Chapter 351.

These rules were revised in accordance with Executive Order Number 8. Staff and Board members had input on these rules. Decisions were made 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 July 31, 2002, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on July 31, 2002, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code section 147.76 and chapters 17A, 152D and 272C.

The following amendments are proposed.

ITEM 1. Rescind 645—Chapter 350 and adopt the following **new** chapter in lieu thereof:

CHAPTER 350
ADMINISTRATIVE AND REGULATORY AUTHORITY
FOR THE BOARD OF ATHLETIC TRAINING
EXAMINERS

645—350.1(17A) Definitions.

“Board” means the board of athletic training examiners.

“Board office” means the office of the administrative staff.

“Department” means the department of public health.

“Disciplinary proceeding” means any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

“License” means a license to practice athletic training.

“Licensee” means a person licensed to practice athletic training.

645—350.2(17A) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 17A, 147, 152D and 272C with regard to the practice of athletic training. The mission of the board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and rules of the licensure board. Responsibilities include, but are not limited to:

350.2(1) Licensing qualified applicants by examination, renewal, endorsement, and reciprocity.

350.2(2) Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

350.2(3) Imposing discipline on licensees as provided by statute or rule.

645—350.3(17A,147,272C) Organization of board and proceedings.

350.3(1) The board is composed of seven members appointed by the governor and confirmed by the senate.

350.3(2) The members of the board shall include:

- a. Three licensed athletic trainers;
- b. Three physicians licensed to practice medicine and surgery; and
- c. One member not licensed to practice athletic training or medicine and surgery who shall represent the general public.

350.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after April 30 of each year.

350.3(4) The board shall hold at least one meeting annually.

350.3(5) A majority of the members of the board shall constitute a quorum.

350.3(6) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board’s proceedings shall be conducted in accordance with Robert’s Rules of Order, Revised.

350.3(7) The professional licensure division shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter, but shall be reimbursed for all costs incurred from funds appropriated to the board.

350.3(8) The board has the authority to:

a. Develop and implement a program of continuing education to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.

d. Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all discussion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

e. Investigate alleged violations of statutes or rules that relate to the practice of athletic training upon receipt of a complaint or upon the board’s own initiation. The investiga-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tion will be based on information or evidence received by the board.

- f. Initiate and impose licensee discipline.
- g. Monitor licenses that are restricted by a board order.
- h. Perform any other function authorized by a provision of law.

645—350.4(17A) Official communications.

350.4(1) All official communications, including submissions and requests, may be addressed to the Board of Athletic Training, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

350.4(2) Notice of change of address. Each licensee shall notify the board in writing of a change of the licensee's current mailing address within 30 days after the change of address occurs.

350.4(3) Notice of change of name. Each licensee shall notify the board of any change of name within 30 days after changing the name. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

645—350.5(17A) Office hours. The board office is open for public business from 8 a.m. to 4:30 p.m., Monday through Friday of each week, except holidays.

645—350.6(17A) Public meetings. Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office.

350.6(1) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person later in the meeting when a particular topic comes before the board should be made at the time of the public comment period and will be granted at the discretion of the chairperson. No more than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise.

350.6(2) Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

These rules are intended to implement Iowa Code chapters 17A, 147, 152D and 272C.

ITEM 2. Amend rule **645—351.1(152D)** by adopting the following **new** definitions in alphabetical order:

"Active engagement" or "actively engaged" in the practice of athletic training, for the purposes of Iowa Code sections 152D.3(2) and 152D.3(3), means that a person is either:

1. Currently certified by the National Athletic Trainers Association Board of Certification; or
2. Practicing athletic training as verified by notarized signatures from:
 - The athletic director or administrator of the institution, facility, or agency for which the person is currently providing services; and
 - The supervising physician for the institution, facility, or agency for which the person is currently providing services.

"NATA" means the National Athletic Trainers Association.

"NATABOC" means the National Athletic Trainers Association Board of Certification or its successor organization.

"Physical reconditioning" means the part of the practice of athletic training which combines physical treatment and exercise and is carried out under the orders of a physician or

physician assistant. Physical treatment is part of a service plan which includes but is not limited to the continued use of any of the following: cryotherapy, thermotherapy, hydrotherapy, electrotherapy, or the use of mechanical devices.

"Physician" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, or podiatry under the laws of this state.

"Practice of athletic training" means the prevention, physical evaluation, emergency care, and physical reconditioning relating to injuries and illnesses incurred through sports-induced trauma, which occurs during the preparation for or participation in a sports competition or during a physical training program, either of which is sponsored by an educational institution, amateur or professional athletic group, or other recognized sponsoring organization, by a person who uses the title of licensed athletic trainer.

"Supervising physician" means a physician who supervises the athletic training services provided by a licensed athletic trainer.

"Supervision" means that a supervising physician directs the performance of a licensed athletic trainer in the development, implementation, and evaluation of an athletic training service plan as set out in 645—351.6(152D). Supervision shall not be construed as requiring the personal presence of a supervising physician at each activity of the licensed athletic trainer. It is the responsibility of the licensed athletic trainer to ensure that the practice of athletic training is carried out only under the supervision of a licensed physician.

ARC 1779B**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 150, "Improvements and Maintenance on Primary Road Extensions," Iowa Administrative Code.

The chapter is being amended as a result of reviews conducted in accordance with Executive Order Number 8.

The terms "expressway," "arterial" and "arterial connector" are being replaced by the term "nonfreeway primary highway." The rules categorize primary road extensions into two categories—those primary road extensions that are freeways, and those that are not. The terms "expressway," "arterial" and "arterial connector" are not needed. Also, the terms "arterial" and "arterial connector" are obsolete. They were part of state functional classification, which legislation repealed.

Subrule 150.2(1) applies to the construction costs of freeways. This subrule is being revised to state that the Department will be responsible for all storm sewer-related costs within federal control limits.

Subrule 150.2(4), which applies to freeways, addresses traffic signals at ramp terminals with cross streets. This subrule is being amended so that its provisions will be similar to those in subrule 150.3(4), which addresses traffic signals on nonfreeway primary highways.

TRANSPORTATION DEPARTMENT[761](cont'd)

Subrule 150.3(1) applies to the construction costs of non-freeway primary highways. This subrule is being revised as follows:

1. The Department's share of longitudinal and outlet storm sewer construction costs associated with local service roads developed as a part of the construction or reconstruction of the through traffic lanes will be in the proportion that the right-of-way of the primary road extension bears to the total drainage area to be served by the sewers. The current subrule states that the Department is responsible for one-half of these costs. With this change, the same criteria will be used for both local service roads and the highway itself.

2. The Department will be responsible for the cost of right-of-way and construction of local service roads developed as a part of the construction or reconstruction of the through traffic lanes. The current subrule states that the Department is responsible for one-half of these costs. Unchanged is paragraph 150.3(2)"f," which provides for these local service roads to become a part of the city street system once a project is completed. The Department is not responsible for their maintenance.

Subrule 150.3(3) applies to the lighting of nonfreeway primary highways. The term "smaller city" is used. The term is being replaced by the phrase "cities with a population of 5,000 or less." This provides a more objective standard.

Subrule 150.4(3) is being revised to add a policy statement on pedestrian accommodation.

Other amendments add definitions, correct implementation clauses, and remove or update redundant or obsolete language.

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

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: julie.fitzgerald@dot.state.ia.us.

5. Be received by the Director's Staff Division no later than July 30, 2002.

A meeting to hear requested oral presentations is scheduled for Thursday, August 1, 2002, at 10 a.m. in the Administration Building, 3rd Floor Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

These amendments are intended to implement Iowa Code chapters 306, 306A, 313, and 314.

Proposed rule-making action:

Amend 761—Chapter 150 as follows:

CHAPTER 150
IMPROVEMENTS AND MAINTENANCE
ON PRIMARY ROAD EXTENSIONS

761—150.1(307,321,362,306) Definitions.

"City" means a municipal corporation as defined in Iowa Code section 362.2.

~~"Department" means the Iowa department of transportation.~~

"Federal control limits" means the area within the primary highway right-of-way limits, including right-of-way lines extended across side streets and roads. The term includes areas on side streets and roads where the department has acquired access control rights in accordance with 761—Chapter 112.

"Freeway" means a primary highway constructed with Priority I access control. For the purpose of highway lighting, "freeway" means a primary highway constructed with Priority I access control for a length of five miles or greater.

"MUTCD" means the "Manual on Uniform Traffic Control Devices," as adopted in 761—Chapter 130.

"Nonfreeway primary highway" means a primary highway that is not a freeway.

"Right-of-way" means the land for any public road, street or highway, including the entire area between the property lines.

This rule is intended to implement Iowa Code sections 307.1, 321.1, 306.2, 306.3 and 362.2.

761—150.2(306,306A,313,314) Improvements and maintenance on extensions of freeways.

150.2(1) Construction. Except as otherwise provided, the department shall be responsible for all right-of-way and construction costs associated with the construction of freeways and their extensions.

a. No change.

b. ~~The~~ *Outside the federal control limits, the department shall be responsible for the costs of construction of longitudinal and outlet storm sewers made necessary by highway construction in the proportion that the street right-of-way of the primary road extension bears to the total drainage area to be served by the proposed sewers. The city shall be expected to be responsible for the remaining portion of storm sewer costs not paid for by the department.*

c. *The department shall be responsible for all storm sewer-related costs within the federal control limits.*

150.2(2) No change.

150.2(3) Lighting.

~~a. For the purpose of highway lighting, "freeway" means a roadway constructed with Priority I access control for a length of five miles or greater.~~

~~b a.~~ *The department shall be responsible for the cost of installation of lighting on the main-traveled-way lanes and the on and off ramps including the terminals with cross streets when the department determines that lighting is required under established warrants.*

~~e b.~~ *The department shall be responsible for the energy and maintenance costs of lighting on the main-traveled-way lanes.*

~~d c.~~ *The department shall be responsible for the energy and maintenance costs of lighting through interchange areas and ramps thereto at interchanges between freeways which do not provide service to local streets.*

~~e d.~~ *The department shall be responsible for the energy and maintenance costs of lighting in interchange areas at interchanges between freeways and primary roads which are on corporate lines.*

~~f e.~~ *At interchanges with city cross streets, the department shall be responsible for the energy and maintenance costs of lighting on the main-traveled-way lanes, on and off ramps,*

TRANSPORTATION DEPARTMENT[761](cont'd)

ramp terminals, and, when the department determines full interchange lighting is required, the cross street between the outermost ramp terminals.

g. The department shall not be responsible for the installation, energy, and maintenance costs of any lighting on cross streets in advance of interchanges and between the outermost ramp terminals at interchanges where the department determines partial interchange lighting or no lighting is required.

h. Warrants for the lighting of freeways shall be according to the 1984 "AASHTO Information Guide for Roadway Lighting."

150.2(4) Traffic signals at ramp terminals with cross streets.

a. ~~Unless otherwise agreed, it is the intent of the department to share with the city the installation costs of traffic signals at ramp terminals with cross streets when these signals are warranted according to the "Manual on Uniform Traffic Control Devices for Streets and Highways" as adopted in rule 761—130.1(321). Unless otherwise agreed, the installation costs of traffic signals shall be shared between the department and the city on the basis of the current U-STEP (Urban State Traffic Engineering Program) cost apportionment. All traffic signal installations shall meet the standards and warrants established in the MUTCD.~~

b. *On projects initiated by the department, the department may install, at no cost to the city, traffic signals warranted when replacing existing pavement or adding new lanes. In conjunction with these projects, the department may also participate in the cost of signals that are for pedestrian use only. If the department participates, the department's share of the installation costs shall be based on the current U-STEP cost apportionment.*

c. *When new pavement construction or additional lanes are not involved, the department may participate in the installation costs of new and modernized traffic signals or signals that are for pedestrian use only. If the department participates, the department's share of the installation costs shall be based on the current U-STEP cost apportionment; the city shall prepare plans, award the contract, supervise the installation, and be responsible for the remaining installation costs.*

d. *Modifications made to the traffic signal system to coordinate it with other city signal systems (not on the primary road extension system) shall be the sole financial responsibility of the city.*

e. The department shall not assume ownership and shall not be responsible for the energy and maintenance costs involved in the operation of these traffic signals.

f. Signal phasing, initial and future, as well as timing and coordination between intersections shall be coordinated between the department and the city.

This rule is intended to implement Iowa Code sections 306.4, ~~306.5~~, 313.4, 313.5, 313.21 to 313.24, 313.27, 313.36, 314.5 and 314.6 and chapter 306A.

761—150.3(306,306A,313,314,321E) Improvements and maintenance on extensions of ~~expressway, arterial and arterial connector~~ *nonfreeway primary highways.*

150.3(1) Construction.

a. The department shall be responsible for all right-of-way and construction costs to construct ~~expressway, arterial and arterial connector~~ *nonfreeway primary highways* and their extensions to the minimum design criteria as established by the department. Construction improvement costs beyond minimum design criteria shall be the responsibility of the city, as specified in the project agreement. Minimum

design criteria shall be in accordance with ~~1984 AASHTO design standards~~ "A Policy on Geometric Design of Highways and Streets, 2001" (Fourth Edition Green Book).

b. and c. No change.

d. The department shall be responsible for the costs of construction of longitudinal and outlet storm sewers made necessary by highway construction *and construction of local service roads developed as a part of the construction or reconstruction of the through traffic lanes* in the proportion that the ~~street~~ right-of-way of the primary road extension bears to the total drainage area to be served by the proposed sewers. The city shall be expected to be responsible for the remaining portion of storm sewer costs not paid for by the department.

e. Unless otherwise mutually agreed to and specified in the agreement, ~~the~~

(1) ~~The department shall be responsible for one-half of the cost of right-of-way and construction costs of local service roads or streets only when these local service roads or streets are developed as a part of the initial construction or reconstruction of the through traffic lanes. The city shall be expected to be responsible for the remainder of the right-of-way and construction costs.~~

(2) ~~The storm sewer construction costs for local service roads or streets shall be shared equally between the department and the city.~~

150.3(2) Maintenance. The department shall enter into an agreement with a city regarding the maintenance of primary roads within the corporate city limits. This is intended to include corporate line roads, when appropriate. Unless otherwise mutually agreed to and specified in the agreement, maintenance responsibilities shall be as follows:

a. and b. No change.

c. On primary roads constructed with a curbed cross section, the city shall be responsible for:

(1) No change.

(2) Painting of parking stalls, stop lines and crosswalks, and the installation and maintenance of flashing lights. Pavement markings shall be in conformance with *conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways." MUTCD.*

(3) to (7) No change.

d. to f. No change.

~~g. Expressways constructed to freeway standards shall be maintained in accordance with subrule 150.2(2).~~

150.3(3) Lighting.

a. The department shall not be responsible for the installation, energy, and maintenance costs of lighting on extensions of ~~expressway, arterial and arterial connector~~ *nonfreeway primary highways*. The city may elect to provide lighting at its own expense. However:

(1) For ~~a smaller city~~ *cities with a population of 5,000 or less*, the department may elect to install interchange lighting and to be responsible for or to participate in the energy and maintenance costs of this lighting.

(2) On a new construction project that results in a predominately fully controlled access highway, but incorporates some ~~expressway or arterial~~ *nonfreeway* segments, the department may elect to participate in the installation of lighting at conflict points if the city agrees to be responsible for the energy and maintenance costs of this lighting.

b. No change.

150.3(4) Traffic signals.

a. All traffic signal installations shall meet *the standards and traffic volume warrants* as established in the ~~"Manual on~~

TRANSPORTATION DEPARTMENT[761](cont'd)

Uniform Traffic Control Devices for Streets and Highways.²² MUTCD.

b. On projects initiated by the department, the department may install, at no cost to the city, traffic signals warranted when replacing the existing pavement or adding new lanes ~~in conjunction with any existing or new pavement~~. In conjunction with these projects, the department may also participate in the cost of signals *that are* for pedestrian use only. If the department participates, the department's share of the installation costs shall be based on the current U-STEP cost apportionment.

c. When new pavement construction or additional lanes are not involved, the department may participate in the installation costs of new and modernized traffic signals or signals *that are* for pedestrian use only. If the department participates, the department's share of the installation costs shall be based on the current U-STEP cost apportionment; the city shall prepare plans, award the contract, supervise the installation, and be responsible for the remaining installation costs.

d. to h. No change.

150.3(5) No change.

This rule is intended to implement Iowa Code sections 306.4, ~~306.5~~, 313.5, 313.21 to 313.24, 313.27, 313.36, 314.5, 314.6 and 321E.2, and chapter 306A.

761—150.4(~~306,306A,313,314,319~~) General requirements for primary road extensions.**150.4(1) Signing.**

a. to d. No change.

e. ~~Overhead~~ "Business District" signs on primary road extensions may be permitted upon application by the city to the department ~~if minimum clearance and mounting standards are provided for~~.

f. All signing within the right-of-way shall be ~~in conformance with conform to~~ the ~~"Manual on Uniform Traffic Control Devices for Streets and Highways."~~ MUTCD.

150.4(2) No change.

150.4(3) Pedestrian, equestrian, and bicycle routes (side-walks).

a. The department shall remove and replace portions of existing routes as required by construction. ~~Unnecessary routes shall be removed and not replaced.~~

b. ~~Initial construction of new sidewalks shall be the responsibility of the city.~~ *The department will consider the impacts to pedestrian accommodation at all stages of the project development process and encourage pedestrian accommodation efforts when pedestrian accommodation is impacted by highway construction. The cost of pedestrian accommodation made at the time of the highway improvement may be considered an additional roadway construction cost. Providing pedestrian accommodation independent of a highway construction project may be considered with construction funding obtained from local jurisdictions or other federal and non-road use tax state sources.*

c. No change.

150.4(4) No change.**150.4(5) Utility relocation and removal.**

a. and b. No change.

c. The department shall expect the city to comply with the utility accommodation policy of the department, as adopted in ~~rule 761—115.1(306A)~~ 761—Chapter 115.

d. No change.

150.4(6) Project concept statements and predesign project agreements for proposed construction projects.

a. No change.

b. *A During the design process, a predesign project agreement shall may be submitted to city officials for their approval. It shall outline include:*

(1) *A preliminary description of the project,*

~~(1)~~ (2) *The general concepts of the project,*

~~(2)~~ (3) *Responsibilities for right-of-way acquisition, storm sewer costs and utility adjustment costs,*

~~(3)~~ (4) *The parking and access control restrictions to be applied to the project, and*

~~(4)~~ (5) *Financial participation above minimum standards.*

150.4(7) Preconstruction project agreements for proposed construction projects.

~~a. During the design process, the predesign project agreement shall be revised to include a detailed project description, terms for reimbursement and local financial participation.~~

~~b a.~~ The department shall maintain a close liaison with the city during the development of the project plan so that all parties will be fully informed of the details involved in the proposed improvement.

~~e b.~~ When the plan is sufficiently complete to provide typical cross sections, plan and profile drawings and incidental details, the department shall submit a preconstruction project agreement, which shall include known design data, to city officials for their approval. Terms for reimbursement to the state and local financial participation shall be stated in this agreement.

~~d c.~~ Modifications to this agreement necessitated by design changes encountered during construction shall be made by extra work order agreed to in writing by the city, the contractor, and the department.

150.4(8) ~~Reverting primary road extensions. When a primary road extension is to be reverted to a city by agreement, the applicable provisions of 761—Chapter 100 shall apply.~~

This rule is intended to implement Iowa Code sections 306.4, ~~306.5, 306.8~~, 313.21 to 313.24, 313.27, 313.36, 314.5 and 314.6, and chapters 306A and 319.

ARC 1770B**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 321E.15, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

These amendments are the result of 2002 Iowa Acts, Senate File 2192. They make the following changes:

- Increase the length on the self-routing provision of the annual permit and the all-systems permit from 75 feet to 120 feet.

- Expand the ability of a carrier to self-route beyond 50 miles on four-lane roads on the larger-dimensioned annual permit and the all-systems permit.

TRANSPORTATION DEPARTMENT[761](cont'd)

- Increase the weight on the annual oversize/overweight permit from 136,000 pounds to 156,000 pounds.
- Allow a carrier operating on an annual oversize/overweight permit to operate under the same restrictions as an annual permit under rule 511.7(321,321E) when the vehicle meets the dimensions required by that rule.
- Correct implementation clauses to reflect legislative changes.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: tracy.george@dot.state.ia.us.

5. Be received by the Director's Staff Division no later than July 30, 2002.

A meeting to hear requested oral presentations is scheduled for Thursday, August 1, 2002, at 10 a.m. in the DOT Conference Room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

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

These amendments are intended to implement Iowa Code chapter 321E.

Proposed rule-making actions:

ITEM 1. Amend paragraph **511.7(1)“b”** as follows:

- b. Length. ~~75 feet 0 inches~~ 120 feet 0 inches overall.

ITEM 2. Amend paragraph **511.7(2)“e”** as follows:

- e. Distance. Movement is restricted to 50 miles unless trip routes are obtained from the office of motor carrier services *or the route continues on at least four-lane roads*. Trip routes are valid for five days.

ITEM 3. Amend rule **761—511.7(321,321E)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.1, 321E.2, ~~321E.8 as amended by 2001 Iowa Acts, chapter 32,~~ 321E.10, 321E.28, 321E.29 and 321E.29A *and Iowa Code Supplement section 321E.8 as amended by 2002 Iowa Acts, Senate File 2192, section 36.*

ITEM 4. Amend rule 761—511.8(321,321E), introductory paragraph, as follows:

761—511.8(321,321E) Annual oversize/overweight permits. Annual oversize/overweight permits are issued for the indivisible vehicles or indivisible loads for travel when either the dimensions or the weight or both the dimensions and the weight exceed statutory limits. Travel is not allowed on the interstate. *However, a carrier moving under this annual oversize/overweight permit may operate under the same restrictions as an annual permit under rule 511.7(321,321E) when the vehicle meets the dimensions required by that rule.* Routing is subject to embargoed bridges and roads and posted speed limits. Annual oversize/overweight permits are issued for the following:

ITEM 5. Amend rule **761—511.8(321,321E)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.1, 321E.2, ~~321E.8 as amended by 2001 Iowa Acts, chapter 32,~~ and 321E.28 *and Iowa Code Supplement section 321E.8 as amended by 2002 Iowa Acts, Senate File 2192, section 36.*

ITEM 6. Amend paragraph **511.9(1)“b”** as follows:

- b. Length. ~~75 feet 0 inches~~ 120 feet 0 inches overall.

ITEM 7. Amend paragraph **511.9(2)“e”** as follows:

- e. Distance. Movement is restricted to 50 miles unless trip routes are obtained from the office of motor carrier services and city and county jurisdictions *or the route continues on at least four-lane roads*. Trip routes are valid for five days.

ITEM 8. Amend rule **761—511.9(321,321E)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.1, 321E.2, ~~321E.8 as amended by 2001 Iowa Acts, chapter 32,~~ 321E.10, 321E.28 and 321E.29 *and Iowa Code Supplement section 321E.8 as amended by 2002 Iowa Acts, Senate File 2192, section 36.*

ITEM 9. Amend paragraph **511.12(2)“a”** as follows:

- a. For movement under an annual oversize/overweight permit, the gross weight on any axle shall not exceed 20,000 pounds, with a maximum of ~~136,000~~ 156,000 pounds total gross weight.

ITEM 10. Amend rule **761—511.12(321,321E)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.463, 321E.7, ~~to~~ 321E.9, 321E.9A and 321E.32 *and Iowa Code Supplement section 321E.8 as amended by 2002 Iowa Acts, Senate File 2192, section 36.*

ARC 1813B

DENTAL EXAMINERS BOARD[650]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 20, "Dental Assistants," and Chapter 25, "Continuing Education," Iowa Administrative Code.

In accordance with 2002 Iowa Acts, House File 2547, the amendments extend from 60 days to six months the length of time that a dental assistant trainee has to complete board-approved education and examinations in infection control, hazardous materials, and jurisprudence. In addition, the amendments exempt dental assistants who were registered by examination from the continuing education requirements for the first biennium renewal period, or portion thereof, following original issuance of the registration. This continuing education exemption for a registrant is consistent with the exemption for a Board licensee.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary and impracticable because 2002 Iowa Acts, House File 2547, became effective on July 1, 2002.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and the amendments should become effective on July 1, 2002. These amendments confer a benefit to persons regulated by the Board by allowing registrants additional time to meet education and examination requirements and by exempting registrants from the continuing education requirements for the first biennial renewal period following original issuance of the registration.

These amendments were approved at the June 7, 2002, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code section 153.39 as amended by 2002 Iowa Acts, House File 2547, and section 272C.2.

These amendments became effective July 1, 2002.

The following amendments are adopted.

ITEM 1. Amend subrule **20.4(1)**, paragraph "a," as follows:

a. Within ~~60 days~~ *six months* of employment, the dental assistant trainee shall successfully complete a course of study and examination in the areas of infection control, hazardous waste and jurisprudence. The course of study shall be prior approved by the board and sponsored by a board-approved postsecondary school.

ITEM 2. Amend subrule **20.6(1)**, paragraph "c," as follows:

c. Within ~~60 days~~ *six months* of employment, the dental assistant trainee is required to successfully complete a board-approved course of study and examination in the areas of infection control, hazardous materials and jurisprudence. The course of study may be taken at a board-approved postsecondary school or on the job using curriculum approved by the board for such purpose. Evidence of meeting this requirement shall be submitted within ~~60 days~~ *six months* by the employer dentist.

ITEM 3. Amend subrule 20.9(4) as follows:

20.9(4) A dental assistant trainee must successfully pass the examination within ~~60 days~~ *six months* of the first date of employment. A dental assistant trainee who does not successfully pass the examination within ~~60 days~~ *six months*

shall be prohibited from working ~~in a dental office or clinic as a dental assistant~~ until the examination has been passed in accordance with these rules.

ITEM 4. Amend subrule **25.7(2)** by adopting new paragraph "f" as follows:

f. For dental assistants registered pursuant to 650—20.6(153,78GA,ch1002), the current biennium renewal period, or portion thereof, following original issuance of the registration.

[Filed Emergency 6/21/02, effective 7/1/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1795B

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 455B.200 and 2002 Iowa Acts, Senate File 2293, section 71, the Environmental Protection Commission hereby amends Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

These amendments modify construction permit requirements for confinement feeding operations as a result of 2002 Iowa Acts, Senate File 2293, enacted on April 29, 2002. Senate File 2293 provides the Department of Natural Resources with the authority to establish, assess and collect a construction permit application fee and a manure management plan filing fee, which shall not exceed \$250 each. Senate File 2293 also provides that the Department shall not approve a construction permit application and a manure management plan unless the applicant has paid the construction permit application fee and manure management plan filing fee.

Pursuant to Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because the amendments are required by 2002 Iowa Acts, Senate File 2293.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on June 18, 2002, as they confer a benefit on a segment of the public.

These amendments are also published herein under Notice of Intended Action as **ARC 1772B** to allow public comment.

These amendments are intended to implement Iowa Code section 455B.200A and 2002 Iowa Acts, Senate File 2293, section 43.

These amendments became effective June 18, 2002.

The following amendments are adopted.

ITEM 1. Amend subrule 65.9(1), introductory paragraph, as follows:

65.9(1) Confinement feeding operations. Application for a construction permit for a confinement feeding operation shall be made on a form provided by the department. The application shall include all of the information required. At the time the department receives a complete application, the

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

department shall make a determination regarding the approval or denial of the permit within 60 days. However, the 60-day requirement shall not apply to an application if the applicant is not required to obtain a permit. A construction permit application for a confinement feeding operation shall include at least the following information:

ITEM 2. Amend subrule 65.9(1) by adopting the following **new** paragraph:

m. A fee of \$500, consisting of a construction permit application fee of \$250 and the manure management plan filing fee of \$250 as required in 65.16(6).

ITEM 3. Amend rule 567—65.16(455B) by adopting the following **new** subrule:

65.16(6) Any person submitting an original manure management plan must also pay to the department a manure management plan filing fee of \$250. This fee shall be included with each original manure management plan being submitted. If the confinement feeding operation is required to obtain a construction permit and to submit an original manure management plan as part of the construction permit requirements, the applicant must pay the manure management plan filing fee together with the construction permit application fee, which total \$500.

ITEM 4. Amend 567—Chapter 65, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 455J; Iowa Code sections 455B.104, 455B.110, 455B.134(3)“e,” 455B.161 to 455B.165, 455B.171 to 455B.188, 455B.191, and 455B.200 to 455B.206; and 1998 Iowa Acts, chapter 1209, sections 41 and 44 to 47; and 2002 Iowa Acts, Senate File 2293, section 43.

[Filed Emergency 6/18/02, effective 6/18/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1796B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments revise the statewide average cost to a private pay person for nursing facility services in Iowa; revise the average charges for nursing facility care, hospital-based and non-hospital-based skilled nursing care, and mental health institute (MHI) care; and update the maximum Medicaid rate for intermediate care facility for the mentally retarded (ICF/MR) care.

The statewide average cost is used to determine the period of ineligibility when an applicant or recipient has transferred assets for less than fair market value in order to become eligible for Medicaid. A person who transfers assets for less than fair market value becomes ineligible for Medicaid payment for long-term care services for a period of time determined by dividing the uncompensated value of the transferred assets by the statewide average cost for nursing facility ser-

vices to a private pay person. “Long-term care services” include nursing facility services, home- and community-based waiver services, home health care services, home and community care for functionally disabled elderly individuals, and personal care services.

The statewide average charge or maximum Medicaid rate is used to determine whether a person who has established a medical assistance income trust under Iowa Code section 633.709 qualifies for Medicaid. A person whose income exceeds 300 percent of the Supplemental Security Income (SSI) benefit for one person (currently \$1,635) may use a medical assistance income trust to establish Medicaid eligibility if the person's income is below the statewide average charge for nursing facility services. When the person requires a higher level of care, the income limit is the maximum Medicaid reimbursement rate for ICF/MR care or the statewide average charge for that type of care.

The average charges and maximum Medicaid reimbursement rate are also relevant to disposition of income and principal in a medical assistance income (Miller-type) trust, which affects the Medicaid eligibility of people with Miller trusts.

The Department conducted a survey of nursing facility services and charges for nursing facility care and skilled nursing care in 2000 and has applied projected increases to establish average costs and charges for 2001 and 2002. This year the average costs are based on the Health Care Financing Administration Skilled Nursing Facility (HCFA/SNF) Total Market Basket Index annual inflation factor of 2.9 percent for 2002. An actual survey will be conducted again in 2002 to determine the averages for 2003.

On this basis, the average private pay cost for nursing facility services increases from \$3,023.99 per month to \$3,111.69. The average charge to a private-pay resident for nursing facility care increases from \$2,844 per month to \$2,926. The average charge for hospital-based skilled care increases from \$10,141 per month to \$10,435. The average charge for non-hospital-based skilled care increases from \$4,663 per month to \$4,767 per month.

The Department provides the average charge for care in an MHI and the maximum Medicaid reimbursement rate for ICF/MR care based on rule 441—82.5(249A). The average statewide charge to a resident of an MHI increases from \$9,646 to \$10,547 per month. The maximum Medicaid reimbursement rate for ICF/MR care decreases from \$10,365 per month to \$10,282 per month. (Since the Medicaid reimbursement rates for care in a psychiatric medical institution for children have been held constant for state fiscal year 2002, the average charge for this type of care remains the same, at \$4,477 per month.)

These amendments do not provide for waivers in specified situations because everyone should be subject to the same amounts set by these amendments. Individuals may request waivers under the Department's general rule on exceptions at 441—1.8(17A,217).

The Department finds that notice and public participation are unnecessary because the amendments simply update existing rules pursuant to established policy based on mathematical calculations. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on people applying for Medicaid by establishing a more equitable period of ineligibility and raising the income level for people needing to establish a Medicaid-qualifying trust to become eligible for some type of facility care. There-

HUMAN SERVICES DEPARTMENT[441](cont'd)

fore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these amendments June 12, 2002.

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

These amendments became effective July 1, 2002.

The following amendments are adopted.

ITEM 1. Amend subrule 75.23(3) as follows:

75.23(3) Period of ineligibility. The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private pay rate for nursing facility services at the time of application. The average statewide cost to a private pay resident shall be determined by the department and updated annually for nursing facilities. For the period from July 1, ~~2001~~ 2002, through June 30, ~~2002~~ 2003, this average statewide cost shall be ~~\$3,024~~ \$3,111.69 per month or ~~\$99.42~~ \$102.36 per day.

ITEM 2. Amend subrule **75.24(3)**, paragraph "b," first unnumbered paragraph and subparagraphs (1) through (5), as follows:

For disposition of trust amounts pursuant to Iowa Code sections 633.707 to 633.711, the average statewide charges and Medicaid rates for the period from July 1, ~~2001~~ 2002, to June 30, ~~2002~~ 2003, shall be as follows:

(1) The average statewide charge to a private pay resident of a nursing facility is ~~\$2,844~~ \$2,926 per month.

(2) The average statewide charge to a private pay resident of a hospital-based skilled nursing facility is ~~\$10,141~~ \$10,435 per month.

(3) The average statewide charge to a private pay resident of a non-hospital-based skilled nursing facility is ~~\$4,663~~ \$4,767 per month.

(4) The maximum statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is ~~\$10,365~~ \$10,282 per month.

(5) The average statewide charge to a resident of a mental health institute is ~~\$9,646~~ \$10,547.46 per month.

[Filed Emergency 6/13/02, effective 7/1/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1797B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2002 Iowa Acts, House File 2539, sections 1 and 2, the Department of Human Services hereby amends Chapter 76, "Application and Investigation," Iowa Administrative Code.

2002 Iowa Acts, House File 2539, signed on April 5, 2002, amends the statutory language authorizing the Department to recover from a person's estate after the person's death the costs of medical assistance provided to a person aged 55 or over who resides in a medical institution.

Collection of the debt is deferred if it would reduce the amount of the estate for a surviving spouse or a minor or dis-

abled child, or if the person inheriting the estate can prove that collection would cause an undue hardship. Previously, the statute (and rule) provided for recovery upon the death of the inheriting spouse or child, but not upon the death of the recipient of a hardship waiver. As amended, the statute provides that the estate of the recipient of a hardship waiver is also subject to recovery of this debt upon the recipient's death, to the extent of the original inheritance.

2002 Iowa Acts, House File 2539, also changed the definition of assets subject to recovery to include retained life estates.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

The Department of Human Services finds that notice and public participation are unnecessary because these changes merely conform the rules to the amended statute. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit by removing confusion that could arise when the rules and statute are inconsistent. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2). The Department finds that the normal effective date of these amendments should be waived and these amendments made effective upon filing on June 13, 2002.

The Council on Human Services adopted these amendments June 12, 2002.

These amendments are intended to implement Iowa Code section 249A.5 as amended by 2002 Iowa Acts, House File 2539, sections 1 and 2.

These amendments became effective June 13, 2002.

The following amendments are adopted.

Amend subrule **76.12(7)** as follows:

Amend paragraph "c" as follows:

c. If collection of all or part of a debt is waived pursuant to paragraph "b," ~~subparagraph (1),~~ the amount waived shall be a debt due from the estate of the recipient's surviving spouse or blind or disabled child *or of the person who received a hardship waiver under subparagraph (2),* upon the death of the spouse, ~~or child,~~ *or person with a hardship waiver,* or due from a surviving child who was under 21 years of age at the time of the recipient's death, upon the child's reaching the age of 21, to the extent the recipient's estate is received by the surviving spouse, ~~or child,~~ *or person with a hardship waiver.*

Amend paragraph "e" as follows:

e. For these purposes, the "estate" of a Medicaid recipient, surviving spouse, or surviving child shall include all real property, personal property, or any other asset in which the recipient, spouse, or surviving child had any legal title or interest at the time of the recipient's, spouse's or child's death, or a child's reaching the age of 21, to the extent of the interest, including, but not limited to, interest in jointly held property, *retained life estates,* and interests in trusts. All assets included in the estate of a Medicaid recipient, surviving spouse, or surviving child are subject to probate for the purposes of medical assistance estate recovery pursuant to Iowa Code section 249A.5(2)"d."

[Filed Emergency 6/13/02, effective 6/13/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1768B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 130, "General Provisions," Iowa Administrative Code.

These amendments update the Child Care Assistance income limits and the fees parents pay for child care services based on their monthly gross income to be consistent with the federal poverty guidelines for 2002, as mandated by Iowa Code section 237A.13.

These amendments do not provide for waivers in specific situations because these changes confer a benefit on families by providing an increase in the income eligibility guidelines. Also, the legislature mandated these changes with no provisions for exceptions.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public par-

ticipation are unnecessary because these amendments implement Iowa Code section 237A.13, which requires the Department to use the federal poverty levels when determining eligibility for Child Care Assistance. The Department historically has updated the poverty guidelines for Child Care Assistance to be effective July 1. The amendments simply update existing rules pursuant to established policy based on mathematical calculations.

The Department finds that these amendments confer a benefit on families by increasing the Child Care Assistance income limits and by making more families eligible for the services. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these amendments June 12, 2002.

These amendments are intended to implement Iowa Code section 237A.13.

These amendments became effective July 1, 2002.

The following amendments are adopted.

ITEM 1. Amend subrule **130.3(1)**, paragraph "**d**," subparagraph (2), "Monthly Gross Income Limits" table, as follows:

Monthly Gross Income Limits

| Family Size | For Child Care Monthly Gross Income | | | | | | For All Other Services Monthly Gross Income Below |
|-------------|--|-------|---------|---------|---------|---------|--|
| | A | B | C | | | | |
| 1 Member | \$ 716 | \$739 | \$1,002 | \$1,034 | \$1,253 | \$1,292 | \$ 583 |
| 2 Members | 968 | 995 | 1,355 | 1,393 | 1,693 | 1,741 | 762 |
| 3 Members | 1,219 | 1,252 | 1,707 | 1,752 | 2,134 | 2,190 | 942 |
| 4 Members | 1,471 | 1,509 | 2,059 | 2,112 | 2,574 | 2,640 | 1,121 |
| 5 Members | 1,723 | 1,765 | 2,412 | 2,471 | 3,014 | 3,089 | 1,299 |
| 6 Members | 1,974 | 2,022 | 2,764 | 2,830 | 3,455 | 3,538 | 1,478 |
| 7 Members | 2,226 | 2,279 | 3,116 | 3,190 | 3,895 | 3,987 | 1,510 |
| 8 Members | 2,478 | 2,535 | 3,469 | 3,549 | 4,336 | 4,436 | 1,546 |
| 9 Members | 2,729 | 2,792 | 3,821 | 3,908 | 4,776 | 4,885 | 1,581 |
| 10 Members | 2,981 | 3,049 | 4,173 | 4,268 | 5,216 | 5,335 | 1,612 |
| 11 Members | 3,233 | 3,305 | 4,526 | 4,627 | 5,658 | 5,784 | 1,645 |
| 12 Members | 3,484 | 3,562 | 4,878 | 4,986 | 6,099 | 6,154 | 1,678 |
| 13 Members | 3,736 | 3,818 | 5,230 | 5,346 | 6,294 | 6,277 | 1,711 |
| 14 Members | 3,988 | 4,075 | 5,583 | 5,705 | 6,417 | 6,400 | 1,744 |
| 15 Members | 4,239 | 4,332 | 5,935 | 6,064 | 6,541 | 6,523 | 1,777 |
| 16 Members | 4,491 | 4,588 | 6,287 | 6,424 | 6,664 | 6,646 | 1,810 |
| 17 Members | 4,743 | 4,845 | 6,640 | 6,770 | 6,788 | 6,770 | 1,843 |
| 18 Members | 4,994 | 5,102 | 6,911 | 6,893 | 6,911 | 6,893 | 1,876 |
| 19 Members | 5,246 | 5,358 | 7,034 | 7,016 | 7,034 | 7,016 | 1,909 |
| 20 Members | 5,498 | 5,615 | 7,158 | 7,139 | 7,158 | 7,139 | 1,942 |

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule **130.4(3)**, introductory paragraph and "Monthly Income Increment Levels According to Family Size" table, as follows:

130.4(3) Child care services. The ~~monthly income chart and fee schedule for child care services in a licensed child~~

~~care center, an exempt facility, a registered family or group child care home, a nonregistered family child care home, or in-home care~~ are provided according to 441—Chapter 170 is shown in the following table:

Monthly Income Increment Levels According to Family Size

| Income Increment Levels | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | Half-Day Fee |
|-------------------------|------|------|------|------|------|------|------|------|------|------|--------------|
| A | 680 | 919 | 1158 | 1397 | 1636 | 1875 | 2115 | 2354 | 2593 | 2832 | .00 |
| | 702 | 945 | 1189 | 1434 | 1677 | 1921 | 2165 | 2408 | 2652 | 2897 | |
| B | 716 | 968 | 1219 | 1471 | 1723 | 1974 | 2226 | 2478 | 2729 | 2981 | .50 |
| | 739 | 995 | 1252 | 1509 | 1765 | 2022 | 2279 | 2535 | 2792 | 3049 | |
| C | 756 | 1022 | 1287 | 1553 | 1819 | 2085 | 2350 | 2616 | 2882 | 3148 | 1.00 |
| | 781 | 1051 | 1322 | 1594 | 1864 | 2135 | 2407 | 2677 | 2948 | 3220 | |
| D | 798 | 1079 | 1360 | 1640 | 1921 | 2201 | 2482 | 2763 | 3043 | 3324 | 1.50 |
| | 824 | 1110 | 1396 | 1683 | 1968 | 2254 | 2542 | 2827 | 3113 | 3400 | |
| E | 843 | 1139 | 1436 | 1732 | 2028 | 2325 | 2621 | 2917 | 3214 | 3510 | 2.00 |
| | 871 | 1172 | 1474 | 1777 | 2078 | 2381 | 2684 | 2985 | 3287 | 3591 | |
| F | 890 | 1203 | 1516 | 1829 | 2142 | 2455 | 2768 | 3081 | 3394 | 3707 | 2.50 |
| | 919 | 1237 | 1556 | 1877 | 2195 | 2514 | 2834 | 3152 | 3472 | 3792 | |
| G | 940 | 1270 | 1601 | 1931 | 2262 | 2592 | 2923 | 3253 | 3584 | 3914 | 3.00 |
| | 971 | 1307 | 1644 | 1982 | 2318 | 2655 | 2993 | 3329 | 3666 | 4004 | |
| H | 993 | 1342 | 1691 | 2040 | 2389 | 2738 | 3087 | 3436 | 3785 | 4134 | 3.50 |
| | 1025 | 1380 | 1736 | 2093 | 2448 | 2803 | 3161 | 3515 | 3871 | 4229 | |
| I | 1048 | 1417 | 1785 | 2154 | 2522 | 2891 | 3259 | 3628 | 3996 | 4365 | 4.00 |
| | 1083 | 1457 | 1833 | 2210 | 2585 | 2960 | 3338 | 3712 | 4088 | 4465 | |
| J | 1107 | 1496 | 1885 | 2274 | 2664 | 3053 | 3442 | 3831 | 4220 | 4609 | 4.50 |
| | 1143 | 1539 | 1936 | 2334 | 2729 | 3126 | 3525 | 3920 | 4317 | 4715 | |
| K | 1169 | 1580 | 1991 | 2402 | 2813 | 3224 | 3635 | 4046 | 4457 | 4868 | 5.00 |
| | 1207 | 1625 | 2044 | 2465 | 2882 | 3301 | 3722 | 4140 | 4559 | 4979 | |
| L | 1234 | 1668 | 2102 | 2536 | 2970 | 3404 | 3838 | 4272 | 4706 | 5140 | 5.50 |
| | 1275 | 1716 | 2158 | 2603 | 3044 | 3486 | 3930 | 4371 | 4814 | 5258 | |
| M | 1304 | 1762 | 2220 | 2678 | 3137 | 3595 | 4053 | 4511 | 4970 | 5428 | 6.00 |
| | 1346 | 1812 | 2279 | 2748 | 3214 | 3681 | 4151 | 4616 | 5084 | 5553 | |

[Filed Emergency 6/13/02, effective 7/1/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1771B

CORRECTIONS DEPARTMENT[201]

Adopted and Filed

Pursuant to the authority of Iowa Code section 904.512, the Department of Corrections hereby amends Chapter 20, "Institutions Administration," and rescinds Chapter 21, "Iowa State Penitentiary," Chapter 22, "Iowa State Men's Reformatory," Chapter 23, "Iowa Correctional Institution for Women," Chapter 24, "Medium Security Facility," Chapter 25, "Correctional Treatment Unit," Chapter 26, "North Central Correctional Facility," Chapter 27, "Iowa Medical and Classification Center," Chapter 28, "Newton Correctional Facility," and Chapter 29, "Fort Dodge Correctional Facility," Iowa Administrative Code.

2002 Iowa Acts, Senate File 2304, was recently passed by the Iowa General Assembly, signed into law by Governor Thomas J. Vilsack on March 1, 2002, and became effective immediately. 2002 Iowa Acts, Senate File 2304, requires the Department to achieve mandatory furlough savings of \$1.7 million by June 30, 2002. Other budgetary reductions, staff vacancies, early retirements, layoffs and staff turnover have directly impacted the Department's ability to provide the privilege of visitation for offenders.

Governor Thomas J. Vilsack issued Executive Order Number 8, which requires state agencies to successfully identify and eliminate outdated, redundant, ineffective, or otherwise unnecessary rules to reduce inconvenience and confusion and increase public confidence in state government. To achieve this goal, the Department is rescinding Chapters 21 to 29, each of which governs institutional visitation, and is incorporating new language in Chapter 20 to govern all institutional visitation.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1559B** on May 1, 2002. These amendments were also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 1592B** on May 1, 2002.

A public hearing was held on May 21, 2002. Both written and oral comments were received regarding the new visiting schedule and who may be impacted by this change.

The following changes from the Notice of Intended Action have been made:

At the suggestion of the Administrative Rules Review Committee, language was added in subrule 20.3(2) to clarify that each institutional visiting room will be open a minimum of four hours on each authorized visiting day. A new paragraph "c" was added to subrule 20.3(3) to specify that all minors are allowed to visit with their parents or legal guardians, and existing paragraph "c" of subrule 20.3(3) was relettered as "d." Subrule 20.3(20) was amended to include personnel restrictions as a factor in the temporary modification of the visiting schedule.

The Department of Corrections Board adopted these amendments on June 7, 2002.

These amendments will become effective on August 14, 2002, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code section 904.512.

The following amendments are adopted.

ITEM 1. Amend rule 201—20.1(904) as follows:

201—20.1(904) Application of rules. The rules in this chapter apply to all adult correctional institutions unless otherwise stated. ~~Rules related to individual institutions can be found in chapters on the institutions.~~ The institutions covered by these rules are the Iowa state penitentiary, Fort Madison, ~~the Iowa state men's reformatory~~ *Anamosa state penitentiary*, Anamosa, the Iowa correctional institution for women, Mitchellville, the Iowa medical and classification center, Oakdale, ~~the correctional release center~~ *Newton correctional facility*, Newton, the Mt. Pleasant correctional facility, Mt. Pleasant, the Clarinda correctional facility, Clarinda, ~~and the north central correctional facility, Rockwell City, and the Fort Dodge correctional facility, Fort Dodge.~~

ITEM 2. Amend rule 201—20.2(904) as follows:

201—20.2(904) Title II definitions.

"Class I Disciplinary Report" means the same as a major report and is defined in ~~Department Manual~~ *department policy* IN-V-36.

"Class II Disciplinary Report" means the same as a minor report and is defined in ~~Department Manual~~ *department policy* IN-V-36.

"Contraband" means weapons, alcohol, drugs, money, obscene materials, or materials advocating disruption of or injury to ~~inmates~~ *offenders*, employees, programs, or physical facilities. It shall also include anything which is illegal to possess under ~~the federal or state law~~, against institutional regulations, *drugs or alcohol* or materials which are used in the production or use of drugs or alcohol or ~~used in conjunction with the taking of illicit drugs.~~ *weapons, explosives, or potential weapons and explosives.*

"Furlough" means any temporary release from custody as granted in accordance with Iowa Code section 904.108(2).

"Furlough residence" means any private dwelling, apartment, house, trailer court, hotel, motel or community dwelling place.

"Immediate family" means ~~mother, father, sister, brother, half sister, half brother, spouse, son, daughter, natural grandparents, and natural grandchildren. Legal guardian, foster parents, stepparents, stepchildren, stepsister, and stepbrother will be included provided a positive relationship exists or contact will confer a benefit to the inmate.~~ *an offender's spouse, mother, father, sister, brother, child, grandparent, established legal guardian or other who acted in place of parents, and step- or half-relation if the step- or half-relation and the offender were raised as cohabiting siblings.*

For the purpose of visitation, all the above will be included as immediate family provided a positive relationship exists. Immediate family members may be subject to criminal background investigation.

"Law enforcement checks" means prescheduled, in person, check-ins at designated law enforcement agencies such as police departments, sheriff's offices and highway patrol offices.

"Medical practitioner" means medical doctor, osteopathic physician or physician's assistant employed by the department.

"Obscene material" means the same as that described in 20.6(4).

"Performance evaluation" means evaluation of work and program participation as well as other areas of behavior.

"Plan of payment" means the method by which the ~~inmate~~ *offender* is to make restitution. The plan may include legal financial obligations. The plan is to reflect the offender's present circumstances, such as income, physical and mental health, education, employment and family circumstances.

CORRECTIONS DEPARTMENT[201](cont'd)

“Plan of restitution” means a plan stating the amount of restitution as set by the court.

“Responsible person” means an individual on the inmate’s offender’s visiting list of legal age and in the judgment of the staff, is a person of accountability, is able to think and act rationally, and is willing to facilitate the inmate’s offender’s successful completion of furloughs within the furlough rules and facilitate the return of the inmate offender to the institution. A responsible person shall further mean an individual not now under indictment, sentence or conviction of an indictable public offense. Ex-felons will not be permitted to act as responsible persons for furlough until the demonstration of two years’ successful adjustment in the community after release from any supervision.

This rule is intended to implement Iowa Code section 904.108(1)“k.”

ITEM 3. Amend rule 201—20.3(904), introductory paragraph, as follows:

201—20.3(904) Visits to offenders. Visiting is a privilege which allows offenders to maintain and strengthen relationships with family members and friends. Though visits are encouraged, institutions’ space, schedule, personnel constraints, treatment considerations, or other safety and security issues of the institutions and their operations may result in limiting the number and length of visits. *Visitation is additionally governed by the provisions of department of corrections policy IN-V-122.*

ITEM 4. Adopt **new** subrule 20.3(2) as follows and renumber subrules **20.3(2)** to **20.3(6)** as **20.3(3)** to **20.3(7)**:

20.3(2) Schedule. Each department of corrections institution will structure a visiting schedule allowing visitation for a minimum of four days per week. Each institution’s visiting room will be open a minimum of four hours on each authorized day of visiting. The warden/superintendent will designate the time for visiting on certain days/holidays and advise the offenders. The offender is responsible for informing the visitor of the days and hours for visitation.

ITEM 5. Amend renumbered subrule 20.3(3) as follows:

20.3(3) Authorized visitors. Each institution will establish an approved visiting list for each offender. This visiting list remains valid when the offender is transferred to another institution. To meet facility design limitations and security considerations, the visiting list shall be limited to ~~immediate family members and two other visitors.~~ *the following individuals:*

a. Immediate family members. The offender’s immediate family members may be included on the list without a background investigation unless one is required for security purposes.

b. Two other visitors. The offender’s relatives other than immediate family may be included on the list and allowed to visit if visiting space is available. Relatives of the offender other than immediate family may be subject to a background investigation. Friends of the offender may be included on the list. All friends of the offender will be subject to a background investigation conducted by law enforcement officials.

c. *Minor children under the immediate supervision of their parent or legal guardian.*

e d. Limitations. An individual on the approved visiting list of one offender shall not be on the approved visiting list of another offender unless approved by the warden/superintendent or designee of each affected institution, jurisdiction, or sovereign. The warden/superintendent or designee

may make exceptions only for a visitor who is an immediate family member of more than one offender.

A person working in any institution as a volunteer shall not be on an offender’s visiting list, except with the permission of the warden/superintendent or designee.

ITEM 6. Amend renumbered subrule **20.3(4)**, paragraphs “a,” “i” and “j,” as follows:

a. Individuals discharged from a correctional institution, from parole or from probation within the last ~~18~~ *six* months. Noncontact visiting may be authorized for an offender’s spouse or child who has been discharged from a correctional institution, from parole or from probation within the last ~~18~~ *six* months.

i. Current and former employees, volunteers or ex-volunteers, and individuals who currently are providing, or have previously provided, contract services to the department of corrections or a judicial district *within the last six months.*

j. Former department of corrections employees of this or other federal, state, or local jurisdiction or volunteers who have left employment voluntarily or been terminated as a result of accusation or investigation for misconduct *within the last six months* shall not be allowed to visit at the facility where they were employed or volunteered.

ITEM 7. Amend renumbered subrule 20.3(7) as follows:

20.3(7) Special visitors. Attorneys, division of criminal investigation agents, Federal Bureau of Investigation agents, and law enforcement officials, ~~and ministers~~ shall present proof of identity upon entrance to the institution. The offender must express a desire to visit ~~a minister or an attorney~~ before the ~~minister or~~ attorney will be admitted. Attorney ~~and minister~~ visits shall be during normal visiting hours unless a special visit has been requested by the offender and approved by the warden/superintendent or designee prior to the visit.

An attorney ~~or minister~~ testing positive by an electronic detection device may be required to visit without direct contact.

ITEM 8. Adopt **new** subrule 20.3(8) as follows and renumber subrules **20.3(7)** to **20.3(18)** as **20.3(9)** to **20.3(20)**:

20.3(8) Ministers. Ministers shall present proof of identity upon entrance to the institution. The offender must express a desire to visit a minister before the minister will be admitted. Minister visits shall be during normal visiting hours unless a special visit has been requested by the offender and approved by the warden/superintendent or designee prior to the visit.

A minister testing positive by an electronic detection device may be required to visit without direct contact.

ITEM 9. Amend renumbered subrule 20.3(11) as follows:

20.3(11) Minors. ~~Minors outside the offender’s immediate family shall have written permission from a parent or guardian and be accompanied by an adult on the approved visiting list shall visit only in conjunction with their parent or legal guardian. All minors shall have adult supervision. Exceptions shall have prior approval of the warden/superintendent or designee.~~

ITEM 10. Amend renumbered subrule 20.3(17) as follows:

20.3(17) Segregation status. Offenders ~~in~~ *who are assigned to special units such as disciplinary detention or administrative segregation* status may have visits modified in

CORRECTIONS DEPARTMENT[201](cont'd)

regard to place, time, and visitor, depending on the staff and space available.

ITEM 11. Amend renumbered subrule 20.3(20) as follows:

20.3(20) Temporary modifications. Visiting procedures may be temporarily modified or suspended in the following circumstances: riot, disturbance, fire, labor dispute, space and personnel restrictions, natural disaster, or other emergency.

ITEM 12. Rescind and reserve **201—Chapter 21** through **201—Chapter 29**.

[Filed 6/13/02, effective 8/14/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1805B**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 1, "Definitions," and rescinds Chapter 5, "Organization," Iowa Administrative Code.

These amendments change the title of Chapter 1 to "Administration." The amendments also add new definitions and new rules that describe the purpose and organization of the Board. The definition of "practice of dental hygiene" is rescinded. This definition will be incorporated into Chapter 10. (See **ARC 1802B** herein.) Chapter 5 is also rescinded because existing rules in Chapter 5 are being incorporated into Chapter 1.

The Board's Committee for Regulatory Review, formed pursuant to Executive Order Number 8 and comprised of representatives from the Board's constituent groups, recommended the amendments.

These rules are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 20, 2002, as **ARC 1403B**. A public hearing on the amendments was held on March 13, 2002. No oral or written comments on the amendments were received. One change was made from the Notice. In Item 2, the definition of "practice of dentistry," which was proposed to be rescinded in the Noticed amendments, is retained in rule 1.1(153).

These amendments were approved at the June 7, 2002, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, 153 and 272C.

These amendments will become effective on August 14, 2002.

The following amendments are adopted.

ITEM 1. Amend the title of **650—Chapter 1** as follows:

CHAPTER 1**DEFINITIONS ADMINISTRATION**

ITEM 2. Amend rule 650—1.1(153) as follows:
Amend the introductory sentence as follows:

650—1.1(153) Definitions. As used in ~~this chapter~~ *these rules*:

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

"Direct supervision" means that the dentist is present in the treatment facility, but it is not required that the dentist be physically present in the treatment room.

"General supervision of a dental assistant" means that a dentist has delegated the extraoral services to be provided by a dental assistant. The dentist need not be present in the facility while these extraoral services are being provided.

"General supervision of a dental hygienist" means that a dentist has examined the patient and has prescribed authorized services to be provided by a dental hygienist. The dentist need not be present in the facility while these services are being provided. If a dentist will not be present, the following requirements shall be met:

1. Patients or their legal guardians must be informed prior to the appointment that no dentist will be present and therefore no examination will be conducted at that appointment.

2. The hygienist must consent to the arrangement.

3. Basic emergency procedures must be established and in place and the hygienist must be capable of implementing these procedures.

4. The treatment to be provided must be prior prescribed by a licensed dentist and must be entered in writing in the patient record.

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

"License" means a certificate issued to a person to practice as a dentist or dental hygienist under the laws of this state.

"Licensee" means a person who has been issued a certificate to practice as a dentist or dental hygienist under the laws of this state.

"Personal supervision" means the dentist is physically present in the treatment room to oversee and direct the services of the dental assistant.

"Registrant" means a person who has been issued a certificate to practice as a dental assistant under the laws of this state.

"Registration" means a certificate issued to a person to practice as a dental assistant under the laws of this state.

Rescind the definition of "practice of dental hygiene."

Amend the definition of "peer review" as follows:

"Peer review" as defined in Iowa Code section 272C.1(7) means evaluation of professional services rendered by a licensee *or registrant*.

ITEM 3. Adopt **new** rules 650—1.2(17A,147,153,272C) to 650—1.6(17A,147,153) as follows:

650—1.2(17A,147,153,272C) Purpose of the board. The purpose of the board is to protect public health, safety, and welfare by administering, interpreting, and enforcing the provisions of law that relate to the practice of dentistry, dental hygiene, and dental assisting. In pursuit of this mission, the board performs these primary functions:

1.2(1) Administers examinations for the testing of dentists, dental hygienists, and dental assistants;

1.2(2) Issues licenses, registrations, certificates, and permits to qualified practitioners;

1.2(3) Sets standards for license, registration, and permit renewal and continuing education;

DENTAL EXAMINERS BOARD[650](cont'd)

1.2(4) Enforces Iowa laws regulating the practice of dentistry, dental hygiene, and dental assisting;

1.2(5) Investigates complaints concerning violations of the dental practice Act and rules;

1.2(6) Conducts disciplinary hearings and monitors the compliance of licensees or registrants with board orders; and

1.2(7) Adopts rules and establishes standards for practitioners pursuant to its authority under the Iowa Code and administrative rules.

650—1.3(17A,147,153) Organization of the board.

1.3(1) The board shall be composed of five members licensed to practice dentistry, two members licensed to practice dental hygiene and two members not licensed to practice dentistry or dental hygiene and who shall represent the general public. All members are appointed by the governor, subject to confirmation by the senate.

1.3(2) Five members of the board shall constitute a quorum for the purpose of conducting business.

1.3(3) The dental hygiene committee of the board shall be composed of the two dental hygiene members of the board and one dentist member of the board. The dentist member will be elected annually to serve on the committee by a majority vote of the board. The dentist member of the committee must have supervised and worked in collaboration with a dental hygienist for a period of at least three years immediately preceding election to the committee.

1.3(4) Two members of the dental hygiene committee shall constitute a quorum for the purpose of conducting business.

1.3(5) Committees of the board may be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons. Committees of the board may include the executive committee, licensure committee, grievance committee, continuing education advisory committee, and dental assistant committee.

650—1.4(153) Organization of the dental hygiene committee.

1.4(1) All matters regarding the practice, discipline, education, examination, and licensure of dental hygienists will be initially directed to the dental hygiene committee. The committee shall have the authority to adopt recommendations regarding the practice, discipline, education, examination, and licensure of dental hygienists and shall carry out duties as assigned by the board. Recommendations by the committee shall include a statement and documentation supporting its recommendation to the board. The board shall review all committee recommendations. The recommendations shall be ratified by the board unless the board makes a specific written finding that the recommendation exceeds the jurisdiction or expands the scope of the committee beyond the authority granted in subrule 1.4(2), creates an undue financial impact on the board, or is not supported by the record. The board may not amend a committee recommendation without the concurrence of the majority of the members of the dental hygiene committee.

1.4(2) This rule shall not be construed as impacting or changing the scope of practice of the profession of dental hygiene or authorizing the independent practice of dental hygiene.

1.4(3) The committee shall not have regulatory or disciplinary authority with regard to dentists, dental assistants, dental lab technicians, or other auxiliary dental personnel.

This rule is intended to implement Iowa Code section 153.33A.

650—1.5(17A,153) Information. Members of the public may obtain information from or submit requests relating to the practice of dentistry, dental hygiene, or dental assisting, continuing education, or any other matter to the Executive Director, Iowa Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687.

650—1.6(17A,147,153) Meetings.

1.6(1) The board shall hold an annual meeting each year in Des Moines to elect officers and conduct other business. Officers of the board shall consist of a chairperson, vice chairperson, and secretary. Officers shall assume their duties immediately following their election at the annual meeting.

1.6(2) The board may hold additional meetings as the chairperson, vice chairperson, or majority of the board deems necessary. Written notices stating the time and place of the meetings shall be provided consistent with the open meetings law.

1.6(3) The dental hygiene committee shall hold an annual meeting each year in Des Moines, Iowa, to elect officers and conduct other business. Officers of the committee shall consist of a chairperson, vice chairperson, and secretary. Officers shall assume their duties immediately following their election at the annual meeting.

1.6(4) The dental hygiene committee may hold additional meetings as the chairperson, vice chairperson, or majority of the committee deems necessary.

1.6(5) Dates and location of board meetings may be obtained from the board's office. Except as otherwise provided by statute, all board meetings shall be open and the public shall be permitted to attend.

These rules are intended to implement Iowa Code sections 17A.3, 147.14(4), 147.22, and 153.33A(1).

ITEM 4. Rescind and reserve **650—Chapter 5.**

[Filed 6/21/02, effective 8/14/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1801B

DENTAL EXAMINERS BOARD[650]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 6, "Public Records and Fair Information Practices," Iowa Administrative Code.

These amendments specify that certain groups of Board records may be stored electronically and on paper.

These rules are not subject to waiver because they relate to how agency records are stored and do not establish administrative requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 20, 2002, as **ARC 1402B**. A public hearing on the amendments was held on March 13, 2002. No oral or written comments on the amendments were received. These amendments are identical to those published under Notice.

DENTAL EXAMINERS BOARD[650](cont'd)

These amendments were approved at the June 7, 2002, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

These amendments will become effective August 14, 2002.

The following amendments are adopted.

ITEM 1. Amend subrules 6.14(2), 6.14(3), introductory paragraph, 6.14(6), 6.14(7), 6.14(8), and 6.14(10) as follows:

6.14(2) Information in complaint, compliance, and investigative files maintained by the board for the purposes of discipline. This information is collected pursuant to Iowa Code sections 153.33, 272C.3, and 272C.9. This information is stored *electronically and on paper only*. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, information may be released to the licensee or registrant once a disciplinary proceeding is commenced by the filing of a formal *statement of charges* and the notice of hearing.

6.14(3) Records of board disciplinary hearings. These records contain information about licensees and persons under the board's jurisdiction who are subject of a board disciplinary proceeding or other action. This information is collected by the board pursuant to the authority granted in Iowa Code sections 153.23 and 153.33, and chapter 272C. This information is stored *electronically and on paper only*. These records may also contain the following:

6.14(6) Application records. These records contain information about applicants which may include name, address, telephone number, social security number, place of birth, date of birth, education, certifications, examinations with scores, character references, fingerprints, diplomas and any additional information the board may request. This information is collected by the board pursuant to Iowa Code sections 147.2, 153.21, 153.22, and 153.37 ~~and 2000 Iowa Acts, chapter 1002 to 153.39~~. This information is stored *electronically and on paper only*. The personal information contained in these records may be confidential in whole or in part pursuant to Iowa Code sections 147.21(1) to 147.21(3), 22.7(1), and 22.7(19) or other provisions of law.

6.14(7) Examination records. These records contain examination information and scores for any of the following examinations: Joint Commission on National Dental Examinations; Joint Commission on National Dental Hygiene Examinations; Central Regional Dental Testing Service, Inc. examinations; Iowa jurisprudence examinations; state radiography examinations; state dental examinations; state dental hygiene examinations; and state dental assistant registration examinations. This information is collected by the board pursuant to Iowa Code sections 147.21 and 147.34. This information is stored *electronically and on paper only*. The information contained in these records is confidential in part pursuant to Iowa Code sections 147.21(2), 147.21(3), 22.7(1), and 22.7(19).

6.14(8) Licensure, registration, permit or certification records. These records contain information about currently, previously, or reinstated licensed dentists, dental hygienists, and dental assistants. This information includes name of licensee, registration, permit or certificate holder, license, registration, permit or certificate number, date issued, current renewal status and current address. This information is collected by the board pursuant to the authority granted in Iowa Code sections 136C.2, 147.2, 147.10, 153.22, 153.23, and 153.30. This information is stored *electronically and on pa-*

per, in automated data processing systems, on microfiche, or in the state archives.

6.14(10) Compliance reports. These records contain information about dentists and their dental facilities which are inspected to determine compliance with board regulations including the use of parenteral sedation, general anesthesia, or nitrous oxide by dentists in dental facilities. This information is collected by the board pursuant to the authority granted in Iowa Code section 153.20. The information contained in these reports is confidential in whole or in part pursuant to Iowa Code sections 22.7(5), 272C.3, and 272C.6(4). This information is stored *electronically and on paper only*.

ITEM 2. Amend rule 650—6.15(153,147,22) as follows:

Amend the introductory paragraph as follows:

650—6.15(153,147,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 6.1(153,147,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 6.13(153,147,22). This information is stored *electronically and on paper only*. The records listed may contain information about individuals.

Amend subrule 6.15(1) as follows:

6.15(1) Board agendas, minutes, news releases, statistical reports and compilations, newsletters, publications, correspondence, opinions, rulings, and other information intended for the public except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. These records may contain information about individuals, including board members and staff. This information is collected pursuant to Iowa Code section 21.3. This information is stored *electronically and on paper only*.

[Filed 6/21/02, effective 8/14/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1802B

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 10, "General," Iowa Administrative Code.

These amendments revise the title of the chapter and specify that a license or registration and current renewal must be displayed at each permanent practice location. In addition, rules affecting the practice of dental hygiene have been reorganized. No changes in the requirements have been made regarding supervision or authorized services of a hygienist. Requirements regarding general supervision of a dental hygienist are being rescinded and moved to 650—1.1(153). (See **ARC 1805B** herein.) The definition of "practice of dental hygiene" has also been moved from Chapter 1 to Chapter 10.

The amendments also adopt a new rule that specifies requirements of licensees and registrants for making required reports and obtaining training in the identification and reporting of child and dependent adult abuse.

DENTAL EXAMINERS BOARD[650](cont'd)

The Board's Committee for Regulatory Review, formed pursuant to Executive Order Number 8 and comprised of representatives from the Board's constituent groups, recommended these amendments.

These rules are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 20, 2002, as **ARC 1401B**. A public hearing on the amendments was held on March 13, 2002. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

These amendments were approved at the June 7, 2002, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

These amendments will become effective August 14, 2002.

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 [10.2 to 10.5] is being omitted. These amendments are identical to those published under Notice as **ARC 1401B**, IAB 2/20/02.

[Filed 6/21/02, effective 8/14/02]
[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1803B**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 15, "Fees," Iowa Administrative Code.

These amendments specify that the fee charged for the dental assistant trainee manual is \$70. The application fees for a dental assistant trainee and student status application were combined for a new fee of \$25. In addition, the fee for radiography qualification is \$40. The board is also adopting new rules that specify fees charged for public records and purchase of mailing or data lists, and a returned check fee.

The Board's Committee for Regulatory Review, formed pursuant to Executive Order Number 8, recommended the proposed amendments.

These rules are not subject to waiver or variance. Iowa Code section 147.80 requires the Board to set fees based upon costs of sustaining the Board and the actual cost of licensing and requires the Board to generate revenues to equal projected costs. The Board must be able to collect fees uniformly in order to comply with statutory provision.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 20, 2002, as **ARC 1400B**. A public hearing on the amendments was held on March 13, 2002. No oral or written comments on the amendments were received. These amendments are identical to those published under Notice.

These amendments were approved at the June 7, 2002, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

These amendments will become effective August 14, 2002.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [15.1, 15.4 to 15.9] is being omitted. These amendments are identical to those published under Notice as **ARC 1400B**, IAB 2/20/02.

[Filed 6/21/02, effective 8/14/02]
[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1804B**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby rescinds Chapter 22, "Minimum Training Standards for Dental Assistants Engaged in Dental Radiography," and adopts a new Chapter 22, "Dental Assistant Radiography Qualification," Iowa Administrative Code.

This amendment rescinds the Board's rules on dental radiography and adopts a new chapter pertaining to dental assistants engaged in dental radiography. The purpose of the new chapter is to streamline the training process for dental radiography with the dental assistant registration training process. The chapter specifies exemptions, application and examination requirements and requirements for renewal and reinstatement and establishes penalties.

The Board's Committee for Regulatory Review, formed pursuant to Executive Order Number 8, recommended the proposed amendment.

These rules are subject to waiver or variance at the sole discretion of the Board in accordance with 650—Chapter 7.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 20, 2002, as **ARC 1404B**. A public hearing on the amendment was held on March 13, 2002. No oral or written comments on the amendment were received.

Two revisions were made to the Notice of Intended Action:

- In subrule 22.4(3), the concluding sentence, "The course of study must include application of radiation to humans pursuant to Iowa Code section 136C.3," has become part of the second sentence in this subrule. The introductory paragraph of this subrule now reads as follows:

"**22.4(3)** Evidence of successful completion, within the previous two years, of a board-approved course of study in the area of dental radiography. The course of study must include application of radiation to humans pursuant to Iowa Code section 136C.3 and may be taken by the applicant:"

- In subrule 22.8(2), the words "or a registrant who engages in dental radiography" were added to the sentence. The subrule now reads as follows:

"**22.8(2)** Any licensee who permits a person to engage in dental radiography or a registrant who engages in dental radiography contrary to this chapter or Iowa Code chapter

DENTAL EXAMINERS BOARD[650](cont'd)

136C shall be subject to discipline by the board pursuant to 650—Chapter 30.”

This amendment was approved at the June 7, 2002, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

This amendment will become effective January 1, 2003.

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 22] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 1404B**, IAB 2/20/02.

[Filed 6/21/02, effective 1/1/03]
[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1810B**ELDER AFFAIRS
DEPARTMENT[321]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.44, the Department of Elder Affairs hereby amends Chapter 9, “Resident Advocate Committees,” Iowa Administrative Code.

The amendments are intended to modify distribution of reports of committee meetings to include submittal to the Department of Elder Affairs by the resident advocate coordinator.

The amendments also include a new rule in Chapter 9 related to accountability measures. This rule provides a protocol for resolution of issues and concerns, as well as a process for handling unresolved issues and concerns.

Notice of Intended Action was published in the March 6, 2002, Iowa Administrative Bulletin as **ARC 1435B**. The amendments are identical to those published under Notice.

These amendments were approved during the June 20, 2002, meeting of the Commission of the Department.

These amendments will become effective August 14, 2002.

These amendments are intended to implement Iowa Code section 231.44.

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 [9.6(2), 9.15] is being omitted. These amendments are identical to those published under Notice as **ARC 1435B**, IAB 3/6/02.

[Filed 6/21/02, effective 8/14/02]
[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1774B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.193, the Environmental Protection Commission hereby amends Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” and Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

The 2000 General Assembly passed legislation (2000 Iowa Acts, Senate File 2371) that, among other things, established a “credible data” requirement for developing Section 303(d) lists of impaired waters and various other water quality program activities. The credible data legislation, now codified at Iowa Code sections 455B.171 and 455B.193 to 455B.195:

- Defines credible data as scientifically valid data collected under scientifically accepted sampling plans, including quality assurance and quality control procedures;
- Stipulates that data is not credible data unless it originates from studies and samples collected by the Department and its professional designees or from qualified volunteers;
- Requires the review and approval of all data provided by a qualified volunteer as well as the volunteer monitoring plan before the volunteer data may be considered credible data; and
- Requires the Department to adopt rules to establish requirements for a person to become a qualified volunteer.

The amended rules establish minimum requirements for data produced by volunteers to meet the credible data and qualified volunteer requirements.

The expertise needed to produce scientifically valid data can vary significantly depending on the type of monitoring (e.g., chemical versus biological) and other factors, including analytical procedures and changing technology. Providing a definition of “qualified volunteer” in terms of specific education, experience and knowledge would be difficult and would have the effect of discouraging volunteer monitoring, especially for the simpler types of monitoring (e.g., water temperature testing). For that reason, the amendments define “qualified volunteer” in general terms and concentrate on the process of reviewing the volunteer monitoring plan, including quality assurance and quality control measures, and the monitoring data to ensure the data are, in fact, scientifically valid. Volunteers working under the provisions of an approved volunteer monitoring plan would be considered qualified volunteers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 6, 2002, as **ARC 1351B**. In response to the comments the Department received during the public comment period and the three public hearings, the following changes were made to the amendments published under Notice:

- Subrule 61.12(1) was reworded to clarify that qualified volunteers must specifically request that their data be considered credible before the Department can incorporate it in a 303(d) list; to require the Department to provide a standard format for the submission of qualified volunteer data; and to clarify that data collected by volunteers will be labeled as such in any Department databases, reports, or Web sites.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

• Rule 61.13(455B) was reworded to clarify that the Department shall conduct statistically valid field audits of volunteer data collection activities and analysis procedures.

These amendments were approved during the June 17, 2002, meeting of the Environmental Protection Commission.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments will become effective August 14, 2002.

The following amendments are adopted.

ITEM 1. Amend rule **567—60.2(455B)** by adopting the following **new** definition in alphabetical order:

“Qualified volunteer” means a person or group of people acting on their own behalf, and not for a government agency or under contract with the department, to produce water quality monitoring data in accordance with a department-approved volunteer monitoring plan. Qualified volunteers must have the training and experience to ensure quality assurance and quality control for the data being produced, or be under the direct supervision of a person having such qualifications. A person or persons identified as participants in a department-approved volunteer monitoring plan will be considered qualified volunteers.

ITEM 2. Amend 567—Chapter 61 by adopting the following **new** division title before rule 567—61.1:

WATER QUALITY STANDARDS

ITEM 3. Reserve rules **567—61.4** to **567—61.9** and adopt the following **new** division:

VOLUNTEER MONITORING DATA REQUIREMENTS

567—61.10(455B) Purpose. The department uses water quality monitoring data for a number of purposes, including determining compliance with effluent limits for operation permits issued under 567—Chapter 64. The department also uses water quality monitoring data to determine the relative health of a water body by comparing monitoring data to the appropriate water quality standards established in 567—Chapter 61, a process known as water body assessments. Water body assessments are performed to prepare the biennial water quality report required under Section 305(b) of the Act and the list of impaired waters under Section 303(d) of the Act.

Iowa Code sections 455B.193 to 455B.195 require that credible data, as defined in Iowa Code section 455B.171, be used for the purpose of preparing Section 303(d) lists and other water quality program functions. Data provided by a volunteer are not considered credible data unless provided by a qualified volunteer. The purpose of this chapter is to establish minimum requirements for data produced by volunteers to meet the credible data and qualified volunteer requirements.

567—61.11(455B) Monitoring plan required. Volunteer water quality monitoring data submitted to the department must have been produced in accordance with a department-approved volunteer water quality monitoring plan before the data may be used for any of the purposes listed in Iowa Code section 455B.194. Approval of a plan will establish qualified volunteer status for the personnel identified in the plan for those monitoring activities covered under the plan.

61.11(1) Submittal of the plan. Prior to initiation of volunteer water quality monitoring activities intended to produce credible data, a water quality monitoring plan must be

submitted to the department for review and approval. The plan must be submitted to the Volunteer Monitoring Coordinator, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319, a minimum of 90 days before planned initiation of volunteer monitoring activities. A letter transmitting the plan must specifically request formal review and approval of the plan and identify a contact person. Volunteer monitors are encouraged to communicate with the department and to attend volunteer monitoring training sessions prior to formal submittal of a plan.

61.11(2) Content of the plan. A volunteer monitoring plan must contain, at a minimum, the following to be considered an acceptable volunteer monitoring plan:

- a. A statement of the intent of the monitoring effort.
- b. The name(s) of the person or persons that will be involved in data collection or analysis, the specific responsibilities of each person or group of people, and the general qualifications of the volunteers to carry out those responsibilities. For groups, such as educational institutions, it will be acceptable to identify the persons involved by general description (e.g., tenth grade biology class) with the exception of persons in responsible charge.
- c. The name(s) of the person or persons that will oversee the monitoring plan, ensure that quality assurance and control objectives are being met, and certify the data. The person or persons in responsible charge must have training commensurate with the level of expertise to ensure that credible data is being generated.
- d. The duration of the volunteer monitoring effort. In general, the department will not approve plans of greater than three years' duration unless a longer duration is justified.

- e. Location and frequency of sample collection.
- f. Methods of data collection and analysis.
- g. Record keeping and data reporting procedures.

61.11(3) Department review of the plan. The department will review monitoring plans and normally approve or disapprove the plan within 90 days of receipt. The department will work with the contact person identified in the plan to make any necessary changes prior to taking formal action. The department will use guidelines contained in the publications EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5, 2001) and Volunteer Monitor's Guide to Quality Assurance Project Plans (1966, EPA 841-B-96-003) or equivalent updates to determine if the plans provide adequate quality assurance and quality control measures. Approval or disapproval of the plan will be in the form of a letter and approval may include conditions or limitations.

61.11(4) Changes in monitoring plans. The department must approve any changes to an approved monitoring plan. Data collected under a modified plan will not be considered credible data until such time as the department has approved the modifications. Modifications to an approved plan should be submitted at the earliest possible time to avoid interruptions in data collection and to ensure continuity of data.

61.11(5) Appeal of disapproval. If a monitoring plan submitted for approval is disapproved, the decision may be appealed by filing an appeal with the director within 30 days of disapproval. The form of the notice of appeal and appeal procedures are governed by 567—Chapter 7.

567—61.12(455B) Use of volunteer monitoring data. Data produced under an approved water quality monitoring plan will be considered credible data for the purposes listed in Iowa Code section 455B.194 if the following conditions are met.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

61.12(1) Data submittal. A qualified volunteer monitor or qualified volunteer monitoring group must specifically request that data produced under an approved volunteer monitoring plan be considered credible data. A letter identifying the specific data must be submitted along with a certification from the volunteer or the person in responsible charge for volunteer groups that the data, to the best of the volunteer's or responsible person's knowledge, was produced in accordance with the approved volunteer monitoring plan. The department shall provide a standard format on the IOWATER Web site for submittal of qualified volunteer data and related information. The department encourages volunteers to enter monitoring data on the IOWATER volunteer monitoring database maintained by the department, but doing so does not constitute submittal to or acceptance of the data by the department for uses requiring credible data. Volunteer data shall be labeled as such in any departmental reports, Web sites, or databases.

61.12(2) Department review of submitted data. The department must review and approve the submitted data. The person submitting the data will be informed of the department's decision either to accept or reject the data. The department will attempt to resolve any apparent inconsistencies or questionable values in the submitted data prior to making a final decision.

567—61.13(455B) Department audits of volunteer monitoring activities. The department shall conduct field audits of a statistically valid and representative sample of volunteer data collection and analysis procedures to ensure compliance with an approved plan and may conduct confirmatory monitoring tests. Volunteers shall be informed of any audit results and be provided with an opportunity to address any concerns to the extent possible. The department reserves the right to rescind approval of an approved plan if it finds substantial problems that cannot be addressed in a timely manner to ensure the quality of the data being produced.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

[Filed 6/18/02, effective 8/14/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1773B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.304(8), the Environmental Protection Commission hereby amends Chapter 111, "Financial Assurance Requirements for Municipal Solid Waste Landfills," Iowa Administrative Code.

These amendments establish specifications for the closure and postclosure accounts required for municipal solid waste landfills by Iowa Code section 455B.306(8)"b." The amendments also correct some inconsistencies found in the new Chapter 111 that became effective August 15, 2001.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 9, 2002, as **ARC 1263B**. A public hearing was held on February 12, 2002, and written

comments were accepted on or before that date. The Department has reviewed all comments received and has prepared a responsiveness summary, which has been distributed to interested parties. Based upon comments received, the wording in rule 567—111.9(455B) has been revised for greater clarity and now reads as follows:

"567—111.9(455B) Amount of required financial assurance. A financial assurance mechanism established pursuant to 567—111.6(455B) shall be in the amount of the third-party cost estimates required by rules 567—111.3(455B), 111.4(455B), and 111.5(455B) except that the amount of the financial assurance instrument may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with rule 567—111.8(455B) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed at Iowa Code section 12B.10(5)."

These amendments are intended to implement Iowa Code section 455B.304(8).

These amendments will become effective August 14, 2002.

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 [111.3(1) to 111.3(3), 111.4(2), 111.4(3), 111.6(1) to 111.6(4), 111.6(9), 111.8, 111.9] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 1263B**, IAB 1/9/02.

[Filed 6/18/02, effective 8/14/02]

[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1788B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed Without Notice**

Pursuant to the authority of 2002 Iowa Acts, House File 2554, the Environmental Protection Commission hereby adopts new Chapter 116, "Registration of Waste Tire Haulers," Iowa Administrative Code.

This new chapter establishes a waste tire hauler registration program within the Department of Natural Resources. The intent of the registration process is to ensure the proper management of waste tires by those persons providing waste tire hauling and disposal services. As defined in 2002 Iowa Acts, House File 2554, section 4, a waste tire hauler is a person who transports for hire more than 40 waste tires in a single load for commercial purposes.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary, as waste tire haulers were previously registered through the Secretary of State. 2002 Iowa Acts, House File 2554, transferred the responsibility for this registration process to this Department as of April 22, 2002. These rules are a direct adaptation of the Secretary of State's rules contained in Iowa Administrative Code 721—Chapter 44. The only change made to the rules was the replacement of the words "Secretary of State" with the word "department" as the appropriate state agency for reference within the rules. Adop-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

tion of these rules will provide continuity in the issuance of registration certificates and enforcement of the requirements therein.

The Commission adopted this amendment on June 17, 2002.

These rules will become effective on August 14, 2002.

These rules are intended to implement 2002 Iowa Acts, House File 2554.

The following **new** chapter is adopted.

CHAPTER 116

REGISTRATION OF WASTE TIRE HAULERS

567—116.1(455D) Registration requirement. For the purposes of this chapter, "waste tire hauler" means a person who transports for hire more than 40 waste tires in a single load for commercial purposes. A waste tire hauler does not include a person who hauls tires received by the person in trade for the purchase of new tires, when the tires are hauled from the person's place of business to a permitted final disposal site. A waste tire hauler shall register with and obtain a certificate of registration from the department in accordance with this chapter before hauling waste tires in Iowa.

567—116.2(455D) Registration form. A waste tire hauler shall submit the following information on a form prescribed by the department.

1. The name of the waste tire hauler and any other names under which the waste tire hauler may do business.
2. The principal address of the waste tire hauler and any other address at which the waste tire hauler may do business.
3. A business telephone number.
4. The name and address of the principal officer of a corporate waste tire hauler or the principal owner or owners of a waste tire hauler operating a proprietorship or partnership.
5. The following information for each motor vehicle used by the waste tire hauler for hauling tires:
 - The name and address of the owner of the vehicle.
 - The vehicle identification number of the vehicle.
 - The year, make, and model of the vehicle.
 - The license plate number of the vehicle.
 - The state in which the vehicle is registered.
6. A statement that the waste tire hauler agrees to notify the department within 30 days of any change in the information contained in the registration form.
7. A statement that the waste tire hauler agrees to comply with the vehicle identification requirements contained in this chapter.
8. A statement that the waste tire hauler shall pay all amounts due to any individual or group of individuals when due for damages caused by improper disposal of waste tires by the waste tire hauler or the waste tire hauler's employee while acting within the scope of employment.
9. The signature of the waste tire hauler.

567—116.3(455D) Registration fee. An application for registration of a waste tire hauler shall be accompanied by a fee of \$50.

567—116.4(455D) Bond form. An application for registration as a waste tire hauler shall not be approved by the department until the waste tire hauler has provided a bond in the sum of a minimum of \$10,000 on a form prescribed by the insurance commissioner.

567—116.5(455D) Marking of equipment. Equipment used for the hauling of waste tires subject to this chapter shall be marked as required in this rule. The following information shall be displayed on each side of the equipment, in letters

and figures large enough to be read easily at a distance of 50 feet and in a color in contrast to the background.

1. The name of the registered waste tire hauler under whose authority equipment is being operated.

2. The address of the registered waste tire hauler (city and state).

3. The registration number of the waste tire hauler, as assigned by the department.

These rules are intended to implement 2002 Iowa Acts, House File 2554.

[Filed Without Notice 6/18/02, effective 8/14/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1789B

ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

These amendments reflect statutory amendments in 1999 Iowa Acts, chapter 136, by removing references to "support or oppose" and inserting "expressly advocating." The amendments also reflect statutory amendments in 2002 Iowa Acts, House File 2538, by raising the financial threshold for the registration of a campaign "committee" from \$500 to \$750.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on May 15, 2002, as **ARC 1607B**. No oral or written comments on the amendments were received. These amendments are identical to those published under Notice.

The Board adopted these amendments on June 20, 2002.

These amendments are intended to implement Iowa Code chapters 56 and 68B.

These amendments will become effective on August 14, 2002.

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 [4.1(1), 4.25(1), 4.25(3), 4.38, 4.53, 4.70(2) to 4.70(5), 4.87] is being omitted. These amendments are identical to those published under Notice as **ARC 1607B**, IAB 5/15/02.

[Filed 6/21/02, effective 8/14/02]

[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1792B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," and Chapter 11, "Personal Financial Disclosure," Iowa Administrative Code.

These amendments rescind the requirement for a campaign committee to file an original disclosure report within ten days of filing a report by fax. These amendments also rescind the requirement for an executive branch candidate, official, or employee who is required to file a personal financial disclosure statement to file an original statement within ten days of filing a statement by fax.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on May 15, 2002, as **ARC 1606B**. No oral or written comments on the amendments were received. These amendments are identical to those published under Notice.

The Board adopted these amendments on June 20, 2002.

These amendments are intended to implement Iowa Code chapters 56 and 68B.

These amendments will become effective on August 14, 2002.

The following amendments are adopted.

ITEM 1. Amend rule 351—4.23(56,68B) by rescinding subrule **4.23(3)**.

ITEM 2. Amend rule 351—11.4(68B) by rescinding subrule **11.4(3)**.

[Filed 6/21/02, effective 8/14/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1791B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," and Chapter 6, "Civil Penalties," Iowa Administrative Code.

These amendments require an out-of-state political committee to file a verified statement of registration within 15 days of the date of making a campaign contribution to an Iowa committee in lieu of the current requirement of 10 days. These amendments also reflect current Board policies concerning the filing of verified statements of registration and the imposition of civil penalties for late-filed statements.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on May 15, 2002, as **ARC 1602B**. No oral or written comments on

the amendments were received. These amendments are identical to those published under Notice.

The Board adopted these amendments on June 20, 2002.

These amendments are intended to implement Iowa Code chapters 56 and 68B.

These amendments will become effective on August 14, 2002.

The following amendments are adopted.

ITEM 1. Amend rule 351—4.48(56,68B), introductory paragraph, as follows:

351—4.48(56,68B) Contributions from political committees not organized in Iowa. Iowa candidates' committees and other political committees may receive contributions from committees outside Iowa, and committees outside Iowa may contribute to Iowa candidates' committees and other political committees provided one of the specified procedures is followed:

ITEM 2. Amend subrule 4.48(2), introductory paragraph, as follows:

4.48(2) In lieu of filing a statement of organization and regular disclosure reports as required by Iowa Code sections 56.5 and 56.6, the out-of-state committee ~~may shall~~ send a verified (~~sworn~~) statement registration form (a "VSR") with the contribution, and shall also ~~send~~ file a copy ~~to with~~ the board ~~or county commissioner of elections~~. The VSR forms may be obtained from the board ~~or county commissioners of elections~~. The ~~requested information~~ VSR shall include:

ITEM 3. Amend paragraph **4.48(2)"i"** as follows:

i. An attested statement that the jurisdiction under which the out-of-state committee is registered or operates has reporting requirements ~~which that~~ are substantially similar to those of Iowa Code chapter 56 and that the contribution is made from an account ~~which that~~ does not accept contributions ~~which would be in violation of prohibited by~~ Iowa Code section 56.15. ~~The VSR shall be signed by the treasurer or chairperson or filed electronically as provided by the board.~~

The VSR shall be filed with the board on or before the fifteenth day after the date of the contribution, or mailed bearing a United States Postal Service postmark dated on or before the fifteenth day after the date of the contribution. For purposes of this subrule, "date of the contribution" means the day, month, and year the contribution check is dated. If the board deems it necessary, a copy of any check may be required to be filed with the board. When a copy of a check is required to be filed with the board, the copy shall be filed within ten days after notice by the board.

The board shall make available to the appropriate county commissioner of elections a copy of any VSR filed on behalf of a county or local committee.

A properly completed VSR shall relieve an out-of-state committee from other disclosure filing requirements of Iowa Code chapter 56.

ITEM 4. Amend subrule 4.48(3) as follows:

4.48(3) Out-of-state committees which determine that An out-of-state committee determining that the jurisdiction under which the committee is registered or operates does not have reporting requirements ~~which are~~ substantially similar to those of Iowa Code chapter 56 may choose to comply by enhancing ~~their~~ the committee's filing in the other jurisdiction. The enhanced filing shall meet the reporting requirements of chapter 56 for the reporting period ~~in which that~~ contributions to an Iowa candidate committee are made. The report shall cover a period of at least one month. An out-of-

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

state committee choosing this option shall comply with the VSR procedures in subrule 4.13(2) 4.48(2) and attach a signed statement that the report has been or will be enhanced to satisfy the Iowa reporting requirements.

ITEM 5. Amend subrule 6.2(5) as follows:

6.2(5) Late-filed verified statements of registration. The board shall routinely assess and collect monetary penalties against committees ~~which~~ *that* are organized in a jurisdiction other than Iowa and ~~which~~ choose to file a verified statement of registration (VSR) as provided in Iowa Code section 56.5 and rule 351—4.48(56,68B), but are delinquent in filing the VSR. A VSR is considered delinquent if it is not received on or before the ~~ten~~ *fifteenth* day after the date of the contribution, or mailed bearing a United States Postal Service postmark dated on or before the ~~ten~~ *fifteenth* day after the contribution. A ~~flat late~~ penalty of \$25 shall be assessed for late-filed VSRs, except that if it is a repeat delinquency by the same committee in a 12-month period, the ~~flat late~~ penalty shall be \$50. However, if the VSR is not filed within ~~ten~~ *15* days after notice of the delinquency is sent to the committee by the board, the ~~amount of the late filing~~ penalty shall increase to \$100 for a first-time delinquency, or to \$200 for a repeat delinquency by the same committee within a 12-month period. ~~A VSR which is not filed within 45 days after the notice is sent by the board shall be referred to as an extreme delinquency and shall be subject to the provisions of subrule 6.2(4).~~ In addition, ~~a~~ *an* Iowa committee ~~which that~~ has received a contribution from a committee ~~which that~~ has failed to file a VSR may be required to return the contribution.

For purposes of this subrule, "date of the contribution" means the day, month and year the contribution check is dated. If the board deems it necessary, a copy of any check may be required to be filed with the board. When a copy of a check is required to be filed with the board, said copy shall be filed within ~~ten~~ *10* days of notice by the board.

[Filed 6/21/02, effective 8/14/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1790B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

This amendment rescinds the Board-imposed requirements on the charging of interest on a campaign loan or debt and the time frame for repaying the obligation. The lender and the campaign committee will now decide whether or not interest is charged and when the debt will be repaid.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on May 15, 2002, as **ARC 1601B**. No oral or written comments on the amendment were received. This amendment is identical to that published under Notice.

The Board adopted this amendment on June 20, 2002.

This amendment is intended to implement Iowa Code chapters 56 and 68B.

This amendment will become effective on August 14, 2002.

The following amendment is adopted.

Rescind and reserve rule **351—4.50(56,68B)**.

[Filed 6/21/02, effective 8/14/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1776B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby adopts new Chapter 35, "Fish Habitat Promotion for County Conservation Boards," Iowa Administrative Code.

This chapter allows the Department to distribute fish habitat funds and enter into agreements with county conservation boards.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 3, 2002, as **ARC 1518B**. A public hearing was held on May 7, 2002. There are no changes from the Notice of Intended Action.

These rules are intended to implement Iowa Code Supplement section 483A.3A.

These rules will become effective August 14, 2002.

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 35] is being omitted. These rules are identical to those published under Notice as **ARC 1518B**, IAB 4/3/02.

[Filed 6/18/02, effective 8/14/02]

[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1775B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 456A.24(5), the Natural Resource Commission hereby amends Chapter 71, "Nursery Stock Sale to the Public," Iowa Administrative Code.

This amendment increases the price of nursery stock sold to the public and allows stock to be provided to schools and conservation groups for special events. The price increase is needed to ensure that nursery stock sales cover future pro-

NATURAL RESOURCE COMMISSION[571](cont'd)

duction costs and promote conservation plantings. Prices have not been increased since 1999.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 3, 2002, as **ARC 1517B**. Three public comments in favor of increasing the prices were received during the public comment period. The adopted amendment is unchanged from the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 456A.20 and 456A.24.

This amendment shall become effective August 14, 2002. The following amendment is adopted.

Amend rule 571—71.3(456A,461A) as follows:

571—71.3(456A,461A) Nursery stock prices.

71.3(1) Prices for hardwoods ~~and shrubs~~ shall be as follows:

a. ~~Hardwoods and shrubs, 17" and larger—\$40 per hundred plants.~~

b. ~~Hardwoods and shrubs, 10" to 16"—\$35 per hundred plants.~~

a. *Oak, hickory, walnut, pecan and basswood, 6" to 16"—\$40 per hundred plants.*

b. *Oak, hickory, walnut, pecan and basswood, 17" and larger—\$45 per hundred plants.*

c. *Other hardwood tree species, 6" to 16"—\$37 per hundred plants.*

d. *Other hardwood tree species, 17" and larger—\$42 per hundred plants.*

71.3(2) Prices for shrubs shall be as follows:

a. *Elderberry, buttonbush, dogwood, and Nanking cherry, 6" to 16"—\$37 per hundred plants.*

b. *Elderberry, buttonbush, dogwood, and Nanking cherry, 17" and larger—\$42 per hundred plants.*

c. *Other shrub species, 6" to 16"—\$40 per hundred plants.*

d. *Other shrub species, 17" and larger—\$45 per hundred plants.*

71.3(2) (3) Prices for conifers shall be ~~\$20 per hundred plants.~~ be as follows:

a. *Conifers, 6" to 16"—\$25 per hundred plants.*

b. *Conifers, 17" and larger—\$30 per hundred plants.*

71.3(3) (4) Prices for wildlife packets shall be ~~\$65~~ 90 each.

71.3(4) (5) Prices for songbird packets shall be \$20 each.

71.3(5) (6) Prices for walnut seed shall be \$3 per pound.

71.3(7) *For promotion of conservation plantings, nursery stock may be provided to schools and conservation and education groups to use for Arbor Day and other special events.*

[Filed 6/18/02, effective 8/14/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1781B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby adopts new Chapter 30, "Administrative and Regulatory Authority for the Board of Behavioral Science Examiners," Iowa Administrative Code.

The new rules concern the purpose of the Board, organization and proceedings of the Board, official communications, office hours, and public meetings.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 17, 2002, as **ARC 1556B**. A public hearing was held on May 9, 2002, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No public comments were received at the hearing.

The following changes have been made to the Notice of Intended Action:

- In subrule 30.3(8), paragraph "g" was reworded, but the intent of the language did not change. Also, paragraph "j" was added to provide for Board authority over any other function authorized by a provision of the law.

- Subrule 30.4(3) was added to require licensees to notify the board of a change of name.

These rules were adopted by the Board of Behavioral Science Examiners on June 14, 2002.

These rules will become effective August 14, 2002.

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

The following new chapter is adopted.

CHAPTER 30**ADMINISTRATIVE AND REGULATORY
AUTHORITY FOR THE****BOARD OF BEHAVIORAL SCIENCE EXAMINERS****645—30.1(17A,154D) Definitions.**

"Board" means the board of behavioral science examiners.

"Board office" means the office of the administrative staff.

"Department" means the department of public health.

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

"License" means a license to practice marital and family therapy or mental health counseling.

"Licensee" means a person licensed to practice as a marital and family therapist or mental health counselor in Iowa.

"Peer review" means evaluation of professional services rendered by a professional practitioner.

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

645—30.2(17A,154D) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 17A, 147, 154D and 272C with regard to the practice of marital and family therapy and mental health counseling. The mission of the board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

enforcement of the statutes and rules of the licensure board. Responsibilities include, but are not limited to:

30.2(1) Licensing of qualified applicants by examination, renewal, endorsement, and reciprocity.

30.2(2) Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

30.2(3) Imposing discipline on licensees as provided by statute or rule.

645—30.3(17A,147,272C) Organization of board and proceedings.

30.3(1) The board is composed of nine members appointed by the governor and confirmed by the senate.

30.3(2) The members of the board shall include:

a. Three members licensed to practice marital and family therapy, one of whom shall be employed in graduate teaching, training, or research in marital and family therapy and two of whom shall be practicing marital and family therapists;

b. Three members licensed to practice mental health counseling, one of whom shall be employed in graduate teaching, training, or research in mental health counseling and two of whom shall be practicing mental health counselors; and

c. Three members who are not licensed to practice marital and family therapy or mental health counseling and who shall represent the general public.

30.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after April 30 of each year.

30.3(4) The board shall hold at least one annual meeting.

30.3(5) A majority of the members of the board shall constitute a quorum.

30.3(6) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings shall be conducted in accordance with Robert's Rules of Order, Revised.

30.3(7) The professional licensure division shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter, but shall be reimbursed for all costs incurred from funds appropriated to the board.

30.3(8) The board has the authority to:

a. Develop and implement a program of continuing education to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.

d. Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all discussion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

e. Investigate alleged violations of statutes or rules that relate to the practice of marital and family therapy and mental health counseling upon receipt of a complaint or upon the board's own initiation. The investigation will be based on information or evidence received by the board.

f. Initiate and impose licensee discipline.

g. Monitor licenses that are restricted by a board order.

h. Establish and register peer reviewers.

i. Refer a complaint to one or more registered peer reviewers for investigation and review. The peer reviewers will review cases and recommend appropriate action. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction.

j. Perform any other function authorized by a provision of law.

645—30.4(17A) Official communications.

30.4(1) All official communication, including submissions and requests, may be addressed to the Board of Behavioral Science Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

30.4(2) Notice of change of address. Each licensee shall notify the board in writing of a change of the licensee's current mailing address within 30 days after the change of address occurs.

30.4(3) Notice of change of name. Each licensee shall notify the board of any change of name within 30 days after changing the name. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

645—30.5(17A) Office hours. The board office is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

645—30.6(17A) Public meetings. Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office.

30.6(1) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period any person may speak for up to two minutes. Requests to speak for two minutes per person later in the meeting when a particular topic comes before the board should be made at the time of the public comment period and will be granted at the discretion of the chairperson. No more than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise.

30.6(2) Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

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

[Filed 6/19/02, effective 8/14/02]

[Published 7/10/02]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/02.

ARC 1784B

**PROFESSIONAL LICENSURE
DIVISION[645]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby amends

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Chapter 100, "Funeral Directors"; rescinds Chapter 101, "Board of Mortuary Science Examiners," and adopts new Chapter 101, "Licensure of Funeral Directors"; amends Chapter 102, "Continuing Education for Funeral Directors"; adopts new Chapter 103, "Discipline for Funeral Directors," and new Chapter 104, "Fees," Iowa Administrative Code.

These amendments rescind the current rules regarding licensure and fees and adopt new chapters for licensure, discipline and fees, and amend the chapter for continuing education.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 9, 2002, as **ARC 1271B**. A public hearing was held on January 30, 2002, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No written or oral comments were received.

The following changes were made to the Notice of Intended Action:

- An amendment to Chapter 100 was added. The amendment rescinds rules 645—100.9(156) and 645—100.10(156) because the requirements for funeral and cremation establishment licenses and license renewals can be found in new 645—Chapter 101.

- Paragraph "c" was added to subrule 101.5(2) and the paragraphs were relettered accordingly. The paragraph requires preceptors to be affiliated with a funeral home that has been in good standing for a minimum of five years. The paragraph reads as follows:

"c. A preceptor shall be affiliated with a funeral home that has been in good standing with the board of mortuary science examiners for a minimum of five years."

- The following sentence was added to subrule 101.6(4): "The preceptor shall meet the criteria stated in 101.5(2)."

- The examination fee was added to the reinstatement table found in subrule 101.13(6), to agree with the reinstatement table found in subrule 101.12(6). The addition of the examination fee increased by \$50 the total fees for renewal of a lapsed license.

- The title of Chapter 102 was changed to "Continuing Education for Funeral Directors."

- Numbered paragraph "5" was added to rule 645—102.6(272C) so that the requirement for the examination fee can also be found in the continuing education chapter. The new paragraph reads as follows:

"5. Pays the examination fee;"

These amendments were adopted by the Board of Mortuary Science Examiners on June 13, 2002.

These amendments will become effective August 14, 2002.

These amendments are intended to implement Iowa Code section 147.76 and chapters 17A, 156 and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [100.9, 100.10; Ch 101; Ch 102, title, 102.6, 102.9, 102.10; Chs 103, 104] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 1271B**, IAB 1/9/02.

[Filed 6/19/02, effective 8/14/02]
[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1800B**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue and Finance hereby amends Chapter 7, "Practice and Procedure Before the Department of Revenue and Finance," Chapter 15, "Determination of a Sale and Sale Price," and Chapter 87, "Iowa Estate Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume 24, Number 23, page 1846, on May 15, 2002, as **ARC 1626B**.

Item 1 amends the requirements for deletion of identifying details in rule 701—7.42(17A) and provides grammatical correction. Item 2 amends subrule 7.44(2) by adding a new paragraph "e" to provide a new procedure for dismissing untimely protests. Item 3 amends subrule 7.56(12) to implement restrictions on the withdrawal of a declaratory order. Item 4 updates rule 701—15.19(422,423) to clarify ownership for the purpose of the trade-in of a vehicle and updates the implementation clause to correct citations. Item 5 amends 701—Chapter 87 by implementing a new rule regarding applicability of inheritance tax rules to estate taxes.

These amendments are identical to those published as Notice of Intended Action.

These amendments will become effective August 14, 2002, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapters 17A, 422 and 451.

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 [7.42, 7.44(2), 7.56(12), 15.19, 87.6] is being omitted. These amendments are identical to those published under Notice as **ARC 1626B**, IAB 5/15/02.

[Filed 6/21/02, effective 8/14/02]
[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1787B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on June 18, 2002, adopted amendments to Chapter 400, "Vehicle Registration and Certificate of Title," Chapter 401, "Special Registration Plates," Chapter 411, "Persons with Disabilities Parking Permits," Chapter 415, "Driver's Privacy Protection—Certificates of Title and Vehicle Registration," Chapter 424, "Transporter Plates," Chapter 425, "Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Chapter 431, "Vehicle Recyclers," Chapter

TRANSPORTATION DEPARTMENT[761](cont'd)

450, "Motor Vehicle Equipment," and Chapter 451, "Emergency Vehicle Permits," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 17, 2002, Iowa Administrative Bulletin as **ARC 1544B**.

These amendments implement legislation and make technical corrections that have been identified as appropriate pursuant to Executive Order Number 8.

Item 1 adds a reference to Iowa Code section 321.113, which provides for flat registration fees for older passenger-type vehicles.

Items 2 and 15 modify references to mobile homes to include manufactured homes, in accordance with 2001 Iowa Acts, chapter 153.

Item 3 corrects a sentence regarding the model year of specially constructed or reconstructed vehicles. The model year is the year the vehicle is first titled as a specially constructed or reconstructed vehicle.

Item 4 changes the frequency of remittances to the Department of Public Health from monthly to quarterly. These remittances are voluntary contributions collected by the county treasurers and the Department of Transportation for the anatomical gift public awareness and transplantation fund. This change was requested by the Department of Public Health in order to streamline the procedure at both the state and local levels.

Item 5 adds the Internet address from which application forms for special plates are available.

Item 6 deletes the listing of fees for special plates because the listing unnecessarily repeats the statute, and Item 6 also substitutes a cross reference to Iowa Code section 321.34.

Item 7 clarifies the fact that ex-prisoner of war plates may not be reissued to a surviving spouse once the surviving spouse remarries and surrenders the plates.

Item 8 corrects the criteria for issuance of U.S. armed forces retired special plates to agree with Iowa Code subsection 321.34(19).

Item 9 corrects an implementation clause.

Items 10 to 12 revise 761—Chapter 415 to remove or update provisions that are incorrect and add two forms. The current rules are based on the premise that personal information in a motor vehicle record is confidential only if the individual who is the subject of the record requests confidentiality. Amendments to both Iowa Code section 321.11 and the federal Driver's Privacy Protection Act changed this premise. Now, personal information is confidential and may be released only as specified in these statutes. The revised rules mention two forms. One form is used to justify release of personal information without the express written consent of the subject of the record. The other form is used to obtain the subject's express written consent.

Items 13 and 24 correct an office name and delete a telephone number.

Item 14 corrects the name of a federal agency and a reference to the Iowa Code.

Item 16 changes "certified mail" to "first-class mail" in accordance with 2001 Iowa Acts, chapter 32, section 41.

Items 17 and 18 remove measurements expressed in meters. Measurements expressed in feet are unchanged.

Item 19 corrects a form number.

Items 20 and 21 implement 2001 Iowa Acts, chapter 32, section 32, which requires motor vehicle dealers to obtain a permit to display new motor vehicles at fairs, vehicle shows and vehicle exhibitions. Prior to this legislation, motor vehicle dealers did not need a "display only" permit.

Item 22 changes "mobile home dealers" to "manufactured or mobile home retailers," in accordance with 2001 Iowa Acts, chapter 153.

Item 23 adds a form number for the demonstration permit.

Item 25 rescinds rule 761—450.1(321) because the Department no longer has statutory authority to set standards for the types of motor vehicle equipment covered in this rule.

Item 26 amends rule 761—450.6(321) to agree with Iowa Code subsection 321.383(1).

Items 27 and 28 pertain to "dark" windows. Item 27 removes a reference to the Code of Federal Regulations but retains the actual standard adopted, which is a minimum standard of 70 percent light transmittance. Item 28 requires the dark window exemption form to be carried at all times in the vehicle to which the exemption applies, and Item 28 amends the definition of "physician" to allow chiropractors to grant a dark window exemption.

Item 29 removes language which either unnecessarily repeats the statute or is incorrect because of recent legislation and substitutes a reference to Iowa Code section 321.451. Item 29 also revises the definition of "rescue vehicle" to include vehicles used by persons supervising rescue operations.

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

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective August 14, 2002.

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 400, 401, 411, 415, 424, 425, 431, 450, 451] is being omitted. These amendments are identical to those published under Notice as **ARC 1544B**, IAB 4/17/02.

[Filed 6/19/02, effective 8/14/02]
[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1786B

**TRANSPORTATION
DEPARTMENT[761]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on June 18, 2002, adopted amendments to Chapter 421, "Mobile Home Dealers, Manufacturers and Distributors," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 17, 2002, Iowa Administrative Bulletin as **ARC 1546B**.

This chapter is being amended to correct outdated language. 2001 Iowa Acts, chapter 153, amended several Iowa Code sections by modifying references to mobile homes to

TRANSPORTATION DEPARTMENT[761](cont'd)

include manufactured homes. Also, manufactured or mobile home "dealers" are now termed "retailers."

"Certified mail" is being changed to "first-class" mail in accordance with 2001 Iowa Acts, chapter 32, section 41.

"Manufacturer's statement of origin" is being changed to "manufacturer's certificate of origin" and "year model" is being changed to "model year" to be consistent with other rules of the Department.

The amount of the surety bond is being corrected to agree with Iowa Code section 322B.3.

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

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 322B.

These amendments will become effective August 14, 2002.

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 Ch 421] is being omitted. These amendments are identical to those published under Notice as **ARC 1546B**, IAB 4/17/02.

[Filed 6/19/02, effective 8/14/02]
[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1785B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on June 18, 2002, adopted amendments to Chapter 600, "General Information," Chapter 601, "Application for License," Chapter 602, "Classes of Driver's Licenses," Chapter 605, "License Issuance," Chapter 607, "Commercial Driver Licensing," Chapter 610, "Computerized Driver License Records," Chapter 611, "Driver's Privacy Protection—Driver's License and Nonoperator's Identification Card," Chapter 615, "Sanctions," Chapter 620, "OWI and Implied Consent," Chapter 630, "Nonoperator's Identification," Chapter 640, "Financial Responsibility," and Chapter 641, "Financial Liability Coverage Cards," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 17, 2002, Iowa Administrative Bulletin as **ARC 1545B**.

These amendments make technical corrections that have been identified as appropriate pursuant to Executive Order Number 8.

Item 6 amends subrule 601.1(3). The purpose of the amendment is to correct this subrule in accordance with State of Iowa vs. Richard Duane Vargason, 607 N.W. 2d 691 (Iowa 2000), and Iowa Code chapter 321C.

Item 7 amends subrules 601.5(1) and 601.5(2). Subrule 601.5(1) is being amended to state that documents verifying

an applicant's social security number must be issued in the United States. Subrule 601.5(2) is being amended to state that primary and secondary documents verifying an applicant's age and identity must be issued in the United States unless otherwise specified, and to add as a primary document an Offender Snapshot issued by the Iowa Department of Corrections. Other changes in both subrules clarify certain items that are listed.

Item 21 amends the definition of "state" in rule 761—607.3(321) to include a Mexican state, as the word "state" is used in three Iowa Code sections cited in the rule.

Item 22 amends rule 761—607.10(321) by updating a citation to the Code of Federal Regulations and adding the Internet address where the regulations can be reviewed.

Item 23 amends paragraph 607.20(2)"c," which pertains to the knowledge test for a commercial driver's instruction permit, to specify that the applicant must pass the general knowledge test for a commercial driver's license. The current subrule erroneously states that the applicant must pass the knowledge examination for a Class D license.

Item 24 amends rule 761—607.35(321) to agree with Iowa Code section 321.189.

Item 25 amends subrule 607.49(1) by updating a reference to a federal regulation.

Items 26 and 27 amend 761—Chapter 610, which pertains to release of computerized driver's license records. This chapter is being amended to add nonoperator's identification card records, to make the chapter clearer, and to reflect how Iowa Code section 321.11 and the federal Driver's Privacy Protection Act impact requests for these records.

Items 28 to 30 amend 761—Chapter 611, which applies to personal information in records pertaining to driver's licenses and nonoperator's identification cards. This chapter is being amended to remove or update provisions that are incorrect and to add a form. The current rules are based on the premise that personal information in a motor vehicle record is confidential only if the individual who is the subject of the record requests confidentiality. Amendments to both Iowa Code section 321.11 and the federal Driver's Privacy Protection Act changed this premise. Now, personal information is confidential and may be released only as specified in these statutes.

Item 34 clarifies subrule 615.23(1) regarding suspensions for juveniles under Iowa Code section 321.213A.

Item 40 amends rule 761—620.15(321J) by striking language which is obsolete.

Item 42 amends paragraph 640.5(2)"b" to clarify that a certificate of satisfaction or receipt used to prove satisfaction of a judgment is issued by the clerk of court.

Item 43 amends subrules 641.3(1) and 641.3(2) pertaining to financial liability coverage cards to agree with Iowa Code section 321.20B.

Other items in this rule making update Iowa Acts citations and correct citations to the Iowa Code.

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

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective August 14, 2002.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the

TRANSPORTATION DEPARTMENT[761](cont'd)

Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 600 to 602, 605, 607, 610, 611, 615, 620, 630, 640, 641] is being omitted. These amendments are identical to those published under Notice as **ARC 1545B**, IAB 4/17/02.

[Filed 6/19/02, effective 8/14/02]
[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]

ARC 1799B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4 and 478.1 and 2002 Iowa Acts, Senate File 2086, the Utilities Board (Board) gives notice that on June 18, 2002, the Board issued an order in Docket No. RMU-02-5, In re: Threshold for Electric Transmission Line Franchises, "Order Adopting Rules." The Board proposed to amend 199 IAC 11.1(5), 11.3(2), and 11.4(478) to reflect changes to Iowa Code chapter 478 contained in 2002 Iowa Acts, Senate File 2086. This legislation increased the threshold requirement before an electric line franchise petition is required from 34.5 kilovolts or more to 69 kilovolts or more. 2002 Iowa Acts, Senate File 2086, became effective April 1, 2002.

On April 26, 2002, the Board issued an order in Docket No. RMU-02-5 to consider the amendments. Notice of Intended Action for the proposed rule making was published in IAB Vol. XXIV, No. 23 (5/15/02), p. 1849, as **ARC 1615B**. The Consumer Advocate Division of the Department of Justice and MidAmerican Energy Company filed written comments. Both commenters supported the proposed amendments. No person requested an oral presentation.

No changes have been made to the proposed amendments. There is no specific waiver provision in the adopted amendments because the threshold for electric franchises is statutory and cannot be waived.

These amendments are intended to implement Iowa Code section 478.1 and 2002 Iowa Acts, Senate File 2086.

These amendments will become effective August 14, 2002.

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 [11.1(5), 11.3(2), 11.4] is being omitted. These amendments are identical to those published under Notice as **ARC 1615B**, IAB 5/15/02.

[Filed 6/21/02, effective 8/14/02]
[Published 7/10/02]

[For replacement pages for IAC, see IAC Supplement 7/10/02.]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*** EXECUTIVE ORDER NUMBER TWENTY-FIVE**

WHEREAS, state agencies are charged with the responsibility of performing their assigned functions as efficiently and effectively as possible to achieve maximum results for Iowans; and

WHEREAS, state agencies are authorized to contract for services that promote the policies of the agency and serve the best interest of Iowans; and

WHEREAS, services contracting has become a major category of expenditures as the operations of state government have become increasingly complex; and

WHEREAS, to maintain public confidence, every reasonable effort must be made to ensure that public funding commitments for service contracts are obtained at the best value and are subject to appropriate oversight:

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, hereby declare my commitment to provide Iowans with the most efficient and effective state services available by directing state agencies to participate in the state service procurement program outlined in this Order. I hereby order and direct that:

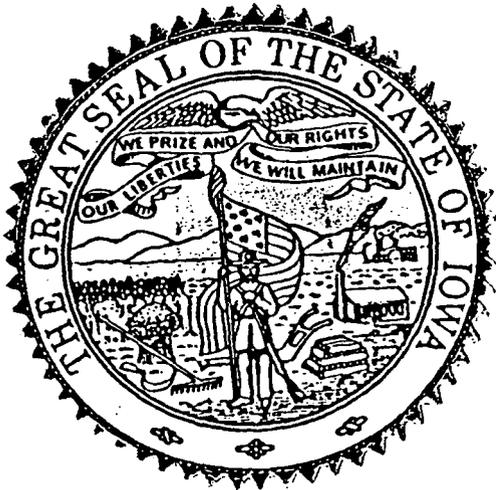
1. Executive Order Number 60, issued by Governor Terry E. Branstad on May 19, 1997, is rescinded.
2. All agencies in the executive branch of state government shall procure services in accordance with Iowa Code §§ 8.47 and 18.3, and all administrative rules developed in accordance with the Iowa Accountable Government Act.
3. All agencies in the executive branch shall procure services in a manner that facilitates cooperative service purchasing across state government whenever possible. The goal of this enterprise-wide approach shall be to reduce waste, duplication, and inefficiency in procurement of services across state government, and to achieve the best value for public fund expenditures.

4. All agencies in the executive branch of state government are encouraged to consider purchasing services from targeted small businesses in accordance with the provisions of Iowa Code §§ 73.15 through 73.21.
5. All agency employees who engage in contracting for services shall receive procurement training from the Department of Personnel, in partnership with other state agencies. The agencies designated by the governor's office to provide procurement training shall develop programming that addresses issues pertinent to service contracting, which shall include, but not be limited to, competitive selection, contract development, contract negotiation, performance measures, and contract monitoring.
6. Upon request, the Department of General Services may assist state agencies that contract services by managing the selection process, and providing technical advice or facilitating the selection process.
7. Agencies are encouraged to submit to a periodic review by the state auditor of service contracting procedures to assess whether the agency is compliant with Iowa Code §§ 8.47 and 18.3, and all administrative rules developed in accordance with the Iowa Accountable Government Act.

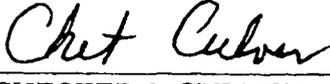
IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 4th day of June, in the year of our Lord two thousand two.



 THOMAS J. VILSACK
 GOVERNOR



ATTEST:

 by  Deputy SOS

 CHESTER J. CULVER
 SECRETARY OF STATE

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