

IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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Schedule for Rule Making 2003

| 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. 3 '03 | Jan. 22 '03 | Feb. 11 '03 | Feb. 26 '03 | Feb. 28 '03 | Mar. 19 '03 | Apr. 23 '03 | July 21 '03 |
| Jan. 17 | Feb. 5 | Feb. 25 | Mar. 12 | Mar. 14 | Apr. 2 | May 7 | Aug. 4 |
| Jan. 31 | Feb. 19 | Mar. 11 | Mar. 26 | Mar. 28 | Apr. 16 | May 21 | Aug. 18 |
| Feb. 14 | Mar. 5 | Mar. 25 | Apr. 9 | Apr. 11 | Apr. 30 | June 4 | Sept. 1 |
| Feb. 28 | Mar. 19 | Apr. 8 | Apr. 23 | Apr. 25 | May 14 | June 18 | Sept. 15 |
| Mar. 14 | Apr. 2 | Apr. 22 | May 7 | May 9 | May 28 | July 2 | Sept. 29 |
| Mar. 28 | Apr. 16 | May 6 | May 21 | May 23 | June 11 | July 16 | Oct. 13 |
| Apr. 11 | Apr. 30 | May 20 | June 4 | June 6 | June 25 | July 30 | Oct. 27 |
| Apr. 25 | May 14 | June 3 | June 18 | June 20 | July 9 | Aug. 13 | Nov. 10 |
| May 9 | May 28 | June 17 | July 2 | July 4 | July 23 | Aug. 27 | Nov. 24 |
| May 23 | June 11 | July 1 | July 16 | July 18 | Aug. 6 | Sept. 10 | Dec. 8 |
| June 6 | June 25 | July 15 | July 30 | Aug. 1 | Aug. 20 | Sept. 24 | Dec. 22 |
| June 20 | July 9 | July 29 | Aug. 13 | Aug. 15 | Sept. 3 | Oct. 8 | Jan. 5 '04 |
| July 4 | July 23 | Aug. 12 | Aug. 27 | Aug. 29 | Sept. 17 | Oct. 22 | Jan. 19 '04 |
| July 18 | Aug. 6 | Aug. 26 | Sept. 10 | Sept. 12 | Oct. 1 | Nov. 5 | Feb. 2 '04 |
| Aug. 1 | Aug. 20 | Sept. 9 | Sept. 24 | Sept. 26 | Oct. 15 | Nov. 19 | Feb. 16 '04 |
| Aug. 15 | Sept. 3 | Sept. 23 | Oct. 8 | Oct. 10 | Oct. 29 | Dec. 3 | Mar. 1 '04 |
| Aug. 29 | Sept. 17 | Oct. 7 | Oct. 22 | Oct. 24 | Nov. 12 | Dec. 17 | Mar. 15 '04 |
| Sept. 12 | Oct. 1 | Oct. 21 | Nov. 5 | Nov. 7 | Nov. 26 | Dec. 31 | Mar. 29 '04 |
| Sept. 26 | Oct. 15 | Nov. 4 | Nov. 19 | ***Nov. 19*** | Dec. 10 | Jan. 14 '04 | Apr. 12 '04 |
| Oct. 10 | Oct. 29 | Nov. 18 | Dec. 3 | Dec. 5 | Dec. 24 | Jan. 28 '04 | Apr. 26 '04 |
| Oct. 24 | Nov. 12 | Dec. 2 | Dec. 17 | ***Dec. 17*** | Jan. 7 '04 | Feb. 11 '04 | May 10 '04 |
| Nov. 7 | Nov. 26 | Dec. 16 | Dec. 31 | Jan. 2 '04 | Jan. 21 '04 | Feb. 25 '04 | May 24 '04 |
| ***Nov. 19*** | Dec. 10 | Dec. 30 | Jan. 14 '04 | Jan. 16 '04 | Feb. 4 '04 | Mar. 10 '04 | June 7 '04 |
| Dec. 5 | Dec. 24 | Jan. 13 '04 | Jan. 28 '04 | Jan. 30 '04 | Feb. 18 '04 | Mar. 24 '04 | June 21 '04 |
| ***Dec. 17*** | Jan. 7 '04 | Jan. 27 '04 | Feb. 11 '04 | Feb. 13 '04 | Mar. 3 '04 | Apr. 7 '04 | July 5 '04 |
| Jan. 2 '04 | Jan. 21 '04 | Feb. 10 '04 | Feb. 25 '04 | Feb. 27 '04 | Mar. 17 '04 | Apr. 21 '04 | July 19 '04 |

PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u> | <u>ISSUE DATE</u> |
|---------------------|----------------------------|-------------------|
| 26 | Friday, June 6, 2003 | June 25, 2003 |
| 1 | Friday, June 20, 2003 | July 9, 2003 |
| 2 | Friday, July 4, 2003 | July 23, 2003 |

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.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

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The Administrative Rules Review Committee will hold a special two-day meeting on Monday, June 9, 2003, at 9 a.m. and Tuesday, June 10, 2003, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

IADA loan participation program; Iowa agricultural loan assistance program.

4.3(7), 4.6(1)"b," 4.7, 4.7(1) to 4.7(11); rescind ch 6, Filed **ARC 2471B** 5/14/03

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Registration of exhibitions involving poultry, 60.4,

Notice **ARC 2458B**, also Filed Emergency **ARC 2479B** 5/14/03

Health requirements for animals exhibited at fairs and district shows,

64.34, 64.35, Filed Emergency After Notice **ARC 2480B** 5/14/03

Chronic wasting disease surveillance and monitoring program, 64.104, 64.106(3),

64.113(2), 64.115 to 64.117, 64.119, 64.120, Filed **ARC 2457B** 5/14/03

AUDITOR OF STATE[81]

Fee structure for filing audits, 21.1(2), Filed **ARC 2513B** 5/28/03

CIVIL RIGHTS COMMISSION[161]

Meetings, 1.1(1)"b," 1.1(3), Filed **ARC 2511B** 5/28/03

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Temporary permit to practice dentistry or dental hygiene, 13.3, 15.1(16), Notice **ARC 2473B** 5/14/03

Expanded functions for dental assistants, 15.1(14), 15.2(7), 20.3,

20.4, 20.4(3), 20.6(3), 20.11, 20.16, 33.1, Notice **ARC 2474B** 5/14/03

Removal of restorations, 27.7(8), Filed **ARC 2472B** 5/14/03

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Organization; division responsibilities; Iowa intergovernmental review system;

rural resource coordination programs for fire services; main street linked investments

loan program; housing assessment and action planning program; amend chs 1, 21;

rescind chs 38, 42, 43, 45; amend ch 50; rescind chs 52, 101, 131;

amend ch 163, Notice **ARC 2461B** 5/14/03

EDUCATIONAL EXAMINERS BOARD[282]

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Abuse identification training for renewal of substitute authorization, 14.143(3), Notice **ARC 2501B** 5/28/03

Evaluator training required for renewal of administrator's license, 17.7(3), Notice **ARC 2502B** 5/28/03

Abuse identification training for renewal of driving instructor authorization, 21.5, Notice **ARC 2503B** 5/28/03

EDUCATION DEPARTMENT[281]

Professional development, ch 12 div VII title, 12.7, Notice **ARC 2499B** 5/28/03

Attendance centers, adopt ch 19, Filed **ARC 2500B** 5/28/03

Minimum standards for community college-employed faculty, 21.3(1) to 21.3(6),

Filed **ARC 2498B** 5/28/03

EMPLOYMENT APPEAL BOARD[486]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

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4.8(1), 4.70(3), 5.1(1), 11.1(1), Filed **ARC 2475B** 5/14/03

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Licensure fees, 2.1, Filed **ARC 2489B** 5/28/03

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Controlling air pollution—exemptions for certain equipment,

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Ambient air quality standards, 28.1, Filed **ARC 2465B** 5/14/03

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NATURAL RESOURCES DEPARTMENT[561]"umbrella"

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Iowa ethics and campaign disclosure board; codes of conduct,

ch 1; rescind ch 12, Notice **ARC 2462B** 5/14/03

Iowa election campaign fund; public records and fair information practices;

civil penalties, chs 2, 3, 6, 10, Notice **ARC 2486B** 5/28/03Campaign disclosure procedures, ch 4, Filed **ARC 2463B** 5/14/03Contested case procedures; personal financial disclosure, chs 7, 11, Notice **ARC 2478B** 5/14/03**HUMAN SERVICES DEPARTMENT[441]**Food stamp eligibility for aliens, 65.37(4), Notice **ARC 2490B** 5/28/03**INSPECTIONS AND APPEALS DEPARTMENT[481]**Indigent defense claims for processing, ch 9, Filed **ARC 2476B** 5/14/03**IOWA FINANCE AUTHORITY[265]**

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

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Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Description of organization; examinations and licensing; continuing education;

uniform rules; sales of goods and services; waivers; rules of professional conduct,

rescind chs 1 to 8; adopt chs 1 to 4, Notice **ARC 2477B** 5/14/03**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Wildlife violator compact, 15.13, Filed **ARC 2495B** 5/28/03

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COMMERCE DEPARTMENT[181]"umbrella"

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PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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- Fire safety—hospitals, licensed health care facilities, and assisted living facilities,
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23.18(2), 23.18(6), 23.19(1), 23.19(3) to 23.19(8), 23.20, 23.24(1), 23.25(3) to 23.25(8),
23.25(10), 23.25(11), 23.26(5), 23.26(5)“a,” 23.26(7), 23.26(8), 23.26(10) to 23.26(14),
23.28(1)“b”(2), 23.28(1)“c,” 23.28(2), 23.28(3), 23.28(7), 23.28(7)“d”(2),
23.29(1)“a” and “b,” 23.29(2)“b” and “c,” 23.30(2), 23.31(1)“a”(1), 23.31(1)“b”(1), (4) and (5),
23.31(4), 23.36, 23.37, 23.39, 23.40(1), 23.40(3), 23.41, 23.43(1), 23.43(4)“b,” 23.43(7),
23.43(9)“a” and “d,” 23.46(2) to 23.46(5), 23.47, 23.48, 23.51(1), 23.51(2), 23.52(1) to 23.52(6),
23.55(3), 23.56(2), 23.58, 23.59, 23.59(2)“c,” 23.61 to 23.63, 23.65(1)“c,” 23.65(2), 23.65(6),
23.65(7), 23.66(1), 23.67(1) to 23.67(3), 23.69(3)“e,” 23.70(1), 23.70(6), 23.70(13),
23.71(1)“a” and “c,” 23.71(3), 23.72(4), 23.73(3), Filed **ARC 2469B** 5/14/03

To All Agencies:

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

| AGENCY | HEARING LOCATION | DATE AND TIME OF HEARING |
|--------|------------------|--------------------------|
|--------|------------------|--------------------------|

DENTAL EXAMINERS BOARD[650]

| | | |
|--|---|-------------------------|
| Temporary permit and associated fee, 13.3, 15.1(16) IAB 5/14/03 ARC 2473B | Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa | June 3, 2003 10 a.m. |
| Expanded functions for dental assistants, 15.1(14), 15.2(7), 20.3, 20.4, 20.6(3), 20.11, 20.16, 33.1 IAB 5/14/03 ARC 2474B | Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa | June 3, 2003 10 a.m. |

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

| | | |
|---|--|------------------------|
| Department organization, amend chs 1, 21, 50, 163; rescind chs 38, 42, 43, 45, 52, 101, 131 IAB 5/14/03 ARC 2461B | Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa | June 3, 2003 2 p.m. |
|---|--|------------------------|

EDUCATIONAL EXAMINERS BOARD[282]

| | | |
|---|---|----------------------------|
| Abuse identification training required for renewal of substitute authorization, 14.143(3) IAB 5/28/03 ARC 2501B | Room 3 North Grimes State Office Bldg. Des Moines, Iowa | June 26, 2003 1:30 p.m. |
| Evaluator training required for renewal of administrator's license, 17.7(3) IAB 5/28/03 ARC 2502B | Room 3 North Grimes State Office Bldg. Des Moines, Iowa | June 26, 2003 2 p.m. |
| Abuse identification training required for renewal of behind-the-wheel driving instructor authorization, 21.5 IAB 5/28/03 ARC 2503B | Room 3 North Grimes State Office Bldg. Des Moines, Iowa | June 26, 2003 1:30 p.m. |

EDUCATION DEPARTMENT[281]

| | | |
|--|--|------------------------------|
| Professional development, 12.7 IAB 5/28/03 ARC 2499B (ICN Network) | Second Floor Grimes State Office Bldg. Des Moines, Iowa | June 17, 2003 3 to 5 p.m. |
| | Northern Trails AEA 9184 B 265th St. Clear Lake, Iowa | June 17, 2003 3 to 5 p.m. |
| | Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa | June 17, 2003 3 to 5 p.m. |
| | Ottumwa Comm. School District H.S. 422 McCarroll Dr. Ottumwa, Iowa | June 17, 2003 3 to 5 p.m. |

EDUCATION DEPARTMENT[281] (Cont'd)
(ICN Network)

| | |
|---|------------------------------|
| Great River AEA 3601 W. Avenue Rd. Burlington, Iowa | June 17, 2003 3 to 5 p.m. |
| Dubuque Comm. School District Forum 2300 Chaney Rd. Dubuque, Iowa | June 17, 2003 3 to 5 p.m. |
| Buena Vista University 610 W. Fourth St. Storm Lake, Iowa | June 17, 2003 3 to 5 p.m. |
| Public Library 507 Poplar Atlantic, Iowa | June 17, 2003 3 to 5 p.m. |

ENVIRONMENTAL PROTECTION COMMISSION[567]

| | | |
|---|---|-------------------------|
| Controlling pollution—exemptions for specific types of equipment, 22.1(2) IAB 5/14/03 ARC 2467B | Conference Rooms 2 and 3 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa | June 13, 2003 1 p.m. |
|---|---|-------------------------|

NATURAL RESOURCE COMMISSION[571]

| | | |
|---|--|--------------------------|
| Use of stationary blinds and waterfowl decoys on pools 16, 17 and 18 on Mississippi River, 51.5 IAB 5/28/03 ARC 2493B | Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | June 19, 2003 10 a.m. |
|---|--|--------------------------|

PERSONNEL DEPARTMENT[581]

| | | |
|--|---------------------------------------|-------------------------|
| IPERS, 21.33(4) IAB 5/28/03 ARC 2509B | 7401 Register Dr. Des Moines, Iowa | June 17, 2003 9 a.m. |
|--|---------------------------------------|-------------------------|

PROFESSIONAL LICENSURE DIVISION[645]

| | | |
|---|---|-------------------------------|
| Cosmetology arts and sciences examiners, amend chs 59 to 61 and 63; adopt new ch 65 IAB 5/28/03 ARC 2483B | Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa | June 23, 2003 9 to 11 a.m. |
| Board of examiners for the licensing and regulation of hearing aid dispensers, amend chs 120, 121; adopt new ch 124 IAB 5/28/03 ARC 2484B | Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa | June 20, 2003 9 to 11 a.m. |
| Psychology examiners, amend chs 239, 240; adopt new ch 242 IAB 5/28/03 ARC 2485B | Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa | June 19, 2003 9 to 11 a.m. |
| Speech pathology and audiology examiners, amend chs 299, 300, 303; adopt new ch 304 IAB 5/28/03 ARC 2512B | Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa | June 26, 2003 9 to 11 a.m. |

PUBLIC HEALTH DEPARTMENT[641]

| | | |
|---|---|--------------------------|
| Out-of-hospital do-not-resuscitate orders, ch 142 IAB 5/28/03 ARC 2491B | EMS Bureau Conference Room Suite D 401 SW Seventh St. Des Moines, Iowa | June 17, 2003 10 a.m. |
|---|---|--------------------------|

PUBLIC SAFETY DEPARTMENT[661]

| | | |
|---|---|----------------------------|
| Exit requirements, 5.2, 5.50 to 5.65 IAB 5/28/03 ARC 2488B | Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | June 19, 2003 9:30 a.m. |
| Fire safety requirements for hospitals, licensed health care facilities, and assisted living facilities, 5.626, 5.900 to 5.925 IAB 5/28/03 ARC 2487B | Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa | June 19, 2003 10 a.m. |

TRANSPORTATION DEPARTMENT[761]

| | | |
|---|--|---|
| Rules review pursuant to Executive Order Number 8, amend chs 201, 800, 802, 810, 811, 820, 821, 830, 831 IAB 5/14/03 ARC 2464B | First Floor South Conference Room Administration Bldg. 800 Lincoln Way Ames, Iowa | June 5, 2003 10 a.m. (If requested) |
|---|--|---|

UTILITIES DIVISION[199]

| | | |
|---|---|--------------------------|
| Customer service rules revisions, 6.2, 6.3(3), 6.5(2), 19.4, 20.4 IAB 4/2/03 ARC 2378B | Hearing Room 350 Maple St. Des Moines, Iowa | May 28, 2003 10 a.m. |
| Alternate energy purchase programs, 15.1, 15.17, 20.9(2) IAB 5/14/03 ARC 2459B | Hearing Room 350 Maple St. Des Moines, Iowa | June 27, 2003 10 a.m. |

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

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

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

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

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CAPITAL INVESTMENT BOARD, IOWA[123]

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 2501B**EDUCATIONAL EXAMINERS
BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, “Issuance of Practitioner’s License and Endorsements,” Iowa Administrative Code.

The proposed amendment clarifies for individuals who renew the substitute authorization annually that the completion of child and dependent adult abuse training is required every five years rather than every year.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held on Thursday, June 26, 2003, at 1:30 p.m. in Room 3 North, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319.

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. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, June 27, 2003. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 14.143(3) as follows:

14.143(3) The substitute authorization must be renewed annually. Renewal requirements for the substitute authorization consist of a minimum of one renewal unit equivalent to 15 clock hours and completion of a child and dependent adult abuse program approved by the state abuse education review panel. A waiver of the approved child and dependent adult abuse training requirement may apply under the following conditions with appropriate documentation of any of the following:

a. *A The person is engaged in active duty in the military service of this state or of the United States.*

b. The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

c. *A The person is practicing a licensed profession outside this state.*

d. *A The person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.*

e. *The person has previously renewed a license or authorization issued by the board of educational examiners and, at that time, reported the completion, within the past five years, of child and dependent adult abuse training approved by the state abuse education review panel.*

ARC 2502B**EDUCATIONAL EXAMINERS
BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 17, “Renewal of Licenses,” Iowa Administrative Code.

The proposed amendments provide a mechanism for an administrator to add the evaluator endorsement to the person’s administrator license. The amendments include a prorated fee chart for this conversion.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held on Thursday, June 26, 2003, at 2 p.m. in Room 3 North, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319.

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. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, June 27, 2003. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

Amend rule 282—17.7(272) by adopting the following **new** subrules:

17.7(3) Applicants renewing a professional administrator’s or area education agency administrator’s license must

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

submit documentation of completion of the evaluator training required in Iowa Code section 284.10. Applicants may apply for the five-year administrator license upon completion of this training.

The fee for the five-year administrator license is \$50. If the term of the renewed administrator license extends beyond the term of the applicant's current administrator license, the fee for the renewed administrator license will be prorated to equal \$10 per year of extension. For example, if the applicant completes the evaluator training course in the fall of 2002, the applicant will receive a new administrator license with a 2003 issue date.

a. The following are examples of the prorated fees for this extension.

(1) If the applicant holds an administrator license that is valid until 2003, the fee for the new license is \$50.

(2) If the applicant's administrator license is valid until 2004, the fee for the new license is \$40.

(3) If the applicant's administrator license is valid until 2005, the fee for the new license is \$30.

(4) If the applicant's administrator license is valid until 2006, the fee for the new license is \$20.

(5) If the applicant's administrator license is valid until 2007, the fee for the new license is \$10.

b. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

(1) The person is engaged in active duty in the military service of this state or of the United States.

(2) The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

(3) The person is an administrator in an accredited non-public school.

(4) The person is practicing a licensed profession outside this state.

(5) The person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.

17.7(4) Requirements for a one-year extension of the administrator license. A license valid for one year may be issued to an applicant who has not completed the required evaluator training necessary for renewal of the administrator license.

The fee for this one-year extension is \$10.

This license may be renewed for one additional year at the same fee if the individual cannot complete the evaluator training during the term of the initial extension. This subrule will sunset January 1, 2005.

ARC 2503B**EDUCATIONAL EXAMINERS
BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of In-

tended Action to amend Chapter 21, "Behind-the-Wheel Driving Instructor Authorization," Iowa Administrative Code.

The proposed amendment clarifies for individuals who renew this authorization that the completion of child and dependent adult abuse training is required every five years rather than every year.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held on Thursday, June 26, 2003, at 1:30 p.m. in Room 3 North, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319.

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. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, June 27, 2003. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend rule 282—21.5(272,321) as follows:

282—21.5(272,321) Renewal. All fees are nonrefundable. The behind-the-wheel driving instructor authorization may be renewed upon application, *payment of the \$10 renewal fee and verification of successful completion of:*

21.5(1) Providing behind-the-wheel instruction for a minimum of 12 clock hours during the previous school year; and

21.5(2) Successful participation in at least one department of transportation-sponsored or department of transportation-approved behind-the-wheel instructor refresher course; and

21.5(3) Effective September 1, 2002, the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

a. *A The* person is engaged in active duty in the military service of this state or of the United States.

b. The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

c. *A The* person is practicing a licensed profession outside this state.

d. *A The* person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

e. The person has previously renewed a license or authorization issued by the board of educational examiners and, at that time, reported the completion, within the past five years, of child and dependent adult abuse training approved by the state abuse education review panel.

ARC 2499B**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 12, “General Accreditation Standards,” Iowa Administrative Code.

The proposed amendments align Chapter 12, Division VII, general accreditation standards with Teacher Quality Program expectations by providing expectations for school district professional development including professional development standards, district career development plan expectations, and professional development provider requirements.

These amendments reflect statutory provisions. Therefore, a waiver of this rule or any portion of this rule would conflict with state law.

Any interested party may make written suggestions or comments on the proposed amendments on or before June 17, 2003. Written materials should be directed to Deb Hansen, Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or by fax at (515)281-7700. Persons who wish to convey their views orally should contact Deb Hansen at (515)281-6131 or on the second floor of the Grimes State Office Building.

Persons may also present their views either orally or in writing at a public hearing conducted over the Iowa Communications Network from 3 to 5 p.m. on June 17, 2003. 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. Sites for the hearing are as follows:

Origination Site #142

Department of Education
Grimes State Office Building, Second Floor
Des Moines
(515)281-3038

Site #176

Northern Trails Area Education Agency
9184 B 265th Street
Clear Lake
(641)357-6125

Site #198

Grant Wood Area Education Agency
4401 6th Street SW
Cedar Rapids
(319)399-6700

Site #232

Ottumwa Community School District High School
422 McCarroll Drive
Ottumwa
(641)684-6596

Site #266

Great River Area Education Agency
3601 West Avenue Road
Burlington
(319)753-6561

Site #312

Dubuque Community School District-Forum
2300 Chaney Road
Dubuque
(563)588-5100

Site #478

Buena Vista University
610 West 4th Street
Storm Lake
(712)749-2218

Site #537

Atlantic Public Library
507 Poplar
Atlantic
(712)243-5466

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact Deb Hansen at (515)281-6131, no later than June 10, 2003.

These amendments are intended to implement Iowa Code section 284.6.

The following amendments are proposed.

ITEM 1. Amend **281—Chapter 12, Division VII**, title, as follows:

DIVISION VII

STAFF PROFESSIONAL DEVELOPMENT

ITEM 2. Rescind rule 281—12.7(256) and adopt the following **new** rule in lieu thereof:

281—12.7(256) Professional development.

12.7(1) Professional development for school districts. The following requirements shall apply to professional development for school districts as required by Iowa Code section 284.6.

a. District career development plan. Each school district shall incorporate the district career development plan into its comprehensive school improvement plan pursuant to Iowa Code subsection 284.6(3). The district career development plan shall be a long-term plan designed and implemented to increase student achievement and shall include all site and district personnel responsible for instruction. The district career development plan shall contain, but not be limited to, the following:

(1) Documentation that the professional development is based on student data and other needs assessment; aligned with district student achievement goals; and focused on instruction, curriculum, and assessment.

(2) Documentation that professional development learning opportunities are research-based and aligned with the Iowa teaching standards and criteria.

(3) Identification of the approved professional development provider(s).

EDUCATION DEPARTMENT[281](cont'd)

(4) Description of a professional development process that includes theory, demonstration, practice, observation, collaboration, and the study of implementation.

(5) Description of a program evaluation design for formative and summative evaluation processes.

b. Professional development standards. Implementation of a school district's career development plan shall meet the following standards:

(1) Align with the Iowa teaching standards and criteria;

(2) Deliver research-based instructional strategies aligned with the student achievement goals established by the district;

(3) Deliver professional development training and learning opportunities that are targeted at instructional improvement and designed with the following components:

1. Student achievement data and analysis;

2. Theory;

3. Classroom demonstration and practice;

4. Observation and reflection;

5. Teacher collaboration and study of implementation; and

6. Integration of instructional technology, if applicable;

(4) Include an evaluation component that documents the improvement in instructional practice and the effect on student learning; and

(5) Support the professional development needs of district certified staff responsible for instruction.

c. Individual career development plans. The school district shall support the development and implementation of the individual teacher career development plan for each career teacher as outlined in 281—subrule 83.6(1). Each individual teacher career development plan shall align to the fullest extent possible with the district career development plan.

d. Beginning teacher mentoring and induction. The school district shall support the development and implementation of a beginning teacher mentoring and induction plan as outlined in 281—subrule 83.3(3). The district beginning teacher mentoring and induction plan shall be included in the comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7, subsection (21a), and shall align with the district career development plan described in subrule 12.7(1), paragraph "a."

e. Organizational support for professional development. The school district shall provide resources for and support to the district career development plan, including professional development provider(s), time for collaborative work of staff, budget, policies, and procedures.

12.7(2) Professional development provider requirements.

a. A provider may be a school district, an area education agency, a higher education institution, a public or private entity including a professional organization that provides long-term, ongoing support of the district's career development plan, or a consortium of any of the foregoing. An educational organization or program with specific professional development accreditation or approval from the department is an approved provider.

b. Provider approval procedures must be followed to approve providers identified in the district's career development plan that are not currently accredited or approved through state accreditation procedures. The potential provider must submit a written application to the school district that provides the following documentation:

(1) How the provider will deliver technical assistance that meets the Iowa professional development standards provided in subrule 12.7(1), paragraph "b."

(2) How the provider intends to assist the local district in designing, implementing, and evaluating professional devel-

opment that meets the requirements established in subrule 12.7(1), paragraph "a."

(3) A description of the qualifications of the provider.

(4) Evidence of the provider's expertise in professional development.

(5) A budget.

(6) Procedures for evaluating the effectiveness of the technical assistance delivered by the provider.

12.7(3) Professional development for accredited schools. Each accredited school shall incorporate into its comprehensive school improvement plan provisions for the professional development of all staff. To meet the professional needs of all staff, staff development activities shall align with school goals; shall be based on student and staff information; shall prepare all employees to work effectively with diverse learners and to implement multicultural, gender-fair approaches to the educational program; and shall emphasize research-based practices to achieve increased student achievement, learning, and performance as stated in the comprehensive school improvement plan.

ARC 2486B

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 2, "Iowa Election Campaign Fund," and adopt new Chapter 2, "Public Records and Fair Information Practices"; to adopt new Chapter 3, "Iowa Election Campaign Fund"; to rescind Chapter 6, "Civil Penalties," and Chapter 10, "Public Records and Fair Information Practices"; and to adopt new Chapter 10, "Civil Penalties for Late Campaign Reports," Iowa Administrative Code.

The proposed amendments incorporate the subject matter of current Chapter 2 in new Chapter 3; of current Chapter 10 in new Chapter 2; and of current Chapter 6 in new Chapter 10. Chapter 6 will be temporarily rescinded and reserved. The Board is in the process of placing similar subject matters together by chapter in the Board rules. The proposed amendments also reflect current Board policies and procedures.

The proposed rules contain waiver provisions where appropriate, and would otherwise be subject to waiver under 351—Chapter 15.

Any interested person may make written comments on the proposed amendments on or before June 17, 2003. 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.

These amendments are intended to implement Iowa Code chapters 22, 56 and 68B.

The following amendments are proposed.

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ITEM 1. Rescind 351—Chapter 2 and adopt the following new chapter in lieu thereof:

CHAPTER 2
PUBLIC RECORDS AND FAIR
INFORMATION PRACTICES

351—2.1(22,56,68B) Definitions. As used in this chapter:

“Confidential record” means a record that is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records may include information discovered as the result of an investigation until such time as the final action of the board is ordered. Confidential records also include matters in litigation by the board and information conveyed as a result of the attorney/client relationship. Confidential records also include records or information contained in records that the board is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, by the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” means the executive director of the Iowa ethics and campaign disclosure board, who is the person lawfully delegated authority by the policy-setting board to act for the agency in implementing Iowa Code chapter 22.

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

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

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

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

351—2.2(22,56,68B) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22, and board staff shall cooperate with members of the public in implementing the provisions of that chapter.

351—2.3(22,56,68B) Requests for access to records.

2.3(1) Location of record. A request for access to a record shall be directed to the Iowa Ethics and Campaign Disclosure Board, 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309. If the requested record is not on file in the board office, the custodian will arrange for it to be retrieved from state archives and made available in the board office.

2.3(2) Office hours. Records shall be made available from 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays. Records made available via the board’s Web site at www.iowa.gov/ethics are available at all hours and on all days.

2.3(3) Request for access. Requests for access to records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or de-

scription in order to facilitate the location of the record. Mail requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

2.3(4) Granting access to records. The custodian is authorized to grant or deny access to the record according to the provisions of Iowa Code chapter 22 and this chapter. The decision to grant or deny access may be delegated to one or more designated employees. Access to an open record shall be granted immediately upon request. If the size or nature of the request requires time for compliance, the board shall comply with the request as soon as possible. However, access to such a record may be delayed for one of the purposes authorized by Iowa Code chapter 22. The board shall promptly inform the requester of the reason for the delay.

2.3(5) Security of record. No person shall, without permission, search or remove any record from board files. Examination and copying of records shall be done under the supervision of board staff. Records shall be protected from damage and disorganization.

2.3(6) Copying. A reasonable number of copies may be made in the board office unless printed copies are available. If copying equipment is not available in the office where a record is kept, the board shall permit its examination in that office and shall arrange to have copies promptly made elsewhere. Records made available on the board’s Web site may be copied without restriction.

2.3(7) Fees.

a. Copying costs. Price schedules for regularly published records and for copies of records not regularly published shall be posted by the board. Copies may be made by or for members of the public at cost as determined and posted by the custodian of the record. The cost of postage and of other services provided in connection with the request may be charged as appropriate.

b. Search and supervisory fee. An hourly fee may be charged for actual board expenses in searching for, and supervising the examination and copying of, requested records. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. No fee shall be charged if the records are not made available for inspection, or if the time required does not exceed one-half hour in duration, or if the time required for the search was the result of a board error or a record-keeping problem. The board shall post the hourly fees to be charged in routine cases for search and supervision of records. The board shall give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the particular records in question, and shall indicate the amount of that higher hourly wage to the requester.

c. Advance deposits.

(1) The board may require a requester to make an advance deposit of the estimated fee.

(2) When a requester has previously failed to pay a fee charged under this subrule, the board may require advance payment of the full amount of any estimated fee before the board processes a new or pending request for access to records from that requester, as well as payment in full of the amount previously owed.

351—2.4(22,56,68B) Procedures for access to confidential records. The following procedures for access to confidential records are in addition to those specified for all records in rule 351—2.3(22,56,68B).

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2.4(1) Proof of identity. A person requesting access to a confidential record shall be required to provide proof of identity.

2.4(2) Requests. A request to review a confidential record shall be in writing. A person requesting access to a confidential record may be required to sign a certified statement or affidavit enumerating the specific grounds justifying access to the confidential record and to provide any proof necessary to establish relevant facts. Such request may be referred to the full board for consideration.

2.4(3) Request denied. When the custodian of a confidential record or the board denies a request for access to a confidential record, in whole or in part, the requester shall be notified in writing. The denial shall be signed by the custodian of the confidential record and shall include:

- a. The name and title or position of the person or persons responsible for the denial and a brief citation to the statute or other provision of law that prohibits disclosure of the records;
- b. A brief citation to the statute vesting discretion in the custodian to deny disclosure of the record; and
- c. A brief statement of the grounds for the denial to this requester.

351—2.5(22,56,68B) Request for treatment of a record as a confidential record.

2.5(1) Who may file request. Any person who would be aggrieved or adversely affected by disclosure of all or a part of a record to members of the public may file a request, as provided in this rule, for its treatment as a confidential record. Failure of a person to request confidential record treatment for all or part of a record, such as information obtained in the course of a board investigation or to achieve voluntary compliance with Iowa Code chapter 56 or 68B, does not preclude the board from treating it as a confidential record. The information may become a public record once the matter is resolved or dismissed.

2.5(2) Form of request. A request for the treatment of a record as a confidential record shall be in writing and shall be filed with the custodian of the record. The request shall include the specific grounds justifying confidential record treatment for all or part of the record; the specific provision of law that authorizes such confidential record treatment; and the name, address, and telephone number of the person authorized to respond to any board action concerning the request. A person filing such a request shall attach a copy of the record in question. The material to which the request applies shall be physically separated from any materials to which the request does not apply. The request shall be attached to the materials to which it applies. Each page of the material to which the request applies shall be clearly marked confidential. If the original record is being submitted to the board by the person requesting confidentiality at the same time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are a confidential record. A request for treatment of all or portions of a record as a confidential record for a limited time period shall also specify the precise period of time for which such confidential record treatment is requested.

2.5(3) Failure to request confidentiality. If a person who has submitted business information to the board does not request confidential record treatment for all or part of that information, the custodian of records containing that information may assume that the person who submitted the information has no objection to its disclosure.

2.5(4) Time. A board decision with respect to the disclosure of all or parts of a record may be made when a request for

its treatment as a confidential record is filed or when the board receives a request for access to the record.

2.5(5) Effect of granted request. If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the board decision will be placed in the public file in lieu of the original record.

2.5(6) Effect of denied request. If a request for confidential record treatment is denied, the board shall advise the requester in writing on the grounds the request was denied and treat the record as a confidential record for 30 days to allow the person requesting such treatment for the record an opportunity to seek injunctive relief. However, if the board determines that a 30-day delay is not in the public interest and furnishes the requester with a written copy of that determination, including the appropriate grounds, the record will be treated as a confidential record for at least three working days unless prior release of the record is necessary to avoid imminent peril to the public health, safety, or welfare. The board may extend the period of confidential record treatment of such a record beyond 30 days only if a court directs the board to treat the record as a confidential record or to the extent permitted by Iowa Code chapter 22 or with the consent of the person requesting access.

351—2.6(22,56,68B) Procedure by which a subject may have additions, dissents or objections entered into the record. Except as otherwise provided by law, the subject shall have the right to have a written statement of additions, dissents, or objections entered into the record. However, any additions, dissents, or objections entered into the record shall not be considered evidence in a contested case proceeding. The subject shall send the statement to the Executive Director, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309. The statement shall be dated and signed by the subject and shall include the subject's current address and telephone number.

351—2.7(22,56,68B) Consent to disclosure by the subject of a confidential record. The subject of a confidential record may consent to board disclosure to a third party of that portion of the record concerning the subject. The consent must be in writing and must identify the particular record that may be disclosed, the particular person or class of persons to whom the record may be disclosed, and, where applicable, the time period during which the record may be disclosed. The subject and, where applicable, the person to whom the record is to be disclosed must provide proof of identity.

351—2.8(22,56,68B) Notice to suppliers of information. When the board requests persons to supply information about themselves, the board shall notify those persons of the use that will be made of the information, which persons outside the board might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information. Notice may be given in this chapter, on the written form used to collect the information, in a separate fact sheet or letter, in brochures, in formal agreements or contracts, in handbooks or manuals, orally, or by other appropriate means.

351—2.9(22,56,68B) Disclosure without the consent of the subject.

2.9(1) Open record. An open record is routinely disclosed without the consent of the subject.

2.9(2) Partial open record. If the board is prohibited from disclosing part of a document from inspection, that part will

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not be disclosed and the remainder will be made available for inspection.

2.9(3) Disclosure of confidential record. To the extent allowed by law, disclosure of a confidential record may occur without the consent of the subject. Following are instances when disclosure, if lawful, will generally occur without notice to the subject:

- a. For a routine use as defined in rule 351—2.10(22,56,68B) or in the notice for a particular record system.
- b. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.
- c. To the legislative services agency.
- d. In response to a court order or subpoena.
- e. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- f. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- g. Disclosures in the course of employee disciplinary proceedings.

351—2.10(22,56,68B) Routine use.

2.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose that is compatible with the purpose for which the record was collected. “Routine use” includes disclosures required to be made by statute other than Iowa Code chapter 22.

2.10(2) Examples of routine uses. To the extent allowed by law, the following are considered routine uses of all board records:

- a. Disclosure to officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the initiative of the custodian, determine what constitutes legitimate need to use confidential records.
- b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c. Transfers of information within the board, to other state and federal agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- d. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.
- e. Any disclosure specifically authorized by the statute under which the record was collected or maintained, including disclosure to the general public of information contained in reports required to be filed by Iowa Code chapter 56 or 68B.
- f. The following records are routinely disseminated to members of the public:
 1. Reports and statements filed by campaign committees as authorized by Iowa Code chapter 56.

2. Reports and statements filed by executive branch lobbyists as authorized by Iowa Code chapter 68B.

3. Personal financial disclosure forms filed by designated persons in the executive branch as authorized by Iowa Code section 68B.35.

351—2.11(22,56,68B) Consensual disclosure of confidential records.

2.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 351—2.7(22,56,68B).

2.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official that seeks the official’s intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

351—2.12(22,56,68B) Release to subject.

2.12(1) Filing of request. The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 351—2.6(22,56,68B). However, the board need not release the following records to the public:

- a. The identity of a person providing information to the board need not be disclosed directly or indirectly to the subject when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.
 - b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
 - c. Peace officers’ investigative reports may be withheld from the subject except as required by Iowa Code section 22.7(5).
 - d. As otherwise authorized by law.
- 2.12(2) Multiple subjects.** When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to more than one subject.

351—2.13(22,56,68B) Availability of records.

2.13(1) General. Board records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) Confidential records. The following records may be withheld from public inspection:

- a. Sealed bids received prior to the time set for public opening of bids under Iowa Code section 72.3.
- b. Tax records made available to the board under Iowa Code sections 422.72 and 422.20.
- c. Records that are exempt from disclosure under Iowa Code section 22.7.
- d. Agendas, minutes and tape recordings of closed meetings of a government body pursuant to Iowa Code subsection 21.5(4).
- e. Records that constitute attorney work product, attorney-client communications, or that are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, and the Code of Professional Responsibility.
- f. Those portions of the board’s staff manuals, instructions or other statements issued that set forth criteria or guidelines to be used by the board staff in auditing, in making inspections, in settling commercial disputes or negotiating

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commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

1. Enable law violators to avoid detection;
2. Facilitate disregard of requirements imposed by law;

or

3. Give a clearly improper advantage to persons who are in an adverse position to the board.

g. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d.”

- h. Any other records made confidential by law.

2.13(3) Authority to release confidential records. The board may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute that authorizes limited or discretionary disclosure as provided in rule 351—2.4(22,56,68B). If the board initially determines that it will release such records, the board may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

351—2.14(22,56,68B) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 351—2.1(22,56,68B). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the board are:

2.14(1) Personnel files. The board maintains files containing information about employees, families and dependents, and applicants for positions with the board. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

2.14(2) Campaign finance organization statements. These records include the name and address of the campaign committee and the name and address of the committee officers. The name of the committee may contain a personal identifier. This information is collected pursuant to Iowa Code section 56.5 or may be voluntarily submitted and is stored on paper and in an automated data processing system. The information stored in the data processing system does not match, collate or permit comparison with other data processing systems. The information contained in statements of organization is public information.

351—2.15(22,56,68B) Other groups of records. This rule describes groups of records maintained by the board other than record systems as defined in rule 351—2.1(22,56,68B). These records are routinely available to the public. However, the board's files of these records may contain confidential information pursuant to rule 351—2.13(22,56,68B). The records listed may contain information about individuals. Un-

less otherwise stated, the authority for the board to maintain the record is provided by Iowa Code chapters 22, 56, and 68B.

2.15(1) Rule making. Public documents generated during the promulgation of board rules, including notices and public comments, are available for public inspection. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

2.15(2) Board records. Agendas, minutes, and materials presented to the ethics and campaign disclosure board are available from the custodian, except those records concerning closed sessions that are exempt from disclosure under Iowa Code section 21.5 or that are otherwise confidential by law. Board records may contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

2.15(3) Publications. The board receives a number of books, periodicals, newsletters, and government documents. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state library or law library. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

2.15(4) Office publications. The board publishes instructional manuals, forms, form letters, calendars, and brochures. These publications are routinely made available to the public. This information is not stored in an automated data processing system.

2.15(5) Administrative records. These records include documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, office correspondence, and printing and supply requisitions. Some of this information is in the state of Iowa automated data processing system.

2.15(6) Decisions, orders, and opinions. All final decisions, orders, and opinions are available for public inspection in accordance with Iowa Code section 17A.3. These records may contain personally identifiable information regarding individuals who are the subjects or requesters of the order, decision, or opinion. This information is collected pursuant to Iowa Code chapters 17A and 68B. This information is not stored in an automated data processing system.

2.15(7) Policy manuals. The board employees' manual, containing the policies and procedures for programs administered by the board, is available from the custodian except as noted in rule 351—2.14(22,56,68B).

2.15(8) Campaign finance disclosure reports. These records contain information about campaign committees that include itemization of the source of contributions, a list of expenditures, itemization of fundraising events, debts incurred, donors of goods or services, loan transactions, and details of contracts with consultants. These records may include an individual's name and address. These records are required by Iowa Code section 56.6 and may be voluntarily submitted. These records are available by paper and are accessible via the board's Web site at www.iowa.gov/ethics.

2.15(9) Federal repository. The board serves as the Iowa repository for public viewing of a variety of disclosure reports required to be filed under the jurisdiction of the Federal Election Commission. These records are accessible via the board's Web site at www.iowa.gov/ethics through a computer modem connected with the Federal Election Commission's database. The computer records are for viewing, and

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reports may be printed. The terminal does not permit these records to be changed or deleted. Reports are accessed by the name of the reporting committee. Information in this database does not match, collate, or permit comparison with other data processing systems.

2.15(10) Executive branch lobbying reports. The board serves as the repository for public viewing of executive branch lobbyist registration statements, executive branch lobbying reports, and executive branch lobbyist client reports. These reports are available by paper and are also accessible via the board's Web site at www.iowa.gov/ethics. The information disclosed on these reports is required by Iowa Code sections 68B.36, 68B.37, and 68B.38. This information does not match, collate, or permit comparison with other data processing systems.

2.15(11) Personal financial disclosure. The board serves as the repository for the filing of personal financial disclosure forms (Form PFD) for designated positions in the executive branch. These reports are available by paper and are also accessible via the board's Web site at www.iowa.gov/ethics. The information disclosed on these forms is required by Iowa Code section 68B.35. This information does not match, collate, or permit comparison with other data processing systems.

351—2.16(22,56,68B) Data processing systems. None of the data processing systems used by the board compare personally identifiable information in one record system with personally identifiable information in another record system.

351—2.17(22,56,68B) Limitation of applicability. This chapter does not:

2.17(1) Require the board to index or retrieve records that contain information about a person by that person's name or other personal identifier.

2.17(2) Make available to the general public a record that would otherwise not be available to the general public under Iowa Code chapter 22.

2.17(3) Govern the maintenance or disclosure of, notification of or access to, a record in the possession of the board that is governed by the rules of another agency.

2.17(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

2.17(5) Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the board.

These rules are intended to implement Iowa Code chapters 22, 56, and 68B.

ITEM 2. Adopt the following **new** 351—Chapter 3:

CHAPTER 3

IOWA ELECTION CAMPAIGN FUND

351—3.1(56) Interpretation of checkoff markings. For the purpose of implementing Iowa Code section 56.18, the director of revenue and finance shall, wherever feasible, interpret the marking of a tax return so as to give effect to the taxpayer's intent, as follows:

3.1(1) In a case of a single taxpayer who marks the columns designated for "spouse" the marking shall have the effect of making a \$1.50 contribution so designated if only one box is marked.

fect of making a \$1.50 contribution so designated if only one box is marked.

3.1(2) A single taxpayer marking the box "spouse" and then marking only one box for "yourself" shall be deemed to have contributed \$1.50 as indicated by the box marked for the single taxpayer.

3.1(3) In a case of a single taxpayer marking more than one box, this shall have the effect of making a contribution to the campaign fund to be divided among the eligible parties.

3.1(4) Taxpayers filing a joint or combined return who mark more than one box under "yourself" shall be deemed to have indicated their intention to contribute \$1.50 to the campaign fund to be divided among the eligible parties. Taxpayers filing a joint or combined return who mark more than one box under "spouse" shall be deemed to have indicated their intention to contribute \$1.50 to the campaign fund to be divided among the eligible parties.

3.1(5) The words "mark," "marks," and "marking" shall mean any X, check, circle, line, filling in of the square, or any other reasonable indication of the intention of the taxpayer.

3.1(6) Any taxpayer who directs that \$1 of the taxpayer's tax liability be paid over to the Iowa election campaign fund may also donate an additional \$2 to be allocated to or among the qualifying political parties in the same manner as the taxpayer's \$1 designation. If a husband and wife file a joint return, each spouse may direct that an additional \$2 be donated pursuant to the provisions of this paragraph. The \$2 donation will reduce the taxpayer's refund or increase the amount due with the return, and must be made on the original return for the current year.

This rule is intended to implement Iowa Code section 56.18.

351—3.2(56) Distribution of funds.

3.2(1) Multiple parties. If two political parties are listed on the Iowa individual income tax return for a tax year for purposes of the checkoff to the Iowa election campaign fund and a taxpayer designates on the return that the checkoff contribution is to be divided between the political parties, the contribution shall be divided equally between the two political parties. However, if more than two political parties are listed on the income tax return for the checkoff to the Iowa election campaign fund, the contribution shall be divided among the political parties pursuant to Iowa Code section 56.19.

3.2(2) Effect of filed return. A checkoff made on a return filed with the Iowa department of revenue and finance cannot be changed or revoked. Once a check is certified, the designation shall not be rescinded if the taxpayer later amends the return to reduce the tax liability to zero. A tax return containing a political checkoff must be filed within 12 months after the close of the taxpayer's tax year for the checkoff to be counted.

This rule is intended to implement Iowa Code sections 56.18 and 56.19.

351—3.3(56) Director of revenue and finance—monthly reports. The director of revenue and finance shall submit a report to the board and each state party chair on the twenty-fifth day of each month of the amount of money remitted to the Iowa election campaign fund that month and the total amount year-to-date during that taxable year. The report by the director of revenue and finance for the month of November in the year in which the general election occurs that certifies the amount of election campaign funds available to the parties shall be the last funds available to the parties under the

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

application submitted by the parties pursuant to subrule 3.3(1).

This rule is intended to implement Iowa Code section 56.22.

351—3.4(56) Funds—application and transfer. Iowa election campaign funds shall be applied for by and transferred to political parties eligible to receive such funds in a manner that substantially complies with the following:

3.4(1) Time requirements. Upon the director of revenue and finance's receipt of the party's application for funds, the party may request the transfer of all or any part of the election campaign funds to which it is presently entitled. However, the last claim voucher for a year in which a general election occurs should be submitted to the director of revenue and finance no later than November 25. The last warrant written by the director of revenue and finance in a general election should be issued to the political party no later than December 1.

3.4(2) Additional funds. The director of revenue and finance shall, after making the last payment, commence to accumulate any additional funds received by that office from the department of revenue and finance and shall hold them for distribution according to these rules for the next succeeding general election. Accumulation of funds shall not be construed to include any funds not utilized by a political party that revert to the general fund of the state pursuant to Iowa Code section 56.24.

3.4(3) Interest statements. Each year the treasurer of state shall submit to the director of revenue and finance and to the board a statement detailing the amount of interest income credited to the state account of each political party during the 12-month period ending November 30.

This rule is intended to implement Iowa Code section 56.22.

351—3.5(56) Nonlegitimate Iowa election campaign fund expenses; documentation; return of funds.

3.5(1) Prohibited during primary election. Funds accumulated in the Iowa election campaign fund shall not be used to expressly advocate the nomination, election, or defeat of any candidate during the primary election. This prohibition also applies when two or more candidates from the same party seek office in a special election.

3.5(2) Limitation on types of expenditures. The Iowa election campaign fund may only be used to purchase services or items set out in this rule or as otherwise permitted by the board.

3.5(3) Documentation by political parties. The chair of each political party receiving funds from the Iowa election campaign fund shall provide invoices and canceled checks or cash receipts for all expenditures related to such funds. The funds shall be maintained in a separate account. Upon completion of each general election cycle, the board shall conduct an audit of the expenditure records maintained by each political party receiving funds from the Iowa election campaign fund. Party records relating to expenditures from the Iowa election campaign fund shall be maintained by the party for a period of five years.

3.5(4) Return of funds. If the board determines that any part of the funds have been used for improper expenses, the board may order the political party or candidate to return all or any part of the total funds paid to that political party for that election. When such funds are returned, the funds shall be deposited in the general fund of the state.

This rule is intended to implement Iowa Code sections 56.22 and 56.23.

351—3.6(56) Legitimate campaign expenses. All Iowa election campaign funds shall be used only for legitimate campaign expenses. "General election" as used in these rules shall be the same as defined in Iowa Code section 39.3.

3.6(1) General election candidates. Any expenditure that expressly advocates the nomination, election, or defeat of a candidate during the general election or a special election that does not involve two or more candidates from the same political party.

3.6(2) Party staff. Party staff and general election campaign staff salaries, fringe benefits and applicable payroll taxes, including travel expenses, lodging, and food for party staff and general election campaign candidates and staff. Each staff person must be listed by name, the amount paid as net salary, fringe benefits, applicable payroll taxes and the amount paid for expenses.

3.6(3) Party activities. Travel expenses, lodging and food for public officials who promote party activities or travel with general election candidates in campaign activities.

3.6(4) Building costs. Building costs, utilities, and maintenance for the office locations of the state political parties or general election candidates.

3.6(5) Office expenses. Expenses of the office operations of the political parties, including printing and copying charges, postage costs, telephone charges, computer services, bank charges, election records, parking costs and miscellaneous office supplies used during the general election.

3.6(6) Candidate recruitment. Party expenses for the initial recruitment of candidates for public office by the political parties are allowed.

3.6(7) Expenses by volunteers. Expenses for volunteer activities, meeting costs, and fundraising costs during the general election.

This rule is intended to implement Iowa Code sections 56.22 and 56.23.

351—3.7(56) Loss of party status. A political party that loses its status as a political party by failing to meet the requirements of Iowa Code section 43.2 shall no longer be entitled to funds from the Iowa election campaign fund. This prohibition commences on January 1 of the year following the general election, and any subsequent funds designated to go to a party that has lost its party status shall revert to the general fund of the state.

This rule is intended to implement Iowa Code sections 56.19 through 56.24.

ITEM 3. Rescind and reserve **351—Chapter 6.**

ITEM 4. Rescind 351—Chapter 10 and adopt the following new chapter in lieu thereof:

CHAPTER 10

CIVIL PENALTIES FOR LATE CAMPAIGN REPORTS

351—10.1(68B) Delinquent campaign disclosure reports.

10.1(1) Election year. Election year reports from all committees, except those for city, school, other political subdivision, and local ballot issues, are delinquent if not received by the nineteenth day of January, May, July, and October. If mailed, the reports are delinquent if they do not bear a United States Postal Service postmark dated on or before the nineteenth day of January, May, July, and October.

10.1(2) Nonelection year. Nonelection year reports for statewide, general assembly, and county committees are delinquent if not received by the nineteenth day of January. If mailed, the reports are delinquent if they do not bear a United

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States Postal Service postmark dated on or before the nineteenth day of January.

10.1(3) Special election. Special election reports of candidates to fill vacancies are delinquent if not received 14 calendar days prior to the special election date. If mailed, the reports are delinquent if they do not bear a United States Postal Service postmark dated on or before 14 calendar days prior to the election date.

10.1(4) Supplementary report. Supplementary reports of statewide candidates and candidates for the general assembly are delinquent if not received by the Friday immediately preceding the primary, special, or general election day. If mailed, the reports are delinquent if they do not bear a United States Postal Service postmark dated on or before the Friday before the election day.

10.1(5) Local reports. Reports from city, school, other political subdivision, and local ballot issue committees are delinquent if not received five days prior to the local election and on the first day of the month following the election. If mailed, the reports are delinquent if they do not bear a United States Postal Service postmark dated on or before the due date. Additionally, election year reports for these committees are delinquent if not received by the nineteenth day of January, May, or July. If mailed, the reports are delinquent if they do not bear a United States Postal Service postmark dated on or before the nineteenth day of January, May, or July.

10.1(6) Nonelection year local reports. Nonelection year reports for city, school, other political subdivision, and local ballot issue committees are delinquent if not received by the nineteenth day of January and October. If mailed, the reports are delinquent if they do not bear a United States Postal Service postmark dated on or before the nineteenth day of January and October.

10.1(7) Electronic reports. Committees that file reports using the board's electronic filing system must submit the reports on or before 11:59 p.m. of the report due date to avoid being delinquent.

10.1(8) Weekends and holidays. For all committees required to report under this chapter, if the reporting deadline falls on a Saturday or Sunday or holiday, the filing deadline shall be extended to the first working day following the deadline. This extension also applies to the required United States Postal Service postmark date.

351—10.2(68B) Routine civil penalty assessment for late-filed disclosure reports.

10.2(1) Administrative resolution. In administrative resolution of violations for late-filed disclosure reports, the board shall assess and collect monetary penalties for all state and local committees in Iowa and all out-of-state committees that are delinquent in filing a verified statement of registration. After a delinquent committee has filed, the board shall notify the committee of the amount of the assessment by first-class mail.

10.2(2) County and local committee assessments. County, city, school, other political subdivision, and local ballot issue committees shall be assessed civil penalties for late-filed reports in accordance with the following schedule:

| Date report received | First-time delinquency | Repeat delinquency by same treasurer of a committee in 12-month period |
|--------------------------------------|------------------------|--|
| 1 to 14 consecutive days delinquent | \$ 20 | \$ 50 |
| 15 to 30 consecutive days delinquent | \$ 50 | \$100 |
| 31 to 45 consecutive days delinquent | \$100 | \$200 |

10.2(3) State committee assessments. Statewide, general assembly, state statutory, and state political committees shall be assessed civil penalties for late-filed reports, except for supplemental and special election reports, in accordance with the following schedule:

| Date report received | First-time delinquency | Repeat delinquency by same treasurer of a committee in 12-month period |
|--------------------------------------|------------------------|--|
| 1 to 14 consecutive days delinquent | \$ 50 | \$100 |
| 15 to 30 consecutive days delinquent | \$100 | \$200 |
| 31 to 45 consecutive days delinquent | \$200 | \$300 |

10.2(4) Supplementary report assessments. General assembly candidates' committees required to file supplementary disclosure reports shall be assessed a \$200 civil penalty for filing any supplementary report one or more days delinquent. Statewide committees required to file supplementary disclosure reports shall be assessed a \$400 civil penalty for filing any supplementary report one or more days delinquent.

10.2(5) Special election assessments. The committees of general assembly candidates to fill vacancies in special elections shall be assessed a \$100 civil penalty for filing a special election report one or more days delinquent. The committees of statewide candidates to fill vacancies in special elections shall be assessed a \$200 civil penalty for filing a special election report one or more days delinquent.

10.2(6) Verified statement of registration assessments. Committees that are organized in a jurisdiction other than Iowa and choose to file a verified statement of registration (VSR) as provided in Iowa Code section 56.5 and rule 351—4.32(56,68B), but are delinquent in filing the VSR, shall be assessed a \$25 civil penalty per late-filed VSR. However, if there is a repeat delinquency by the committee in a 12-month period, the penalty shall be \$50. A VSR is considered delinquent if it is not received on or before the fifteenth day after the date of the contribution or, if mailed, does not bear a United States Postal Service postmark dated on or before the fifteenth day after the contribution.

For purposes of this subrule, "date of the contribution" means the day, month and year the contribution check is dated.

10.2(7) Independent expenditure assessment. A person that is delinquent in filing an independent expenditure statement shall be assessed a \$25 civil penalty for filing the statement one or more days delinquent, except that if there is a repeat delinquency by the person in timely filing an independent expenditure statement within a 12-month period, the penalty shall be \$50.

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10.2(8) Form DR-OTC assessment. A permanent organization that makes a one-time contribution in excess of \$750 but fails to file Form DR-OTC within ten days of the date on which the check is issued shall be assessed a \$20 civil penalty.

351—10.3(68B) Requests for waiver of penalties. If a committee believes that there are mitigating circumstances that prevented its timely filing, the committee may make a written request to the board for waiver of the penalty. A committee seeking a waiver must submit the request to the board within 30 days of receiving a civil penalty assessment order. Waivers may be granted only under exceptional or very unusual circumstances. The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the committee shall promptly pay the assessed penalty or seek a contested case proceeding pursuant to rule 351—10.4(68B).

351—10.4(68B) Contested case challenge.

10.4(1) Request. If the committee accepts administrative resolution of a matter through the payment of the assessed penalty, the matter shall be closed. If the committee chooses to contest the board's decision to deny the request or grant a partial waiver of an assessed penalty, the committee shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

10.4(2) Procedure. Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board's rules. The burden shall be on the board's legal counsel to prove that a violation occurred.

10.4(3) Failure to request hearing. Failure to request a contested case proceeding to appeal the board's decision on a waiver request is failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

351—10.5(68B) Payment of penalty.

10.5(1) Where payment made. Checks or money orders shall be made payable and forwarded to: Iowa Ethics and Campaign Disclosure Board, 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309. Such funds shall be deposited in the general fund of the state of Iowa.

10.5(2) Who may make payment. Payment may be made at the discretion of the delinquent committee, including funds of the committee or from personal funds of an officer of the committee. Payments from corporate entities as described in Iowa Code section 56.15 are prohibited, except in the case of a ballot issue committee.

10.5(3) Disclosure of payment. If payment is made from a source other than committee funds, the payment shall be publicly disclosed as an in-kind contribution to the committee.

These rules are intended to implement Iowa Code section 68B.32A(8).

ARC 2490B

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 65, “Administration,” Iowa Administrative Code.

This amendment implements provisions of the Farm Security and Rural Investment Act of 2002 that affect food stamp eligibility for aliens. The law requires states to:

- Grant food stamp eligibility to legal immigrants aged 18 or under who are otherwise eligible, regardless of the date they entered the United States. Currently, aliens in this age group are not eligible for food stamps if they immigrated after August 22, 1996.

- Exclude the income and resources of a sponsor when determining food stamp eligibility and benefits for a legal immigrant who is aged 18 or under.

This amendment does not provide for waivers in specified situations because the Department does not have the authority to waive provisions of federal law.

Any interested person may make written comments on the proposed amendment on or before June 18, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 234.12 and Public Law 107-171, Subtitle D, Section 4401.

The following amendment is proposed.

Adopt new subrule 65.37(4) as follows:

65.37(4) Aliens aged 18 or under, regardless of their immigration date. The department shall exclude the income and resources of a sponsor when determining food stamp eligibility and benefits for an alien aged 18 or under.

ARC 2493B

NATURAL RESOURCE
COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 51, “Game Management Areas,” Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

Chapter 51 gives the regulations for public use of state game management areas. These amendments provide the requirements for registration, construction and use of stationary blinds and decoys on Pools 16, 17 and 18 of the Mississippi River.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 19, 2003. Such written materials should be directed to Richard Bishop, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on June 19, 2003, at 10 a.m. in the Fourth 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, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those relating 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 sections 456A.24 and 481A.6.

The following amendments are proposed.

ITEM 1. Amend subrule 51.5(1), introductory paragraph, as follows:

51.5(1) Stationary blinds. The construction and use of stationary blinds on all game management areas, *except on Pools 16, 17 and 18 of the Mississippi River*, are restricted as follows:

ITEM 2. Amend subrule 51.5(3), introductory paragraph, as follows:

51.5(3) Use of waterfowl decoys. The use of waterfowl decoys on any game management area, *except on Pools 16, 17 and 18 of the Mississippi River*, is restricted as follows:

ITEM 3. Adopt the following new subrule:

51.5(4) Use of stationary blinds and waterfowl decoys on Pools 16, 17 and 18 of the Mississippi River. The use of permanent blinds for waterfowl hunting on Pools 16, 17 and 18 of the Mississippi River is restricted as follows:

a. Registration. Hunters must register their blind site with the department of natural resources by completing a registration card and designating the blind's location on a map. Registration will be held in August at a site to be publicly announced by the department. Registration is for a five-year period and requires a fee of \$100. The blind registration number must be visibly posted at the blind's entrance.

b. Construction. Blinds must have minimum dimensions of 4 feet by 8 feet and not greater than 500 square feet of floor space, not including a boat hide. The blind must be constructed of biodegradable materials, including nontreated dimensional lumber and nontreated plywood, unless the blind will be removed at the end of the waterfowl season. The use of metal and nylon fasteners, including but not limited to nails, screws, lag bolts, staples and ties, is allowed. Treated lumber, treated plywood, woven wire, chicken wire, cattle panels, tin and sheet metal, vinyl and plastic, and other nonbiodegradable materials are not allowed unless those materials or the entire blind is removed within three days after the close of the waterfowl season. All existing blinds are exempted from conforming to these construction requirements until September 1, 2008, except that all repair, modification

or new construction of blinds must conform to these construction requirements.

c. Tree and brush removal. No person shall remove brush or trees around any blind, except willows. Willows and annual vegetation from the blind site may be used to cover the blind.

d. Occupation of blinds. Registrants must occupy their blind site by the opening of shooting time each day to claim the blind site for that day. After that time, unoccupied blind sites will be available to any other hunters. No person shall claim or attempt to claim a blind that is legally occupied. No person shall harass, in any manner, the occupants of a blind that is legally occupied.

e. Locking blinds. No person shall lock a blind.

f. Decoys. Decoys may be left out for the entire waterfowl season but must be picked up and removed from the area within three days after the close of the waterfowl season. All jugs and other floating devices used to attract waterfowl shall be considered decoys.

ARC 2509B

PERSONNEL DEPARTMENT[581]

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 97B.15, the Department of Personnel hereby gives Notice of Intended Action to amend Chapter 21, “Iowa Public Employees’ Retirement System,” Iowa Administrative Code.

The proposed amendment clarifies the process for reviewing applications for membership on the IPERS benefits advisory committee.

This amendment was prepared after consultation with the IPERS legal and benefits units, and the members of the current benefits advisory committee.

There is no waiver provision included in the proposed amendment because it removes a limitation.

Any person may make written suggestions or comments on the proposed amendment on or before June 17, 2003. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045, or by E-mail to info@ipers.org.

There will be a public hearing on June 17, 2003, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the proposed amendment.

This amendment is intended to implement Iowa Code chapter 97B.

The following amendment is proposed.

Amend subrule 21.33(4) as follows:

21.33(4) Replacement or expansion of membership organizations. A membership organization must be a unit of the

PERSONNEL DEPARTMENT[581](cont'd)

executive branch or a formally organized corporation or association representing a viable and identifiable group of covered employers or covered employees as determined by the BAC in its sole discretion.

An organization that wishes to replace an existing membership organization may petition the BAC at any time to do so. If the BAC determines that there are two organizations that meet the foregoing requirements and purport to represent the same group of covered employers or employees, the board seat shall be awarded to the organization representing the largest number of employer or employee constituents, as applicable.

An organization that would qualify as a membership organization under this subrule may also, in lieu of replacing an existing membership organization, petition the BAC to increase the number of membership organizations listed in subrule 21.33(3) to include that organization.

Beginning March 2005 and every three years thereafter, the BAC will review new applications for replacement or expansion of membership organizations. The applications will be reviewed by a subcommittee that will offer recommendations to the full BAC for consideration at the March meeting before the end of each three-year period.

This subrule shall not be construed to affect the board positions reserved for the director of the department of personnel or the position reserved for a citizen who has substantial pension benefits experience and who is not a member of IPERS.

ARC 2510B**PROFESSIONAL LICENSING AND REGULATION DIVISION[193]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 546.2, the Professional Licensing and Regulation Division hereby gives Notice of Intended Action to amend Chapter 1, “Organization and Operation,” Iowa Administrative Code.

The proposed rule establishes guidelines for the Division’s newsletter. This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before June 17, 2003. Comments should be addressed to Glenda Loving, Professional Licensing and Regulation Division, 1920 S.E. Hulsizer, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to glenda.loving@comm7.state.ia.us.

This amendment is intended to implement Iowa Code chapter 546.

The following amendment is proposed.

Adopt the following **new** rule:

193—1.9(272C,542,542B,543B,543D,544A,544B) Newsletter.

1.9(1) The administrator may publish or contract with a vendor to publish a newsletter as a nonpublic forum to disseminate official information related to the regulated professions. This official information may include statutory requirements, statutory changes, rules, rule changes, proposed or pending rule changes, licensing requirements, license renewal procedures, board action, board interpretative rulings or guidelines, office procedures, disciplinary action, ethical or professional standards, education requirements, education opportunities (prelicense education, continuing education, and professional development), board business, board meetings, and board news.

1.9(2) When boards are required or allowed to mail notices to licensees about matters such as license renewal, the boards may include such notices in the newsletter.

1.9(3) The newsletter may include vendor advertising to:

- Enable the boards to communicate with licensees and other interested persons without expending moneys appropriated from the state’s general fund; and
- Provide a targeted opportunity for licensees to receive profession-specific information to facilitate entry into the profession and enhance professional performance.

1.9(4) All newsletter advertising must be consistent with the boards’ missions. The primary mission of the boards in the division is to provide progressive, efficient and professional regulation and enforcement of the professions; to protect the public through examination, licensing and regulation of the professions; and to enhance economic growth through the responsible, competent, and ethical performance of the professions.

1.9(5) All newsletter advertising must be professional and respectful of the nature of the regulated professions, established as a nonpublic forum, and consistent with guidelines established by the administrator. Advertising shall be restricted to commercial offerings of goods and services directly related to the lawful practice of the professions or the regulation of the professions. Political, advocacy or issue-oriented advertising shall not be permitted.

1.9(6) Newsletter advertising shall be considered consistent with the boards’ missions if it pertains to commercial offerings of goods or services in one or more of the following areas:

1.9(6) Newsletter advertising shall be considered consistent with the boards’ missions if it pertains to commercial offerings of goods or services in one or more of the following areas:

- Entry into the profession, such as prelicense education or internship opportunities.

- A licensee’s compliance with statutes or rules, such as continuing education courses or publications containing professional standards.

- The lawful and competent performance of the profession, e.g., errors and omissions insurance, or goods or services uniquely used in the profession, such as land surveying equipment or seals for design professionals.

- Employment opportunities in the profession.

- A professional’s marketing of professional services to other professionals, e.g., a design professional’s advertising the availability of specialized design services for other design professionals.

- Education programs designed to enhance credentials of professionals, or profession-specific degrees.

1.9(7) Newsletter advertising shall be clearly separated from the substantive sections of each newsletter. Vendors authorized to solicit newsletter advertising must do so consistent with the administrator’s advertising guidelines in a manner which is viewpoint-neutral and nondiscriminatory in all respects. Goods or services advertised in a newsletter must be lawful for all possible readers of any age to view, use or buy. The front page of each newsletter containing advertis-

PROFESSIONAL LICENSING AND REGULATION DIVISION[193](cont'd)

ing must include a prominent disclaimer notifying the reader that the boards play no role in the solicitation of advertising, and do not explicitly or implicitly endorse any advertiser or any good or service advertised in the newsletter.

ARC 2483B**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 Cosmetology Arts and Sciences Examiners hereby gives Notice of Intended Action to amend Chapter 59, "Administrative and Regulatory Authority for the Board of Cosmetology Arts and Sciences Examiners," Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences," Chapter 61, "Licensure of Salons and Schools of Cosmetology Arts and Sciences," and Chapter 63, "Sanitation for Salons and Schools of Cosmetology Arts and Sciences"; and to rescind Chapter 65, "Disciplinary Procedures for Cosmetology Arts and Sciences Licensees," and adopt new Chapter 65, "Discipline for Cosmetology Arts and Sciences Licensees, Instructors, Salons, and Schools," Iowa Administrative Code.

The proposed amendments adopt new subrules for the conduct of persons who attend public meetings, requirements for notifying the Board of a name or address change, and criteria for issuing a duplicate license. The proposed amendments also adopt a new discipline chapter that contains standard language which is being used by all boards regulated by the Division of Professional Licensure.

The Division sent a draft of the proposed amendments to schools and associations. The Board received no comments on the proposed amendments.

Any interested person may make written comments on the proposed amendments no later than June 23, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail ebaird@idph.state.ia.us.

A public hearing will be held on June 23, 2003, 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 chapters 21, 147, 157 and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 59.4(2) and 59.4(3) as follows:

59.4(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.

59.4(3) Notice of change of name. Each licensee shall notify the board *in writing* of ~~any a~~ 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.~~

ITEM 2. Amend rule 645—59.6(17A), parenthetical implementation, as follows:

645—59.6(17A 21)

ITEM 3. Adopt new subrules 59.6(3) and 59.6(4) as follows:

59.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

59.6(4) Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 59** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, and 157.

ITEM 5. Renumber rule **645—60.11(272C)** as **645—60.12(272C)** and adopt the following new rule:

645—60.11(147) Duplicate certificate or renewal card.

60.11(1) A duplicate renewal card or duplicate certificate shall be required if the current renewal card or certificate is lost, stolen or destroyed. A duplicate renewal card or duplicate certificate shall only be issued under such circumstances.

60.11(2) A duplicate renewal card or certificate shall be issued upon receipt of a written request from the licensee and receipt of the fee as specified in rule 645—62.1(147,157).

60.11(3) If the board is notified by the licensee that the renewal card or certificate has not been received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate renewal card or certificate.

ITEM 6. Rescind subrule 61.5(3) and adopt the following new subrule in lieu thereof:

61.5(3) Each licensee or trainee shall have in the licensee's or trainee's possession a current renewal card verifying that the licensee is licensed or that the trainee is certified by the board. An agent of the board may request a photo I.D. for verification.

ITEM 7. Renumber rules **645—61.6(157)** to **645—61.8(272C)** as **645—61.7(157)** to **645—61.9(272C)** and rules **645—61.9(272C)** to **645—61.21(157)** as **645—61.11(272C)** to **645—61.23(157)** and adopt the following new rules:

645—61.6(147) Duplicate certificate or renewal card for salons.

61.6(1) A duplicate renewal card or duplicate certificate shall be required if the current renewal card or certificate is lost, stolen or destroyed. A duplicate renewal card or duplicate certificate shall only be issued under such circumstances.

61.6(2) A duplicate salon renewal card or certificate shall be issued upon receipt of a written request from the owner of the salon and receipt of the fee as specified in rule 645—62.1(147,157).

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

61.6(3) If the board is notified by the holder of the license that the renewal card or certificate has not been received within 60 days after being mailed by the board, no fee shall be required for reissuing the duplicate renewal card or certificate.

645—61.10(147) Duplicate certificate or renewal card for schools.

61.10(1) A duplicate renewal card or a duplicate certificate shall be required if the current renewal card or certificate is lost, stolen or destroyed. A duplicate renewal card or a duplicate certificate shall only be issued under such circumstances.

61.10(2) A duplicate school renewal card or certificate shall be issued upon receipt of a written request from the owner of the school and receipt of the fee as specified in rule 645—62.1(147,157).

61.10(3) If the board is notified by the holder of the license that the renewal card or certificate has not been received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate renewal card or certificate.

ITEM 8. Rescind subrule 63.3(2) and adopt the following new subrule in lieu thereof:

63.3(2) Each licensee or trainee shall have in the licensee's or trainee's possession a current renewal card verifying that the licensee is licensed or that the trainee is certified by the board. An agent of the board may request a photo I.D. for verification.

ITEM 9. Rescind 645—Chapter 65 and adopt the following new chapter in lieu thereof:

CHAPTER 65

DISCIPLINE FOR COSMETOLOGY ARTS AND
SCIENCES LICENSEES, INSTRUCTORS, SALONS,
AND SCHOOLS

645—65.1(157,272C) Definitions.

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

"Discipline" means any sanction the board may impose upon cosmetology arts and sciences licensees, instructors, salons, and schools.

"Licensure" means the granting of a license to any person or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65, Iowa Administrative Code.

645—65.2(157,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—65.3(157,272C) when the board determines that any of the following acts or offenses have occurred:

65.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, the following:

- a. An intentional perversion of the truth in making application for a license to practice in this state;
- b. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state;
- c. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

65.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice;

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other licensees in the state of Iowa acting in the same or similar circumstances;

c. A failure to exercise the degree of care which is ordinarily exercised by the average licensee acting in the same or similar circumstances;

d. Failure to conform to the minimal standard of acceptable and prevailing practice in this state.

65.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

65.2(4) The use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, acts which constitute making false, deceptive, misleading or fraudulent representations in the practice of the profession.

65.2(5) Practice outside the scope of the profession.

65.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

65.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

65.2(8) Falsification of client records.

65.2(9) Acceptance of any fee by fraud or misrepresentation.

65.2(10) Misappropriation of funds.

65.2(11) Negligence in the practice of the profession. Negligence in the practice of the profession includes a failure to exercise due care, including improper delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair a practitioner's ability to safely and skillfully practice the profession.

65.2(12) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

65.2(13) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

65.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory or country; or failure to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

65.2(15) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of the profession in another state, district, territory or country.

65.2(16) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

65.2(17) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

65.2(18) Engaging in any conduct that subverts or attempts to subvert a board investigation.

65.2(19) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

65.2(20) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

65.2(21) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

65.2(22) Failure to pay costs assessed in any disciplinary action.

65.2(23) Knowingly aiding, assisting, or advising a person to unlawfully practice the profession.

65.2(24) Failure to report a change of name or address within 30 days after the occurrence.

65.2(25) Representing oneself as a licensed individual or entity when the person's license has been suspended or revoked, or when the person's license is lapsed or has been placed on inactive status.

65.2(26) Permitting another person to use one's license for any purpose.

65.2(27) Permitting an unlicensed employee or person under the licensee's or the licensed school's or salon's control to perform activities that require a license.

65.2(28) Permitting a licensed person under the licensee's or the licensed school's or salon's control to practice outside the scope of the person's license.

65.2(29) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

65.2(30) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

65.2(31) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

- a. Verbally or physically abusing a client.
- b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a client or coworker.
- c. Betrayal of a professional confidence.
- d. Engaging in a professional conflict of interest.
- e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
- f. Being adjudged mentally incompetent by a court of competent jurisdiction.

65.2(32) Performing any of those practices coming within the jurisdiction of the board pursuant to Iowa Code chapter 157, with or without compensation, in any place other than a licensed salon, a licensed school of cosmetology arts and sciences, or a licensed barbershop as defined in Iowa Code section 158.1. **EXCEPTION:** A licensee may practice at a location that is not a licensed salon or school of cosmetology arts and sciences when extenuating circumstances related to the physical or mental disability or death of a customer prevent the customer from seeking services at the licensed salon or school.

65.2(33) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as

issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—65.3(157,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—65.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring the citizens of this state a high standard of professional care;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 157 and 272C.

ARC 2484B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for the Licensing and Regulation of Hearing Aid Dispensers hereby gives Notice of Intended Action to amend Chapter 120, "Administrative and Regulatory Authority for the Board of Examiners for the Licensing and Regulation of Hearing Aid Dispensers"; amend Chapter 121, "Licensure of Hearing Aid Dispensers"; and rescind Chapter 124, "Discipline for Hearing Aid Dispensers," Iowa Administrative Code, and adopt new Chapter 124 with the same title.

The proposed amendments adopt new subrules for the conduct of persons who attend public meetings, requirements for notifying the Board of a name or address change

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

and criteria for obtaining a duplicate license. The proposed amendments also adopt a new discipline chapter that contains standard language which is being used by all boards regulated by the Division of Professional Licensure.

The Division sent a draft of the proposed amendments to selected associations. The Board received one positive comment on the proposed amendments.

Any interested person may make written comments on the proposed amendments no later than June 20, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail ebaird@idph.state.ia.us.

A public hearing will be held on June 20, 2003, 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 chapters 21, 147, 154A and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 120.4(2) and 120.4(3) as follows:

120.4(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.

120.4(3) Notice of change of name. Each licensee shall notify the board *in writing* of ~~any a~~ 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.~~

ITEM 2. Amend rule 645—120.6(17A), parenthetical implementation, as follows:

645—120.6(17A 21)

ITEM 3. Adopt new subrules 120.6(3) and 120.6(4) as follows:

120.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

120.6(4) Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 120** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 154A, and 272C.

ITEM 5. Renumber rule **645—121.12(272C)** as **645—121.13(272C)** and adopt the following new rule:

645—121.12(154A,147) Duplicate certificate or renewal card.

121.12(1) A duplicate renewal card or duplicate certificate shall be required if the current renewal card or certificate is lost, stolen or destroyed. A duplicate renewal card or duplicate certificate shall only be issued for such circumstances.

121.12(2) A duplicate renewal card or certificate shall be issued upon receipt of a written request from the licensee and receipt of the fee as specified in rule 645—125.1(147).

121.12(3) If the board is notified by the licensee that the renewal card or certificate has not been received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate renewal card or certificate.

ITEM 6. Rescind 645—Chapter 124 and adopt the following new chapter in lieu thereof:

CHAPTER 124

DISCIPLINE FOR HEARING AID DISPENSERS

645—124.1(154A,272C) Definitions.

"Board" means the board of examiners for the licensing and regulation of hearing aid dispensers.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means a person licensed to practice as a hearing aid dispenser in Iowa.

645—124.2(154A,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—124.3(154A,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

124.2(1) Failure to comply with the current Code of Ethics of the International Hearing Society. The board hereby adopts by reference the current Code of Ethics of the International Hearing Society, available at <http://www.ihinfo.org>.

124.2(2) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, the following:

a. An intentional perversion of the truth in making application for a license to practice in this state;

b. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

c. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

124.2(3) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other hearing aid dispensers in the state of Iowa acting in the same or similar circumstances;

c. A failure to exercise the degree of care which is ordinarily exercised by the average hearing aid dispenser acting in the same or similar circumstances;

d. Failure to conform to the minimal standard of acceptable and prevailing practice of licensed hearing aid dispensers in this state.

124.2(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of hearing aid dispensing or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

124.2(5) Advertising that hearing testing or hearing screening is for the purpose of detection or diagnosis of medical problems or medical screening for referral to a physician.

124.2(6) Failure to place the hearing aid dispenser's name, office address, and telephone number in an advertisement relating to hearing aids.

124.2(7) Practice outside the scope of the profession.

124.2(8) The use of untruthful or improbable statements in advertisements. The use of untruthful or improbable state-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ments in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

124.2(9) Except in cases of selling replacement hearing aids of the same make or model within one year of the original sale, a hearing aid shall not be sold without adequate diagnostic testing and evaluation using established procedures. Instruments shall be calibrated to current standards at least annually or more often if necessary. The distributor shall keep with the instruments a certificate indicating the date of calibration. "Established procedures" means use of pure tone air conduction and bone conduction and speech audiometry.

124.2(10) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

124.2(11) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

124.2(12) Falsification of client records.

124.2(13) Acceptance of any fee by fraud or misrepresentation.

124.2(14) Misappropriation of funds.

124.2(15) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including improper delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

124.2(16) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice as a hearing aid dispenser. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

124.2(17) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of hearing aid dispensing.

124.2(18) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory or country; or failure of the licensee to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

124.2(19) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice as a hearing aid dispenser in another state, district, territory or country.

124.2(20) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

124.2(21) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

124.2(22) Engaging in any conduct that subverts or attempts to subvert a board investigation.

124.2(23) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

124.2(24) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

124.2(25) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

124.2(26) Failure to pay costs assessed in any disciplinary action.

124.2(27) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

124.2(28) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

124.2(29) Knowingly aiding, assisting, or advising a person to unlawfully practice as a hearing aid dispenser.

124.2(30) Failure to report a change of name or address within 30 days after the occurrence.

124.2(31) Representing oneself as a licensed hearing aid dispenser when the person's license has been suspended or revoked, or when the person's license is lapsed or has been placed on inactive status.

124.2(32) Permitting another person to use the licensee's license for any purpose.

124.2(33) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

124.2(34) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

a. Verbally or physically abusing a patient, client, or co-worker.

b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

e. Being adjudged mentally incompetent by a court of competent jurisdiction.

124.2(35) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—124.3(154A,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.

2. Suspension of license until further order of the board or for a specific period.

3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.

4. Probation.

5. Require additional education or training.

6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.

8. Impose civil penalties not to exceed \$1000.

9. Issue a citation and warning.

10. Such other sanctions allowed by law as may be appropriate.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—124.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring the citizens of this state a high standard of professional care;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 154A and 272C.

ARC 2485B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby gives Notice of Intended Action to amend Chapter 239, “Administrative and Regulatory Authority for the Board of Psychology Examiners”; amend Chapter 240, “Licensure of Psychologists”; and rescind Chapter 242, “Discipline for Psychologists,” Iowa Administrative Code, and adopt new Chapter 242 with the same title.

The proposed amendments adopt new subrules for the conduct of persons who attend public meetings, requirements for notifying the Board of a name or address change, and criteria for obtaining a duplicate license. The proposed amendments also adopt a new discipline chapter that contains standard language which is being used by all boards regulated by the Division of Professional Licensure.

The Division sent a draft of the proposed amendments to selected associations. The Board received no comments on the proposed amendments.

Any interested person may make written comments on the proposed amendments no later than June 19, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail ebaird@idph.state.ia.us.

A public hearing will be held on June 19, 2003, 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 chapters 21, 147, 154B and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 239.4(2) and 239.4(3) as follows:

239.4(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.

239.4(3) Notice of change of name. Each licensee shall notify the board *in writing* of ~~any a~~ 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.~~

ITEM 2. Amend rule 645—239.6(17A), parenthetical implementation, as follows:

645—239.6(17A 21)

ITEM 3. Adopt new subrules 239.6(3) and 239.6(4) as follows:

239.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

239.6(4) Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 239** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, and 154B, and 272C.

ITEM 5. Renumber rule **645—240.15(17A,147,272C)** as **645—240.16(17A,147,272C)** and adopt the following new rule:

645—240.15(147) Duplicate certificate or renewal card.

240.15(1) A duplicate renewal card or a duplicate certificate shall be required if the current renewal card or certificate is lost, stolen or destroyed. A duplicate renewal card or a duplicate certificate shall only be issued under such circumstances.

240.15(2) A duplicate renewal card or certificate shall be issued upon receipt of a written request from the licensee and receipt of the fee as specified in rule 645—243.1(147,154B).

240.15(3) If the board is notified by the licensee that the renewal card or certificate has not been received within 60 days after being mailed by the board, no fee shall be required for reissuing the duplicate renewal card or certificate.

ITEM 6. Rescind 645—Chapter 242 and adopt the following new chapter in lieu thereof:

CHAPTER 242**DISCIPLINE FOR PSYCHOLOGISTS**

645—242.1(154B) Definitions.

“Board” means the board of psychology examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice psychology in Iowa.

645—242.2(147,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—242.3(147,272C), when the board determines that the licensee is guilty of any of the following acts or offenses:

242.2(1) Failure to comply with the Ethical Principles of Psychologists and Code of Conduct of the American Psycho-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

logical Association, as published in the December 2002 edition of American Psychologist, hereby adopted by reference. Copies of the Ethical Principles of Psychologists and Code of Conduct may be obtained from the American Psychological Association's Web site at <http://www.apa.org>.

242.2(2) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, the following:

a. An intentional perversion of the truth in making application for a license to practice in this state;

b. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

c. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

242.2(3) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other psychologists in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average psychologist acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensed psychologist in this state.

242.2(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of psychology or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

242.2(5) Practice outside the scope of the profession.

242.2(6) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

242.2(7) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

242.2(8) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

242.2(9) Falsification of client or patient records.

242.2(10) Acceptance of any fee by fraud or misrepresentation.

242.2(11) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

242.2(12) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice psycholo-

gy. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

242.2(13) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of psychology.

242.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory or country; or failure of the licensee to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

242.2(15) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of psychology in another state, district, territory or country.

242.2(16) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

242.2(17) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

242.2(18) Engaging in any conduct that subverts or attempts to subvert a board investigation.

242.2(19) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

242.2(20) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

242.2(21) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

242.2(22) Failure to pay costs assessed in any disciplinary action.

242.2(23) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

242.2(24) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

242.2(25) Knowingly aiding, assisting, or advising a person to unlawfully practice psychology.

242.2(26) Failure to report a change of name or address within 30 days after it occurs.

242.2(27) Representing oneself as a licensed psychologist when the person's license has been suspended or revoked, or when the person's license is lapsed or has been placed on inactive status.

242.2(28) Permitting another person to use the licensee's license for any purpose.

242.2(29) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

242.2(30) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

a. Verbally or physically abusing a patient or client.

b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

242.2(31) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—242.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—242.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring the citizens of this state a high standard of professional care;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 154B and 272C.

ARC 2512B**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 Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to amend Chapter 299, “Administrative and Regulatory Authority for the Board of Speech Pathology and Audiology Examiners”; amend Chapter 300, “Licensure of Speech Pathologists and Audiologists”; and amend Chapter 303, “Continuing Education for

Speech Pathologists and Audiologists”; and rescind Chapter 304, “Discipline for Speech Pathologists and Audiologists,” Iowa Administrative Code, and adopt new Chapter 304 with the same title.

The proposed amendments adopt new subrules for the conduct of persons who attend public meetings, requirements for notifying the Board of a name or address change and criteria for obtaining a duplicate license. The proposed amendments also amend the requirements for reinstatement from a lapsed license to be more consistent with the requirements for reinstatement from inactive status and adopt a new discipline chapter that contains standard language which is being used by all boards regulated by the Division of Professional Licensure.

The Division sent a draft of the proposed amendments to selected licensees and associations. The Board received no comments on the proposed amendments.

Any interested person may make written comments on the proposed amendments no later than June 26, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail ebaird@idph.state.ia.us.

A public hearing will be held on June 26, 2003, 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 chapters 21, 147, and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 299.4(2) and 299.4(3) as follows:

299.4(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.

299.4(3) Notice of change of name. Each licensee shall notify the board ~~in writing of any~~ a 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.~~

ITEM 2. Amend rule 645—299.6(17A), parenthetical implementation, as follows:

645—299.6(17A 21)

ITEM 3. Adopt new subrules 299.6(3) and 299.6(4) as follows:

299.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

299.6(4) Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 299** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, ~~and~~ 147, ~~and~~ 272C.

ITEM 5. Amend subrule 300.12(6) as follows:

300.12(6) Reinstatement of a lapsed license. The following chart illustrates the requirements for reinstatement based on the length of time a license has lapsed.

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| An applicant shall satisfy the following requirements: | 30 days after expiration date up to 1 renewal | 2 renewals | 3 or more renewals |
|--|---|---|---|
| Submits written application for reinstatement | Required | Required | Required |
| Pay the renewal fee(s) | \$80 | \$160 | \$240 |
| Pay the late fee | \$50 | \$50 | \$50 |
| Pay the reinstatement fee | \$50 | \$50 | \$50 |
| Complete continuing education requirements during the period since the license lapsed <i>Furnish evidence of full-time practice in another state of the U.S. or District of Columbia and completion of continuing education</i> OR <i>Furnish evidence of completion of continuing education</i> OR <i>Furnish evidence of successful completion of the National Teacher Examination within one year immediately prior to submission of application for reinstatement</i> | <i>Current valid license and 30 hours</i> <i>30 hours</i> <i>Successful completion of examination</i> | <i>Current valid license and 60 hours</i> <i>60 hours</i> <i>Successful completion of examination</i> | <i>Current valid license and 90 hours</i> <i>90 hours</i> <i>Successful completion of examination</i> |
| Total fees and continuing education hours required for reinstatement: | \$180 and 30 hours | \$260 and 60 hours | \$340 and 90 hours |

ITEM 6. Renumber rule **645—300.13(17A,147,272C)** as **645—300.14(17A,147,272C)** and adopt the following **new** rule:

645—300.13(147) Duplicate certificate or renewal card.

300.13(1) A duplicate renewal card or duplicate certificate shall be required if the current renewal card or certificate is lost, stolen or destroyed. A duplicate renewal card or duplicate certificate shall only be issued for such circumstances.

300.13(2) A duplicate renewal card or certificate shall be issued upon receipt of a written request from the licensee and receipt of the fee as specified in rule 645—305.1(147).

300.13(3) If the board is notified by the licensee that the renewal card or certificate has not been received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate renewal card or certificate.

ITEM 7. Amend rule **645—303.6(147)**, numbered paragraphs “2” and “3,” as follows:

2. Pays all of the following fees to a maximum of \$350 \$340:

- Renewal fees due;
- The late fee which has been assessed by the board for failure to renew; and
- The reinstatement fee which has been assessed by the board for failure to renew; and

3. Provides evidence of:

• *Full-time practice in another state of the United States or the District of Columbia and completion of continuing education for each biennium since the license had lapsed substantially equivalent in the opinion of the board to that required under these rules;*

• Satisfactory completion of Iowa continuing education requirements computed by multiplying 30 times the number of bienniums since the license had lapsed to a maximum of 90 hours; or

• Successful completion of the National Teacher Examination in speech pathology or audiology within one year immediately prior to the submission of application for reinstatement.

ITEM 8. Rescind 645—Chapter 304 and adopt the following **new** chapter in lieu thereof:

CHAPTER 304

DISCIPLINE FOR SPEECH PATHOLOGISTS
AND AUDIOLOGISTS

645—304.1(151) Definitions.

“Board” means the board of speech pathology and audiology examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as a speech pathologist or audiologist in Iowa.

645—304.2(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—304.3(272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

304.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, the following:

- a. An intentional perversion of the truth in making application for a license to practice in this state;
- b. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or
- c. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

304.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other speech pathologists or audiologists in the state of Iowa acting in the same or similar circumstances.
- c. A failure to exercise the degree of care which is ordinarily exercised by the average speech pathologist or audiologist acting in the same or similar circumstances.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensed speech pathologist or audiologist in this state.

304.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

304.2(4) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

304.2(5) Practice outside the scope of the profession.

304.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

304.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

304.2(8) Falsification of client records.

304.2(9) Acceptance of any fee by fraud or misrepresentation includes, but is not limited to, billing for services which were not rendered or charging fees which are inconsistent with any prior agreements reached with the clients.

304.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

304.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

304.2(12) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of speech pathology or audiology.

304.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure of the licensee to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

304.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of speech pathology or audiology in another state, district, territory or country.

304.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

304.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

304.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

304.2(18) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

304.2(19) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

304.2(20) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

304.2(21) Failure to pay costs assessed in any disciplinary action.

304.2(22) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

304.2(23) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

304.2(24) Knowingly aiding, assisting, or advising a person to unlawfully practice speech pathology or audiology.

304.2(25) Failure to report a change of name or address within 30 days after it occurs.

304.2(26) Representing oneself as a licensed speech pathologist or audiologist when the person's license has been suspended or revoked, or when the person's license is lapsed or has been placed on inactive status.

304.2(27) Permitting another person to use the licensee's license for any purpose.

304.2(28) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

304.2(29) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

a. Verbally or physically abusing a client.

b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

304.2(30) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

304.2(31) Violation of the following code of ethics:

a. Claims of expected clinical results shall be based upon sound evidence and shall accurately convey the probability and degree of expected improvement.

b. Records shall be adequately maintained for the period of time required by applicable state and federal laws.

c. Persons served professionally or the files of such persons will be used for teaching or research purposes only after obtaining informed consent from those persons or from the legal guardians of such persons.

d. Information of a personal or professional nature obtained from persons served professionally will be released only to individuals authorized by the persons receiving professional service or to those individuals to whom release is required by law.

e. Relationships between professionals and between a professional and a client shall be based on high personal re-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

gard and mutual respect without concern for race, religious preference, sex, or age.

f. Referral of clients for additional services or evaluation and recommendation of sources for purchasing appliances shall be without any consideration for financial or material gain to the licensee making the referral or recommendation for purchase.

g. Licensees who dispense products to persons served professionally shall provide clients with freedom of choice for the source of services and products.

h. Failure to comply with current Food and Drug Administration regulations 21 CFR §801.420, "Hearing aid devices; professional and patient labeling," and 21 CFR §801.421, "Hearing aid devices, conditions for sale."

645—304.3(272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—304.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring the citizens of this state a high standard of professional care;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

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

ARC 2491B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 135.11, 144A.7A and 147A.4, the Department of Public Health here-

by gives Notice of Intended Action to adopt new Chapter 142, "Out-of-Hospital Do-Not-Resuscitate Orders," Iowa Administrative Code.

The rules in new Chapter 142 are not intended to change the current practice of medicine in hospitals or other care facilities, but to streamline the care of any patient who has a known terminal condition to ensure that medical care provided in the out-of-hospital setting is consistent with the patient's desire and the attending physician's authorization. The out-of-hospital setting may include a medical care facility, a hospice setting, or the patient's own home while the patient remains active in the community or when the patient interfaces with the emergency medical services (EMS) system.

Since June 2002, a broad group of stakeholders has met numerous times and was instrumental in the development of the following proposed rules, which have been approved by the stakeholders group and by the EMS Advisory Council at its January meeting. This stakeholders group was open to any individual or organization; some of the organizations participating were:

Aging Resources
Bureau of EMS/Department of Public Health
Iowa Academy of Family Physicians
Iowa Emergency Medical Services Association
Iowa Hospital Association
Iowa Medical Society
Hospice of Central Iowa
Iowa Trial Lawyers Association
Polk County Medical Society

Any interested person may make written suggestions or comments on this proposed chapter on or before June 17, 2003. Such written materials should be directed to the EMS Bureau, Iowa Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309; fax (515)725-0318.

Also, there will be a public hearing on June 17, 2003, at 10 a.m. in the EMS Bureau Conference Room, 401 SW 7th Street, Suite D, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the chapter.

Any person who plans to attend a public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Bureau of EMS at (800)728-3367 and advise of specific needs.

These rules are intended to implement Iowa Code sections 144A.7A and 147A.4.

The following **new** chapter is proposed.

CHAPTER 142 OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS

641—142.1(144A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Adult" means any individual 18 years of age or older.

"Attending physician" means a physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

"Comfort care" means care within the scope of the health care provider's training and certification to alleviate pain and suffering, but does not include resuscitative measures.

"Department" means the Iowa department of public health.

"Emergency medical care" means such medical procedures as:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

1. Administration of intravenous solutions.
2. Intubation.
3. Performance of cardiac defibrillation and synchronized cardioversion.
4. Administration of emergency drugs as provided by rule by the department.
5. Any other medical procedure approved by the department, by rule, as appropriate to be performed by emergency medical care providers who have been certified in that procedure.

“Emergency medical care provider” or “EMS provider” means an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist level or other certification levels adopted by rule by the department and who has been issued a certificate by the department.

“Health care provider” means a person, including an emergency medical care provider, who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

“Hospital” means any hospital licensed under the provisions of Iowa Code section 135B.1.

“Life-sustaining procedure” means any medical procedure, treatment, or intervention, including resuscitation, which utilizes mechanical or artificial means to sustain, restore or supplant a spontaneous vital function and, when applied to a patient in a terminal condition, would serve only to prolong the dying process. “Life-sustaining procedure” does not include the provision of nutrition or hydration except when required to be provided parenterally or through intubation or the administration of medication or performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

“Medical direction” means direction, advice, or orders provided by a medical director, supervising physician, or physician designee (in accordance with written parameters and protocols) to emergency medical care providers.

“Medical director” means any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and who has completed a medical director workshop, sponsored by the department, within one year of assuming duties.

“On-line medical direction” means immediate medical direction provided directly to service program emergency medical care providers, in accordance with written parameters and protocols, by the medical director, supervising physician or physician designee either on scene or by any telecommunications system.

“Out-of-hospital do-not-resuscitate identifier” or “OOH DNR identifier” means a durable yet easily removable unique identification approved by the department and worn by a patient who has an out-of-hospital do-not-resuscitate order.

“Out-of-hospital do-not-resuscitate order” or “OOH DNR order” means a written order on a form approved by the department, signed by an attending physician, executed in accordance with the requirements of Iowa Code section 144A.7A and issued consistent with Iowa Code section 144A.2, that directs the withholding or withdrawal of resuscitation when an adult patient in a terminal condition is outside the hospital.

“Out-of-hospital do-not-resuscitate protocol” or “OOH DNR protocol” means the statewide protocol approved by the department and intended to avoid unwarranted resuscita-

tion by emergency medical care providers when a valid out-of-hospital do-not-resuscitate order or identifier is encountered.

“Patient” means any individual who is sick, injured, or otherwise incapacitated.

“Physician” means any individual licensed under Iowa Code chapter 148, 150, or 150A.

“Physician assistant” or “PA” means an individual licensed pursuant to Iowa Code chapter 148C.

“Physician designee” means any registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners. The physician designee acts as an intermediary for a supervising physician in accordance with written policies and protocols in directing the actions of emergency medical care providers.

“Protocols” means service program patient care written directions and orders consistent with the department’s standard-of-care procedures to be followed by emergency medical care providers in emergency and nonemergency situations.

“Qualified patient” means an adult patient determined by an attending physician to be in a terminal condition for which the attending physician has issued an out-of-hospital do-not-resuscitate order in accordance with the law.

“Registered nurse” or “RN” means an individual licensed pursuant to Iowa Code chapter 152.

“Resuscitation” means any medical intervention that utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function, including but not limited to chest compression, defibrillation, intubation, and emergency drugs intended to alter cardiac function or otherwise to sustain life.

“Service program” or “service” means any medical care ambulance service or nontransport service that is currently authorized by the department.

“Supervising physician” means any physician licensed under Iowa Code chapter 148, 150, or 150A. The supervising physician is responsible for medical direction of emergency medical care providers when such providers are providing emergency medical care.

“Terminal condition” means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery.

641—142.2(144A) Purpose. These rules direct EMS providers and service programs on the processes for the recognition of OOH DNR orders or identifiers and implementation of the OOH DNR protocol. In addition, these rules set forth guidelines for consideration by health care providers and organizations to help ensure uniform and orderly understandings, processes and procedures for the use and implementation of OOH DNR orders consistent with the provisions of Iowa Code chapter 144A.

641—142.3(144A,147A) Responsibilities of the department. The department is responsible for the following:

142.3(1) OOH DNR physician order. The department shall approve a uniform OOH DNR order form to be utilized by a patient’s attending physician for purposes of OOH DNR orders issued under Iowa Code chapter 144A. The uniform physician order form approved by the department on January 15, 2003, is hereby adopted by reference.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

142.3(2) OOH DNR identifier. The department shall approve a uniform OOH DNR identifier for purposes of OOH DNR orders issued under Iowa Code chapter 144A. The OOH DNR identifier approved by the department on January 15, 2003, is hereby adopted by reference.

142.3(3) OOH DNR EMS protocol. The uniform OOH DNR protocol to direct EMS providers when implementing an OOH DNR order approved by the department on January 15, 2003, is hereby adopted by reference.

641—142.4(144A,147A) EMS providers.

142.4(1) Uniform protocol. EMS providers shall act in accordance with the department's OOH DNR protocol when implementing an OOH DNR order. EMS service programs shall incorporate the OOH DNR protocol as part of their service protocols and, using educational materials consistent with the curriculum developed and approved by the department, shall inform and educate EMS providers on the protocol's requirements as well as the requirements of Iowa Code chapter 144A and these rules.

142.4(2) Responsibility of the EMS provider. The EMS provider responding outside a hospital as a member of a service program shall:

- a. Evaluate the patient's status and needs through an assessment consistent with the provider's training and certification.
- b. Determine the existence of an OOH DNR order or that the patient is wearing an OOH DNR identifier.
- c. Honor the OOH DNR order or OOH DNR identifier worn by the patient.
- d. Discontinue resuscitation if the OOH DNR order or OOH DNR identifier worn by the patient is discovered after resuscitation has begun.
- e. Follow the OOH DNR protocol.
- f. Provide comfort care to the patient at all times.
- g. Contact on-line medical direction for further instructions as necessary to provide appropriate patient care.
- h. If uncertainty exists regarding the validity or applicability of the OOH DNR order or identifier, the EMS provider shall provide the necessary and appropriate resuscitation.
- i. Document compliance or noncompliance with the OOH DNR order and the reasons for not complying with the order, including evidence that the order was revoked or uncertainty regarding the validity or applicability of the order.

641—142.5(144A) Guidelines for non-EMS health care providers, patients, and organizations. In order to encourage understanding and implementation of OOH DNR orders and protocols throughout Iowa and honor a qualified patient's wishes and intent regarding the provision of life-sustaining procedures in an out-of-hospital setting consistent with the requirements of Iowa Code chapter 144A, the following guidelines should be considered.

142.5(1) Attending physicians who issue OOH DNR orders. The attending physician should ensure the following are accomplished:

- a. Establish that the patient is qualified because the patient:
 - (1) Is an adult; and
 - (2) Has a terminal condition.
- b. Explain to the patient or the individual legally authorized to act on the patient's behalf the implications of an OOH DNR order.
- c. If the qualified patient or individual legally authorized to act on the patient's behalf decides that the patient should not be resuscitated, the attending physician may issue the OOH DNR order on the prescribed uniform order form. The

order will direct health care providers to withhold or withdraw resuscitation.

d. Explain to the patient or the individual legally authorized to act on the patient's behalf how the OOH DNR order is revoked.

e. Include a copy of the order in the patient's medical record.

f. Provide a copy of the order to the patient or the individual legally authorized to act on the patient's behalf.

142.5(2) Qualified patients or legally authorized persons. A qualified patient or a person legally authorized to act on a qualified patient's behalf should:

- a. Make an informed decision concerning resuscitation in the face of a terminal condition.
- b. Ensure that the qualified patient's family members are aware of this decision and inform them of the location of the OOH DNR order and the purpose of an OOH DNR identifier.
- c. Understand the process for revocation as described in rule 641—142.6(144A).

142.5(3) Non-EMS health care providers. A non-EMS health care provider contemplating resuscitation for a patient should:

- a. Evaluate the patient's status and needs through an assessment consistent with the provider's training, certification and licensure.
- b. Determine that the presenting condition is within the scope of the patient's terminal condition and is not the result of a motor vehicle collision, fire, mass casualty or other cause of a sudden accident or injury.
- c. Determine the existence of an OOH DNR order or that the patient is wearing an OOH DNR identifier.
- d. Honor the OOH DNR order or OOH DNR identifier worn by the patient.
- e. Discontinue resuscitation if the OOH DNR order or OOH DNR identifier worn by the patient is discovered after resuscitation has begun.
- f. Provide comfort care to the patient at all times.
- g. If uncertainty exists regarding the validity or applicability of the OOH DNR order or identifier, the health care provider shall provide the necessary and appropriate resuscitation.
- h. Document compliance or noncompliance with the OOH DNR order and the reasons for not complying with the order, including evidence that the order was revoked or uncertainty regarding the validity or applicability of the order or OOH DNR identifier.

142.5(4) Hospitals. A hospital licensed under Iowa Code chapter 135B:

- a. Shall not be precluded from honoring an OOH DNR order entered in accordance with this chapter and in compliance with established hospital policies and protocols.
- b. Should establish such policies and protocols to address an OOH DNR order or identifier encountered in a person who presents to the emergency department or in any other area within the facility if the person presents as a patient or visitor, to avail itself of the immunities provided by law.
- c. Should integrate policies and procedures with the OOH DNR protocol for hospital-based ambulance service programs, if present.

142.5(5) Other health care organizations. A nursing home, home health care agency, hospice, or other health care organization should establish policies and protocols consistent with these rules to address admitted patients who have OOH DNR orders.

641—142.6(144A) Revocation of the out-of-hospital do-not-resuscitate order. An OOH DNR order is deemed re-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

voked at any time that a patient, or an individual authorized to act on the patient's behalf as designated on the OOH DNR order, is able to communicate in any manner the intent that the order be revoked, without regard to the mental or physical condition of the patient. A revocation is only effective as to the health care provider upon communication to that provider by the patient, an individual authorized to act on the patient's behalf as designated in the OOH DNR order, or by another person to whom the revocation is communicated by the patient.

641—142.7(144A) Personal wishes of family members or other individuals who are not authorized to act on the patient's behalf. The personal wishes of family members or other individuals who are not authorized in the order to act on the patient's behalf shall not supersede a valid OOH DNR order.

641—142.8(144A) Transfer of patients.

142.8(1) An attending physician who is unwilling to comply with an OOH DNR order or who is unwilling to comply with the provisions of Iowa Code section 144A.7A shall take all reasonable steps to effect the transfer of the patient to another physician.

142.8(2) If the policies of a hospital, nursing home, home health care agency, hospice or other health care organization preclude compliance with the OOH DNR order of a qualified patient, the provider shall take all reasonable steps to effect the transfer of the patient to an organization in which the provisions of Iowa Code section 144A.7A can be carried out.

641—142.9(144A) Application to existing orders.

142.9(1) An OOH DNR order or similar order executed prior to the adoption of these rules is valid and shall be honored in accordance with the then-applicable provisions of the law.

142.9(2) Health care providers may honor an OOH DNR order or identifier from another state if it can be validated and applied in a manner consistent with the OOH DNR order or identifier prescribed in these rules. In cases where there is uncertainty, clarification should be sought through on-line medical direction or resuscitation efforts should be initiated.

These rules are intended to implement Iowa Code sections 144A.7A and 147A.4.

ARC 2488B

PUBLIC SAFETY DEPARTMENT[661]

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 100.1 and 100.35, the Department of Public Safety gives Notice of Intended Action to amend Chapter 5, “Fire Marshal,” Iowa Administrative Code.

Iowa Code section 100.1(5) assigns to the State Fire Marshal the exclusive authority to adopt fire safety rules in Iowa. Iowa Code section 100.35 enumerates various sorts of occupancies for which the State Fire Marshal is required to adopt rules.

Exits are a major area covered by the rules of the State Fire Marshal. The configuration of exits and allowance for means of egress in buildings and structures are major factors in the level of safety from fires afforded to the occupants of those structures.

Current exit requirements in the rules of the State Fire Marshal are outdated, having last been amended in 1992. In addition, the Iowa Occupational Safety and Health Program administered by Iowa Workforce Development, which has jurisdiction over many of the same occupancies, recently amended the exit requirements that it enforces, in response to changes made by the federal Occupational Safety and Health Administration (OSHA). The new OSHA exit requirements allow, as one option, compliance with exit requirements established in the Life Safety Code, which is a standard published by the National Fire Protection Association. The chapter on exit requirements (titled “Means of Egress”) from the 2000 edition of the Life Safety Code is proposed here for adoption by reference as the exit requirements to be enforced by the State Fire Marshal.

A public hearing on these proposed amendments will be held on June 19, 2003, at 9:30 a.m. in the third floor conference room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code section 100.35.

The following amendments are proposed.

ITEM 1. Amend rule **661—5.2(17A,80,100,101,101A)** by adding the following **new** definition in alphabetical order:

“NFPA” means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form “NFPA xx,” where “xx” is a number, refer to the NFPA standard or pamphlet of the corresponding number.

ITEM 2. Rescind rules **661—5.50(100)** through **5.65(100)** and adopt in lieu thereof the following **new** rule:

661—5.51(100) Exits. NFPA 101, 2000 edition, Chapter 7, is adopted as the general rules establishing exit requirements.

NOTE: When exit requirements for a specific form of occupancy are in conflict with this rule, the requirements for the specific occupancy apply.

This rule is intended to implement Iowa Code section 100.35.

ARC 2487B**PUBLIC SAFETY
DEPARTMENT[661]****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 100.1, 100.35 and 231C.4, the Department of Public Safety gives Notice of Intended Action to amend Chapter 5, "Fire Marshal," Iowa Administrative Code.

Iowa Code section 100.1(5) assigns to the State Fire Marshal the exclusive authority to adopt fire safety rules in Iowa. Iowa Code section 100.35 enumerates various sorts of occupancies, including hospitals and licensed health care facilities, for which the State Fire Marshal is required to adopt rules. Iowa Code section 231C.4 authorizes the State Fire Marshal to adopt fire safety requirements for assisted living facilities, in coordination with the Department of Elder Affairs.

Hospitals, licensed health care facilities, and assisted living facilities in Iowa are required to comply with fire safety requirements established by the State Fire Marshal in order to obtain and maintain licensure or certification. In addition, hospitals and licensed health care facilities are to comply with fire safety requirements established by the federal Centers for Medicare and Medicaid Services in order to be eligible for reimbursement under the Medicare and Medicaid programs. The federal fire safety regulations were changed so that, as of March 11, 2003, the fire safety requirements for facilities providing services subject to reimbursement from Medicare or Medicaid are based on compliance with provisions from the 2000 edition of the Life Safety Code published by the National Fire Protection Association applicable to the particular type of facility. As of September 11, 2003, each individual facility providing services under the Medicare and Medicaid programs must be in compliance with applicable provisions of the 2000 edition of the Life Safety Code.

Amendments intended to ease the transition to the new requirements for facilities subject both to the rules of the State Fire Marshal and to the fire safety regulations of the Centers for Medicare and Medicaid Services were adopted through emergency rule-making procedures and were effective March 11, 2003. The emergency rules were published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2365B**. Generally, the approach taken was to allow the continued use of the existing requirements, most of which are based upon the 1985 edition of the Life Safety Code, or the use of the new requirements until September 11, 2003, and then to require compliance with the new requirements as of September 11, 2003. Among the provisions that may continue to be used until September 11, 2003, are those that allow, in limited cases, compliance with provisions of earlier editions of the Life Safety Code. Also, plan reviews for new facilities, including additions or facilities engaging in major renovation or remodeling were based upon the new requirements as of March 11, 2003.

The amendments proposed here are similar to those adopted previously through emergency procedures, although

there are several changes. The changes include the following:

- Language in subrule 5.626(4) referring to assisted living facilities seeking certification from the federal Centers for Medicare and Medicaid Services is not included, as this reference was included mistakenly in the emergency rule making. Assisted living facilities are not required to, nor are they able to, receive certification from the Centers for Medicare and Medicaid Services. In those cases where an assisted living facility receives reimbursement from the federal agency, it is pursuant to a waiver and does not require the facility to be federally certified.

- Provisions regarding intermediate care facilities for the mentally retarded (ICFs/MR) are changed to reflect enactment of 2003 Iowa Acts, House File 387. Prior to enactment of House File 387, ICFs/MR were required to comply with requirements of the 1985 edition of the Life Safety Code (Iowa Code section 135C.2, subsection 3, paragraph "c"). House File 387 amended the Iowa statute to require compliance with the 2000 edition of the Life Safety Code, which is consistent with the new federal requirements.

- For ICFs/MR, an exception in the Life Safety Code, 2000 edition, regarding sprinklering in facilities with eight or fewer beds which have been converted from other residential occupancies is deleted. Implementation of the exception would require staff of the Fire Marshal Division to determine the evacuation capability of residents and would require revisits by staff of the Division each time a new resident is admitted, neither of which is practical.

A public hearing on these proposed amendments will be held on June 19, 2003, at 10 a.m. in the third floor conference room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code section 100.35 and chapters 135B, 135J and 231C and chapter 135C as amended by 2003 Iowa Acts, House File 387, and 42 CFR Parts 403, 416, 418, 482 and 483.

The following amendments are proposed.

ITEM 1. Amend rule 661—5.626(231C) as follows:

Amend subrule **5.626(1)** by rescinding the definition of "NFPA" and adopting in lieu thereof the following **new** definition in alphabetical order:

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

Rescind subrule 5.626(4) and adopt in lieu thereof the following **new** subrule:

5.626(4) Alternative requirements. In lieu of complying with the requirements established in subrule 5.626(2) or

PUBLIC SAFETY DEPARTMENT[661](cont'd)

5.626(3), assisted living facilities may alternatively comply with the requirements established in this subrule.

a. An assisted living facility that begins operation on or after September 11, 2003, or that received plan approval for initial construction or for its most recent addition or renovation or remodeling project on or after March 11, 2003, may comply with the requirements established in NFPA 101, Life Safety Code, 2000 edition, Chapter 32, in lieu of compliance with the requirements established in subrule 5.626(2).

b. An assisted living facility that begins operation prior to September 11, 2003, or that received plan approval for initial construction or for its most recent addition or renovation or remodeling project prior to March 11, 2003, may comply with the requirements established in NFPA 101, Life Safety Code, 2000 edition, Chapter 33, in lieu of compliance with the requirements established in subrule 5.626(3).

ITEM 2. Rescind rules **661—5.900(100)** through **5.925(100)** and adopt in lieu thereof the following new rules:

661—5.900(100) Definitions. The following definitions apply to rules 661—5.900(100) through 661—5.925(100).

“Ambulatory health care facility” means a facility or portion thereof used to provide services or treatment that provides, on an outpatient basis, treatment for one or more patients that renders the patients incapable of taking action for self-preservation under emergency conditions without the assistance of others; or provides, on an outpatient basis, anesthesia that renders the patient incapable of taking action for self-preservation under emergency conditions without the assistance of others.

“Existing” means that a facility (1) has been in continuous operation under its current classification of occupancy since before September 11, 2003, and has not undergone renovation or remodeling, including an addition, on or after September 11, 2003, or (2) received plan approval for initial construction or for its most recent renovation or remodeling project, including an addition, if any, from the building code bureau of the fire marshal division prior to March 11, 2003.

“Hospice” means a facility licensed or seeking licensure pursuant to Iowa Code section 135J.2.

“Hospital” means a facility licensed or seeking licensure pursuant to Iowa Code chapter 135B.

“Intermediate care facility for the mentally retarded” means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.2(3)“c,” as amended by 2003 Iowa Acts, House File 387, section 1.

“New” means that a facility (1) commenced continuous operation under its current classification of occupancy on or after September 11, 2003, (2) has undergone renovation or remodeling, including an addition, on or after September 11, 2003, or (3) received plan approval from the building code bureau of the fire marshal division for the initial construction of the facility or the most recent renovation of or addition to the facility on or after March 11, 2003.

“NFPA” means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form “NFPA xx,” where “xx” is a number, refer to the NFPA standard or pamphlet of the corresponding number.

“Nursing facility” means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.6, including a nursing facility for intermediate care or a nursing facility for skilled care.

661—5.901 to 5.904 Reserved.

661—5.905(100) Hospitals.

5.905(1) New hospitals. NFPA 101, Life Safety Code, 2000 edition, Chapter 18, is adopted by reference as the fire safety rules for new hospitals.

5.905(2) Existing hospitals. NFPA 101, Life Safety Code, 2000 edition, Chapter 19, is adopted by reference as the fire safety rules for existing hospitals, with the following amendments:

Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.

Section 19.2.9 is not effective prior to March 13, 2006.

EXCEPTION 1: Prior to September 11, 2003, existing hospitals may comply with NFPA 101, Life Safety Code, 1985 edition, Chapter 13, in lieu of NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

EXCEPTION 2: Prior to September 11, 2003, any hospital that on or before May 9, 1988, complied with the relevant provisions of NFPA 101, Life Safety Code, 1981 edition, may continue to comply with those provisions in lieu of NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

EXCEPTION 3: Prior to September 11, 2003, any hospital that on or before November 26, 1982, complied with the relevant provisions of NFPA 101, Life Safety Code, 1967 edition, may continue to comply with those provisions in lieu of NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

661—5.906 to 5.909 Reserved.

661—5.910(100) Nursing facilities and hospices.

5.910(1) New nursing facilities and hospices. NFPA 101, Life Safety Code, 2000 edition, Chapter 18, is adopted by reference as the fire safety rules for new nursing facilities and hospices that provide inpatient care directly.

5.910(2) Existing nursing facilities and hospices. NFPA 101, Life Safety Code, 2000 edition, Chapter 19, is adopted by reference as the fire safety rules for existing nursing facilities and hospices that provide inpatient care directly, with the following amendments:

Section 19.2.9 is not effective prior to March 13, 2006.

Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.

EXCEPTION 1: Prior to September 11, 2003, any existing nursing facility or hospice that provides inpatient care directly may comply with the provisions of NFPA 101, Life Safety Code, 1985 edition, Chapter 13, in lieu of NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

EXCEPTION 2: Prior to September 11, 2003, any existing nursing facility or hospice that provides inpatient care directly, that on or before May 9, 1988, complied with the relevant provisions of NFPA 101, Life Safety Code, 1981 edition, may continue to comply with those provisions in lieu of NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

EXCEPTION 3: Prior to September 11, 2003, any existing nursing facility or hospice that provides inpatient care directly, that on or before November 26, 1982, complied with the relevant provisions of NFPA 101, Life Safety Code, 1967 edition, or NFPA 101, Life Safety Code, 1973 edition, may continue to comply with those provisions in lieu of NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

661—5.911 to 5.914 Reserved.

661—5.915(100) Intermediate care facilities for the mentally retarded.

5.915(1) New intermediate care facilities for the mentally retarded. New intermediate care facilities for the mentally retarded shall comply with the provisions of one of the following:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

a. NFPA 101, Life Safety Code, 2000 edition, Chapter 18.

b. NFPA 101, Life Safety Code, 2000 edition, Chapter 32, with the following amendment:

NOTE: Any requirement contained within Chapter 32 that is based on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical."

Exception No. 1 to Section 32.2.3.5.1 is deleted.

5.915(2) Existing intermediate care facilities for persons with mental illness. Existing intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

a. NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

b. NFPA 101, Life Safety Code, 2000 edition, Chapter 33, with the following amendment:

NOTE: Any requirement contained in Chapter 33 that is based on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical."

661—5.916(100) Intermediate care facilities for persons with mental illness.

5.916(1) New intermediate care facilities for persons with mental illness. New intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

a. NFPA 101, Life Safety Code, 2000 edition, Chapter 18.

b. NFPA 101, Life Safety Code, 2000 edition, Chapter 32, with the following amendment:

NOTE: Any requirement contained within Chapter 32 that is based on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical."

5.916(2) Existing intermediate care facilities for persons with mental illness. Existing intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

a. NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

b. NFPA 101, Life Safety Code, 2000 edition, Chapter 33, with the following amendment:

NOTE: Any requirement contained in Chapter 33 that is based on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical."

661—5.917 to 5.919 Reserved.

661—5.920(100) Ambulatory health care facilities.

5.920(1) New ambulatory health care facilities. NFPA 101, Life Safety Code, 2000 edition, Chapter 20, is adopted by reference as the fire safety rules for new ambulatory health care facilities.

5.920(2) Existing ambulatory health care facilities. NFPA 101, Life Safety Code, 2000 edition, Chapter 21, is adopted by reference as the fire safety rules for existing ambulatory health care facilities, with the following amendments:

Section 21.2.9.1 is not effective prior to March 13, 2006.

EXCEPTION 1: Prior to September 11, 2003, existing ambulatory health care facilities may comply with NFPA 101, Life Safety Code, 1985 edition, Section 13-6, in lieu of NFPA 101, Life Safety Code, 2000 edition, Chapter 21.

EXCEPTION 2: Prior to September 11, 2003, an existing ambulatory health care facility which on or prior to May 9, 1988, complied with the relevant requirements of NFPA 101, Life Safety Code, 1981 edition, may continue to comply with those requirements in lieu of compliance with NFPA 101, Life Safety Code, 2000 edition, Chapter 21.

661—5.921 to 5.924 Reserved.

661—5.925(100) Religious nonmedical health care institutions.

5.925(1) New religious nonmedical health care institutions. NFPA 101, Life Safety Code, 2000 edition, Chapter 18, is adopted by reference as the fire safety rules for new religious nonmedical health care institutions.

5.925(2) Existing religious nonmedical health care institutions. NFPA 101, Life Safety Code, 2000 edition, Chapter 19, is adopted by reference as the fire safety rules for existing religious nonmedical health care institutions, with the following amendments:

Section 19.2.9 is not effective prior to March 13, 2006.

Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.

EXCEPTION: Prior to September 11, 2003, existing religious nonmedical health care institutions may comply with the provisions for existing health care facilities of NFPA 101, Life Safety Code, 1997 edition, in lieu of compliance with the provisions of NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

Rules 661—5.900(100) to 661—5.925(100) are intended to implement Iowa Code section 100.35.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for May is 5.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective May 10, 2003, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

TIME DEPOSITS

| | |
|--------------------------------|---------------|
| 7-31 days | Minimum 0.70% |
| 32-89 days | Minimum 0.70% |
| 90-179 days | Minimum 0.80% |
| 180-364 days | Minimum 0.80% |
| One year to 397 days | Minimum 0.80% |
| More than 397 days | Minimum 1.15% |

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.
Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

| | |
|--|-------|
| June 1, 2002 — June 30, 2002 | 7.25% |
| July 1, 2002 — July 31, 2002 | 7.25% |
| August 1, 2002 — August 31, 2002 | 7.00% |
| September 1, 2002 — September 30, 2002 | 6.75% |
| October 1, 2002 — October 31, 2002 | 6.25% |
| November 1, 2002 — November 30, 2002 | 5.75% |
| December 1, 2002 — December 31, 2002 | 6.00% |
| January 1, 2003 — January 31, 2003 | 6.00% |
| February 1, 2003 — February 28, 2003 | 6.00% |
| March 1, 2003 — March 31, 2003 | 6.00% |
| April 1, 2003 — April 30, 2003 | 6.00% |
| May 1, 2003 — May 31, 2003 | 5.75% |
| June 1, 2003 — June 30, 2003 | 6.00% |

ARC 2513B

AUDITOR OF STATE[81]

Adopted and Filed

Pursuant to the authority of Iowa Code section 11.6, subsection 10, the Office of Auditor of State hereby amends Chapter 21, "Filing Fees," Iowa Administrative Code.

The amendment revises the fee structure for filing audits required under the provisions of Iowa Code section 11.6, subsections 1 to 3.

The adopted amendment is identical to that published under Notice of Intended Action in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2384B**. No comments were received on the amendment.

This amendment is intended to implement Iowa Code section 11.6, subsection 10.

This amendment will become effective July 2, 2003.

The following amendment is adopted.

Amend subrule 21.1(2) as follows:

21.1(2) The designated strata and applicable fees are as follows:

| Budgeted Expenditures in Millions of Dollars | Fee Amount |
|---|---------------|
| Under 1 | \$ 75 100 |
| At least 1 but less than 3 | 150 175 |
| At least 3 but less than 5 | 225 250 |
| At least 5 but less than 10 | 375 425 |
| At least 10 but less than 25 | 550 625 |
| 25 and over | 750 850 |

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/28/03.

ARC 2511B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to Iowa Code sections 216.4, 216.5(10) and 216.15(11), the Civil Rights Commission hereby amends Chapter 1, "Rules of Practice," Iowa Administrative Code.

These amendments implement Iowa Code section 216.4, which gives the Commission the authority to adopt rules governing its own meetings. Also, the changes implement the directive of Iowa Code section 17A.3(1)"a" that the agency give a description and set out methods of contacting the agency.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2165B**. A public hearing was held on December 31, 2002. No written comments were received, and no one attended the public hearing. Because the Civil Rights Commission has moved from Maple Street to the Grimes Building, 400 East Fourteenth Street, Des Moines, Iowa, a change was made to the address listed in paragraph 1.1(1)"b."

These amendments will become effective July 2, 2003.

These amendments are intended to implement Iowa Code chapter 216.

The following amendments are adopted.

Amend rule 161—1.1(216) to read as follows:

Amend paragraph **1.1(1)"b"** as follows:

b. Location. The Iowa civil rights commission, hereinafter referred to as "commission," is located on the ~~second floor, 211 East Maple Street first floor, Grimes State Office Building, 400 East 14th Street~~, Des Moines, Iowa 50309 50319; telephone (515)281-4121; toll-free in Iowa only 1-800-457-4416; facsimile transmission (fax) (515) 242-5840; ~~telecommunications device for the deaf (TDD) (515)281-8085~~. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday.

Rescind subrule 1.1(3) and insert the following **new** subrule in lieu thereof:

1.1(3) Electronic attendance of commissioners.

a. Notification. A commissioner wishing to attend the commission meeting by electronic means shall notify the executive director of this intent. The executive director will then take all reasonable measures to ensure that the necessary equipment is available at the site selected for the commission meeting. The commissioner attending by electronic means is responsible for ensuring that adequate equipment is available at the commissioner's location.

b. Public participation. Whenever any commissioners attend by electronic means, public access to the conversation of the commission will be allowed at the location of at least one of the commissioners. Unless good cause requires otherwise, the location where public access to the conversation is provided shall be a location reasonably accessible to the public. If the location is not reasonably accessible to the public, the nature of the good cause justifying inaccessibility shall be stated in the minutes.

c. Electronic attendance of multiple commissioners. If at the time a commissioner notifies the executive director of the intent to attend electronically that commissioner's electronic attendance would mean that four or more commissioners would be attending separately via electronic means, then that commissioner may not attend by electronic means unless the in-person attendance of any four of the commissioners attending the meeting at any of the available meeting sites is impossible or impracticable.

d. Conducting electronic meeting. Whenever four or more commissioners are separately attending a commission meeting by electronic means, the commission shall conduct the meeting in accordance with the following requirements:

(1) The commission shall keep detailed minutes of all discussion, all persons present and all action. The commission shall electronically record all proceedings in the meeting and retain such recordings for no less than one year from the date of the meeting.

(2) The minutes of the meeting shall include a statement explaining why a meeting in person was impossible or impracticable.

(3) The public notice of the meeting shall state the location of the meeting to be the location where public access to the conversation is provided.

[Filed 5/8/03, effective 7/2/03]

[Published 5/28/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/28/03.

ARC 2500B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts Chapter 19, "Attendance Centers," Iowa Administrative Code.

This chapter is adopted pursuant to Iowa Code section 17A.3(1), which requires state agencies to promulgate administrative rules in situations where administrative case law yields guidelines applicable to the regulated public. Specifically, the guidelines regarding the closing of an attendance center have been in the Department's administrative law cases since the case of In re Norman Barker, 1 D.P.I. App. Dec. 145 (1977). The guidelines regarding grade realignment within an attendance center were first published by this agency in McCoy v. Highland Community School District, 8 D.o.E. App. Dec. 1 (1990) and most recently clarified and affirmed in Jacobson v. Nodaway Valley Community School District, 21 D.o.E. App. Dec. 99 (2002).

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2399B**. A public hearing was held on April 22, 2003, and no written or oral comments were received. These rules are identical to those published under Notice.

These rules are intended to implement Iowa Code sections 256.7(5) and 279.11.

These rules shall become effective on July 2, 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 19] is being omitted. These rules are identical to those published under Notice as **ARC 2399B**, IAB 4/2/03.

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

[For replacement pages for IAC, see IAC Supplement 5/28/03.]

ARC 2498B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts amendments to Chapter 21, "Community Colleges," Iowa Administrative Code.

The amendments update the rules governing minimum standards for community college-employed faculty in accordance with 2002 Iowa Acts, chapter 1047 (House File 2394). 2002 Iowa Acts, chapter 1047, eliminates the state licensure requirements for community college faculty through the Board of Educational Examiners and sets forth minimum standards for full-time faculty teaching in arts and sciences and career and technical education.

Notice of Intended Action was published in the April 2, 2003, Iowa Administrative Bulletin as **ARC 2398B**. A public hearing was held on April 25, 2003. No written or oral comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement 2002 Iowa Acts, chapter 1047.

These amendments will become effective July 2, 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 amendments [21.3(1) to 21.3(6)] is being omitted. These amendments are identical to those published under Notice as **ARC 2398B**, IAB 4/2/03.

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

[For replacement pages for IAC, see IAC Supplement 5/28/03.]

ARC 2489B**ENGINEERING AND LAND
SURVEYING EXAMINING
BOARD[193C]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 2, "Fees and Charges," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 19, 2003, as **ARC 2307B**. This amendment is identical to that published under Notice of Intended Action.

This amendment revises the fee structure for engineering and land surveying licensure.

This amendment was adopted by the Board on May 8, 2003.

This amendment shall become effective July 2, 2003.

This amendment is intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14 and 542B.15.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [2.1] is being omitted. This amendment is identical to that published under Notice as **ARC 2307B**, IAB 2/19/03.

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

[For replacement pages for IAC, see IAC Supplement 5/28/03.]

ARC 2504B**IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(17), the Iowa Finance Authority hereby amends Chapter 3, "Multifamily Preservation Loan Program," Iowa Administrative Code.

These amendments revise current Chapter 3 by splitting it into two divisions. Division I of Chapter 3 contains rules pertaining to the multifamily preservation loan program, while Division II consists of rules pertaining to a predevelopment

IOWA FINANCE AUTHORITY[265](cont'd)

loan fund. In addition, these amendments outline the application procedure, loan fund guidelines, and other necessary requirements of the predevelopment loan fund.

Notice of Intended Action was published in the April 2, 2003, Iowa Administrative Bulletin as **ARC 2369B**. No public comment was received on these amendments. The adopted amendments are identical to those published under Notice of Intended Action.

The Authority adopted these amendments on May 7, 2003.

These amendments will become effective on July 2, 2003.

These amendments are intended to implement Iowa Code sections 16.5(17), 16.18(1) and 16.18(2).

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 3] is being omitted. These amendments are identical to those published under Notice as **ARC 2369B**, IAB 4/2/03.

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

[For replacement pages for IAC, see IAC Supplement 5/28/03.]

ARC 2505B**IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(17), the Iowa Finance Authority hereby amends Chapter 15, "Housing Assistance Fund (HAF)," Iowa Administrative Code.

These amendments will expand the available uses of funds granted to local housing trust funds and extend the interest rate reduction under the single family construction loan program to those homes that are purchased by borrowers using the Authority's FirstHome Program.

Notice of Intended Action was published in the April 2, 2003, Iowa Administrative Bulletin as **ARC 2368B**. No public comment was received on these amendments. The adopted amendments are identical to those published under Notice of Intended Action.

The Authority adopted these amendments on May 7, 2003.

These amendments will become effective on July 2, 2003.

These amendments are intended to implement Iowa Code section 16.5(17).

The following amendments are adopted.

ITEM 1. Amend numbered paragraph **15.8(1)"a"(4)"12"** as follows:

12. Interest rate will be based on Fannie Mae loan-out rate, or as determined by the authority. If the house is sold to families whose income is at or below 80 percent of the area median income *or to families using the authority's firsthome program*, the interest rate will be 3 percent for the term of the loan; and the gap financing subsidy grants will be up to an amount of \$15,000 each; and

ITEM 2. Amend subparagraph **15.8(3)"c"(2)** as follows:

(2) The eligible uses for ~~this matching three-year grant grants under this category~~ are to fund programs that serve primarily ~~low-income~~ *lower-income* families and ~~coordinate development activities and services to the homeless and the spectrum of local nonprofit housing providers, including but not limited to programs or projects for construction, rehabilitation, capacity building, technical assistance and public education and other programs and uses that benefit and expand affordable housing.~~

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/28/03.

ARC 2495B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 456A.24(14) and 481A.134, the Natural Resource Commission hereby amends Chapter 15, "General License Restrictions," Iowa Administrative Code.

The Department's adoption of new rule 571—15.13(456A) will allow the Department to carry out the duties of the state pursuant to the Wildlife Violator Compact entered into between the Department and other states that have adopted the Compact. Approximately 18 other states have entered into the Compact at this time.

The purpose of the Wildlife Violator Compact is to ensure that out-of-state hunters and anglers resolve pending enforcement actions through payment of fines or other court resolution. The Compact provides for suspension of licenses by the sportsperson's home state for failure to resolve a pending out-of-state enforcement action. The Compact also provides for reciprocal suspension of violators who are suspended in other states.

Notice of Intended action was published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2388B**. No comments were received during the comment period or at the public hearing held April 22, 2203. There are no changes from the Notice of Intended Action.

This rule is intended to implement Iowa Code section 456A.24(14).

This rule will become effective July 2, 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 this rule [15.13] is being omitted. This rule is identical to the one published under Notice as **ARC 2388B**, IAB 4/2/03.

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

[For replacement pages for IAC, see IAC Supplement 5/28/03.]

ARC 2496B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 52, "Wildlife Refuges," Iowa Administrative Code.

This amendment adds the Pool Slough Wildlife Area to the list of wildlife refuges.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 5, 2003, as **ARC 2339B**. There have been no changes to the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39.

This amendment shall become effective July 2, 2003.

The following amendment is adopted.

Amend subrule **52.1(2)**, paragraph "a," by adding the following **new** entry in alphabetical order:

Pool Slough Wildlife Area Allamakee

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/28/03.

ARC 2494B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsections 455A.5(6) and 456A.24(5), the Natural Resource Commission hereby adopts new Chapter 74, "Forest Land Enhancement Program (FLEP)," Iowa Administrative Code.

This new chapter implements a forestry cost-share program known as the Forest Land Enhancement Program (FLEP). The Forest Land Enhancement Program is established to fulfill the provisions of Title VIII, Subtitle A, Section 8002, of the Farm Security and Rural Investment Act of 2002, which amends the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2102). FLEP will provide funding for conservation tree and shrub planting for reforestation, wildlife habitat establishment, forest riparian buffer establishment, timber stand improvement and other forestry enhancement projects on private land. Availability of funds will vary based upon the federal allocation from the USDA Forest Service. Funding is anticipated through 2007. The Department anticipates receiving between \$140,000 and \$200,000 annually for the state of Iowa. It is also anticipated that additional sources of funding will become available for this program.

This program was developed in cooperation with the Iowa Forest Stewardship Committee during the summer and fall of 2002. The committee includes representatives of forest landowners, forestry businesses, environmental organizations and federal, state and local government agencies.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 5, 2003, as **ARC 2346B**. A public hearing was held on March 25, 2003. These rules are identical to those published under Notice.

These rules are intended to implement Iowa Code sections 455A.13(1) and 456A.24(13).

These rules shall become effective July 2, 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 74] is being omitted. These rules are identical to those published under Notice as **ARC 2346B**, IAB 3/5/03.

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

[For replacement pages for IAC, see IAC Supplement 5/28/03.]

ARC 2497B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 99, "Wild Turkey Fall Hunting by Residents," Iowa Administrative Code.

These amendments change season dates, license quotas, means and method of take and procedures to obtain licenses.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 5, 2003, as **ARC 2344B**. One change has been made from the Notice. Item 5 in the Notice proposed new subrule 99.8(1) and has been withdrawn due to a legislative resolution.

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

These amendments shall become effective July 2, 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 amendments [99.2, 99.3(1), 99.5, 99.9] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2344B**, IAB 3/5/03.

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

[For replacement pages for IAC, see IAC Supplement 5/28/03.]

ARC 2508B**PERSONNEL DEPARTMENT[581]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 97B.15, the Department of Personnel hereby amends Chapter 21, "Iowa Public Employees' Retirement System," appearing in the Iowa Administrative Code.

PERSONNEL DEPARTMENT[581](cont'd)

These amendments exclude wages under other special payment arrangements; remove a sunset date for certain rules governing coverage of contributions to IRC Section 125 cafeteria plans; rescind the subrule regarding emergency refunds as requests for refunds are processed daily; implement the statutory contribution rates for special service members recommended by IPERS' actuary pursuant to Iowa Code sections 97B.49B and 97B.49C; clarify language relating to IPERS options that include contingent annuitants; allow IPERS to rely on additional resources for proof of date of birth; clarify point of contact for benefit calculations; and clarify information provided to IPERS' actuary for member service purchase cost quotes.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2367B**.

A public hearing was held on April 22, 2003, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa. No parties attended the public hearing, and no written comments were received prior to the hearing. These amendments are identical to those published under Notice.

These amendments were prepared after consultation with the IPERS legal, accounting and benefits units.

There are no waiver provisions included in the amendments because the amendments confer benefits or are required by statute.

These amendments will become effective July 2, 2003.

These amendments are intended to implement Iowa Code chapter 97B.

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 [21.4(1), 21.4(4), 21.6(9), 21.8(5), 21.11, 21.24(18)] is being omitted. These amendments are identical to those published under Notice as **ARC 2367B**, IAB 4/2/03.

[Filed 5/9/03, effective 7/2/03]
[Published 5/28/03]

[For replacement pages for IAC, see IAC Supplement 5/28/03.]

ARC 2492B**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue and Finance hereby amends Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXV, No. 11, page 817, on November 27, 2002, as **ARC 2126B**.

Iowa Code section 421.7 requires the Director of the Department of Revenue and Finance to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes arising under Iowa Code Title XVI shall be 7 percent for the calendar year 2003 (0.6 percent per month). The Department will also pay interest at the 7 percent rate on refunds.

This amendment is identical to the one published under Notice of Intended Action.

This amendment will become effective July 2, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code section 421.7.

The following amendment is adopted.

Amend rule 701—10.2(421) by adding the following **new** subrule:

10.2(22) Calendar year 2003. The interest rate upon all unpaid taxes which are due as of January 1, 2003, will be 7 percent per annum (0.6% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2003. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2003. This interest rate of 7 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2003.

[Filed 5/9/03, effective 7/2/03]
[Published 5/28/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/28/03.

ARC 2507B**UTILITIES DIVISION[199]****Adopted and Filed**

Pursuant to Iowa Code sections 17A.4 and 476.2 and 47 U.S.C. § 251(e), the Utilities Board (Board) gives notice that on May 9, 2003, the Board issued an order in Docket No. RMU-02-9, In re: Efficient Use of Telephone Numbering Resources, "Order Adopting Rule." The Board adopted new rule 199 IAC 22.24(476), containing the requirements for communications service providers in Iowa that wish to apply for additional central office codes with the North American Numbering Plan Administrator (NANPA). This rule is intended to implement a process for communications service providers to submit applications for new or additional prefixes or "thousand blocks" to the Board as well as to the NANPA.

Notice of Intended Action for the proposed rule was published in the IAB Vol. XXV, No. 10 (11/13/02), p. 766, as **ARC 2105B**. Written comments were filed on or before December 3, 2002. No request was made for an oral comment hearing on the proposed rule.

Written comments were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and AT&T Communications of the Midwest, Inc., and AT&T Local Services on behalf of TCG Omaha (AT&T). Consumer Advocate's comments supported the proposed rule. AT&T did not support the proposed rule as written and suggested potential revisions to the rule as described below.

AT&T alleged that the proposed rule exceeded the Board's authority under the rules of the Federal Communications Commission (FCC). Specifically, AT&T asserted that, by requiring communications service providers to submit a copy of their NANPA application to the Board two days prior to the date the application is filed with the NANPA, the Board is adding an additional layer of review to the application process, which is not compliant with the FCC. AT&T also asserted that the proposed rule as written would have a minimal impact on number conservation.

UTILITIES DIVISION[199](cont'd)

AT&T suggested that the rule be changed to provide that the application be submitted to the Board at the same time it is filed with the NANPA to remain in accordance with FCC rules. In addition, AT&T suggested that the rule should also be changed to provide that all data contained in the applications be treated as confidential by the Board. The Board has considered AT&T's suggestions and revised the adopted rule to address some of AT&T's concerns.

Under the existing North American Numbering Plan, telephone numbers in Iowa are assigned by central office code, or prefix. In a standard seven-digit local telephone number, the prefix is the first three digits, sometimes referred to as the NXX. Each prefix, or NXX, represents 10,000 potential telephone numbers. Because certain prefixes are unavailable for use as local exchange telephone numbers (such as prefixes starting with a 0 or 1 or special prefixes like 800 or 911), there are only about 750 to 760 prefixes available in any particular area code. Similarly, in area codes participating in thousand block number pooling, the Pooling Administrator (PA) assigns numbering resources in blocks of 1,000 rather than a full NXX code. Those carriers that do not receive numbering resources in thousand blocks will receive numbering resources in full blocks of 10,000.

Area code exhaust occurs when all of the available prefixes are assigned. Before this occurs, the Board must initiate area code relief proceedings to provide additional available prefixes. These relief proceedings are expensive and disruptive processes that should be avoided if possible.

Pursuant to current requirements by the FCC, communications service providers apply to the NANPA for new or "growth" prefixes. Currently, prefixes are assigned by the NANPA at a national rate of approximately 40,000 prefixes per year. Under existing guidelines, the NANPA must approve or reject each application within ten days of the date on which the application is filed.

The FCC has urged state commissions to work cooperatively with the NANPA to help ensure that numbering resources are not prematurely assigned. FCC 00-104, ¶ 75, "Report and Order and Further Notice of Proposed Rule Making," adopted March 17, 2000. To that end, the FCC recommends that state commissions should be notified when a carrier requests numbering resources, and the state commissions then advise the NANPA if the carrier has not been certified or if there are other issues. FCC 00-104, ¶ 94.

The Board's intent in adopting this rule is to avoid situations in which prefixes are assigned to communications service providers in Iowa on the basis of invalid applications. Such an occurrence means that valuable prefixes are wasted on noncompliant services and the projected date of area code exhaustion is accelerated. Therefore, it is in the public interest for each application to be reviewed for compliance with all Iowa requirements in conjunction with the requirements of the NANPA before the application is granted.

In order to effectively fulfill its cooperative role, the Board must receive a copy of each application for a new or additional prefix prior to the time that the application is filed with the NANPA (or the PA, for pooling situations). The Board issued an order on July 24, 2002, in Docket No. NOI-00-3, which established the procedures that communications service providers are to follow when submitting copies of their applications to the Board. The order required carriers to send an executed application to the Board by facsimile transfer or electronic mail two days prior to submission to the NANPA.

While the FCC has stated concerns about the potential delay of the processing of these applications by state commissions, the FCC has not indicated that the information contained in an application should not be submitted to state com-

missions prior to the filing of a formal application. The Board has considered AT&T's concern that the Board's rule serves as a preapplication filter through which carrier number acquisitions must pass. The rule, however, is not a preapplication filter process. Rather, the rule is the Board's implementation of the FCC's request that the Board act in cooperation with the NANPA to see that these applications are processed correctly. The Board needs this brief additional time to review the application and determine whether the communications carrier submitting the application is in compliance with Iowa law. Therefore, the adopted rule will require communications service providers to submit the information that will be the subject of an executed application to the NANPA or the PA for numbering resources to the Board at least two days prior to the date on which the executed application is to be received by the NANPA or the PA.

The Board has also considered AT&T's concern regarding the potential complication that this rule may add to the application process. To address this concern, the Board modified the adopted rule to allow submission of draft applications from communications service providers, as well as executed applications, at least two days prior to the date on which an executed application is to be received by the NANPA or the PA. However, a draft application must contain the identical information that is to be submitted to the NANPA in the executed application; if the information in the executed application is substantially revised, the process must start again.

The Board has also considered AT&T's suggestion regarding the confidential treatment of the information contained in these applications. AT&T points out that the FCC has stated that this information should be treated confidentially. To date, the Board has relied upon 199 IAC 1.9(22) regarding application for confidential treatment when processing this information. However, this process has proven to be cumbersome and inefficient, as this information often needs to be confidential for only a limited time period. In order to address AT&T's concerns and to minimize potential complications to the process, the Board has revised the adopted rule and will automatically hold the information contained in the applications or draft applications for numbering resources confidential for a period of 90 days or until the new codes are entered into the local exchange routing guide (LERG). Once the codes are entered into the LERG, they become publicly available, thereby eliminating the need for continued confidential treatment of the application.

The Board considered including a waiver provision in this rule, but has chosen to rely on the regular waiver rule provisions of 199 IAC 1.3(17A,474,476,78GA,HF2206).

This rule is intended to implement Iowa Code sections 17A.4 and 476.2 and 47 U.S.C. § 251(e).

This rule will become effective July 2, 2003.

The following **new** rule is adopted.

199—22.24(476) Applications for numbering resources.

22.24(1) Application to be filed with the board. Any communications service provider, including but not limited to local exchange carriers, wireless service providers, and paging companies, applying for numbering resources with the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator (PA) shall send a draft application or executed application to the board by facsimile transfer or electronic mail at least two days prior to the date on which the original application is to be received by the NANPA or PA. A draft application shall contain substantially the same information that is to be contained in an executed application. The application may be faxed to (515)281-5329 or elec-

UTILITIES DIVISION[199](cont'd)

tronically mailed to iubrecordscenter@iub.state.ia.us. Electronic submissions shall include "NANPA Application" or "PA Application" in the subject line.

22.24(2) Confidential treatment. The information contained in the draft applications or executed applications for numbering resources shall be held as confidential for a period of 90 days or until the new codes are entered into the local exchange routing guide (LERG), whichever is later.

22.24(3) Content. Each application filed with the board under this rule shall include a reference to this rule and sufficient information to identify the service provider and a contact person.

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/28/03.

ARC 2506B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A, 476.1B, and 476.27 (2003), the Utilities Board (Board) gives notice that on May 2, 2003, the Board issued an order in Docket No. RMU-02-7, In re: Crossing of Railroad Rights-of-Way, "Order Adopting Rules." The Board is adopting a new chapter, 199 IAC 42, to address recent legislation related to the fees and procedures for public utilities crossing railroad rights-of-way with their wires and pipelines. This legislation, Iowa Code section 476.27 (2003), allows for crossing of railroad rights-of-way subject to certain terms and conditions. While the legislation sets a standard crossing fee, that fee can be exceeded if special circumstances exist. In addition, the legislation provides that a railroad and public utility may agree to terms and conditions that differ from those provided for in Iowa Code section 476.27(3) or the rules.

On July 9, 2002, the Board issued an order in Docket No. RMU-02-7 to consider the new chapter. Notice of Intended Action for the proposed rule making was published in IAB Vol. XXV, No. 3 (8/7/02), p. 201, **ARC 1852B**. Written or oral comments were submitted by the Consumer Advocate Division of the Department of Justice, Qwest Corporation, United Cities Gas Company, a division of Atmos Corporation, Iowa-American Water Company, the Small Utility Group, the Joint Utility Group, the Iowa Rural Water Association, the Mahaska Rural Water Association, and the Iowa Railroads. An oral presentation was held on November 5, 2002. Some entities or groups also filed supplemental written comments following the oral presentation.

The adopted rules are the result of an extensive collaboration involving various public utilities, utility-industry groups, and railroads. While much agreement was reached, consensus was not reached in all areas. The adopted rules attempt to reflect agreement where it was reached and, where consensus was not attained, the rules attempt to balance the interests of the railroads and the utilities with the specific language set forth in the legislation. The participants are continuing to attempt to reach agreement on some areas of dispute, particularly specification exhibits. The Board understands a meeting is scheduled in May 2003, to discuss these issues. The Board is also continuing to review certain aspects of the rules and comments and anticipates that there may be a

follow-up rule making in the next few months to propose changes to the adopted rules. However, the Board believes it is important to adopt rules now, rather than renote the entire chapter, so that both railroads and public utilities will have some guidance for the upcoming construction season.

The rules provide that the railroads should file, on or before August 1, 2003, specification exhibits for Board review and approval. If the railroads and utilities reach agreement, the Board may propose amending the rules so that the specification exhibits will be included in the rules.

The Board will not detail here the reasons for the changes from the proposed rules because those reasons have been delineated in the "Order Adopting Rule Making," issued simultaneously with this rule making. This order is available at the Board's Web site, <http://www.state.ia.us/iub>. The order is also available in hard copy for review or purchase at the Board's Records Center, 350 Maple Street, Des Moines, Iowa 50319-0069; telephone (515)281-5563.

The changes to the noticed rules are in response to the comments. The Board finds that no additional notice is required. The Board invites participants to petition the Board for rule changes, particularly if additional agreement can be reached on specification exhibits or other aspects of the rules.

The Board does not find it necessary to adopt a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA, HF2206) is applicable to these rules. In addition, Iowa Code section 476.27 specifically allows a railroad and public utility to agree on different terms.

These rules are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and 476.27.

These rules will become effective July 2, 2003.

The following **new** chapter is adopted.

CHAPTER 42

CROSSING OF RAILROAD RIGHTS-OF-WAY

199—42.1(476) Definitions. The following words and terms, when used in these rules, shall have the meanings set forth in Iowa Code section 476.27: "board," "crossing," "direct expenses," "facility," "public utility," "railroad" or "railroad corporation," "railroad right-of-way," and "special circumstances."

In addition, as used in this chapter, the following definitions shall apply:

"Complainant" means a person who complains to the board by written complaint regarding any of the issues identified in Iowa Code section 476.27(2) or these rules.

"Petitioner" means a person who files a written petition with the board seeking a determination of special circumstances pursuant to Iowa Code section 476.27(4).

"Respondent" means a person against whom a complaint or petition is filed.

199—42.2(476) Applicability and purpose. These rules provide terms and conditions for the crossing of railroad rights-of-way by public utilities. However, these rules shall not prevent a railroad and public utility from negotiating other terms and conditions applicable to a crossing or agreeing to a different dispute resolution mechanism than that provided for in Iowa Code section 476.27 and these rules. These rules do not apply to longitudinal occupancy of railroad right-of-way, but only to the crossing of railroad right-of-way.

199—42.3(476) General notice and specification exhibit requirements and payment of fee.

42.3(1) Notice and exhibit. Anytime a public utility intends to construct a crossing across railroad right-of-way, the

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utility shall submit to the railroad a notification of intent to construct, along with a specification exhibit that shows the location of the crossing and the railroad's property, tracks, and wires that the public utility's facilities will cross. The notice and exhibit shall be submitted to the railroad by certified mail, return receipt requested. The one-time standard crossing fee of \$750, unless otherwise agreed to by the railroad and public utility, shall accompany the notice and exhibit. The public utility shall use its best efforts to submit the specification exhibit on a form provided or approved by the railroad. The specification exhibit constitutes the public utility's warranty that the public utility facilities that are the subject of the exhibit will be constructed and installed as shown on the exhibit. By August 1, 2003, each railroad, either individually or jointly, shall submit for board review and approval proposed specification exhibits for use with notifications of intent to construct. The board must also approve any subsequent revisions or amendments to the forms.

42.3(2) Exhibit—overhead wireline crossings. For overhead wireline crossings, the specification exhibit shall contain, at a minimum, the location of the poles supporting the crossing span and adjoining spans on each side of the crossing span on the proposed facilities; the number, kind, and size of wires; and the clearance between the facilities and any existing railroad tracks, wires, or fiberoptic lines.

42.3(3) Exhibit—underground crossings. For underground crossings, the specification exhibit shall contain, at a minimum, the number, kind, and size of wires, pipes, and conduit and casing to be used, the commodity conveyed, and the depth to which the public utility facilities will be placed below the base of the rail track and at other locations on the right-of-way. Multiple wires to be contained within a single conduit may be combined on a single exhibit and notice of intent to construct. Both cased and uncased natural gas pipeline crossings shall be provided for on the specification exhibit form or forms.

42.3(4) Authorization to commence construction. After 35 days from the mailing of the notice, specification exhibit, and fee, the public utility, absent a claim of special circumstances or objection from the railroad that the information contained in the specification exhibit is inadequate or incomplete, shall be deemed to have authorization to commence construction of the facilities that are the subject of the specification exhibit. In the event the public utility does not commence construction within 120 days from the mailing of the notice or any changes to the specification exhibit, whichever is later, the notice shall expire and the fee may be retained by the railroad. If the public utility subsequently desires to proceed with construction of the facilities subject to the notice, the public utility must again comply with the notice, specification exhibit, and fee requirements of these rules.

42.3(5) Crossing notice and payment of flagging costs. In addition to any other required notice, a public utility, except for emergency repair or maintenance, shall provide the railroad written notice at least ten days prior to commencing any construction, maintenance, or repair of facilities within the railroad's right-of-way. Such notice is to enable the railroad to make any appropriate flagging arrangements. The public utility shall reimburse the railroad for actual flagging expenses within 30 days of receipt of a bill for flagging services.

42.3(6) Securing damages—special circumstances. Pending a board resolution of a claim of special circumstances raised in a petition filed by the railroad pursuant to Iowa Code section 476.27(4) and subrule 42.18(2), a public utility may, upon compliance with these rules and securing the pay-

ment of an amount sufficient for the removal of any facilities constructed by the public utility in a manner approved by the board, proceed with construction unless the board intervenes to prevent construction pursuant to Iowa Code section 476.27(6).

42.3(7) Inductive interference study. If the railroad reasonably determines through its initial review of the specification exhibit and engineering analysis that a proposed public utility facility has a material possibility of posing an induction problem with railroad property, the public utility, if it wishes to proceed with the facility, shall cause a formal inductive interference study to be performed by a qualified engineer approved by the railroad. The public utility shall make and pay for any modifications to the proposed facility, or to the railroad's property, that are necessary to ensure safe and reliable operations of the railroad's property that are recommended by the qualified engineer. No public utility facility that has undergone an inductive interference study pursuant to this subrule shall be energized until the railroad has had an opportunity to conduct any appropriate tests to ensure that, after the facility is energized, there will not be any interference with the operation of the railroad's property. Any appropriate tests shall be conducted by the railroad within 30 days after receipt of a notice from the public utility that the facility is ready to be energized.

199—42.4(476) Emergency notice and repairs.

42.4(1) Notice. In the event a public utility or railroad needs to perform emergency or nonroutine maintenance or repair within a railroad right-of-way and the maintenance or repair may affect the operations of the other entity, immediate notification of the maintenance or repair being performed shall be given.

42.4(2) Notification plan filing. Each railroad and public utility with a facility crossing railroad right-of-way shall establish, and file with the board, a mechanism or plan for receiving emergency notifications 24 hours per day, seven days per week.

42.4(3) Scope of emergency work and reimbursement of expenses. Unless permission from the affected railroad or public utility has been received, the railroad and public utility may only perform maintenance or repair work of their own respective property. If the emergency maintenance or repair performed by the railroad or public utility causes reasonable expenses to be incurred by the other entity, those reasonable expenses shall be reimbursed.

199—42.5(476) Relocation of public utility facilities.

42.5(1) Standard for relocation. The railroad may require that the public utility, at the public utility's expense, relocate facilities on railroad right-of-way whenever such relocation is necessary to accommodate railroad operations. The decision that relocation is required is made solely by the railroad, although the railroad may not act arbitrarily or unreasonably. The public utility shall not have to pay a standard crossing fee for such relocations.

42.5(2) Completion of relocation. In the event relocation of facilities is required, the relocation shall be to a location mutually agreed upon by the railroad and utility, within the railroad right-of-way. The relocation shall be completed within a reasonable period of time.

42.5(3) Statement of reasons. Upon the request of the public utility, the railroad shall provide within 15 days a statement or other supporting documentation indicating the operational reasons for requiring relocation of facilities.

199—42.6(476) Engineering standards for electric and communications lines. These engineering standards apply

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to crossings that do not involve special circumstances such that additional or more stringent engineering standards may be warranted. The determination of such additional or more stringent standards will be determined on a case-by-case basis, according to the procedures in subrule 42.18(2), depending on the facts and circumstances associated with the particular crossing.

42.6(1) General.

a. Except as provided for in this chapter, electric and communications lines crossing railroads shall be constructed in accordance with 199—Chapter 25, the Iowa electrical safety code.

b. Crossings should be made as near as possible at an angle of 90 degrees to the railroad tracks, but in no event shall any crossing be at less than a 60-degree angle to the railroad track.

c. Aboveground facilities at road or pedestrian crossings shall be located or constructed in a manner that minimizes interference with lines of sight for observing oncoming trains.

42.6(2) Additional requirements for overhead crossings.

a. In determining the line height needed to meet the clearance requirements of the Iowa electrical safety code, the height of a rail car shall be assumed to be 23 feet.

b. Electric and communications lines shall be installed with at least 4 feet of clearance above overhead railroad signal and communications lines.

c. The perpendicular distance of poles from the centerline of the tracks shall not be less than the largest of the following:

(1) Unguyed poles shall be located a minimum distance equal to the height of the pole above the ground line plus 10 feet. If guys are installed, they shall be placed in a manner that would prevent the pole from leaning or falling in the direction of the tracks.

(2) Fifty feet near straight tracks, except for industry track where 10 feet is permitted. If located adjacent to curved track, the clearance shall be increased by 1.5 inches per degree of track curvature.

(3) Towers for electric lines capable of operating at 34,500 volts or more shall not be located on railroad right-of-way.

d. Poles shall be located a minimum distance from overhead railroad signal or communications lines equal to the height of the pole above ground line, or poles must be guyed at a right angle away from such lines.

e. Crossings shall not be installed under or within 500 feet of a railroad bridge, or 300 feet from the centerline of a culvert or switch area.

42.6(3) Additional requirements for underground crossings.

a. The minimum depth below the base of the rail shall be 4.5 feet except for fiberoptic cables, which shall be 5.0 feet.

b. The minimum depth at other locations on the right-of-way shall be:

(1) 5.0 feet for fiberoptic cables;

(2) 4.0 feet for conductors operating at more than 750 volts;

(3) 3.0 feet for all other lines.

c. Crossings shall not be installed within 50 feet of the end of a railroad bridge, the centerline of a culvert, or a switch area.

d. Casings must extend at least 30 feet from the centerline of the nearest track, measured at a right angle, except that casings for electrical conductors operating at more than 750 volts shall extend the full width of the right-of-way. At burial depths of less than 15 feet below the track, the casing materi-

al shall be steel or rigid metal conduit. At depths of 15 feet or more, polyvinyl chloride (PVC) casing pipe may be used.

e. Except for the track and ballast area, warning tape shall be installed 1 foot below ground level over conductors operating at more than 750 volts, except that tape is not required for lines installed using horizontal directional drilling.

f. Bored crossings shall not be installed using water jetting or other methods that might leave cavities beneath a railroad embankment. Horizontal directional drilling techniques that use drilling mud are permitted. Pits for boring or drilling crossings shall be beyond the limits of the railroad embankment.

g. Unless otherwise authorized by the railroad, a railroad representative must be present during installation of buried crossings if there are underground railroad signal lines in the vicinity of the crossing.

199—42.7(476) Engineering standards for pipelines.

These engineering standards apply to crossings that do not involve special circumstances such that additional or more stringent engineering standards may be warranted. The determination of such additional or more stringent standards will be determined on a case-by-case basis, according to the procedures in subrule 42.18(2), depending on the facts and circumstances associated with the particular crossing.

42.7(1) General.

a. Except as provided for in this chapter, pipelines crossing railroads shall be constructed in accordance with Part 5, "Pipelines," of the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering – 2001.

b. For pipelines subject to 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline," or 49 CFR Part 195, "Transportation of Hazardous Liquids by Pipeline," the appropriate federal standard shall control for pipeline marker signs, valves, corrosion control, welding and weld testing, and pressure testing. The design stress level in such pipelines shall not exceed that permitted by the appropriate federal standard.

c. Polyethylene (PE) pipe may be used as carrier pipe for natural gas pipelines. Polyethylene and polyvinyl chloride (PVC) pipe may be used as carrier pipe for water and wastewater. Such pipe shall be manufactured of materials approved for its intended use by an appropriate standards organization.

d. Slip jointed carrier pipe may be used only for encased water or wastewater pipelines, and the ends of such casings shall be oriented such that drainage from any internal leakage will not endanger the railroad embankment.

e. Casings of material other than steel may be used with railroad company approval.

f. Cathodic protection test boxes located on railroad right-of-way shall be attached to casing vents or installed flush with the ground surface.

42.7(2) Installation methods.

a. Pipe shall be installed using boring, drilling, or jacking methods. Open cut crossings are permitted only with the specific authorization of the railroad company.

b. Pits for boring or jacking shall not disturb the railroad embankment and shall be located at least 30 feet from the track centerline where practical. Pits shall be of the minimum size necessary.

c. Bored crossings shall not be installed using water jetting or other drilling methods that might leave cavities beneath a railroad embankment. Horizontal directional drilling techniques that use drilling mud are permitted.

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d. Pipe or casing shall be installed with at least 1 foot of separation from any other pipe or wire in the right-of-way.

e. When boring for pipe greater than 20 inches in diameter is proposed, and the pipe would be installed less than 10 feet below the base of the rail, if the railroad has knowledge of soil conditions in the vicinity which could lead to deterioration of track support if the soil is disturbed, the railroad company may require that a geotechnical study be performed by the public utility to determine if the proposed crossing site is undesirable or requires special construction methods or monitoring.

f. For unusually large pipeline crossings that do not involve special circumstances, or for crossings where geotechnical study has identified potentially destabilizing soil conditions, the railroad company may require that a railroad representative be present during installation, and may also require the presence of a survey crew to monitor the tracks for any change in alignment.

199—42.8(476) Liability. Each railroad and public utility shall maintain and repair its respective property within the railroad right-of-way, and the railroad and public utility shall bear responsibility for each person's own acts and omissions, except the public utility shall be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy.

199—42.9(476) Insurance. Unless otherwise agreed upon by the railroad and public utility, the public utility shall maintain, or cause to be maintained, the following minimum insurance coverage with respect to each railroad crossing:

42.9(1) General public liability insurance with limits of not less than \$500,000 for injury or death of a single person, or not less than \$1 million for any one accident, and not less than \$250,000 per accident for property damage. The exclusion or limitations for railroads shall be removed.

42.9(2) Comprehensive automobile liability insurance with limits of not less than \$500,000 for injury or death of a single person, or not less than \$1 million for any one accident, and not less than \$250,000 for property damage.

42.9(3) Excess liability coverage with limits of not less than \$5 million.

42.9(4) Railroad protective liability insurance with a combined single limit of \$4 million per occurrence and \$6 million aggregate. Such coverage may be provided by a blanket insurance policy, provided that the coverage, including the coverage limits, applies to each individual crossing on each individual railroad.

42.9(5) The coverage in 42.9(1) through 42.9(3) above must be by blanket insurance policies covering other property or risks, or self-insurance. In the event the public utility desires to self-insure, it must maintain a minimum long-term rating of A- and net assets of not less than \$100 million, unless the railroad agrees to different amounts. If the public utility's long-term rating is lowered below an A- rating, the public utility will provide commercial insurance as required in this rule, and will notify the railroad that its long-term rating was lowered below A-.

42.9(6) The coverage in 42.9(1) through 42.9(4) must be in place prior to the commencement by the public utility of any work within the railroad's right-of-way in order to secure payment for any damages for which the public utility bears responsibility.

199—42.10(476) Removal of equipment. Upon completion of any facility, the public utility shall remove, or cause to be removed, all tools, equipment, or other property used in the construction and, if railroad property was moved or disturbed, restore that property to the same condition it was in prior to being moved or disturbed.

199—42.11(476) Assignment. The public utility may assign or otherwise transfer any rights to cross railroad right-of-way to any financially responsible entity controlled by, controlling, or under common control with the public utility or to any entity into or with which the public utility is merged or consolidated or which acquires ownership or control of all or substantially all of the transmission assets of the public utility. Notice of the assignment or transfer shall be given to the railroad within 30 days. No other transfer or assignment may take place without the written permission of the railroad, which permission shall not be unreasonably withheld.

199—42.12(476) Prohibition against mechanic's liens. The public utility shall not create, permit, or suffer any mechanic's lien or other lien of any kind or any nature to be created or enforced against the railroad's property for any work performed by the public utility in connection with its facilities that are located in the railroad's right-of-way. The railroad shall not create, permit, or suffer any mechanic's lien or other lien of any kind or any nature to be created or enforced against the public utility's property located in the railroad's right-of-way for any work performed by the railroad in connection with the railroad's facilities.

199—42.13(476) Taxes. The public utility shall promptly pay or discharge all taxes and charges levied upon its facilities located in the railroad's right-of-way. Where any such tax or charge may not be separately made or assessed to the public utility, but is included in the taxes or charges assessed to the railroad, the public utility shall pay to the railroad an equitable portion of such taxes determined by the value of the public utility's facilities located on railroad right-of-way as compared with the entire value of the railroad property.

199—42.14(476) Protection of signal systems. Prior to penetrating the surface of any railroad right-of-way, the public utility shall contact the railroad to determine if any of the railroad's signal systems are located in the area. If signal systems are located in the area, the public utility, at its expense, shall arrange for a cable locator and make arrangements for relocation or other protection of the signal system. The public utility shall also contact Iowa One-Call for locating other underground facilities and shall comply with all other applicable statutes, regulations, and rules pertaining to such underground facilities.

199—42.15(476) Safety regulations. The public utility shall ensure compliance with all applicable local, state, and federal safety rules and regulations during the time any work is being performed on a facility within the railroad's right-of-way. Any personal injury arising during work being performed on a facility shall be promptly reported by the public utility to the railroad.

199—42.16(476) Recording. The public utility, at its own expense, may record a memorandum of its rights pursuant to Iowa Code section 476.27 and these rules. A legal description of the crossing that has been approved by both the railroad and public utility shall be attached to the memorandum. Upon termination of the public utility's rights, the public utility shall file an appropriate document to evidence such termination.

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199—42.17(17A,476) Complaints and petitions for relief—general information. These rules are promulgated under Iowa Code chapter 17A and Iowa Code section 476.27 as guides for procedures when railroads or public utilities file with the board complaints regarding crossings pursuant to Iowa Code section 476.27(2)“a”(9) or petitions for relief pursuant to Iowa Code section 476.27(4). The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, any of these rules, unless otherwise provided by law, may be waived by the board or its designated presiding officer pursuant to rule 199—1.3(17A,474,476,78GA,HF2206). The board recognizes that the parties will ordinarily require expedited procedures and a swift decision. Therefore, any procedural rules in 199—Chapter 7 that are in conflict with these rules do not apply to contested cases under this chapter.

199—42.18(17A,476) Filing of complaint or petition.

42.18(1) Complaints. A railroad or public utility that has a complaint regarding any of the issues identified in Iowa Code section 476.27(2) that cannot be resolved without intervention by the board may file a complaint with the board. The complainant must serve the other railroad or public utility involved and the consumer advocate, either in person or by overnight delivery, on the same day the complaint is filed with the board. The complaint must be in writing and must include the following:

- a. The name, address, telephone number, and contact person for the complainant and the complainant's attorney, if any;
- b. The basis for the board's jurisdiction over the matter;
- c. A statement of the complainant's position and a detailed discussion of the facts that support the complainant's position, including a description of the issues involved, the resolution requested, and the facts supporting the resolution requested;
- d. The particular provisions of the statutes and rules involved;
- e. A description of the attempts made to informally resolve the complaint;
- f. All documentation relied on to support the facts alleged in the complaint and the requested resolution; and
- g. The name, address, telephone number, and contact person and attorney, if any, for the other railroad or public utility involved and a statement that the complaint was served on the other railroad or public utility involved and the consumer advocate, the method of service, and the date served.

42.18(2) Petitions for relief. A railroad or public utility that believes special circumstances exist for a particular crossing pursuant to Iowa Code section 476.27(4) may file a petition for relief with the board if the railroad and the public utility have been unable to resolve their differences without intervention by the board. The petitioner must serve the other railroad or public utility involved and the consumer advocate, either in person or by overnight delivery, on the same day the petition is filed with the board. The petition must be in writing and must include the following:

- a. The name, address, telephone number, and contact person for the petitioner and the petitioner's attorney, if any;
- b. The basis for the board's jurisdiction over the matter;
- c. A statement of the petitioner's position and a detailed discussion of the facts that support the petitioner's position, including a description of the issues involved, why special circumstances exist for the particular crossing, the relief requested, and the facts supporting the relief requested;

d. The particular provisions of the statutes and rules involved;

e. A description of the attempts made to informally resolve the issues involved in the petition;

f. All documentation relied on to support the facts alleged in the petition and the requested relief; and

g. The name, address, telephone number, contact person and attorney, if any, for the other railroad or public utility involved and a statement that the petition was served on the other railroad or public utility involved and the consumer advocate, the method of service, and the date served.

199—42.19(17A,476) Presiding officer. The presiding officer who conducts the contested case hearing on the complaint or petition may be one or more members of the board or a qualified person designated by the board. The presiding officer has the authority granted by the board as specified in 199—subrule 7.1(4) and given by statute.

199—42.20(17A,476) Answer. Upon receipt of a complaint filed pursuant to subrule 42.18(1), or a petition for relief filed pursuant to subrule 42.18(2), the railroad or public utility must file an answer with the board. The railroad or public utility must serve the answer upon the other railroad or public utility involved and the consumer advocate, either in person or by overnight delivery, on the same day the answer is filed with the board. The answer must be filed within ten days of the date of service of the complaint or petition.

42.20(1) The answer must be in writing and must include the following, at a minimum:

- a. The name, address, telephone number, and contact person for the respondent and the respondent's attorney, if any;
- b. An admission or denial of each allegation in the petition;
- c. A statement of the respondent's position and a detailed discussion of the facts that support the respondent's position, including a description of the issues involved, the resolution or relief requested, and the facts supporting the resolution or relief requested;
- d. A description of the attempts made to informally resolve the complaint or the issues involved in the petition;
- e. All documentation relied on to support the facts alleged in the answer and the requested resolution or relief; and
- f. A statement that the answer was served on petitioner or complainant and the consumer advocate, the method of service, and the date served.

42.20(2) Failure to file a timely answer may be deemed a default and, upon motion and absent objection by the consumer advocate, the resolution or relief requested by the moving party may be granted. On motion and for good cause shown, the presiding officer may set aside a default order. The motion to set aside must be filed promptly, and in no case more than ten days after issuance of the default order.

199—42.21(17A,476) Parties and appearances. The parties include the petitioner or complainant, the respondent, the consumer advocate, and any intervenors. Each party must file a written appearance at the earliest possible time identifying one person upon whom the board and the other parties may serve all orders, correspondence, and other documents.

199—42.22(17A,476) Procedural order and notice of hearing. Upon receipt of a complaint or petition filed pursuant to rule 199—42.18(17A,476), the presiding officer will prepare and issue a procedural order and notice of hearing. Prefiled testimony will not be used unless deemed necessary by the presiding officer, or unless requested by the railroad

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and public utility involved or the consumer advocate. In scheduling the hearing, the presiding officer will consider the schedules of the parties involved and will schedule the hearing as soon as possible. However, the hearing will not be scheduled earlier than seven days after the answer is due to be filed. The procedural order and notice of hearing will be served upon the parties by ordinary mail.

199—42.23(17A,476) Discovery. Discovery procedures available to parties in civil actions are available to the parties. However, because of the expedited nature of these proceedings, all responses must be given within five days of receipt of any request, and all discovery requests must be delivered so that discovery is completed at least five days prior to the date set for hearing. Parties must make good-faith efforts to resolve discovery disputes before filing any motion relating to discovery.

199—42.24(17A,476) Hearing procedures.

42.24(1) All hearings will be recorded either by mechanized means or by certified shorthand reporters. All testimony will be taken under oath or affirmation.

42.24(2) If a party fails to appear at a hearing after proper service of the notice of hearing, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. The parties will be notified of the decision by ordinary mail. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer may vacate the decision and, after proper service of notice, conduct another hearing and issue a decision.

42.24(3) The presiding officer shall maintain the decorum of the hearing, and may refuse to admit, or may expel, anyone whose conduct is disorderly, contemptuous, or disruptive.

42.24(4) Subject to terms and conditions set by the presiding officer, each party has the right to introduce evidence, cross-examine witnesses, present evidence in rebuttal, and present oral argument. The presiding officer will determine the order for the presentation of evidence. Prior to or at the hearing, the parties must alert the presiding officer if circumstances exist that require expedited issuance of the decision.

42.24(5) A party that wishes to present a brief must file it prior to or at the hearing.

42.24(6) A party that wishes a shortened appeal time must make a motion at the hearing. If there are no objections and there are no issues that indicate the need for a 15-day appeal period, the presiding officer may shorten the time for appeal set forth in 199—subrule 7.8(2).

199—42.25(17A,476) Decision. The presiding officer will issue a decision as soon as possible after the conclusion of the hearing. If the board issues the decision, it is final agency action. If a single presiding officer issues the decision, it is a proposed decision, and the rules applicable to appeals from the decision of a presiding officer at rule 199—7.8(476) apply, except that the appeal time may be shortened at the discretion of the presiding officer, and all times set forth in rule 199—7.8(476) may be shortened at the discretion of the board.

These rules are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and 476.27.

[Filed 5/9/03, effective 7/2/03]

[Published 5/28/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/28/03.



HOUSE JOINT RESOLUTION 5

* A JOINT RESOLUTION

TO NULLIFY ADMINISTRATIVE RULES OF THE DEPARTMENT OF NATURAL RESOURCES CONCERNING METHODS OF TAKING WILD TURKEY AND DEER AND PROVIDING AN EFFECTIVE DATE.

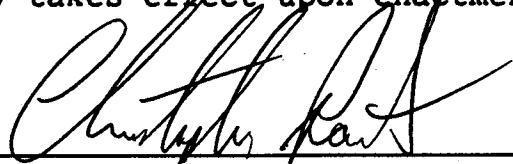
BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. 571 Iowa administrative code, rule 98.2, subrule 1, paragraph b, subparagraph (2), last sentence, is nullified.

Sec. 2. 571 Iowa administrative code, rule 106.7, subrule 1, paragraph b, last sentence, is nullified.

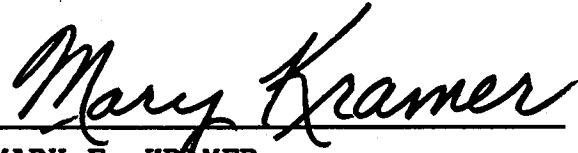
House Joint Resolution 5, p. 2

Sec. 3. EFFECTIVE DATE. This joint resolution, being deemed of immediate importance, takes effect upon enactment.



CHRISTOPHER C. RANTS

Speaker of the House



MARY E. KRAMER

President of the Senate

I hereby certify that this joint resolution originated in the House and is known as House Joint Resolution 5, Eightieth General Assembly.



MARGARET THOMSON

Chief Clerk of the House



SENATE JOINT RESOLUTION 5

A JOINT RESOLUTION

NULLIFYING AMENDMENTS TO ADMINISTRATIVE RULES OF THE ENVIRONMENTAL PROTECTION COMMISSION OF THE DEPARTMENT OF NATURAL RESOURCES RELATING TO AMMONIA AND HYDROGEN SULFIDE AMBIENT AIR REGULATIONS AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. The amendments to 567 Iowa administrative code, rule 28.1, adopted on April 21, 2003, are nullified.

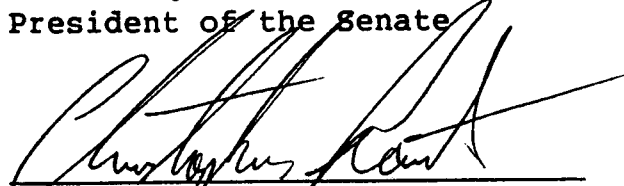
Sec. 2. 567 Iowa administrative code, rule 28.2, adopted on April 21, 2003, is nullified.

SENATE JOINT RESOLUTION 5

Sec. 3. EFFECTIVE DATE. This Joint Resolution, being deemed of immediate importance, takes effect upon enactment.


MARY E. KRAMER

President of the Senate


CHRISTOPHER C. RANTS

Speaker of the House

I hereby certify that this joint resolution originated in the Senate and is known as Senate Joint Resolution 5, Eightieth General Assembly.


MICHAEL E. MARSHALL

Secretary of the Senate

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Department of General Services
Hoover State Office Building, Level A
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