



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>
6	Friday, August 29, 2003	September 17, 2003
7	Friday, September 12, 2003	October 1, 2003
8	Friday, September 26, 2003	October 15, 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

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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 its regular, statutory meeting on Tuesday, September 9, 2003, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Procurement of goods and services of general use; purchasing procedures for state agencies;
 special rules for the acquisition of data processing equipment, services, or software;
 centralized purchasing, rescind 401—chapters 7 to 9; adopt 11—chapter 105, Notice **ARC 2708B** 8/20/03

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Iowa organic program, 47.2, 47.3(2)“a” and “b,” 47.3(5)“a” and “b,” 47.3(5)“c”(3),
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 Registration of exhibitions involving poultry, 60.4, Filed **ARC 2693B** 8/20/03
 Low pathogenic avian influenza (PLAID), 64.1, 64.185 to 64.192, Notice **ARC 2694B** 8/20/03

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 Physician loan payments program, rescind ch 23, Filed **ARC 2666B** 8/6/03
 Chiropractic graduate student forgivable loan program, ch 32, Filed **ARC 2665B** 8/6/03
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- Electronic delivery of accident and health group insurance certificates, 35.8, Filed ARC 2678B 8/6/03

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810.5, 811.1, 820.2 to 820.5, ch 821, 830.2, 830.3(2), 830.3(4), 830.4(2),
831.3, 831.10(1), Filed ARC 2661B 8/6/03

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Customer rights and remedies to avoid disconnection,
19.4(15)"h"(3), 20.4(15)"h"(3), Filed ARC 2681B 8/6/03
- Intrastate access service charges, 22.14(2)"d,"
Notice ARC 2680B 8/6/03

WORKFORCE DEVELOPMENT DEPARTMENT[871]

- Claims and benefits, 24.1, 24.1(1), 24.1(12)“b,” 24.1(25), 24.1(25)“b”(2), (8), (9), (12) and (22), 24.1(52), 24.1(67), 24.1(68)“a,” 24.1(78), 24.1(89), 24.1(113)“a,” 24.1(115), 24.2(1)“a”(1), 24.2(1)“b,” 24.2(1)“b”(8) and (9), 24.2(1)“c”(1), (3), (5) and (6), 24.2(1)“e” and “g,” 24.2(2)“a,” “b” and “d,” 24.2(2)“e”(3), 24.2(3)“a” and “b,” 24.2(4)“a,” 24.3(1), 24.3(3) to 24.3(6), 24.4, 24.4(1) to 24.4(3), 24.5(1), 24.5(1)“a,” 24.5(2), 24.5(2)“f,” 24.5(3), 24.5(4), 24.8(1)“a,” 24.8(2)“a” and “d,” 24.8(3)“a” and “b,” 24.9(2)“a,” 24.11(1), 24.11(2)“a” and “b,” 24.11(3), 24.11(3)“a,” 24.11(4)“a,” “c,” “d” and “g,” 24.11(6)“b,” 24.11(8), 24.13(1), 24.13(4)“i,” 24.17(1), 24.22(2)“i”(3), 24.22(2)“m,” 24.22(3)“a”(4), 24.22(3)“b,” “e” and “f,” 24.22(3)“f”(1), (2) and (4), 24.22(3)“g” to “i,” 24.23(13), 24.23(14), 24.23(20), 24.23(21), 24.23(32), 24.23(35), 24.23(36), 24.23(38), 24.23(39), 24.24(1)“b,” 24.24(5), 24.24(6), 24.24(16), 24.28(5), 24.28(8), 24.29(1), 24.29(3), 24.31(2), 24.31(6), 24.32(3)“b,” 24.33(2)“a” to “c,” “e,” “f,” “i,” “j,” “m” and “p,” 24.33(3)“a” and “b,” 24.34(6), 24.34(7)“a” to “c,” 24.35(1), 24.35(2), 24.35(2)“b” to “d,” 24.35(3), 24.36(1), 24.36(2), 24.37(1)“b”(1), (2) and (5), 24.37(1)“e”(1) and (2), 24.37(1)“f”(2), 24.38(1)“a” and “e,” 24.40(1), 24.42, 24.46(1), 24.46(5)“a,” 24.46(5)“c”(4), 24.47, 24.50(1) to 24.50(5), 24.52(8), 24.52(12), 24.58, 24.58(4), 24.59(5), 24.59(6), 24.60(2)“b” and “d,” Filed ARC 2671B 8/6/03
- Benefit payment control; public records and fair information practices, 25.1, 25.3(1), 25.4(1), 25.4(3), 25.4(5), 25.5, 25.5(2) to 25.5(6), 25.6(4), 25.6(5), 25.6(7), 25.7(1) to 25.7(4), 25.8(1)“c” and “d,” 25.9(2)“c”(2), 25.9(3)“f,” 25.9(4), 25.9(7), 25.9(9), 25.10(1), 25.10(1)“b,” 25.10(2), 25.11(4), 25.12(2), 25.13(1), 25.13(2), 25.13(3)“a” and “b,” 25.13(3)“b”(2), 25.13(3)“c,” “d” and “f,” 25.13(4)“b”(2) and (3), 25.13(4)“c,” 25.16(4), 42.12(2)“j,” Notice ARC 2696B 8/20/03

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2007.

Senator Jeff Angelo
808 West Jefferson
Creston, Iowa 50801

Representative Danny Carroll
244 400th Avenue
Grinnell, Iowa 50112

Senator Michael Connolly
3458 Daniels Street
Dubuque, Iowa 52002

Representative George Eichhorn
3533 Fenton Avenue
Stratford, Iowa 50249

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

Representative Marcella R. Frevert
P.O. Box 324
Emmetsburg, Iowa 50536

Senator Paul McKinley
Route 5, Box 101H
Chariton, Iowa 50049

Representative David Heaton
510 East Washington
Mt. Pleasant, Iowa 52641

Senator Donald Redfern
415 Clay Street
Cedar Falls, Iowa 50613

Representative Mark Kuhn
2667 240th Street
Charles City, Iowa 50616

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

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

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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ADMINISTRATIVE SERVICES DEPARTMENT[11]

Procurement of goods and services of general use, rescind 401—chs 7 to 9; adopt 11—ch 105 IAB 8/20/03 ARC 2708B	General Services Director’s Conference Room Level A Hoover State Office Bldg. Des Moines, Iowa	September 11, 2003 11 a.m.
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CREDIT UNION DIVISION[189]

Procedure for adoption of rules, ch 4 IAB 8/6/03 ARC 2679B	Conference Room, Suite 370 200 E. Grand Des Moines, Iowa	August 26, 2003 2:30 p.m.
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Value-added agricultural products and processes financial assistance program, amendments to ch 57 IAB 8/6/03 ARC 2674B	Second Floor Northwest Conference Rm. 200 E. Grand Des Moines, Iowa	August 27, 2003 1 p.m.
New jobs and income program, amendments to ch 58 IAB 8/6/03 ARC 2675B	Main Conference Room 200 E. Grand Des Moines, Iowa	August 27, 2003 2 to 3 p.m.
New capital investment program, ch 64 IAB 8/6/03 ARC 2676B	Main Conference Room 200 E. Grand Des Moines, Iowa	August 27, 2003 3 to 4 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

Endorsement for PK-12 principal and PK-12 supervisor of special education, 14.142(1), 14.142(2) IAB 8/6/03 ARC 2669B	Room 2 South Grimes State Office Bldg. Des Moines, Iowa	September 9, 2003 3 p.m.
Paraeducator certificates—competencies, school library media concentration, 22.6(5), 22.7, 22.13(1) IAB 8/20/03 ARC 2715B	Room 3 South Grimes State Office Bldg. Des Moines, Iowa	September 24, 2003 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Concrete standards for formed manure storage structures, 65.15(14) IAB 8/20/03 ARC 2716B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 11, 2003 1 p.m.
Waste tire management—authority for enforcement actions and penalties, 117.1 to 117.8 IAB 8/20/03 ARC 2717B	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 10, 2003 10 a.m.

HUMAN SERVICES DEPARTMENT[441]

Adoption subsidy program, 130.3(3), 201.1, 201.3 to 201.6 IAB 8/20/03 ARC 2701B	DHS Conference Rm., Second Floor 126 S. Kellogg St. Ames, Iowa	September 10, 2003 9:30 a.m.
	Seventh Floor Conference Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	September 10, 2003 2 p.m.
	ICN Room 417 E. Kanessville Blvd. Council Bluffs, Iowa	September 10, 2003 10 a.m.
	Conference Rooms 605A and 605B Scott County Administrative Center 428 Western Ave. Davenport, Iowa	September 10, 2003 1 p.m.
	Conference Room 105 City View Plaza 1200 University Des Moines, Iowa	September 12, 2003 9 a.m.
	Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	September 10, 2003 9 a.m.
	Third Floor Conference Room J Trosper-Hoyt Bldg. 822 Douglas St. Sioux City, Iowa	September 10, 2003 1 p.m.
	Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	September 11, 2003 10 a.m.

MEDICAL EXAMINERS BOARD[653]

Standards of practice and principals of medical ethics, 13.7, 13.10, 13.20, 13.21; rescind ch 18 IAB 8/20/03 ARC 2707B	Suite C 400 SW Eighth St. Des Moines, Iowa	September 9, 2003 4 p.m.
Iowa physician health committee, 14.2, 14.3, 14.5, 14.7(1), 14.9(3), 14.10, 14.11 IAB 8/20/03 ARC 2704B	Suite C 400 SW Eighth St. Des Moines, Iowa	September 9, 2003 2:30 p.m.
Physician supervision of a physician assistant, 21.1 to 21.5 IAB 8/20/03 ARC 2705B	Suite C 400 SW Eighth St. Des Moines, Iowa	September 9, 2003 2 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Barber examiners, amendments to chs 20 to 24; ch 25; 26.1 IAB 8/20/03 ARC 2703B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 10, 2003 9 to 11 a.m.
Administration of conscious sedation by podiatrists, 222.3(2), 223.1 to 223.4 IAB 8/6/03 ARC 2672B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 26, 2003 9 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Birth defects institute, 4.2, 4.3, 4.6 IAB 8/6/03 ARC 2683B (ICN Network)	ICN Conference Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	August 26, 2003 11 a.m. to 12 noon
	Kimberly Center 1002 W. Kimberly Davenport, Iowa	August 26, 2003 11 a.m. to 12 noon
	Clear Creek-Amana High School 311 W. Marengo Rd. Tiffin, Iowa	August 26, 2003 11 a.m. to 12 noon
Immunization requirements for attendance at elementary or secondary schools or licensed child care centers, 7.1 to 7.11 IAB 8/6/03 ARC 2684B	Conference Room 518, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa	August 26, 2003 8:30 to 10:30 a.m.
Varicella vaccine required for enrollees in child care centers and schools, 7.4 IAB 8/6/03 ARC 2653B (See also ARC 2652B)	Conference Room 518, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa	August 26, 2003 8:30 to 10:30 a.m.

REAL ESTATE COMMISSION[193E]

Reduction of license fees, 9.1 IAB 8/6/03 ARC 2673B	Second Floor Conference Room 1920 SE Hulsizer Ankeny, Iowa	August 26, 2003 10 a.m.
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TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Purchasing, 5.1 to 5.4, 5.12, 5.13, 5.15, 5.17 to 5.19 IAB 8/20/03 ARC 2697B	Thompson Conference Room Building W-4 Camp Dodge Johnston, Iowa	September 9, 2003 1 p.m.
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TRANSPORTATION DEPARTMENT[761]

Iowa transportation map, ch 28 IAB 8/20/03 ARC 2688B	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	September 11, 2003 10 a.m. (If requested)
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TRANSPORTATION DEPARTMENT[761] (Cont'd)

Utility accommodation, ch 115 IAB 8/6/03 ARC 2662B	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	August 28, 2003 10 a.m. (If requested)
Interstate registration and operation of vehicles—electronic information, 500.24 IAB 8/20/03 ARC 2689B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	September 11, 2003 1 p.m. (If requested)
Regulations applicable to carriers, 520.1, 520.5, 520.6 IAB 8/20/03 ARC 2690B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	September 11, 2003 10 a.m. (If requested)

UTILITIES DIVISION[199]

Intrastate access service charges, 22.14(2) IAB 8/6/03 ARC 2680B	Hearing Room 350 Maple St. Des Moines, Iowa	September 23, 2003 10 a.m.
Iowa broadband initiative, ch 43 IAB 7/23/03 ARC 2620B	Hearing Room 350 Maple St. Des Moines, Iowa	October 21, 2003 10 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Benefit payment control, amendments to chs 25, 42 IAB 8/20/03 ARC 2696B	1000 E. Grand Ave. Des Moines, Iowa	September 9, 2003 9:30 a.m.
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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:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
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 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
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 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]
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 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
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 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]
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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]
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PUBLIC SAFETY DEPARTMENT[661]
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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]

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	TYPES OF PROJECTS	E-Grant Application DUE DATE
Iowa Homeland Security and Emergency Management Division	Pre-Disaster Mitigation Competitive (PDM) Grant for Fiscal Year (FY) 2003 Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA)	<p>All Applicants must be participating in the NFIP: If they have been identified through the NFIP as having a Special Flood Hazard Area (SFHA) (a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) has been issued).</p> <p>The community must not be on probation, suspended or withdrawn from the NFIP.</p>	<ul style="list-style-type: none"> • Other State Agencies and Local Governments • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, Authorized Tribal Organizations, and Alaska Native villages • Private non-profit organizations are not eligible to apply as sub-applicants; however, they may request a local government to submit an application for their proposed activity on their behalf. • All applicants and sub-applicants must be participating in the NFIP if they have been identified through the NFIP as having a Special Flood Hazard Area (SFHA) (a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) has been issued. The Community must not be on probation, suspended or withdrawn from the NFIP. • Applicants must complete an application through the Electronic Grant (e-Grants) System. To learn more about the e-grant system please refer to FEMA's Mitigation e-Grants Management System https://portal.fema.gov. 	<p>National Priority: Projects that address NFIP repetitive flood loss properties</p> <p>Eligible Project Types</p> <ul style="list-style-type: none"> • Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity; • Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, floodproofing, storm shutters, hurricane clips); • Minor structural hazard control or protection projects that may include vegetation management, stormwater management (e.g., culverts, floodgates, retention basins), or shoreline/landslide stabilization; and • Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system. • All State or Local requirements must be met where applicable. 	September 29, 2003

E-Grant Application and guidance may be obtained by contacting:

Dennis Harper

State Hazard Mitigation Officer

or

Bonnie Rieder

Grants Fiscal Specialist

Iowa Homeland Security and Emergency Management Division

Des Moines, Iowa 50319-0113 Ph: 515-281-3231

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	TYPES OF PROJECTS	E-Grant Application DUE DATE
Iowa Homeland Security and Emergency Management Division	Pre-Disaster Mitigation Competitive (PDM) Grant for Fiscal Year (FY) 2003 Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA)	All Applicants must be participating in the NFIP: If they have been identified through the NFIP as having a Special Flood Hazard Area (SFHA) (a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) has been issued). The community must not be on probation, suspended or withdrawn from the NFIP.	<ul style="list-style-type: none"> • Other State Agencies and Local Governments • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, Authorized Tribal Organizations, and Alaska Native villages • Private non-profit organizations are not eligible to apply as sub-applicants; however, they may request a local government to submit an application for their proposed activity on their behalf. • All applicants and sub-applicants must be participating in the NFIP if they have been identified through the NFIP as having a Special Flood Hazard Area (SFHA) (a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) has been issued. The Community must not be on probation, suspended or withdrawn from the NFIP. • Applicants must complete an application through the Electronic Grant (e-Grants) System. To learn more about the e-grant system please refer to FEMA's Mitigation e-Grants Management System https://portal.fema.gov. 	<p>National Priority: Communities with NFIP repetitive flood loss that address those properties in their risk assessment and plan development.</p> <p>Eligible Project Types</p> <ul style="list-style-type: none"> • Mitigation Planning Activities, including the development of risk assessments for mitigation plans, planning assistance and delivery of planning workshops may be submitted for approval through the competitive process to develop State, Tribal, and local multi-hazard mitigation plans that meet planning criteria outlined in 44 CFR Part 201 pursuant to §322 of the Stafford Act. • Countywide or multi-jurisdictional plans may be submitted for funding, but multi-jurisdictional plans must be adopted by all jurisdictions covered by the plan. Mitigation planning activities must focus primarily on natural hazards but also may address hazards caused by non-natural forces. • Eligible Mapping Activities must be completed as part of a risk assessment and may not exceed 30 percent of the total funds awarded for each planning application. • All State or Local requirements must be met where applicable. 	September 29, 2003

E-Grant Application and guidance may be obtained by contacting:

Dennis Harper

State Hazard Mitigation Officer

or

Bonnie Rieder

Grants Fiscal Specialist

Iowa Homeland Security and Emergency Management Division

Des Moines, Iowa 50319-0113 Ph: 515-281-3231

ARC 2708B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****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 2003 Iowa Acts, House File 534, sections 4 and 30, the Department of Administrative Services hereby gives Notice of Intended Action to rescind 401—Chapter 7, "Purchasing Procedures for State Agencies," 401—Chapter 8, "Special Rules for the Acquisition of Data Processing Equipment, Services, or Software," and 401—Chapter 9, "Centralized Purchasing," and to adopt 11—Chapter 105, "Procurement of Goods and Services of General Use," Iowa Administrative Code.

New rules are proposed to support implementation of a new state electronic purchasing system that streamlines agency processes, reduces paperwork, and provides vendors the means to conduct business electronically with the state. The rules eliminate requirements for the use of paper forms and establish new policy governing electronic purchasing processes. The content of 401—Chapters 7, 8 and 9 is simplified and reorganized in new Chapter 105. 401—Chapters 7, 8 and 9 are rescinded.

The proposed rules describe the methods state agencies will use to acquire goods and services of general use. The proposed rules do not make substantive changes to state policy for competitive procurement methods, standard contract requirements, agency guidelines, or vendor responsibilities and rights, with the following exceptions:

1. Additional methods of competitive selection are allowed, such as a best and final offer process, reverse auction and vendor prequalification.

2. A definition of "responsible bidder" is added for use in a vendor selection process when price is not the only consideration.

3. Rules relating to the procurement of architectural and engineering services are added.

4. Effective July 1, 2004, the threshold for direct agency purchasing will increase from \$2,500 to \$5,000.

5. New rules are included to support electronic procurement and an on-line vendor system.

401—Chapter 12, "Purchasing Standards for Services Contracts," and 401—Chapter 13, "Uniform Terms and Conditions for Service Contracts," provide additional requirements for service contracts. 471—Chapter 13, "Acquisition of Information Technology Devices and Services," provides additional requirements for information technology purchases.

The waiver process set forth in 401—Chapter 20 applies to any request for waiver from these rules.

The Department will accept public comments on the proposed rules until 3:30 p.m. on September 11, 2003. Interested persons may submit written, oral or electronic comments to Carol Stratemeyer, Rules Administrator, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0105; telephone (515)281-6134; fax (515)242-5974; or E-mail Carol.Stratemeyer@iowa.gov.

There will be a public hearing on September 11, 2003, at 11 a.m. in the General Services' Director's Conference Room, Hoover State Office Building, Level A, Des Moines, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs should contact the Department of Administrative Services prior to the hearing if accommodations are needed.

These rules are intended to implement 2003 Iowa Acts, House File 534, sections 28, 29 and 30.

The following amendments are proposed.

ITEM 1. Rescind **401—Chapters 7, 8 and 9.**

ITEM 2. Adopt the following **new** chapter:

CHAPTER 105
PROCUREMENT OF GOODS AND SERVICES
OF GENERAL USE

11—105.1(80GA, HF534) Applicability. Under the provisions of 2003 Iowa Acts, House File 534, these rules apply to the purchase of goods and services of general use by any unit of the state executive branch including a commission, board, institution, bureau, office, agency or department, except items used by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies exempted by law.

Procurement of services shall also meet the provisions of Iowa Administrative Code, 401—Chapters 12 and 13.

Procurement of information technology devices and services shall also meet the requirements of Iowa Administrative Code, 471—Chapter 13.

105.1(1) The department and agencies shall follow procurement policies regardless of the funding source supporting the procurement. However, when these rules prevent the state from obtaining and using a federal grant, these rules are suspended to the extent required to comply with the federal grant requirements.

105.1(2) Notwithstanding other administrative rules, requirements for paper transactions in the procurement of goods and services shall be waived when an alternative electronic process is available. If the vendor is unable to use the electronic process, an alternative paper process will be made available.

11—105.2(80GA, HF534) Definitions.

"Agency" or "state agency" means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, "agency" or "state agency" does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.

2. The general assembly, or any office or unit under its administrative authority.

3. The judicial branch, as provided in Iowa Code section 602.1102.

4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

"All or none" means an award based on the total for all items included in the solicitation.

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“American-based business” means an entity that has its principal place of business in the United States of America.

“American-made product” means product(s) produced or grown in the United States of America.

“Award” means the selection of a vendor to receive a master agreement or order of a good or service.

“Bid specification” means the standards or qualities which must be met before a contract to purchase will be awarded and any terms which the director has set as a condition precedent to the awarding of a contract.

“Competent and qualified” means an architect or engineer who, at the sole discretion of the department, has the capability in all respects to satisfactorily perform the scope of services required by the proposed contract in a timely manner.

“Competitive bidding procedure” means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, accepted, rejected or awarded. A “competitive bidding procedure” refers to all types of competitive solicitation processes referenced in this chapter and may include a transaction accomplished in an electronic format.

“Competitive selection documents” means documents prepared for a competitive selection by a department or agency to purchase goods and services. Competitive selection documents may include requests for proposal, invitations to bid, or any other type of document a department or agency is authorized to use that is designed to procure a good or service for state government. A competitive selection document may be an electronic document.

“Department” means the department of administrative services.

“Director” means the director of the department of administrative services or the director’s designee.

“Emergency” includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety; or
2. In which there is a need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement; or
3. In which the department or agency must act to preserve critical services or programs or in which the need is a result of events or circumstances not reasonably foreseeable.

“Emergency procurement” means an acquisition resulting from an emergency need.

“Enterprise” means most or all state agencies acting collectively.

“Fair and reasonable price” means a price that in the department’s sole discretion is commensurate with the extent and complexity of the services to be provided and is comparable to the price paid by the department or other entities for projects of similar scope and complexity.

“Formal competition” means a competitive selection process that employs a request for proposals or other means of competitive selection authorized by applicable law and results in procurement of a good or service.

“Good” or “goods” means personal property other than money that is tangible or movable at the time of purchase, including specially manufactured goods. A contract for goods is a contract in which the predominant factor, thrust, and purpose of the contract as reasonably stated is for the acquisition of goods. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the acquisition of goods, a contract for goods exists.

“Governmental entity” means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

“Informal competition” means a streamlined competitive selection process in which a department or agency makes an effort to contact at least three prospective vendors identified by the purchasing department or agency as qualified to perform the work described in the scope of work to provide bids or proposals to provide the goods or services the department or agency is seeking.

“Iowa-based business” means an entity that has its principal place of business in Iowa.

“Iowa product” means a product(s) produced or grown in Iowa.

“Life cycle cost” means the expected total cost of ownership during the life of a product, including disposal costs.

“Lowest responsible bidder” means the responsible bidder that submits the lowest price(s) or cost(s).

“Master agreement” means a contract arrived at competitively which establishes prices, terms, and conditions for the purchase of goods and services in common use. Agencies may purchase from a master agreement without further competition. These contracts may involve the needs of one or more state agencies. Master agreements for a particular item or class of items may be awarded to a single vendor or multiple vendors.

“Newspaper of general circulation” means a newspaper meeting the definition set forth in Iowa Code section 618.3 as amended by 2003 Iowa Acts, House File 545, section 1.

“Order” means a direct purchase or a purchase from a state contract or master agreement.

“Procurement” or “purchase” means the acquisition of goods and services through lease, formal acceptance, contract, or obtaining title.

“Responsible bidder” means a vendor that in the department’s sole discretion has the capability in all respects to perform the contract requirements. In determining whether a vendor is a responsible bidder, the department may consider various factors including, but not limited to, the vendor’s competence and qualification for the type of services required, the vendor’s integrity and reliability, the past performance of the vendor relative to the quality of the good or service, the past experience of the department in relation to the good or service, the relative quality of the good or service, the proposed terms of delivery, and the best interest of the state.

“Sealed” means the submission of responses to a solicitation in a form that prevents disclosure of the contents prior to a date and time established by the department for opening the responses. Sealed responses may be received electronically.

“Service” or “services” means work performed for an agency or its clients by a service provider. A contract for services is a procurement where the predominant factor, thrust, and purpose of the contract as reasonably stated is for services. When there is a mixed contract for goods and services, if the predominant factor, thrust, and purpose of the contract as reasonably stated is for service, with goods incidentally involved, a contract for services exists.

“Services of general use” means services that are not unique to an agency’s program or that are needed by more than one agency. This chapter applies to the purchase of services of general use.

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“Sole source procurement” means a purchase of a good or service in which the department or agency selects a vendor without engaging in a competitive selection process.

“Targeted small business (TSB)” means a targeted small business as defined in Iowa Code section 15.102 that is certified by the department of inspections and appeals pursuant to Iowa Code section 10A.104 and as authorized by Iowa Code chapter 73.

“Vendor” means a person, firm, corporation, partnership, business or other commercial entity that provides services or offers goods for sale or lease.

“Vendor on-line system” means a state computer system that enables vendors to conduct business electronically with the state through an Internet location on the World Wide Web.

“Web” or “Web site” refers to an Internet location on the World Wide Web that provides information, communications, and the means to conduct business electronically.

11—105.3(80GA, HF534) Competitive procurement. It is the policy of the state to obtain goods and services from the private sector for public purposes to achieve value for the taxpayer through a competitive selection process that is fair, open, and objective. Where feasible, common use items will be purchased cooperatively with state agencies having independent procurement authority to leverage economies of scale, add convenience, standardize common items, and increase efficiencies.

105.3(1) Informal competition for procurement of goods. The department may use informal competition for the purchase of any good or group of goods costing less than \$5,000.

105.3(2) Formal competition for procurement of goods. The department shall use formal competition for the procurement of any good or group of goods costing \$5,000 or more.

105.3(3) Thresholds for services. The use of formal or informal competition for the procurement of services is governed by rule 401—12.5(18).

11—105.4(80GA, HF534) Exemptions from competitive procurement. The director or designee may exempt goods and services of general use from competitive procurement processes when the procurement meets one of the following conditions. All procurements that are exempt from competitive processes shall be recorded as such, and appropriate justification shall be maintained by the agency initiating the action. Additional review and approvals are required.

105.4(1) Emergency procurement.

a. Justification for emergency procurement. An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the department or agency may consider price and availability of the good or service procured so that the department or agency obtains the best value for the funds spent under the circumstances. The department and agencies shall attempt to acquire goods and services of general use with as much competition as practicable under the circumstances.

b. Special procedures required for emergency procurements. Justification for the emergency purchase shall be documented and submitted to the director or designee for approval. The justification shall include the good or service that is to be or was purchased, the cost, and the reasons the purchase should be or was considered an emergency.

105.4(2) Targeted small business (TSB) procurement.

a. Justification for TSB procurement. Agencies may purchase from a TSB without competition for a purchase up to \$5,000.

b. Special procedures for TSB procurements. Agencies must confirm that the vendor is certified as a TSB by the department of inspections and appeals. An agency may contact the TSB directly.

105.4(3) Iowa Prison Industries (IPI) procurement.

a. Justification for IPI procurement. Agencies shall purchase products through the state’s purchasing system while making a purchase from IPI in accordance with Iowa Code section 904.808.

b. Special procedures for IPI purchases. An agency may contact IPI directly.

105.4(4) Procurement based on competition managed by other governmental entities.

a. Justification for procurement based on competition managed by other governmental entities. The department may utilize a current contract, agreement, or purchase order issued by a governmental entity to establish an enterprise master agreement or make a purchase without further competition. The department may join a contract or agreement let by a purchasing consortium when the department reasonably believes it is in the best interest of the enterprise and reasonably believes the contract, agreement, or order was awarded in a fair and competitive manner.

b. Special procedures for procurement based on competition managed by other governmental entities. The department shall notify the other governmental entity and the requesting agency of its intent to use a contract, agreement, or purchase order prior to procuring the good or service in this manner.

105.4(5) Sole source procurement.

a. Justification for sole source procurement. The director or designee may exempt the purchase of a good or service of general use from competitive selection processes when the purchase qualifies as a sole source procurement as a result of the following circumstances:

(1) One vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the good or service; or

(2) The procurement is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity, or ownership of intellectual property rights, could most satisfactorily provide the good or service; or

(3) Applicable law requires, provides for, or permits use of a sole source procurement; or

(4) The federal government or other provider of funds for the goods and services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the use of the funds in a way that restricts the procurement to only one vendor; or

(5) Other circumstances for services exist as outlined in rule 401—12.7(18).

b. Special procedures required for sole source procurement. For exemption from competitive processes, the requesting agency shall submit to the director justification that the procurement meets the definition of a sole source procurement. The agency initiating the procurement shall maintain in a file attached to the order the justification and response from the director. The justification, response, and order shall be available for public inspection.

11—105.5(80GA, HF534) Preferred products and vendors.

105.5(1) Preference to Iowa-made products. The department and state agencies shall make every effort to support Iowa-made products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation,

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shall be decided in favor of the Iowa-made products. Tied bids between Iowa-made products shall be decided in accordance with 105.10(4).

105.5(2) Preference to Iowa-based businesses. The department and state agencies shall make every effort to support Iowa-based businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa-based business. Tied bids between Iowa-based businesses shall be decided in accordance with 105.10(4).

105.5(3) American-made products. The department and agencies shall make every effort to support American-made products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-made product. Tied bids between American-made products shall be decided in accordance with 105.10(4).

105.5(4) American-based businesses. The department and agencies shall make every effort to support American businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-based business. Tied bids between American businesses shall be decided in accordance with 105.10(4).

105.5(5) Recycled product and content. The department and agencies shall make every effort to protect Iowa's environment in the procurement of goods. Recycled goods and goods that include recycled content shall be acquired when those goods are available and comparable in quality, performance, and price and there are not other mitigating factors. As required by Executive Order Number 56, the department and agencies shall whenever possible procure durable items that are readily recyclable when discarded, have minimal packaging, and are less toxic.

105.5(6) Products made by persons with disabilities. The department and agencies shall make every effort to procure those products for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation, other developmental disabilities, or mental illness if the products meet the required specifications.

105.5(7) Targeted small businesses. The department and agencies may buy from a targeted small business if a targeted small business is reasonably able to provide the good or service. When enterprise master agreements with targeted small businesses are available, purchases shall be made through these master agreements.

11—105.6(80GA,HF534) Centralized procurement authority and responsibilities.

105.6(1) Centralized procurement of goods and services of general use. The department shall procure goods and services of general use for all state agencies with the exceptions of those purchases made by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies exempted by law.

105.6(2) Delegation of procurement authority. The department shall establish guidelines for implementation of procurement authority delegated to agencies. The department shall assist agencies in developing purchasing procedures consistent with central purchasing policy and procedures and recommended governmental procurement standards.

105.6(3) Planning, research, and development. The director may establish advisory groups and customer councils of agency representatives appointed by the respective agency

directors to assist the department in procurement planning and research and to advise on policies, procedures, and financing. This advice includes, but need not be limited to, market research, product specifications, terms and conditions; purchasing rules and guidelines; purchasing system development; and equitable financing of the enterprise purchasing system. The department will provide staff support for any advisory groups and councils that are created.

The department may periodically require forecasts from state agencies and institutions regarding future procurements. When requesting forecasts, the department shall assist agencies in securing and analyzing historical information related to previous purchasing activity.

11—105.7(80GA,HF534) Notice of solicitations.

105.7(1) General notification. The department may provide notice of solicitations electronically, by telephone or fax, in print, or by other means that give reasonable notice to vendors.

105.7(2) Targeted small business notification. Targeted small businesses shall be notified of all solicitations at least 48 hours prior to the general release of the notice of solicitation. The notice shall be distributed to the state of Iowa's 48-hour procurement notice Web site for posting.

105.7(3) Direct vendor notification. All procurement opportunities over \$2,500 shall be directly communicated to vendors registered through the vendor on-line system that have indicated an interest in the type of good or service that is the subject of the solicitation. The notice shall be sent to the E-mail or fax or other address entered by the vendor on the vendor on-line system.

105.7(4) Construction procurement exceeding \$25,000. Construction solicitations shall be advertised twice in a newspaper of general circulation published in the county within which the work is to be done. Additional means of advertisement used shall be consistent with practices in the construction industry. The department may publish an advertisement in an electronic format as an additional method of soliciting bids.

11—105.8(80GA,HF534) Types of solicitations. The department may use the following solicitation methods when procuring goods and services of general use for the enterprise.

105.8(1) Request for bids. A request for bids shall be used to select the lowest responsible bidder from which to purchase goods and services of general use on the basis of price. Vendors may offer goods and services that equal or exceed the state's specifications. Bids that do not meet specifications shall be rejected. The state will not give weight to goods and services offered which exceed specifications. When it is feasible to do so and objective data exists to support the state's decision, the award may be made on a life cycle cost basis.

105.8(2) Informal competition.

a. Description of solicitation. The informal request for bids or proposals may be completed electronically, by telephone or fax, or by other means determined by the department.

b. Response and evaluation. Informal bids shall be tabulated, evaluated, documented and attached to the purchase order.

105.8(3) Formal competition.

a. Description of solicitation. A formal request for bids or proposals shall include:

- (1) Bid due date.
- (2) Time of public bid opening.
- (3) Complete description of commodity needed.
- (4) Buyer's name or code.

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b. Response and evaluation. Bids submitted shall be sealed until the date and time of opening. All bids received prior to the date and time set forth on the solicitation will be publicly opened and announced at the designated time and place. All responses shall be documented, evaluated, tabulated and available for public inspection.

105.8(4) Requests for proposals.

a. Description of solicitation. The department shall issue a request for proposals whenever a requirement exists for a procurement anticipated to cost more than \$15,000 and cost is not the sole evaluation criterion for selection. The request for proposals shall provide information about a requirement for technical equipment or professional services that is sufficient for the vendor to propose a solution to the requirement. Elements of a request for proposals shall include, but need not be limited to:

- (1) Purpose, intent and background of the requirement.
- (2) Key dates in the solicitation process.
- (3) Administrative requirements for submitting a proposal and format for the proposal.
- (4) Scope of work and performance requirements.
- (5) Evaluation criteria and method of proposal evaluation.
- (6) Contractual terms and conditions.
- (7) Need for a proposal conference.

b. Response and evaluation. Proposals submitted shall be sealed until the date and time of opening. All proposals received prior to the date and time of opening will be opened, and the name of the submitting vendor will be announced. The issuing purchasing officer will review proposals for compliance with requirements before the proposals are submitted for evaluation. A request for proposals shall be evaluated according to criteria that are developed prior to the issuance of the request for proposal document and that consist of factors relating to technical capability and the approach for meeting performance requirements; competitiveness and reasonableness of price or cost; and managerial, financial and staffing capability.

105.8(5) Best and final offer option.

a. Description of solicitation. The department reserves the right at its sole discretion to conduct a best and final offer process prior to making an award. The best and final offer process shall be conducted after the receipt of responses to a solicitation and prior to publicly releasing the responses. Any best and final offer process shall not allow material modification of the original solicitation requirements or of the evaluation criteria.

The department shall provide to affected vendors instructions that describe in specific terms how the department intends to arrive at the final order or master agreement. The instructions may include modifying the initial offer, updating pricing based on any changes the agency has made, and any added inducements that will improve the overall score in accordance with the evaluation. Other types of solicitations described in this rule may be modified to allow for a best and final offer process.

The department may enter into negotiations with the highest ranked vendor or conduct simultaneous negotiations with a number of the most highly ranked vendors whose total scores are relatively close.

b. Response and evaluation. A best and final offer shall arrive by the due date and time determined by the department and shall be sealed. Evaluation of best and final offers shall be conducted in the same manner as original cost proposals. Scores on the best and final offer shall replace the score achieved on the original cost proposal.

When negotiating with the highest ranked vendor, the department may accept the vendor's best and final offer or reject the offer and open negotiations with the next highest ranked vendor. The department shall proceed in the same manner in rank order. If the state rejects the best and final offer of the highest ranked vendor, a best and final offer accepted from a subsequent vendor must be better than the rejected offer or offers.

When negotiating with the highest ranked group of vendors, the department shall request the best and final offer from each. The department shall issue a notice of intent to award that is in the best interest of the enterprise.

105.8(6) Reverse auction.

a. Description of solicitation. The department may purchase goods and services through a reverse auction, a repetitive competitive bidding process that allows vendors to submit one or more bids, with each bid having a lower cost than the previous bid. Notice to vendors shall be given as described in this chapter. The notice shall include the start and ending time for the reverse auction and the method in which it will be conducted.

b. Response and evaluation. Vendors intending to participate shall provide to the department a notice of their intent to participate and of their agreement to provide goods or services equal to or exceeding specifications. The department may require vendors to prequalify to participate in a reverse auction. Prequalification may include a requirement to commit to a baseline price.

105.8(7) Invitation to qualify.

a. Description of solicitation. The department may prequalify vendors for certain classes of solicitations, including but not limited to information technology consulting, architectural services, and engineering services. Thereafter, the department may select, in a competitive manner, a prequalified vendor without public notice and without further negotiation of general terms and conditions. A solicitation may be restricted only to prequalified vendors.

An invitation to qualify process shall be used for the purpose of facilitating a subsequent solicitation that uses one of the other methods described in these rules. Vendor prequalification is not an award and does not create an obligation on the part of the department.

The department shall develop criteria for vendor qualification based upon its own expertise, the recommendations of its advisors, information and research, and the needs of agencies. The department shall develop evaluation criteria for each invitation to qualify. The department shall issue invitations to qualify on an as-needed basis.

The department shall specify the period of time that the invitation to qualify will remain open and the time period for applicability. Vendors may apply for eligibility on a continuous basis during the time period that the invitation to qualify remains open.

b. Response and evaluation. Vendors seeking to qualify shall be required to meet all the criteria established by the department for a particular category or type of solicitation. The department shall continuously evaluate vendor applications for placement on a prequalified-vendor list during the period that the invitation to qualify remains open. An approved vendor remains qualified for the period specified by the department unless minimum acceptable performance levels are not met by the vendor.

The department shall establish and notify prequalified vendors of minimum acceptable performance levels and institute a performance tracking mechanism on each prequalified vendor. If a vendor's performance falls below the mini-

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imum acceptable level, the vendor shall be removed from the prequalified list.

A vendor that does not prequalify or that is removed from the prequalified list due to the vendor's performance has the right to appeal in accordance with 11—105.17(80GA, HF534).

105.8(8) Architectural and engineering services.

a. Qualifications. In creating a solicitation, the department may request information regarding an architect's or engineer's qualifications. In determining whether an architect or engineer is competent and qualified, the department may consider the following factors:

- (1) Professional licensing or registration credentials,
- (2) Integrity and reliability,
- (3) Past performance relative to the quality and timeliness of service on similar projects,
- (4) Past experience with the state in relation to services provided,
- (5) Quality and timeliness of the services provided,
- (6) The proposed terms of delivery, and
- (7) The best interests of the state.

b. Fair and reasonable price. As part of the competitive selection process, the department may request, in addition to the architect's or engineer's qualifications, pricing information that may include a total fee for the specified services, hourly rates, or other pricing measures that will help the department establish a fair and reasonable price.

The department may request a fee proposal(s) as part of the competitive selection process only when the services required are of limited scope, limited duration or otherwise clearly defined. An award shall not be made solely on the basis of the lowest price.

When a fee is not requested as part of the competitive selection process, other pricing factors shall be requested, and the firm deemed most qualified will be asked to negotiate a fee using the pricing factors included in the firm's proposal. If a fair and reasonable price for the work cannot be negotiated, the department shall reject the firm's proposal and begin negotiations for a fair and reasonable price with the next most qualified firm.

Examples of fair and reasonable pricing include:

- (1) Hourly rates and anticipated hours,
- (2) A lump sum fee,
- (3) Any other costs that are viewed by the department as fair and reasonable.

If reimbursable expenses are included in the price proposal, rates shall be comparable to those in procedure 210.245, "Travel-in-state—board, commission, advisory council, and task force member expenses," of the department of administrative services state accounting enterprise's Accounting Policy and Procedures Manual.

The fee proposal or other pricing information shall serve as a basis for contract negotiations.

105.8(9) Other types of solicitations. The department may use other types of competitive solicitations not outlined in these rules if the following conditions are met:

- a. The solicitation method has been clearly described in public notice.
- b. The solicitation method includes fair and objective criteria for determining the award.

11—105.9(80GA, HF534) Specifications in solicitations. All specifications used in solicitations shall be written in a manner that encourages competition.

105.9(1) Limitations on brands and models. Specifications shall be written in general terms without reference to a particular brand or model unless the reference is clearly iden-

tified as intending to illustrate the general characteristics of the item and not to limit competition. A specific brand or model may be procured only when necessary to maintain a standard required or authorized by law or rule or for connectivity or compatibility with existing commodities or equipment.

105.9(2) Recycled content and products. When appropriate, specifications shall include requirements for the use of recovered materials and products. The specifications shall require, at a minimum, that all responses to a solicitation include a product content statement that describes the percentage of the content of the item that is reclaimed material.

The department shall revise specifications developed by agencies if the specifications restrict the use of alternative materials, exclude recovered materials, or require performance standards that exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will impede the intended use of the product.

Specifications shall support the following procurements:

a. Products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires.

b. Bio-based hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans in accordance with 2003 Iowa Acts, House File 534, section 35.

105.9(3) Life cycle cost and energy efficiency. The department and agencies shall utilize life cycle cost and energy efficiency criteria in developing standards and specifications for procuring energy-consuming products.

105.9(4) All or none solicitations. A solicitation may specify whether or not responses will be accepted on an all or none basis. Only when this statement appears on the solicitation may it be included in the response. The department may award either by item or by lot, whichever is to the advantage of the enterprise.

105.9(5) Financial security. The department may require bid, litigation, fidelity, and performance security as designated in the solicitation documents. When required, a security may be by certified check, cashier's check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the department.

When required, a security shall not be waived. The security provided by vendors shall be retained until all provisions of the solicitation have been met. The security will then be returned to the vendor.

11—105.10(80GA, HF534) Awards.

105.10(1) Intent to award. After evaluating responses to a solicitation, the department shall notify each vendor submitting a response to the solicitation of its intent to award to a particular vendor or vendors subject to execution of a written contract(s). This notice of intent to award does not constitute the formation of a contract(s) between the state and successful vendor(s). If a vendor is not registered on the vendor online system and does not provide an E-mail address or fax number, the notice will be mailed.

105.10(2) Rejection of bids. The department reserves the right to reject any or all responses to solicitations at any time for any reason. New bids may be requested at a time deemed convenient to the department and agency involved.

105.10(3) Minor deficiencies and informalities. The department reserves the right to waive minor deficiencies and informalities if, in the judgment of the department, the best interest of the state of Iowa will be served.

105.10(4) Tied bids. An award shall be determined by a drawing when responses are received that are equal in all re-

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spects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the vendors who are tied in price. Otherwise the drawing will be made in front of at least three noninterested parties. All drawings shall be documented.

Whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, the Iowa vendor will receive preference. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing will be held among the Iowa vendors only. Tied bids involving Iowa produced or Iowa manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product.

105.10(5) Consideration of life cycle costs. When appropriate to the procurement, life cycle costs shall be considered during the award process.

11—105.11(80GA,HF534) Master agreements available to governmental subdivisions. The department shall provide a list of current master agreements to a governmental subdivision upon request. The list may be provided in an electronic format. A governmental subdivision may request a copy of a specific master agreement. The department may provide the master agreement in an electronic format and assess a copying charge when a printed copy is requested.

11—105.12(80GA,HF534) Agency purchasing authority and responsibilities.

105.12(1) Purchase of goods. An agency may acquire goods not otherwise available from a master agreement and in accordance with the procurement threshold guidelines in 11—105.13(80GA,HF534).

105.12(2) Purchase of services. An agency may procure services unique to the agency's program or used primarily by that agency and not by other agencies. The department will assist agencies with these procurements upon request. Procurement of services by agency shall comply with the provisions of 401—Chapters 12 and 13.

105.12(3) Procurements requiring additional authorization. Except where exempted by statute, the following purchases require additional approval.

a. Information technology devices, software and services, as required in 2003 Iowa Acts, House File 534, sections 18 and 22, and 471—Chapter 13.

b. Vehicles, as prescribed in 2003 Iowa Acts, House File 534, section 51.

c. Printing and printing equipment, as prescribed in 2003 Iowa Acts, House File 534, section 45, and related rules.

d. Architectural and engineering services, except for agencies with independent authority, as prescribed in 2003 Iowa Acts, House File 534, sections 29, 30, 36, 211, and 282.

e. Legal counsel, as prescribed in Iowa Code section 13.7.

f. Telecommunications equipment and services, as required by Iowa Code chapter 8D and the rules of the telecommunications and technology commission.

105.12(4) Establishment of agency internal procedures and controls. Agencies shall establish internal controls and procedures to initiate purchases, complete solicitations, make awards, approve purchases, and receive goods. The procedures shall address adequate public recordings of the purchases under the agency's authority consistent with law and rule. Internal controls and security procedures that are consistent with the requirements of the department and state auditor, including staff authority to initiate, execute, approve,

and receive purchases, shall be in place for all phases of the procurement.

105.12(5) Agency receipt of goods. Agencies receiving goods shall:

a. Inspect or otherwise determine that the goods received meet the specifications, terms and conditions within the order or master agreement,

b. Initiate timely payment for goods meeting specifications, and

c. Document the receipt of goods electronically in a manner prescribed by the department.

105.12(6) Partial orders. Agencies may accept partial orders and await additional final receipt or may accept a partial order as a final order. The agency shall notify the vendor of its decision. An agency may pay a vendor a prorated amount for the partial order.

105.12(7) Items not meeting specifications. An agency shall not approve final receipt when goods appear not to meet specifications. An agency shall approve final receipt only when satisfied that the goods meet or exceed the specifications, terms and conditions of the order or master agreement. When an agency and vendor are unable to agree as to whether the specifications, terms and conditions are met, the department shall make the decision.

Agencies shall notify the department and the vendor when apparent defects are first noticed. The department will assist the agency with negotiating a satisfactory settlement with the vendor.

All provisions of 11—105.16(80GA,HF534) shall apply to agency receipt of goods.

105.12(8) Payment to vendors following final receipt. An agency shall not unreasonably delay payment on orders for which final receipt is accepted. Except in the case of latent defects in goods, payment to the vendor by the agency signifies agreement by the agency that the goods received are satisfactory. Payment to vendors may be made by any commercially acceptable method, including a state procurement card, in accordance with state financial requirements.

11—105.13(80GA,HF534) Thresholds for delegating procurement authority.

105.13(1) Agency direct purchasing. An agency may procure non-master agreement goods up to \$2,500 per transaction in a competitive manner. Commencing July 1, 2004, that amount shall increase to \$5,000. Three or more informal quotes shall be obtained, unless quotes are not reasonably available or unless the item is purchased from a targeted small business. The agency shall document the quotes, or circumstances resulting in fewer than three quotes, in an electronic file attached to the order or in another format. However, agencies may purchase directly from a targeted small business without competition.

105.13(2) Targeted small business—procurement up to \$5,000. Agencies may purchase directly from a vendor if the vendor is a certified targeted small business and the purchase does not exceed \$5,000.

105.13(3) Alternative to master agreement. An agency may purchase a comparable good or service of general use available on a master agreement from a different vendor if the quantity required or an emergency or immediate need makes it cost-effective to purchase from a non-master agreement vendor. In instances where an agency or agencies routinely or on a recurring basis purchase a specific good or service not on contract, the department shall establish a master agreement for that good or service in cooperation with the affected agencies.

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105.13(4) Preference to targeted small businesses. Agencies shall search the TSB directory on the Web and purchase directly from the TSB source if it is reasonable and cost-effective to do so. Agencies shall comply with the TSB notification requirements in subrule 105.7(2).

105.13(5) Misuse of agency authority.

a. Purchasing authority delegated to agencies shall not be used to avoid the use of master agreements. If it is cost-effective to purchase a comparable good or service of general use from a master agreement, the agency shall do so. The agency shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements in subrules 105.13(1) and 105.13(2).

b. As a remedy, the department may recover administrative fees appropriate to the improper execution of procurement. The department may rescind delegated authority of an agency that habitually misuses its authority.

c. This rule is not intended to prohibit agencies from aggressively seeking competitive prices. Agencies may purchase outside of master agreements under subrule 105.13(3).

11—105.14(80GA, HF534) Vendor registration and approval. Every vendor wishing to do business with the state shall register as a vendor. Every vendor shall register prior to submitting a response to a solicitation except in the case of an emergency procurement when the vendor shall register prior to filling an order or as soon as practicable. Only properly registered vendors are entitled to payment.

105.14(1) Vendor on-line registration. Vendors are encouraged to register electronically using the vendor on-line system when it becomes available. Vendors that are registered at the vendor on-line system are eligible for all services at the site, including receiving electronic notices of solicitations and submitting an electronic response to a solicitation.

Information from vendors completing registration through the vendor on-line system shall be protected through the use of uniquely identifying information known only to the department and the vendor to confirm the identity of the vendor for all subsequent actions, including responses to solicitations.

The department may take action to restrict or deny use of the vendor on-line system in response to inappropriate use of the site. The department may edit or delete a vendor's posting on the vendor bulletin board if the posting is not appropriate to the business of state purchasing.

105.14(2) Alternate vendor registration. A vendor may register by directly contacting the department or an agency initiating a procurement.

105.14(3) Vendor registration information maintenance. Vendors are responsible for maintaining current registration information. If registered on the vendor on-line system, the vendor shall update the vendor's account whenever information changes. If registered in an alternate manner, the vendor is responsible for notifying the department or agency of any change in information. This information includes, but is not limited to, company name or type, payment address, procurement address and other contact information.

11—105.15(80GA, HF534) Vendor performance.

105.15(1) Review of vendor performance. The department, in cooperation with agencies, shall periodically, but at least directly prior to renewal of a master agreement, review the performance of vendors. Performance reviews shall be based on the specifications of the master agreement or order, and shall include, but need not be limited to, compliance with the specifications, on-time delivery, and accuracy of billing.

This review will help determine whether the vendor is a responsible bidder for future projects.

105.15(2) Vendor suspension or debarment. Prior performance on a state contract may cause a vendor to be disqualified or prevent the vendor from being considered a qualified bidder. In addition, a vendor may be suspended or debarred for any of the following reasons:

a. Failure to deliver within specified delivery dates without agreement of the department or the agency.

b. Failure to deliver in accordance with specifications.

c. Attempts to influence the decision of any state employee involved in the procurement process.

d. Evidence of agreements by vendors to restrain trade or impede competitive bidding. Such activities shall in addition be reported to the attorney general for appropriate action.

e. Determination by the civil rights commission that a vendor conducts discriminatory employment practices in violation of civil rights legislation and executive order.

f. Evidence that a vendor has willfully filed a false certificate with the department.

g. Debarment by the federal government.

105.15(3) Correcting performance. The department shall notify in writing any vendor considered for suspension or debarment and provide the vendor an opportunity to cure the alleged situation. If the vendor fails to remedy the situation after proper notice, the department director may suspend the vendor from eligibility for up to one year or debar the vendor from future business depending on the severity of the violation. The appeal provisions of this chapter shall apply to the decision of the director.

105.15(4) Remedies for failure to deliver or for delivery of nonconforming goods or services. If a vendor fails to remedy the situation after the opportunity to cure is provided, the department or agency may procure substitute goods or services from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The attorney general shall be requested to make collection from the defaulting vendor.

11—105.16(80GA, HF534) General instructions, terms and conditions for vendors. The following instructions, terms and conditions shall apply to all solicitations unless otherwise stated in the solicitation.

105.16(1) Instructions for vendors. The vendor must follow all instructions in the manner prescribed and furnish all information and samples as stated in the solicitation. Minor deficiencies and informalities may be waived if, in the judgment of the department, the best interests of the state will be served.

105.16(2) Deadline for submission of bid or proposal. It is the responsibility of the vendor to submit a response to a solicitation according to time, date, and place stated in the solicitation documents. Late responses will be rejected. Unfamiliarity with a geographical location, weather events, labor stoppages, failure of a carrier to meet promised delivery schedules, mechanical failures, and similar reasons are not sufficient justifications for the department to accept a late bid or proposal. At its sole discretion, the department may accept a late response if the delay is due to a catastrophic event and acceptance by the department does not result in an advantage to a competitor.

105.16(3) Confidential information in a solicitation response. Unless material submitted in response to a solicitation is identified as proprietary or confidential by the vendor, all submissions by a vendor are public information. To facilitate a fair and objective evaluation of proposals, submissions by vendors will not be released to competitors or the public.

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prior to issuance of the notice of intent to award. If a vendor's claim of confidentiality is challenged by a competitor or through a request by a citizen to view the proposal, it is the sole responsibility of the vendor to defend the claim of confidentiality in an appropriate venue. The department will not release the subject material while the matter is being adjudicated.

105.16(4) Recycled products. A vendor shall be required to include for all applicable procurements a product content statement providing the percentage of the content of the item that is reclaimed material.

105.16(5) Modifications or withdrawal of a solicitation response. A solicitation response may be withdrawn prior to the time and date set for opening. Withdrawal requests shall be in writing. With the approval of the director or designee, a bid or proposal may be withdrawn after opening only if the vendor provides prompt notification and adequately documents the commission of an honest error that might cause undue financial loss.

105.16(6) Security. The department may require bid or proposal security in accordance with subrule 105.9(5). When required, security shall not be waived.

105.16(7) Assignments. A vendor may not assign an order or a master agreement to another party without written permission from the department.

105.16(8) Strikes, lockouts or natural disasters. A vendor shall notify the department promptly whenever a strike, lockout or catastrophic event prevents the vendor from fulfilling the terms of an order or contract. The department and affected agency may elect to cancel an order or master agreement at their discretion.

105.16(9) Subcontractors or secondary suppliers. Vendors shall be responsible for the actions of and performance of their subcontractors or secondary suppliers. Vendors shall be responsible for payment to all subcontractors or secondary suppliers. Vendors awarded a state construction contract shall disclose the names of all subcontractors within 48 hours after the award of the contract.

105.16(10) Material and nonmaterial compliance. At its sole discretion, the department reserves the right to waive technical noncompliance with instructions when such noncompliance, as viewed by a reasonable and prudent person, did not result in an advantage to the vendor submitting the apparent lowest bid or best proposal or would not result in a disadvantage to other vendors submitting competing bids or proposals.

105.16(11) Item and pricing. Price information shall be submitted in response to a solicitation as stated in the instructions. In the case of an error, unit price shall prevail. Unless otherwise stated, all prices shall be submitted with free-on-board (FOB) destination including freight and handling costs.

Prices for one-time purchases must be firm, and preference will be given to firm prices in multiple award contracts. If the department believes it is in the best interest of the state, an economic price adjustment clause based on an acceptable economic indicator may be included in multiple delivery contracts.

a. Price during testing. Items may require testing either before or after the final award is made. In these cases, the vendor must guarantee the price through the completion of testing.

b. Unless otherwise contained in the specifications, all items for which a vendor submits a quotation shall be new, of the latest model, crop year or manufacture and shall be at least equal in quality to those specified.

c. Escalator clauses. Unless specifically provided for in the solicitation document, a response containing an escalator clause that provides for an increase in price will not be considered.

d. Discounts. Only cash discounts that apply to payment terms of 30 days or more will be considered in determining awards. Other payment terms will not be considered. The state will attempt to earn any discounts offered and will compute the period from the latest of the following:

- (1) From date of invoice.
- (2) From the date the complete order is received.
- (3) From the date the vendor's certified invoice is received.

When additional testing of a product is required after delivery, the discount period shall not begin until testing is completed and final approval made.

105.16(12) Notice of intent to award. After evaluating responses to a solicitation, the department shall notify each vendor submitting a response to the solicitation of its intent to award to a particular vendor or vendors subject to execution of a written contract(s). This notice does not constitute the formation of a contract(s) between the state and the vendor(s) to which the notice of intent to award has been issued.

If a vendor is not registered on the vendor on-line system and does not provide a fax number, the notice will be sent by ordinary mail.

105.16(13) Time of acceptance of award. The vendor may state the length of time that the state has to accept the vendor's offer. This period shall not be less than 10 days for informal quotations or less than 30 days for formal bids. If no minimum time period is stated by the vendor, the offer shall be irrevocable for 90 days. The department may require a longer evaluation period for technical equipment.

105.16(14) Delivery.

a. Delivery date. A vendor shall show in a response to a solicitation the earliest date on which delivery can be made. The department may include in a solicitation the acceptable delivery date for a commodity. The department may consider delivery dates as a factor in determining to which vendor the notice of intent to award shall be issued. Goods in transit remain the responsibility of the vendor.

b. Notice of rejection. The reason for any rejection of a shipment, based on apparent deficiencies that can be disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a reasonable time after delivery of the item with a copy of this notice provided to the purchasing section. Notice of latent deficiencies that would make items unsatisfactory for the intended purpose may be given at any time after acceptance.

c. Disposition of rejected item. The vendor must remove at the vendor's expense any rejected item. If the vendor fails to remove the rejected item, the department or an agency may dispose of the item by offering it for sale, deduct any accrued expense and remit the balance to the vendor.

d. Testing after delivery. Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test will be made and that payment will be withheld until completion of the testing process.

e. Risk of loss or damage. Risk of loss or damage remains with the vendor until delivery and acceptance by the agency at the destination shown on the order.

f. Vendor responsibility for removal of trade-ins. Whenever the purchase of an item of equipment has been made with the trade-in of equipment, it shall be the vendor's responsibility to remove the traded equipment within 30 days

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of the final acceptance of the purchased equipment by the agency. The department or agency will not assume responsibility for equipment that is not removed within this time period and may cause the equipment to be removed by, shipped to and billed to the vendor for all packing, crating and transportation charges.

105.16(15) Master agreement and purchase order modifications. When consistent with the purpose and intent of the original master agreement or order, amendments or modifications may be issued. All modifications shall be documented and approved by the department or agency and the vendor before modifications take effect. Modifications shall not be used unreasonably to avoid further competition.

105.16(16) Federal and state taxes. The state of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity or service. A vendor shall be furnished a revenue department exemption letter upon request.

11—105.17(80GA, HF534) Vendor appeals.

105.17(1) Filing an appeal. Any vendor that filed a timely bid or proposal and that is aggrieved by an award of the department may appeal the decision by filing a written notice of appeal before the Director, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319, within five calendar days of the date of award, exclusive of Saturdays, Sundays, and legal state holidays. The department must actually receive the notice of appeal within the specified time frame to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the department's award.

105.17(2) Procedures for vendor appeal. The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of the department's administrative rules governing contested case proceedings, unless the provisions of this rule provide otherwise.

a. Notice of hearing. Upon receipt of a notice of vendor appeal, the department shall contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors.

The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the notice of appeal was received by the department.

b. Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

c. Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

d. Amendments to notice of appeal. The aggrieved vendor may amend the grounds upon which the vendor challenges the department's award no later than 15 days prior to the date set for the hearing.

e. If the hearing is conducted by telephone or on the Iowa communications network, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted.

f. The presiding officer shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform to Iowa Code

chapter 17A. The presiding officer shall send the proposed decision to all parties by first-class mail.

g. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6).

(1) Method of recording. Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs.

(2) Transcription. A party may request that oral proceedings in connection with a hearing in a case or any portion of the oral proceedings be transcribed. A party requesting transcription shall bear the expense of the transcription.

(3) Tapes. Parties may obtain copies of tapes of oral proceedings from the presiding officer at the requester's expense.

(4) Retention time. The department shall file and retain the recording or stenographic notes of oral proceedings or the transcription for at least five years from the date of the decision.

105.17(3) Stay of agency action for vendor appeal.

a. When available.

(1) Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

(2) Any party adversely affected by a final decision and order may petition the department for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within five days of receipt of the final decision and order, and shall state the reasons justifying a stay.

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

c. Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

105.17(4) Review of proposed decision.

a. The proposed decision shall become the final decision of the department 15 days after mailing the proposed decision, unless prior to that time a party submits an appeal of the proposed decision in accordance with the provisions of this subrule.

b. A party appealing the proposed decision shall mail or deliver the notices of appeal to the Director, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319. Failure to request review will preclude judicial review unless the department reviews the proposed decision on its own motion. If the department reviews the proposed decision on its own motion, it will send notice of the review to all parties participating in the appeal.

c. A party appealing the proposed decision shall mail a copy of the notice of appeal to all other parties. Any party may submit to the department exceptions to and a brief in support of or in opposition to the proposed decision within 15 days after the mailing of a notice of appeal or of a request for review. The submitting party shall mail copies of any exceptions or brief it files to all other parties to the proceeding. The director shall notify the parties if the department deems oral arguments by the parties to be appropriate. The director will issue a final decision not less than 30 days after the notice of appeal is filed.

d. The department shall review the proposed decision based on the record and issues raised in the hearing. The department shall not take any further evidence and shall not

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consider issues that were not raised at the hearing. The issues for review shall be specified in the party's notice of appeal. The party appealing the proposed decision shall be responsible for transcribing any tape of the proceeding before the presiding officer and filing the transcript as part of the record for review. The party appealing the proposed decision shall bear the cost of the transcription regardless of the method used to transcribe the tape.

e. Each party shall have the opportunity to file exceptions to the proposed decision and present briefs in support of or in opposition to the proposed decision. The department may set a deadline for submission of briefs. When the department consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. The department in its sole discretion may schedule oral arguments regarding the appeal. The department shall notify all parties in advance of the scheduled time and place for oral arguments.

f. The director shall issue a final decision by the department. The decision shall be in writing and shall conform to the requirements of Iowa Code chapter 17A.

These rules are intended to implement 2003 Iowa Acts, House File 534, sections 28, 29 and 30.

ARC 2709B**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****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 159.5(11) and section 190C.3 as amended by 2003 Iowa Acts, House File 600, the Iowa Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 47, "Iowa Organic Program," Iowa Administrative Code.

The proposed amendments are intended to remove rules which no longer have a statutory basis due to the amending of Iowa Code chapter 190C by 2003 Iowa Acts, House File 600, and to comply with federal requirements regulating production, handling and labeling of organic agricultural products pursuant to 7 CFR Part 205, "National Organic Program."

Any interested person may make written suggestions or comments on this Notice of Intended Action prior to 4:30 p.m. on September 10, 2003. Such written material should be directed to Maury Wills, Organic Program Administrator, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments may also be faxed to (515)242-5015. E-mail comments may be sent to maury.wills@idals.state.ia.us.

No waiver provision is included in these proposed amendments because 21—Chapter 8 allows for waivers in appropriate cases and applies to these proposed amendments.

Pursuant to 2003 Iowa Acts, House File 636, the Department finds that the fiscal impact of these amendments does not meet the threshold requirements.

These proposed amendments were approved at the March 14, 2003, meeting of the Organic Standards Board.

These amendments are intended to implement Iowa Code chapter 190C as amended by 2003 Iowa Acts, House File 600.

The following amendments are proposed.

ITEM 1. Amend rule 21—47.2(190C) as follows:

21—47.2(190C) Exempt operations. Production or handling operations exempt from organic certification according to 7 CFR Section 205.101 shall:

1. Submit to the department a signed Exempt Party Declaration form, as provided by the department, attesting to knowledge of and compliance with Iowa Code chapter 190C and this chapter; *and*

2. Submit a processing fee as published by the department; *and*

3. ~~Maintain records to verify compliance and trace an organic product from production site to sale for consumption. Records shall be kept for five years.~~

ITEM 2. Amend subrule 47.3(2), paragraph "a," as follows:

a. Requirements.

~~(1) A minimum of 30 feet shall be maintained as a buffer zone between certified organic crops and areas treated with prohibited substances. A vegetative solid stand windbreak a minimum of 15 feet tall may be substituted for a 30-foot buffer zone.~~

~~(2)~~ (1) If crops are grown in this a buffer zone, such crops shall not be labeled, sold or in any way represented as organic.

~~(3)~~ (2) Crops harvested from buffer zones shall be kept separate from organic crops, and appropriately designated storage areas shall be clearly identified and records maintained to sufficiently identify the disposition of nonorganic product.

ITEM 3. Amend subrule 47.3(2), paragraph "b," as follows:

b. Recommendations.

~~(1) A minimum of 25 feet is recommended as a buffer zone between certified organic crops and areas treated with prohibited substances.~~

~~(4)~~ (2) Planting windbreaks and hedgerows is encouraged to help reduce spray drift from neighboring farms and wind damage to crops.

~~(2)~~ (3) It is recommended that the producer notify neighbors, county roadside management officials, railroads, utility companies and other potential sources of contaminants. It is recommended that the producer provide such individuals with maps of organic production areas, request individuals not to spray adjacent areas, and request to be informed if prohibited materials are applied to land adjacent to organic production areas.

~~(3)~~ (4) Place "no-spray" or "organic farm" signs where appropriate, e.g., roadways and access areas.

ITEM 4. Amend subrule 47.3(5) by rescinding paragraph "a" and adopting in lieu thereof the following **new** paragraph "a":

a. Annual agronomic crops (row crops and small grain crops).

(1) Crops of the same species or family shall not be grown repeatedly without interruption on the same field or plot.

(2) Soil-building period. It is recommended that each field or plot be planted in and achieve a viable stand of a solid-seeded (non-row), soil-building legume crop or crop mixture which includes at least one legume species and that the field or plot be maintained a minimum of one year out of a

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five-year period. During this soil-building period, the producer may maintain the soil-building crop through the crop's growing period to maturity or until the crop achieves its optimal soil-building characteristics. Soil-building crops may be used as winter cover or plow-down in fall. Some examples of soil-building practices include the following:

1. Plant and harvest a small grain crop with the solid-seeded crop mixture identified above; e.g., plant oats and alfalfa in the spring and harvest oats in the summer;
2. Maintain the solid-seeded crop mixture identified above for more than one season; e.g., alfalfa established in one season may be maintained and harvested for successive years if desired; or
3. Harvest the solid-seeded crop mixture identified above prior to its incorporation into the soil; e.g., harvest oats and alfalfa mixture in the summer prior to incorporation into the soil at a later time.

ITEM 5. Amend subrule **47.3(5)** by rescinding paragraph "**b**" and adopting in lieu thereof the following **new** paragraph "**b**":

b. Annual horticultural crops (fruit, vegetable and herb crops).

(1) Crops of the same species or family shall not be grown repeatedly without interruption on the same field or plot.

(2) Soil-building period. It is recommended that each field or plot be planted in and achieve a viable stand of a solid-seeded (non-row), soil-building legume crop or crop mixture which includes at least one legume species and that the field or plot be maintained a minimum of one year out of a five-year period. During this soil-building period, the producer may maintain the soil-building crop through the crop's growing period to maturity or until the crop achieves its optimal soil-building characteristics. Soil-building crops may be used as winter cover or plow-down in fall. Some examples of soil-building practices include the following:

1. Plant and harvest a small grain crop with the solid-seeded crop mixture identified above; e.g., plant oats and alfalfa in the spring and harvest oats in the summer;
2. Maintain the solid-seeded crop mixture identified above for more than one season; e.g., alfalfa established in one season may be maintained and harvested for successive years if desired; or
3. Harvest the solid-seeded crop mixture identified above prior to its incorporation into the soil; e.g., harvest oats and alfalfa mixture in the summer prior to incorporation into the soil at a later time.

(3) It is recommended that the producer make an effort to establish a rotation sequence where crops of the same species or family, e.g., Solanaceae family: tomatoes, peppers, potatoes and eggplant, are not planted in the same field or plot in consecutive years.

ITEM 6. Rescind subrule **47.3(5)**, paragraph "**c**," subparagraph (3).

ITEM 7. Rescind subrule **47.3(5)**, paragraph "**d**."

ITEM 8. Rescind subrule **47.4(2)**, paragraph "**c**," and re-letter paragraph "**d**" as "**c**."

ITEM 9. Amend rule 21—47.6(190C), introductory paragraph, as follows:

21—47.6(190C) General requirements. In order to receive and maintain organic certification from the department, producers, processors and handlers of organic agricultural products shall apply for organic certification with the department and submit all required materials; comply with Iowa Code chapter 190C and this chapter; permit the department to ac-

cess the operation and all applicable records as deemed necessary; comply with all local, state and federal regulations applicable to the conduct of such business; and submit all applicable fees to the department pursuant to Iowa Code section 190C.5(1) *as amended by 2003 Iowa Acts, House File 600*, and this chapter; and receive approval for certification by the organic standards board.

ITEM 10. Rescind and reserve rule **21—47.7(190C)**.

ITEM 11. Amend subrule 47.8(1) as follows:

47.8(1) The department shall serve as certification agent on behalf of and as authorized by the secretary of agriculture pursuant to Iowa Code section ~~190C.4(2)~~ *190C.3 as amended by 2003 Iowa Acts, House File 600*.

ITEM 12. Amend rule 21—47.9(190C), introductory paragraph, as follows:

21—47.9(190C) Fees. Fees are established for application, inspection, and certification to support costs associated with activities necessary to administer this program pursuant to Iowa Code sections 190C.5(1) to 190C.5(3) *as amended by 2003 Iowa Acts, House File 600*. The applicant shall submit all fees to the department for the specific amount and at the appropriate time as specified in this rule. A schedule of application, inspection and certification fees shall be published by the department and disseminated with the application packet.

ITEM 13. Rescind subrule 47.9(3) and insert in lieu thereof the following **new** subrule:

47.9(3) Certification fees. Certification fees may be adjusted annually pursuant to Iowa Code section 190C.5(2) as amended by 2003 Iowa Acts, House File 600. The certification fee is assessed annually.

ITEM 14. Amend rule 21—47.10(190C) as follows:

21—47.10(190C) Compliance.

47.10(1) Enforcement and investigations. The department and the attorney general shall enforce Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.21 *as amended by 2003 Iowa Acts, House File 600*.

47.10(2) Complaints. Any person may submit a written complaint to the department regarding a suspected violation of Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.22(2) *as amended by 2003 Iowa Acts, House File 600*. Such signed complaints shall be submitted on the required form provided by the department upon request.

47.10(3) Inspection and testing, reporting and exclusion from sale—unscheduled inspection. All parties making an organic claim may be subject to an unscheduled on-site inspection, review of records and sampling if deemed necessary by the department pursuant to Iowa Code sections ~~190C.4(2), 190C.22(2) and 190C.22(3), 190C.22(4) and 190C.24(1)~~ *as amended by 2003 Iowa Acts, House File 600*, to verify compliance.

47.10(4) Adverse action appeal process.

a. Appeals. Appeal procedures are established pursuant to Iowa Code section 190C.3(6) under 21—Chapter 2. ~~The organic standards board shall have final agency action, subject to the parameters of Iowa Code chapter 17A. The appeals committee shall be comprised of board members who did not serve on the certification review committee for the particular case in question and who have no conflict of interest in the matter. The department may receive and process appeals regarding organic certification to the extent authorized by the national organic program.~~ Procedures and re-

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

strictions concerning the hearing of appeals shall apply.

b. Written appeal. Except as specifically provided in the Iowa Code or elsewhere in the Iowa Administrative Code, a person who wishes to appeal an action or proposed action of the department which adversely affects the person shall file a written appeal with the department within 30 calendar days of the action or notice of the intended action. A written notice of appeal shall be considered filed on the date of the postmark if the notice is mailed. The failure to file timely shall be deemed a waiver of the right to appeal. ~~Appeal shall first go to the certification review committee. The certification review committee will determine if the party's claim has sufficient merit to overturn the earlier denial in a timely manner. If this is not the case, however, the appeal will be forwarded from the certification review committee to the appeals committee.~~

c. Records. Records of all appeals, complaints and disputes, and remedial actions relative to certification shall be maintained by the department for a minimum of ten years. Records shall include documentation of appropriate subsequent action taken and its effectiveness.

ITEM 15. Amend rule 21—47.11(190C), introductory paragraph, as follows:

21—47.11(190C) Regional organic associations (ROAs). ~~With approval by the board, the~~ *The* department may register and authorize a regional organic association to assist the ~~organic standards board~~ *department* by providing application assistance to its ~~the~~ *association's* members requesting application assistance.

ITEM 16. Amend subrule 47.11(1), introductory paragraph, as follows:

47.11(1) Registration and authorization. ~~Regional~~ *If authorized by the department, regional* organic associations shall be registered and authorized by the department in order to assist the ~~organic standards board pursuant to Iowa Code section 190C.6~~ *department*.

ITEM 17. Amend subrule **47.11(1)**, paragraph “b,” subparagraph (2), as follows:

(2) The regional association shall receive from the department a letter of authorization to provide application assistance ~~upon approval by the organic standards board.~~

ITEM 18. Rescind rule **21—47.12(190C)**.

ITEM 19. Amend **21—Chapter 47**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 190C *as amended by 2003 Iowa Acts, House File 600*.

ARC 2694B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 159.5(11) and 163.1, the Department of Agriculture and Land Steward-

ship hereby gives Notice of Intended Action to amend Chapter 64, “Infectious and Contagious Diseases,” Iowa Administrative Code.

The purpose of these amendments is to establish low pathogenic avian influenza (H5 and H7 subtypes) as a reportable disease in Iowa and to implement a control program for infected flocks.

Any interested persons may make written comments or suggestions on these proposed amendments until 4:30 p.m. on September 9, 2003. Such written materials should be directed to Dr. John Schiltz, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-4282. E-mail comments may be sent to John.Schiltz@idals.state.ia.us.

No waiver provision is included in these proposed amendments because 21—Chapter 8 allows for waivers in appropriate cases and applies to these proposed amendments.

The Department intends to adopt these amendments on a Filed Emergency After Notice basis.

Pursuant to 2003 Iowa Acts, House File 636, the Department finds that the fiscal impact of these amendments does not meet the threshold requirements.

These amendments are intended to implement Iowa Code chapter 163.

The following amendments are proposed.

ITEM 1. Amend rule **21—64.1(163)**, List B, Avian Diseases, by adding the following **new** entry in alphabetical order:

Low pathogenic avian influenza (H5 and H7 subtypes)

ITEM 2. Amend 21—Chapter 64 by adding the following **new** rules:

LOW PATHOGENIC AVIAN INFLUENZA (LPAI)

21—64.185(163) Definitions. Terms used in these rules are defined as follows:

“Affected poultry flock” means a poultry flock from which any animal has been diagnosed as affected with LPAI and which is not in compliance with the provisions of the control program for LPAI as described in this chapter.

“Approved laboratory” means the Iowa State University Veterinary Diagnostic Laboratory, Ames, Iowa, or other American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory, including the National Veterinary Services Laboratory, Ames, Iowa.

“Designated epidemiologist” means a state veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the state veterinarian.

“Individual flock plan” means a written flock management and testing plan that is designed by the flock owner, the owner’s veterinarian, if requested, and a designated epidemiologist to identify and eradicate LPAI from an affected or exposed flock and to prevent the spread of the disease to an adjacent flock.

“Low pathogenic avian influenza (LPAI)” means an infectious, contagious viral disease of poultry. For the purposes of these rules, LPAI shall include only subtypes identified as H5 or H7.

“LPAI affected” means a designation applied to poultry diagnosed as affected with LPAI based on laboratory results, clinical signs, or epidemiologic investigation.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

“LPAI suspect” means a designation applied to poultry for which laboratory evidence or clinical signs suggest a diagnosis of LPAI but for which laboratory results are inconclusive.

“Monitored LPAI poultry flock” means a flock of poultry that is in compliance with the surveillance and testing procedures set forth in these rules.

“Official avian influenza test” means an approved test conducted at a laboratory approved to diagnose avian influenza.

“Poultry” means commercial egg-laying and meat-producing chickens and commercial turkeys. “Poultry” also means breeder flocks and quail.

“Poultry flock” means a group of poultry or one or more groups of poultry maintained on common ground or under common ownership or supervision that are geographically separated but can have interchange or movement.

“Quarantine” means an imposed restriction prohibiting movement of poultry to any location without specific written permits.

21—64.186(163) Supervision of the low pathogenic avian influenza program. The state veterinarian’s office shall provide oversight and supervision of the LPAI program in Iowa.

21—64.187(163) Surveillance procedures. For poultry flocks, surveillance procedures shall include the following:

64.187(1) Turkeys.

a. Slaughter testing. Twenty blood samples shall be collected and forwarded to an approved laboratory for LPAI testing.

b. Sick flock testing. Twenty blood samples shall be collected two weeks after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. Routine serologic testing. A test for LPAI should be included.

64.187(2) Laying chickens and quail.

a. Preslaughter testing. Twenty blood samples shall be collected and forwarded to an approved laboratory for LPAI testing.

b. Sick flock testing. Twenty blood samples shall be collected two weeks after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. Routine serologic testing. A test for LPAI should be included.

64.187(3) Broiler chickens.

a. Slaughter testing. Twenty blood samples shall be collected and forwarded to an approved laboratory for LPAI testing.

b. Sick flock testing. Twenty blood samples shall be collected two weeks after the onset of respiratory disease and forwarded to an approved laboratory for LPAI testing.

c. Routine serologic testing. A test for LPAI should be included.

21—64.188(163) Official LPAI tests. Official tests for LPAI are:

1. Agar Gel Precipitin (AGP);
2. Enzyme Linked Immunosorbent Assay (ELISA);
3. Any other tests performed by an approved laboratory to confirm a diagnosis of LPAI.

Tests positive to screening for avian influenza must be forwarded to National Veterinary Services Laboratory, Ames, Iowa, for subtype testing.

21—64.189(163) Investigation of LPAI affected poultry identified through surveillance. All poultry diagnosed at an approved laboratory as affected with LPAI must be traced back to the flock of origin.

All flocks of origin having contact with affected or exposed poultry as determined by the designated epidemiologist must be investigated epidemiologically. All flocks of origin and flocks having contact with affected or exposed poultry must be quarantined.

21—64.190(163) Duration of quarantine. Quarantines imposed in accordance with these rules shall be in effect for a minimum of three months after the last detection of active avian influenza virus on the premises. Active avian influenza virus on the premises will be determined through the use of sentinel poultry or virus isolation.

21—64.191(163) Flock plan.

64.191(1) The flock owner, the owner’s veterinarian, if requested, and the epidemiologist shall develop a plan for eradicating LPAI in each affected flock. The plan must be designed to reduce and then eliminate LPAI from the flock, to prevent spread of the disease to other flocks, and to prevent reintroduction of LPAI after the flock becomes disease-free. The flock plan must be developed and signed within 15 days after the determination that the flock is affected.

64.191(2) The flock plan will include, but is not limited to, the following areas:

a. Movement of vehicles, equipment, and people on and off the premises.

b. Cleaning and disinfection of vehicles entering and leaving the premises.

c. Proper elimination of daily mortality through composting on premises, incineration on premises, or other approved method.

d. Biosecurity procedures for people entering or leaving the facility.

e. Controlled marketing.

(1) No marketing will be allowed from the infected premises for at least 21 days.

(2) After 21 days, marketing will only be allowed for delivery to slaughter establishments at the close of business for the week.

(3) Routes used to transport poultry to slaughter must avoid other poultry operations.

(4) Trucks used to transport poultry from an infected premises must be cleaned and disinfected and may not enter another poultry facility for at least 24 hours.

f. Vaccination. Avian influenza vaccine will be considered for use only if allowed by the state veterinarian and USDA APHIS.

(1) Killed H5 or H7 vaccine will be used to immunize all noninfected poultry remaining on the premises. Laying-flock replacement poultry should be vaccinated at least two weeks before entering the laying operation.

(2) Twenty sentinel (nonvaccinated) poultry will be kept in each vaccinated flock and all 20 will be tested for avian influenza every 30 days.

(3) Avian influenza virus will be considered to be no longer active when all sentinel poultry are serologically negative on two consecutive tests conducted at least 14 days apart and when cloacal swabs from each of the 20 sentinel poultry are negative by virus isolation testing.

(4) Positive sentinel poultry must be euthanized and replaced by negative poultry after 14 days.

(5) Slaughter withdrawal times must be followed in the marketing of poultry.

g. Housing facilities and manure. Housing facilities must be cleaned and disinfected with synthetic phenol compounds. Housing facilities must be heated to 95-100 degrees Fahrenheit for 15 days. Manure in the housing facilities must

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

be turned every three days. Manure from infected housing facilities must be carried in covered conveyances, and the transportation routes must avoid other poultry operations.

Manure shall not be removed from laying operations for a minimum of 30 days after the last active detection of avian influenza virus.

h. Wild bird, insect, and rodent control. Wild bird, insect, and rodent control programs must be implemented on the premises before a facility is repopulated with poultry. Rodenticide must be set out before feed or birds are removed from the premises.

i. Marketing eggs. Eggs which are washed, sanitized, and packed in new materials may be moved into normal marketing channels, but trucks hauling these eggs must not visit another premises between the production site and the market. Egg handling materials must be destroyed at the plant or cleaned, sanitized, and returned to the premises of origin without contacting materials going to other premises. Disposable egg flats or sanitized, plastic flats must be used to transport eggs.

j. Hen disposal. No hens may be removed from the premises for a minimum of 21 days after the last detection of active avian influenza virus on the premises. Immune flocks that have recovered from avian influenza infection may remain in production for the remainder of their scheduled life span.

64.191(3) The flock plan must address flock management and be in compliance with all provisions of these rules. The plan must be formalized as a memorandum of agreement between the owner and program officials, must be approved by the state veterinarian, and must include plans to obtain a disease-free status.

21—64.192(163) Cleaning and disinfecting. The premises must be cleaned and disinfected under state supervision within 15 days after affected poultry have been removed.

These rules are intended to implement Iowa Code chapter 163.

NOTICE—CIVIL REPARATIONS TRUST FUND

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of June 30, 2003, is approximately \$201,404.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the abovementioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

ARC 2715B

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 22, “Paraeducator Certificates,” Iowa Administrative Code.

The proposed amendments modify the requirements for the paraeducator certificate and add a new area of concentration. The amendment to subrule 22.6(5) clarifies that paraeducators need to complete competencies in the areas of reading, writing and mathematics. The amendment to subrule 22.7(2) strikes the phrase “in the instruction of students.” Subrule 22.7(5) adds a new area of concentration, School Library Media—PK-grade 12. The amendment to subrule 22.13(1) expands the options for renewal requirements.

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 Wednesday, September 24, 2003, at 1 p.m. in Room 3 South, Grimes State Office Building, East 14th Street 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 interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, September 26, 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. 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.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend subrule 22.6(5) as follows:

22.6(5) Applicants shall have successfully completed the following list of competencies so that, under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

a. Support a safe, positive teaching and learning environment including the following competencies:

(1) Follow prescribed health, safety, and emergency school and classroom policy and procedures.

(2) As directed, prepare and organize materials to support teaching and learning.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

(3) Use strategies and techniques for facilitating the integration of individuals with diverse learning needs in various settings.

(4) Assist with special health services.

(5) Assist in adapting instructional strategies and materials according to the needs of the learner *in content areas including, but not limited to, reading, writing and mathematics.*

(6) Assist in gathering and recording data about the performance and behavior of individuals.

(7) Assist in maintaining a motivational environment.

(8) Assist in various instructional arrangements (e.g., large group, small group, tutoring).

(9) *Demonstrate knowledge in the content areas of reading, writing and mathematics.*

b. to f. No change.

ITEM 2. Amend subrule 22.7(2) as follows:

22.7(2) Special needs—prekindergarten through grade 12. The paraeducator shall successfully complete the following list of competencies so that under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

a. Understand and implement the goals and objectives in an individualized education plan (IEP).

b. Demonstrate an understanding of the value of serving children and youth with disabilities and special needs in inclusive settings.

c. Assist ~~in the instruction of students~~ in academic subjects using lesson plans and instructional strategies developed by teachers and other professional support staff.

d. Gather and maintain data about the performance and behavior of individual students and confer with special and general education practitioners about student schedules, instructional goals, progress, and performance.

e. Use appropriate instructional procedures and reinforcement techniques.

f. Operate computers, *and* use assistive technology and adaptive equipment that will enable students with special needs to participate more fully in general education.

ITEM 3. Adopt the following **new** subrule:

22.7(5) School library media—prekindergarten through grade 12. The school library media paraeducator shall successfully complete the following list of competencies so that, under the direct supervision and direction of a qualified school library supervisor or school librarian, the paraeducator will be able to:

a. Be aware of, implement, and support the goals, objectives, and policies of the school library media program.

b. Assist the school library supervisor or school librarian in general operations, such as processing materials, circulating materials, performing clerical tasks, assisting students and staff, and working with volunteers and student helpers, and to understand the role of the paraeducator in the library setting in order to provide efficient, equitable, and effective library services.

c. Demonstrate knowledge of library technical services including, but not limited to, cataloging, processing, acquisitions, routine library maintenance, automation and new technologies.

d. Be aware of and support the integration of literacy initiatives and content area standards, e.g., visual information and technology in support of the curriculum.

e. Be aware of the role school libraries play in improving student achievement, literacy, and lifelong learning.

f. Demonstrate an understanding of ethical issues related to school libraries, such as copyright, plagiarism, privacy, diversity, confidentiality, and freedom of speech.

g. Assist in the daily operations of the school library program, such as shelving, working with volunteers and student helpers, inventory, materials repair and maintenance.

h. Exhibit welcoming behaviors to all library patrons and visitors to encourage use of the library and its resources.

i. Demonstrate knowledge of the school library collection and the availability of other resources that will meet individual student information or research needs.

j. Demonstrate a general knowledge of basic technology skills and assist in troubleshooting basic hardware and software problems.

ITEM 4. Amend subrule 22.13(1) as follows:

22.13(1) The paraeducator certificate may be renewed upon application, *payment of a \$25 renewal fee, and verification of successful completion of coursework totaling three units in any combination listed below.*

a. ~~One unit may be earned through a planned staff development renewal course related to paraeducators in accordance with guidelines approved by the board of educational examiners for each hour of credit which leads to the completion of the requirements for an area of concentration not currently held.~~

b. *One unit may be earned for each hour of credit that will assist a paraeducator to demonstrate the knowledge of and the ability to assist in reading, writing, or mathematics.*

c. *One unit may be earned for each hour of credit completed which supports either the building's or district's career development plan.*

~~b d.~~ One unit may be earned for each semester hour of college credit.

ARC 2716B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 459.103, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The proposed amendment modifies the construction design standards for formed manure storage structures as prescribed by 2002 Iowa Acts, chapter 1137. The proposed standards include upgraded requirements for formed manure storage structures and formed manure storage structures in karst areas and separate construction design standards for formed manure storage structures that store manure exclusively in a dry form.

Written comments will be accepted until 4:30 p.m. on September 11, 2003. Written comments should be sent to Sara Smith, Animal Feeding Operations Section, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319;

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

or faxed to (515)281-8895; or E-mail to Sara.Smith@dnr.state.ia.us.

Also, there will be a public hearing on September 11, 2003, at 1 p.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, people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code section 459.307.

The following amendment is proposed.

Rescind subrule 65.15(14) and adopt in lieu thereof the following **new** subrule:

65.15(14) Concrete standards. A formed manure storage structure which is constructed of concrete on or after January 1, 2004, that is part of a confinement feeding operation other than a small animal feeding operation shall meet the following minimum standards (CAVEAT: These standards are not intended to address other site-related engineering and construction considerations beyond the department's jurisdiction):

a. Nondry manure storage. The following minimum standards are required for a formed structure other than that used for the storage of manure exclusively in a dry form:

(1) The subgrade of the structure shall be graded and compacted to provide a uniform, smooth base, and shall be free of vegetation, organic materials and debris. If the subgrade is nonuniform, a 2-inch subbase of compacted granular material such as sand or similar materials shall be installed.

(2) If the groundwater table, as determined in 65.15(7)"c," will be above the bottom of the concrete structure, a drain tile shall be installed at least 2 feet below the elevation of the footings to lower the groundwater table pursuant to 65.15(7)"b." The drain tile shall be covered with a minimum of 2 inches of gravel or granular material to prevent plugging the drain tile.

(3) All concrete shall have the following minimum compressive strengths as batched and delivered and shall meet American Society for Testing and Materials (ASTM) C-94:

1. 4,000 pounds per square inch (psi) for walls, floors, beams, columns and pumpouts; and

2. 3,000 psi for the footings.

(4) The concrete shall be made with Portland cement that meets the specifications of ASTM C-150, and with aggregates that meet the specifications of ASTM C-33.

(5) All concrete placed on walls shall be consolidated or vibrated, by manual or mechanical means, or a combination, in a manner which meets American Concrete Institute (ACI) 309.

(6) All rebar used shall be a minimum of grade 40 steel.

(7) All rebar shall be placed so as to have a cover of at least 1½ inches.

(8) The floor shall be a minimum of 5 inches thick. The floor of any structure with a depth of 48 inches or more shall be reinforced with a minimum of #4 rebar placed a maximum of 18 inches on center in each direction, or the equivalent design submitted by an engineer licensed in the state of Iowa or by Natural Resources Conservation Service (NRCS) personnel.

(9) The footing or the area where the floor comes in contact with the walls and columns shall be at least 8 inches thick and at least twice the width of the walls, or the equivalent design submitted by an engineer licensed in the state of Iowa or by NRCS personnel.

(10) The load-bearing walls of any structure with a depth of 8 feet or less shall be a minimum of 8 inches thick. The load-bearing walls of any structure with a depth of more than 8 feet shall be a minimum of 10 inches thick. The walls shall be reinforced with a minimum of #4 rebar placed a maximum of 10 inches on center in each direction or the equivalent design submitted by an engineer licensed in the state of Iowa or by NRCS personnel.

(11) Either the vertical steel of the walls and columns shall be extended to the footing and bent at 90°, or a separate dowel shall be installed that is at least 24 inches long and bent at 90°.

(12) All load-bearing walls shall be formed with rigid forming systems and shall not be ground-formed.

(13) All concrete shall be properly cured for at least seven days after pouring, in a manner which meets ACI-308R, by maintaining adequate moisture or by using a curing compound that meets ASTM C-309.

(14) All construction joints shall be poured to prevent discontinuity of steel and concrete and have rebar placed through the joint that is properly spliced and overlaid. Waterstops and keyways shall be installed in all areas where fresh concrete will meet hardened concrete. The waterstops shall be made of plastic or other similar material approved by the department.

(15) Contraction joints for the control of cracking shall be installed in the floors and walls at intervals of less than 100 feet. The floor control joint shall meet the wall contraction joint and shall be sealed with joint sealing that meets ACI-318.

b. Dry manure storage. The following minimum standards are required for a formed structure for the storage of manure exclusively in a dry form.

(1) The subgrade of the structure shall be graded and compacted to provide a uniform, smooth base, and shall be free of vegetation, organic materials and debris. If the subgrade is nonuniform, a 2-inch subbase of compacted granular material such as sand or similar materials shall be installed.

(2) If the groundwater table, as determined in 65.15(7)"c," will be above the bottom of the concrete structure, a drain tile shall be installed at least 2 feet below the elevation of the footings to lower the groundwater table pursuant to 65.15(7)"b." The drain tile shall be covered with a minimum of 2 inches of gravel or granular material to prevent plugging the drain tile.

(3) All concrete shall have the following minimum compressive strengths as batched and delivered and shall meet the American Society for Testing and Materials (ASTM) C-94:

1. 4,000 pounds per square inch (psi) for walls, floors, beams and columns; and

2. 3,000 psi for the footings.

(4) The concrete for walls and floors shall be made with Portland cement that meets the specifications of ASTM C-150, and with aggregates that meet the specifications of ASTM C-33.

(5) All concrete placed on walls shall be consolidated or vibrated, by manual or mechanical means, or a combination, in a manner which meets American Concrete Institute (ACI) 309.

(6) All rebar used shall be a minimum of grade 40 steel.

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(7) All rebar shall be placed so as to have a cover of at least 1½ inches.

(8) The floor shall be a minimum of 6 inches thick and shall be reinforced with a minimum of #4 rebar placed a maximum of 18 inches on center in each direction, or the equivalent design submitted by an engineer licensed in the state of Iowa or by Natural Resources Conservation Service (NRCS) personnel.

(9) The footing or the area where the floor comes in contact with the walls and columns shall be at least 8 inches thick and at least twice the width of the walls, or the equivalent design submitted by an engineer licensed in the state of Iowa or by NRCS personnel.

(10) The load-bearing walls of any structure with a depth of 10 feet or less that stores manure exclusively in a dry form shall be a minimum of 6 inches thick. The load-bearing walls of any structure with a depth of more than 10 feet shall be a minimum of 8 inches thick. The walls shall be reinforced with a minimum of #4 rebar placed a maximum of 18 inches on center in each direction or the equivalent design submitted by an engineer licensed in the state of Iowa or by NRCS personnel.

(11) All walls shall be formed with rigid forming systems and shall not be ground-formed.

(12) All concrete shall be properly cured for at least seven days after pouring, in a manner which meets ACI-308R, by maintaining adequate moisture or by using a curing compound that meets ASTM C-309.

(13) All construction joints shall be poured to prevent discontinuity of steel and concrete and have rebar placed through the joint that is properly spliced and overlaid. Waterstops and keyways shall be installed in all areas where fresh concrete will meet hardened concrete. The waterstops shall be made of plastic or other similar material approved by the department.

(14) Contraction joints for the control of cracking shall be installed in the floors and walls at intervals of less than 100 feet. The floor control joint shall meet the wall contraction joint and shall be sealed with joint sealing that meets ACI-318.

c. Karst terrain—upgraded standards. If the site of the proposed formed manure storage structure is located in an area that exhibits karst terrain or known sinkholes (sinkholes within one-half mile), the following additional minimum requirements apply to all confinement feeding operations:

(1) A minimum 5-foot vertical separation distance shall be maintained between the bottom of the proposed structure and limestone, dolomite, or other soluble rock.

(2) If the bottom elevation of the proposed structure is within 5 feet of limestone, dolomite, or other soluble rock, the structure shall be designed by a professional engineer licensed in the state of Iowa or by a Natural Resources Conservation Service (NRCS) staff person who certifies the structural integrity of the structure.

(3) In addition, the applicant shall obtain soil borings or dig a pit to determine whether the vertical separation between the bottom of the proposed structure and limestone, dolomite, or other soluble rock is 5 feet or less. If one formed structure is being constructed, a minimum of two soil borings or two pits are required. However, if two or more formed structures are being constructed, a minimum of two soil borings or two pits per structure are required.

ARC 2717B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.304(1) and 455D.7(1), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 117, “Waste Tire Management,” Iowa Administrative Code.

These amendments reference appropriate statutory authority for enforcement actions and penalties in accordance with provisions of Chapter 117. Enforcement authority for noncompliance with solid waste regulations is contained within Iowa Code chapter 455B. Therefore, these amendments add references to Iowa Code chapter 455B as needed. These amendments will provide greater effectiveness, clarity, and consistency with legislative intent and statutory authority for waste tire management and regulation.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 10, 2003. Such written materials should be directed to Mel Pins, Energy and Waste Management Bureau, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515) 281-8895. Persons wishing to convey their views orally should contact Mel Pins at (515)281-8489 or at the Wallace State Office Building.

Also, there will be a public hearing on September 10, 2003, at 10 a.m. in the Fifth Floor Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, 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 related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 455B.301 to 455B.307 and 455D.11 to 455D.11H.

The following amendments are proposed.

ITEM 1. Amend rules **567—117.1(455D)** to **567—117.8(455D)**, parenthetical implementation, as follows: (455B,455D)

ITEM 2. Amend **567—Chapter 117**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections *455B.301 to 455B.307 and 455D.11 to 455D.11H*.

ARC 2702B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

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

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

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

The proposed amendment reflects the prohibition in Federal Election Commission regulation 11 CFR 110.20 that prohibits foreign nationals from expending funds in connection with a state or local campaign or election in Iowa. The Board receives frequent questions on this issue.

The proposed amendment does not contain a waiver provision as the prohibition is mandated by federal regulation.

Any interested person may make written comments on the proposed amendment on or before September 9, 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.

This amendment is intended to implement Iowa Code chapter 56.

The following amendment is proposed.

Adopt **new** rule 351—4.28(56) as follows:

351—4.28(56) Prohibition on contributions and independent expenditures by foreign nationals. As provided in Federal Election Commission regulation 11 CFR 110.20, a foreign national shall not, directly or indirectly, make a contribution or expenditure of money or other thing of value, or specifically promise to make a contribution, in connection with a state or local campaign or election in Iowa. A foreign national shall not, directly or indirectly, make a contribution to a campaign committee organized under Iowa Code chapter 56. Foreign nationals are also prohibited from making independent expenditures in relation to any state or local campaign or election in Iowa.

4.28(1) Foreign national defined. “Foreign national” means a person who is not a citizen of the United States and who is not lawfully admitted for permanent residence. “Foreign national” also includes a “foreign principal,” such as a government of a foreign country or a foreign political party, partnership, association, corporation, organization, or other combination of persons that has its primary place of business in or is organized under the laws of a foreign country. “Foreign national” shall not include any person who is a citizen of the United States or who is a national of the United States.

4.28(2) Acceptance of contributions and independent expenditures from foreign nationals. No person shall knowingly accept or receive any contribution from a foreign national with regard to such person’s election-related activities.

4.28(3) Participation by foreign nationals in decisions involving election-related activity. A foreign national shall not, directly or indirectly, participate in the decision-making process of any person, including a corporation, labor organization, political committee, or political organization, with

regard to such person’s election-related activities. Decisions involving election-related activities include decisions involving the making of contributions, donations, or expenditures in connection with elections for state or local office or decisions involving the administration of a political committee.

This rule is intended to implement Iowa Code chapter 56.

ARC 2695B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

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

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

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

The proposed amendments permit a nonprofit advocacy corporation that meets certain criteria and receives Board certification as a political corporation to make independent expenditures that expressly advocate for or against a clearly identified candidate. The provisions of the rule reflect the Federal Election Commission’s regulation in 11 CFR 114.10, the Board’s determination in an investigation, and the following federal court decisions: Federal Election Comm’n v. National Right to Work Comm., 459 U.S. 197; Federal Election Comm’n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238; Iowa Right to Life Committee, Inc., et al. v. Kay Williams, et al., 187 F. 3d 963; and Federal Election Comm’n v. Beaumont, (02-403).

The proposed amendments do not contain a waiver provision as the requirements reflect federal court decisions interpreting campaign finance provisions.

Any interested person may make written comments on the proposed amendments on or before September 9, 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 sections 56.13 and 56.15.

The following amendments are proposed.

ITEM 1. Rescind rule 351—4.50(56,68B) and adopt the following **new** rule in lieu thereof:

351—4.50(56) Political corporations. The prohibitions in Iowa Code section 56.15 on corporations that make expenditures to expressly advocate for or against a clearly identified candidate do not apply to a nonprofit advocacy corporation that has received certification as a political corporation pursuant to this rule.

4.50(1) Applicability. A political corporation may make an independent expenditure as defined in Iowa Code section 56.13(1) to expressly advocate for or against a clearly identified candidate. However, a political corporation may not make direct contributions to a candidate’s committee, state

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

statutory political committee, county statutory political committee, or any political committee (PAC) that is established to expressly advocate for or against a clearly identified candidate.

4.50(2) Criteria. A corporate entity applying for certification as a political corporation shall meet all of the following criteria:

a. The corporation was organized solely for political purposes and engages in minor business activities that generate minimal income and that are incidental to its political purposes.

b. The corporation is not sponsored by a business corporation and has a policy of accepting only an insignificant and insubstantial amount of income from business corporations.

c. The corporation has no shareholders or others that have claims on its assets or earnings.

4.50(3) Application. A corporate entity seeking certification as a political corporation shall submit a letter affirming that the corporate entity meets all of the criteria set out in subrule 4.50(2). The application letter shall also include all other pertinent details of the corporate entity's activities and shall be signed by a corporate officer.

4.50(4) Board review. The board shall review an application letter from a corporate entity seeking status as a political corporation and shall issue a letter of approval or denial.

4.50(5) Denial or failure to seek certification. It shall be deemed a violation of Iowa Code section 56.15 for a corporate entity that is denied certification as a political corporation to make an independent expenditure that expressly advocates for or against a clearly identified candidate. It shall be deemed a violation of Iowa Code section 56.15 for a corporation to make an independent expenditure that expressly advocates for or against a clearly identified candidate without first seeking certification as a political corporation.

4.50(6) Filing. As required by Iowa Code section 56.13, a corporate entity granted political corporation status that makes an independent expenditure in excess of \$750 in the aggregate shall file an independent expenditure statement within 48 hours after the making of the expenditure.

4.50(7) Campaign committee incorporation. An Iowa committee organized under Iowa Code chapter 56 that chooses to incorporate may do so without applying for certification as a political corporation. A committee that chooses to incorporate is not a prohibited contributor under Iowa Code section 56.15.

This rule is intended to implement Iowa Code sections 56.13 and 56.15.

ITEM 2. Rescind and reserve rule 351—4.51(56,68B).

ARC 2699B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment increases the premiums assessed for coverage under the group "Medicaid for employed people with disabilities." When the gross income of a disabled person in this coverage group exceeds 150 percent of the federal poverty level, the Department assesses premiums on a sliding scale, based on a percentage of the person's income. Iowa Code section 249A.3(2) as amended by 2003 Iowa Acts, House File 489, directs the Department to make the maximum premium "commensurate with the cost of state employees' group health insurance." This amendment sets new premium rates based on the increases in the cost of Iowa state employees' group health insurance that took effect in January 2003.

This amendment increases existing premium amounts by 10 percent and adds additional increments to the scale. Currently, the maximum premium amount is \$201 per month and is assessed to all recipients with incomes over 390 percent of the federal poverty level. Under the amendment, the highest premium amount is \$355 per month and is assessed when the recipient's income is over 632 percent of the federal poverty level.

This amendment does not provide for waivers in specified situations because the Department believes that all recipients with similar incomes should be subject to the same premium collection. Individuals may request a waiver of the premium level under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before September 10, 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 249A.3, subsection 2, as amended by 2003 Iowa Acts, House File 489, section 2.

The following amendment is proposed.

Amend subrule 75.1(39), paragraph "b," subparagraph (1), as follows:

(1) Premiums shall be assessed as follows:

Table with 2 columns: INCOME OF THE ELIGIBLE INDIVIDUAL ABOVE: and MONTHLY PREMIUM. Rows list percentages from 150% to 632% of Federal Poverty Level with corresponding premium amounts.

ARC 2700B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments update Medicaid policies for hospitals that receive payments from the Graduate Medical Education and Disproportionate Share Fund for inpatient and outpatient services. Hospitals can qualify for payments from this fund when they report direct medical education costs or they have high rates of low-income or Medicaid utilization or meet requirements for children’s hospitals.

References to data sources are updated to match the most recent rebasing period, to reflect changes in medical education costs and disproportionate share status. For most hospitals, the information used is from the hospital’s fiscal year ending in 2001. Payment amounts are updated to reflect the 3 percent deflation rate applied to hospital providers effective for state fiscal year 2002.

References to inflation and utilization increases being subject to legislative appropriations are removed, based on objections from the federal Centers for Medicare and Medicaid Services. Rules are amended to provide that inflation factors shall be set annually at levels that ensure payments that meet federal Medicaid requirements. The total allocation to the Graduate Medical Education and Disproportionate Share Fund is capped. When the amounts allocated to the Fund change, the Department will adopt rules reflecting those changes.

References to the outpatient risk corridor are removed, since they no longer apply. The risk corridor was a period specified in state fiscal years 1995 and 1996 when hospitals and the Department were held harmless from drastic changes in reimbursement due to the shift to reimbursement based on ambulatory patient groups.

References to adjustments to the Graduate Medical Education and Disproportionate Share Fund based on the Medicaid outpatient population are removed because the Department does not have authority to increase the amount allocated to the fund absent legislative appropriation. Rules requiring automatic increases without corresponding appropriations could result in a deficit.

These amendments do not provide for waivers in specified situations because all hospitals should be subject to the same formulas for direct and indirect medical education and disproportionate share payments. Hospitals may request a waiver of these policies under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before September 10, 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.

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

The following amendments are proposed.

ITEM 1. Amend subrule **79.1(5)**, paragraph “a,” definition of “direct medical education rate,” as follows:

“Direct medical education rate” shall mean a rate calculated for a hospital reporting medical education costs on the Medicare cost report (CMS 2552). The rate is calculated using the following formula: Direct medical education costs are multiplied by inflation factors. The result is divided by the hospital’s case-mix index, then is further divided by net discharges. ~~This formula is limited by funding availability that is legislatively appropriated.~~

For purposes of calculating the disproportionate share rate only, a separate direct medical education rate shall be determined for any hospital that qualifies for a disproportionate share payment only as a children’s hospital based on a distinct area or areas serving children, using the direct medical education costs, case-mix index, and net discharges of the distinct area or areas in the hospital where services are provided predominantly to children under 18 years of age.

ITEM 2. Amend subrule **79.1(5)**, paragraph “k,” subparagraph (1), as follows:

~~(1) Inflation of base payment amounts by the Data Resources, Inc. hospital market basket index factors shall be performed set annually, subject to legislative appropriations at levels that ensure payments that are consistent with efficiency, economy, and quality of care and that are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.~~

ITEM 3. Amend subrule **79.1(5)**, paragraph “y,” as follows:

Amend subparagraphs (2), (3), (5), and (6) as follows:

(2) Allocation to fund for direct medical education. Except as reduced pursuant to subparagraph 79.1(5)“y”(3), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to inpatient services for July 1, 2000 2003, through June 30, 2001 2004, is \$8,314,810 \$8,065,366. ~~Adjustments may be made to this amount for inflation or utilization increases, subject to legislative appropriations.~~

(3) Distribution to qualifying hospitals for direct medical education. Distribution of the amount in the fund for direct medical education shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for direct medical education, the following formula is used:

1. Multiply the total of all DRG weights for claims paid from July 1, 1999 2002, through June 30, 2000 2003, for each hospital reporting direct medical education costs that qualify for payment as medical education costs under the Medicare program in the hospital’s base year cost report by each hospital’s direct medical education rate to obtain a dollar value.

2. ~~The Sum the~~ dollar values for each hospital are summed, then ~~divide~~ each hospital’s dollar value is divided by the total dollar value, resulting in a percentage.

3. ~~Each Multiply each~~ hospital’s percentage is multiplied by the amount allocated for direct medical education to determine the payment to each hospital.

Effective for payments from the fund for July 2003, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2002, through June 30, 2003. Thereafter, the state fiscal year used as the source of DRG weights shall

HUMAN SERVICES DEPARTMENT[441](cont'd)

be updated by a three-year period effective for payments from the fund for July of every third year.

If a hospital fails to qualify for direct medical education payments from the fund because it does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.

(5) Allocation to fund for indirect medical education. Except as reduced pursuant to subparagraph 79.1(5)"y"(6), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for indirect medical education for July 1, 2000 2003, through June 30, 2001 2004, is \$14,599,413 \$14,161,431. ~~Adjustments may be made to this amount for inflation or utilization increases, subject to legislative appropriations.~~

(6) Distribution to qualifying hospitals for indirect medical education. Distribution of the amount in the fund for indirect medical education shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for indirect medical education, the following formula is used:

1. Multiply the total of all DRG weights for claims paid from July 1, 1999 2002, through June 30, 2000 2003, for each hospital reporting direct medical education costs that qualify for payment as medical education costs under the Medicare program in the hospital's base year cost report by each hospital's indirect medical education rate to obtain a dollar value.

2. ~~The Sum the~~ dollar values for each hospital are summed, then *divide* each hospital's dollar value is divided by the total dollar value, resulting in a percentage.

3. ~~Each Multiply each~~ hospital's percentage is multiplied by the amount allocated for indirect medical education to determine the payment to each hospital.

Effective for payments from the fund for July 2003, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2002, through June 30, 2003. Thereafter, the state fiscal year used as the source of DRG weights shall be updated by a three-year period effective for payments from the fund for July of every third year.

If a hospital fails to qualify for indirect medical education payments from the fund because it does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.

Amend subparagraph (7), fifth unnumbered paragraph, as follows:

Information contained in the hospital's available 1998 2001 submitted Medicare cost report is used to determine the hospital's low-income utilization rate and the hospital's Medicaid inpatient utilization rate.

Amend subparagraph (8) as follows:

(8) Allocation to fund for disproportionate share. The total amount of funding that is allocated to the graduate medical education and disproportionate share fund for disproportionate share payments for July 1, 2000 2003, through June 30, 2001 2004, is \$6,978,925 \$6,769,557. ~~Adjustments may be made to this amount for inflation or utilization increases, subject to legislative appropriations.~~

Amend subparagraph (9), first unnumbered paragraph, as follows:

1. Multiply the total of all DRG weights for claims paid July 1, 1999 2002, through June 30, 2000 2003, for each hospital that met the qualifications during the fiscal year used to determine the hospital's low-income utilization rate and Medicaid utilization rate (or for children's hospitals, during the preceding state fiscal year) by each hospital's disproportionate share rate to obtain a dollar value. For any hospital that qualifies for a disproportionate share payment only as a children's hospital, only the DRG weights for claims paid for services rendered to patients under 18 years of age at the time of admission in all distinct areas of the hospital where services are provided predominantly to children under 18 years of age shall be used in this calculation.

2. ~~The Sum the~~ dollar values for each hospital are summed, then *divide* each hospital's dollar value is divided by the total dollar value, resulting in a percentage.

3. ~~Each Multiply each~~ hospital's percentage is multiplied by the amount allocated for disproportionate share to determine the payment to each hospital.

ITEM 4. Amend subrule 79.1(16), paragraph "a," as follows:

Amend the definition of "direct medical education rate" as follows:

"Direct medical education rate" shall mean a rate calculated for a hospital reporting medical education costs on the Medicare cost report (HCFA CMS 2552). The rate is calculated using the following formula: Direct medical education costs are multiplied by the percentage of valid claims to total claims, further multiplied by inflation factors, then divided by outpatient visits. ~~This formula is limited by funding availability that is legislatively appropriated.~~

Rescind the definition of "risk corridor."

ITEM 5. Amend subrule 79.1(16), paragraph "j," as follows:

Amend the introductory paragraph as follows:

j. ~~System implementation, inflation~~ Inflation factors, rebasing, and recalibration. ~~For state fiscal years 1995 and 1996, a risk corridor has been established to ensure that APG payments to each hospital will not be less than 95 percent or greater than 105 percent of Medicaid allowable costs. For the state fiscal year 1997, a risk corridor has been established to ensure that hospital payments will not be less than 90 percent or greater than 110 percent of Medicaid allowable costs.~~

Rescind the first unnumbered paragraph.

Amend subparagraph (1) as follows:

(1) ~~Inflation of base payment amounts by the Data Resources, Inc. hospital market basket index factors shall be performed set annually, subject to legislative appropriations at levels that ensure payments that are consistent with efficiency, economy, and quality of care and that are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.~~

ITEM 6. Amend subrule 79.1(16), paragraph "v," subparagraphs (2) and (3), as follows:

(2) Allocation to fund for direct medical education. Except as reduced pursuant to subparagraph 79.1(16)"v"(3), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to outpatient services for July 1, 2000 2003, through June 30, 2001 2004, is \$2,811,778 \$2,727,424. ~~Adjustments may be made to this amount for inflation, subject to legislative appropriations, and for utilization increases as established in paragraph 79.1(16)"w."~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) Distribution to qualifying hospitals for direct medical education. Distribution of the amount in the fund for direct medical education shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for direct medical education, the following formula is used:

1. Multiply the total count of outpatient visits for claims paid from July 1, 1999 2002, through June 30, 2000 2003, for each hospital reporting direct medical education costs that qualify for payment as medical education costs under the Medicare program in the hospital's base year cost report by each hospital's direct medical education rate to obtain a dollar value.

2. ~~The~~ *Sum* the dollar values for each hospital ~~are~~ summed, then *divide* each hospital's dollar value ~~is~~ divided by the total dollar value, resulting in a percentage.

3. ~~Each~~ *Multiply* each hospital's percentage ~~is~~ multiplied by the amount allocated for direct medical education to determine the payment to each hospital.

Effective for payments from the fund for July 2003, the state fiscal year used as the source of the count of outpatient visits shall be updated to July 1, 2002, through June 30, 2003. Thereafter, the state fiscal year used as the source of the count of outpatient visits shall be updated by a three-year period effective for payments from the fund for July of every third year.

If a hospital fails to qualify for direct medical education payments from the fund because it does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.

ITEM 7. Rescind subrule 79.1(16), paragraph "w."

ARC 2701B

HUMAN SERVICES DEPARTMENT[441]

Notice of Termination and Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 234.6 and 600.22, the Department of Human Services proposes to amend Chapter 130, "General Provisions," and Chapter 201, "Subsidized Adoptions," Iowa Administrative Code.

Notice of Intended Action on the change to Chapter 130 was originally published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2393B**. The Department finds that further rule changes in the adoption subsidy program are needed to make that amendment effective. Therefore, the Department is terminating rule making on that Notice of Intended Action, **ARC 2393B**, and incorporating that amendment into this new Notice of Intended Action, which includes other changes in adoption subsidy rules.

These amendments make the following changes in policies governing eligibility for adoption subsidies:

- Eliminate minority children under two years of age and children who are at risk of (instead of diagnosed as) having mental retardation or an emotional or physical disability from the list of "special needs" that qualify a child for an adoption subsidy.
- Limit the subsidy for nonrecurring expenses for children entering the United States to be adopted to \$2000. This change will enforce current practice. (Nonrecurring expenses are the only type of subsidy available to these children.)
- Limit eligibility for subsidy after a child reaches the age of 18 to children with a current diagnosis of physical or mental disability, based on a review six months before the child's eighteenth birthday.
- Clarify that unearned income of a child (other than child support) shall be subtracted dollar for dollar in computing the amount of a maintenance subsidy.
- Eliminate the biennial review of the subsidy agreement. Families may request a review when their circumstances or the child's needs change.
- Eliminate the addition of \$1 per day to the maintenance subsidy for a sibling group of three or more children.
- Require that a family's eligibility for Child Care Assistance be determined before subsidy funds are authorized for child care needs.
- Exclude the amount of the adoption subsidy from consideration toward the income eligibility limit for Child Care Assistance.
- Exclude families receiving a maintenance subsidy at a higher rate for "difficulty of care" from receiving a subsidy for child care.
- Require that a child care subsidy be limited to meeting the special needs of the child through a specialized program and be subject to the same reimbursement limit as under the Child Care Assistance program.
- Require that the need for and amount of subsidy payments for child care be reviewed annually.
- Limit the subsidy for attorney fees and court costs to \$700 for the first child and \$500 for each additional child adopted at the same time.
- Require families that realize a higher price on the sale of their home due to modifications funded by subsidy to refund to the Department the amount of the increased equity due to the modifications.
- Add expenses up to \$2000 related to preplacement visits as an allowable category for subsidy.
- Update form numbers and organizational references.

These amendments are recommended by the adoption subsidy advisory group convened in March 2003. The group consisted of representatives of Department staff, the Iowa Foster and Adoptive Parents Association, the legal community, and adoptive parents. The group's charge was to continue to provide a full range of services to adoptive families, provide equitable access, and manage available funds.

These changes are proposed to help contain costs within the adoption subsidy program while maintaining the focus of achieving and maintaining permanence for children in foster care through adoption. During the past several years, the Department has significantly increased the number of finalized adoptions of children with special needs. Currently there are more children covered by the subsidy program each month than in all levels of foster care. The Department is challenged to continue to provide quality adoption services with available resources.

These amendments do not provide for waivers. Individuals may request a waiver of these provisions in a specified sit-

HUMAN SERVICES DEPARTMENT[441](cont'd)

rendered within 30 days of receipt of request and verification materials unless additional verification is requested. If additional verification is requested, a decision shall be reached within 30 days of receipt of additional verification materials.

ITEM 5. Amend rule 441—201.5(600) as follows:

Amend subrule 201.5(1) as follows:

201.5(1) The amount of presubsidy or subsidy shall be negotiated between the department and the adoptive parents, and shall be based upon the needs of the child, and the circumstances of the family.

a. Each time negotiations are completed, the Adoption Subsidy Agreement, Form SS-6602-6 470-0749, shall be completed.

b. When a child is eligible for subsidy ~~but and the family does not currently need~~ assistance ~~is not needed by the child or family, or when the child is at risk of being determined a child with special needs and but may need~~ assistance may be needed in the future, only Form 470-0762, Agreement to Future Adoption Subsidy, shall be completed and retained in an inactive case record for future reference.

Amend subrule 201.5(2) as follows:

201.5(2) Other services available to the family free of charge to meet the needs of the child, such as other federal, state, and local governmental and private assistance programs, shall be explored and used ~~prior to before~~ the expenditure of subsidy funds.

a. ~~Similarly, unearned~~ Unearned income of the child, from sources such as social security, veterans administration benefits, railroad compensation, trust funds, and the family's insurance shall also be assessed and used where appropriate before subsidy funds are expended to reduce the amount of the maintenance subsidy, dollar for dollar.

b. Child support payments shall be excluded from consideration in computation of the maintenance subsidy.

c. Unearned income of the child shall be verified by documentation provided to the department worker by the family from the source of the income.

Amend subrule 201.5(7) as follows:

201.5(7) ~~A An adoptive family may request a review of the child's eligibility, subsidy agreement when there is a change in the family's circumstances, or the needs of the child, and the child's unearned income shall be completed every two years, or more often if necessary due to the child's need for a special service, revision of subsidy amount because of the child's age, or request for review by the adoptive family, by the department worker to renegotiate the type and amount of subsidy.~~

Amend subrule 201.5(9) as follows:

201.5(9) The maximum monthly maintenance payment for a child in subsidized adoption shall be made pursuant to the foster family care maintenance rates according to the age and special needs of the child found at 441—subrule 156.6(1) and 441—~~paragraphs~~ paragraph 156.6(4)“a” and “b.” If, at the time of placement, the child was receiving the special needs payment found at 441—paragraph 156.6(4)“d” or was in group care and would have been eligible for the payment if the child had been in foster care, the child shall be eligible for the payment in a subsidized adoptive placement.

ITEM 6. Amend subrule **201.6(1)**, paragraph “a,” as follows:

Amend subparagraph (1), introductory paragraph, as follows:

(1) Outpatient counseling or therapy services. Reimbursement for outpatient individual or family services may be provided from a non-Medicaid provider only with approv-

al from the ~~regional administrator~~ service area manager or designee and when one of the following applies:

Adopt the following **new** subparagraph:

(2) Expenses for transportation, lodging, or per diem related to preplacement visits, not to exceed \$2000 per family.

Amend subparagraphs (4), (6), and (7) as follows:

(4) Child care, as required by the child's special need. When a child's special need requires day child care as determined by the physician, therapist, or other specialist, the family ~~should be advised to~~ shall apply for family-day child care assistance, or other community resources. ~~These resources shall be used prior to the use of adoption subsidy funds. A family's eligibility for child care assistance shall be determined before subsidy funds are used. When a child receives the subsidy rate defined in 441—paragraph 156.6(4)“d,” the child is not eligible for child care reimbursement. When subsidy funds are used to pay for child care, the following conditions shall apply:~~

1. Child care may be provided inside or outside the home.

2. Child care shall be limited to meeting specific needs of the child through a specialized program.

3. The maximum reimbursement rate for child care shall not exceed the child care assistance rate.

4. The department shall review the need for child care reimbursement and the level of reimbursement at the beginning of each fiscal year.

(6) Supplies and equipment as required by the child's special needs and unavailable through other resources. When a sibling group of three or more are placed together, a one-time-only payment can be made, not to exceed \$500 per child. When home modifications have been authorized to accommodate a child's special needs and the family later sells the house, the family shall repay the department an amount equal to the increase in the equity value of the home attributable to the modifications.

(7) Attorney fees and court costs necessary to finalize the adoption, limited to the usual and customary fee for the area \$700 per child. When two or more children are adopted together, the maximum reimbursement rate shall be \$700 for the first child and \$500 for each additional child. Attorney fees may be paid when the adoptive family has negotiated an Agreement to Future Adoption Subsidy, Form 470-0762.

ITEM 7. Amend **441—Chapter 201**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 600.17 to 600.21 and 600.23; , and 2001 2003 Iowa Acts, House File 732 667, section 34 29, subsection 5.

ARC 2707B

MEDICAL EXAMINERS BOARD[653]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Medical Examiners hereby gives Notice of In-

MEDICAL EXAMINERS BOARD[653](cont'd)

tended Action to amend Chapter 13, "Standards of Practice," and rescind Chapter 18, "Principles of Professional Ethics," Iowa Administrative Code.

The Board approved the amendments at its regularly held meeting on July 24, 2003.

The proposed amendments retitle Chapter 13 and establish new standards of practice and principles of medical ethics therein. The new standards of practice address office practice, including termination of the physician-patient relationship, patient referrals, confidentiality, sexual conduct, disruptive behavior, sexual harassment, transfer of medical records, and retention of medical records. The waiver rule is moved to the end of the chapter. Principles of medical ethics are added with reference to ethics documents of the American Medical Association and the American Osteopathic Association, and include specific provisions on conflict of interest and reasonable fees.

Any interested person may present written comments on the proposed amendments not later than 4 p.m. on September 9, 2003. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, or E-mail at ann.mowery@ibme.state.ia.us.

There will be a public hearing on September 9, 2003, at 4 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 147, 148, and 150.

The following amendments are proposed.

ITEM 1. Amend **653—Chapter 13**, title, as follows:

CHAPTER 13
STANDARDS OF PRACTICE
AND PRINCIPLES OF MEDICAL ETHICS

ITEM 2. Adopt the following **new** rule:

653—13.7(147,148,272C) Standards of practice—office practices.

13.7(1) Termination of the physician-patient relationship. A physician may choose whom to serve. Having undertaken the care of a patient, the physician may not neglect the patient. A physician shall provide a patient written notice of the termination of the physician-patient relationship. A physician shall provide emergency medical care during the 30-day period following notice of the termination of the physician-patient relationship.

13.7(2) Patient referrals. A physician shall not pay or receive compensation for patient referrals.

13.7(3) Confidentiality. A physician shall maintain the confidentiality of all patient information obtained in the practice of medicine. Information shall be divulged by the physician when required by law, when authorized by the patient or when required for patient care.

13.7(4) Sexual conduct. It is unprofessional and unethical conduct, and is grounds for disciplinary action, for a physician to engage in conduct which violates the following prohibitions:

a. In the course of providing medical care, a physician shall not engage in contact, touching, or comments of a sexual nature with a patient, or with the patient's parent or guardian if the patient is a minor.

b. A physician shall not engage in any sexual conduct with a patient when that conduct occurs concurrent with the

physician-patient relationship, regardless of whether the patient consents to that conduct.

c. A physician shall not engage in any sexual conduct with a former patient unless the physician-patient relationship was completely terminated before the sexual conduct occurred. In considering whether that relationship was completely terminated, the board will consider the duration of the physician-patient relationship, the nature of the medical services provided, the lapse of time since the physician-patient relationship ended, the degree of dependence in the physician-patient relationship, and the extent to which the physician used or exploited the trust, knowledge, emotions, or influence derived from the physician-patient relationship.

d. A psychiatrist, or a physician who provides mental health counseling to a patient, shall never engage in any sexual conduct with a current or former patient, or with that patient's parent or guardian if the patient was a minor, regardless of whether the patient consents to that conduct.

13.7(5) Disruptive behavior. A physician shall not engage in disruptive behavior. Disruptive behavior is defined as a pattern of contentious, threatening, or intractable behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff.

13.7(6) Sexual harassment. A physician shall not engage in sexual harassment. Sexual harassment is defined as verbal or physical conduct of a sexual nature which interferes with another health care worker's performance or creates an intimidating, hostile or offensive work environment.

13.7(7) Transfer of medical records. A physician must provide a copy of all medical records generated by the physician in a timely manner to the patient or another physician designated by the patient, upon written request when legally requested to do so by the subject patient or by a legally designated representative of the subject patient, except as otherwise required by law. A physician may charge no more than the actual expense of providing duplicate records not to exceed:

Pages 1-20:	\$20
Pages 21-30:	\$20 plus \$1 per page
Pages 31-100:	\$30 plus \$.50 per page
Pages 101-200:	\$65 plus \$.25 per page
Over 200 pages:	\$90 plus \$.10 per page

The board will reconsider these fees at least every three years. A physician may also charge the actual expense of postage.

13.7(8) Retention of medical records. The following paragraphs become effective on January 1, 2004.

a. A physician shall retain all medical records, not appropriately transferred to another physician or entity, for at least seven years from the last date of service for each patient, except as otherwise required by law.

b. A physician must retain all medical records of minor patients, not appropriately transferred to another physician or entity, for at least two years beyond the date the minor patient reaches the age of majority, except as otherwise required by law.

c. Upon a physician's death or retirement, the sale of a medical practice or a physician's departure from the physician's medical practice:

(1) The physician or the physician's representative must ensure that all medical records are transferred to another physician or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The physician shall notify all active patients that their records will be transferred to another physician or entity that will retain custody of their records and that, at their written

MEDICAL EXAMINERS BOARD[653](cont'd)

request, the records will be sent to the physician or entity of the patient's choice.

(3) A physician may charge no more than the fees outlined in subrule 13.7(7) above for the cost of transferring records.

ITEM 3. Renumber rule **653—13.10(17A,147,148,272C)** as **653—13.21(17A,147,148,272C)**.

ITEM 4. Adopt the following new rule:

653—13.20(147,148,150) Principles of medical ethics. The Code of Medical Ethics (2002-2003) prepared and approved by the American Medical Association and the Code of Ethics (2002-2003) prepared and approved by the American Osteopathic Association shall be utilized by the board as guiding principles in the practice of medicine and surgery, osteopathic medicine and surgery and osteopathy in this state.

13.20(1) Conflict of interest.

a. A physician should not provide medical services under terms or conditions which tend to interfere with or impair the free and complete exercise of the physician's medical judgment and skill or tend to cause a deterioration of the quality of medical care.

b. A physician should not place the physician's financial interests above the welfare of the patient.

c. A physician should not provide unnecessary medical services for the physician's financial benefit.

d. In general, a physician should not refer a patient to an outside facility in which the physician has a financial interest unless the patient has received full disclosure of the physician's financial interest.

13.20(2) Fees. Any fee charged by a physician shall be reasonable.

ITEM 5. Rescind **653—Chapter 18**.

ARC 2704B

MEDICAL EXAMINERS BOARD[653]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Iowa Physician Health Committee," Iowa Administrative Code.

The Board approved the amendments at its regularly held meeting on July 24, 2003.

The proposed amendments provide the process for Board referrals to the Iowa Physician Health Program, the Board's licensee review committee, in accordance with 2003 Iowa Acts, House File 641.

Any interested person may present written comments on the proposed amendments not later than 4 p.m. on September 9, 2003. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, or E-mail at ann.mowery@ibme.state.ia.us.

There will be a public hearing on September 9, 2003, at 2:30 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code section 272C.3(1)"k" as amended by 2003 Iowa Acts, House File 641, section 6.

The following amendments are proposed.

ITEM 1. Amend rule **653—14.2(272C)** by adding the following new definition in alphabetical order:

"Referral by the board" means the board has determined, with or without having taken disciplinary action, that the applicant or licensee is an appropriate candidate for participation in the IPHP pursuant to 653—14.11(272C).

ITEM 2. Amend rule 653—14.3(272C) as follows:

653—14.3(272C) Purpose. The IPHC evaluates, assists, and monitors the recovery, rehabilitation, or maintenance of physicians who self-report impairments or are referred by the board pursuant to 653—14.11(272C) and, as necessary, notifies the board in the event of noncompliance with contract provisions. The IPHC is both an advocate for physician health and a means to protect the health and safety of the public.

ITEM 3. Amend rule 653—14.5(272C) as follows:

653—14.5(272C) Eligibility. To be eligible for participation in the IPHP, an applicant or a licensee must self-report an impairment or suspected impairment directly to the coordinator of the IPHP or be referred by the board for an impairment or suspected impairment pursuant to 653—14.11(272C) and be determined by the IPHC to be an appropriate candidate for participation in the IPHP.

14.5(1) An applicant or a licensee is deemed ineligible to participate in the program as a self-reporter if the committee finds sufficient evidence of any of the following:

a. The applicant or licensee is *has* engaged in the unlawful diversion or distribution of controlled substances or illegal substances to a third party or for personal profit or gain;

b. At the time of self-reporting, the licensee is already under an Iowa board order related to an impairment;

c. The applicant or licensee has caused harm or injury to a patient;

d. The board is currently investigating the applicant or licensee for matters related to an alleged impairment; or

e. The applicant or licensee provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the board or committee.

14.5(2) The IPHC may determine a referral from the board pursuant to 653—14.11(272C) is inappropriate for participation in the IPHP if:

a. The applicant or licensee fails to sign a contract.

b. The IPHC determines it will be unable to assist the applicant or licensee.

14.5(2 3) The IPHC shall report to the board any knowledge of violations of administrative rules or statutes unrelated to the impairment.

ITEM 4. Amend subrule **14.7(1)**, paragraph "a," as follows:

a. Participation in the program for applicants or licensees impaired as a result of alcohol or drug abuse, dependency, or addiction is set at a minimum of five years. The committee may offer a contract with a shorter duration to an applicant or licensee who can demonstrate successful participation in another state's physician health program or, who can

MEDICAL EXAMINERS BOARD[653](cont'd)

document similar experience, *or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.*

ITEM 5. Amend subrule 14.9(3) as follows:

14.9(3) The IPHC may communicate information about an IPHP participant to the board in the event a participant does not comply with the terms of the contract. The IPHC may provide the board with a participant's IPHC IPHP file in the event the participant does not comply with the terms of the contract and the IPHC refers the case to the board for the filing of formal disciplinary charges. *The IPHC shall file with the board a report on board-referred cases upon the licensee's successful completion of the program.*

ITEM 6. Amend rule 653—14.10(28E) as follows:

653—14.10(28E) Authority for 28E agreements. The IPHC may enter into 28E agreements with other health professional licensing boards to evaluate, assist, and monitor impaired licensees from other health professions *who self-report* and to report to those professional licensing boards regarding the compliance of individual licensees. In the event of noncompliance, the licensee may be referred to the appropriate licensing board for appropriate disciplinary action. If the IPHC enters into a 28E agreement with another health professional licensing board, this chapter applies and the word "physician" shall be replaced with the word "licensee" for the purpose of interpreting this chapter.

ITEM 7. Add **new** rule 653—14.11(272C) as follows:

653—14.11(272C) Board referrals to the Iowa physician health committee.

14.11(1) Eligibility for board referral to IPHP. The board may refer to the IPHP a licensee or applicant for whom the following circumstances apply:

a. The applicant or licensee has an impairment as defined in rule 653—14.2(272C).

b. The board determines that the applicant or licensee is an appropriate candidate for participation in the IPHP.

NOTE: A licensee who is the subject of a formal board disciplinary order relating to an impairment must demonstrate a sufficient period of compliance with the disciplinary order before referral to the IPHC.

c. The IPHC determines that the applicant or licensee is an appropriate candidate for participation in the IPHP.

14.11(2) Referral process.

a. Determination of whether an applicant or licensee is appropriate for referral to the IPHP is in the sole discretion of the board. Upon the board's approval, a referral shall be made to the IPHP and board staff shall provide relevant information about the applicant or licensee to the IPHC.

b. The IPHC shall make a determination whether the applicant or licensee is an appropriate candidate for participation in the IPHP. Upon this determination, the IPHC shall offer the referred applicant or licensee a physician health contract which provides a detailed description of the goals of the program, the requirements for successful participation, and the applicant's or licensee's obligations therein. See 653—14.6(272C).

c. If the IPHC finds that the applicant or licensee is not an appropriate candidate for participation in the IPHP or if the applicant or licensee fails to sign the physician health contract in the time period specified by the IPHC, the IPHC shall notify the board promptly.

d. When the referred applicant or licensee signs the contract, the IPHC shall notify the board that the applicant or li-

icensee is an appropriate candidate for participation in the IPHP and that the referral has been finalized.

e. Upon notification that the referral has been finalized for a licensee who is the subject of a formal board disciplinary order relating to the impairment, the board shall file an order referring the licensee to the IPHP, and that order shall be a public record.

f. The IPHC shall notify the board upon the licensee's successful completion of the program. The board shall file an order recognizing the licensee's successful completion of the program, and that order shall be a public record.

g. Referral of an applicant or licensee by the board to the IPHP shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. Upon referral, the applicant or licensee shall be subject to the provisions of 653—Chapter 14. Specifically, the applicant or licensee shall be subject to board review and potential formal disciplinary action pursuant to 653—subrule 14.7(2) for noncompliance with the provisions of the IPHP physician health contract.

14.11(3) Investigation and disciplinary action on referrals. Referral of an applicant or licensee to the IPHP does not prevent the board from conducting a disciplinary investigation of the applicant or licensee, or prevent the board from initiating disciplinary action against the licensee for violations other than impairment.

ITEM 8. Amend **653—Chapter 14**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 272C.3 as amended by 2003 Iowa Acts, House File 641, section 6.

ARC 2706B

MEDICAL EXAMINERS BOARD[653]

Notice of Termination

Pursuant to the authority of Iowa Code section 147.76, the Medical Examiners Board hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on June 25, 2003, as **ARC 2545B**, amending Chapter 21, "Physician Eligibility to Supervise a Physician Assistant," Iowa Administrative Code.

The Board approved the termination in a regularly scheduled meeting on July 24, 2003.

The amendments proposed to change the chapter title to reflect its broader purpose of addressing physician supervision, address eligibility to supervise and establish that a physician shall notify the Board of any physician assistants being supervised, in accordance with 2003 Iowa Acts, House File 628.

The Board is terminating the rule making commenced in **ARC 2545B**, and new amendments are proposed and are published herein under Notice of Intended Action as **ARC 2705B**.

ARC 2705B

MEDICAL EXAMINERS BOARD[653]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3 and chapter 148, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 21, “Physician Eligibility to Supervise a Physician Assistant,” Iowa Administrative Code.

The Board approved proposed amendments to Chapter 21 during a regularly scheduled board meeting on July 24, 2003.

The proposed amendments change the chapter title to reflect its broader purpose of physician supervision, address when a physician is ineligible to supervise, provide exemptions from the chapter, establish how a physician notifies the Board when supervising a physician assistant, and identify the grounds for discipline in accordance with 2003 Iowa Acts, House File 628, and prior contested cases.

Any interested person may present written comments on the proposed amendments not later than 4 p.m. on September 9, 2003. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, or by E-mail to ann.mowery@ibme.state.ia.us.

There will be a public hearing on September 9, 2003, at 2 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapter 148 as amended by 2003 Iowa Acts, House File 628, and Iowa Code section 272C.3.

The following amendments are proposed.

ITEM 1. Amend **653—Chapter 21**, title, as follows:

CHAPTER 21 PHYSICIAN ELIGIBILITY TO SUPERVISE SUPERVISION OF A PHYSICIAN ASSISTANT

ITEM 2. Rescind rule **653—21.1(148,272C)** and amend rule 653—21.2(148,272C) as follows:

653—21.2 I(148,272C) Ineligibility determinants. A physician is ineligible to supervise a physician assistant for any of the following reasons:

21.2 I(1) The physician does not hold an active, permanent, *special or temporary* Iowa medical license.

21.2(2) The physician is not actively practicing medicine in Iowa.

21.2(3) The physician does not have sufficient training or experience to supervise a physician assistant in the area of medical practice in which a physician assistant is to be utilized.

21.2(4) 21.I(2) The physician is subject to a disciplinary order of the board that restricts *or rescinds* the physician from supervising physician’s authority to supervise a physician assistant.

ITEM 3. Adopt **new** rule 653—21.2(148,272C) as follows:

653—21.2(148,272C) Exemptions from this chapter. This chapter shall not apply to the following:

21.2(1) A physician working in a federal facility or under federal authority when the provisions of this chapter conflict with federal regulations.

21.2(2) A physician who supervises a physician assistant providing medical care created by an emergency or a state or local disaster pursuant to Iowa Code section 148C.4 as amended by 2003 Iowa Acts, House File 628, section 10.

ITEM 4. Rescind rule 653—21.3(148,272C) and insert in lieu thereof the following **new** rule:

653—21.3(148) Board notification. A physician who supervises a physician assistant shall notify the board of the supervisory relationship at the time of the physician’s license renewal.

ITEM 5. Amend rule 653—21.4(148,272C) as follows:

653—21.4(148,272C) Grounds for discipline. A physician may be subject to disciplinary action for supervising a physician assistant in violation of these rules or the rules found in 653—Chapter 12 or 645—Chapter 325 326, which relate to duties and responsibilities for physician supervision of physician assistants. *Grounds for discipline also include:*

21.4(1) *The physician supervises a physician assistant when the physician is not actively practicing medicine with patients in Iowa. Part-time, voluntary practice with patients in a free clinic in Iowa qualifies as actively practicing medicine in Iowa.*

21.4(2) *The physician supervises a physician assistant when the physician does not have sufficient training or experience to supervise a physician assistant in the area of medical practice in which a physician assistant is to be utilized.*

21.4(3) *A physician supervises more than two physician assistants at the same time.*

21.4(4) *The physician fails to ensure that the physician assistant is adequately supervised, including being available in person or by telecommunication to respond to the physician assistant.*

ITEM 6. Amend rule 653—21.5(148,272C) as follows:

653—21.5(148,272C) Disciplinary sanction. The board may restrict or rescind a physician’s authority to supervise a physician assistant as part of a disciplinary sanction following a contested case proceeding, if the reason for the disciplinary action impacts the ability of the physician to supervise a physician assistant. The board shall notify the board of physician assistant examiners when it takes a disciplinary action against a physician’s license that affects the physician’s ~~eligibility~~ *authority* to supervise a physician assistant.

ARC 2703B
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 Barber Examiners hereby gives Notice of Intended Action to amend Chapter 20, “Administrative and Regulatory Authority for the Board of Barber Examiners,” Chapter 21, “Licensure of Barbers,” Chapter 22, “Sanitary Conditions for Barbershops and Barber Schools,” Chapter 23, “Barber Schools,” and Chapter 24, “Continuing Education for Barbers”; rescind Chapter 25, “Discipline for Barbers,” and adopt new Chapter 25, “Discipline for Barbers, Barber Instructors, Barbershops, and Barber Schools”; and amend Chapter 26, “Fees,” 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, requirements for renewing a barbershop license, and criteria for issuing duplicate or reissued wallet cards and license certificates. The requirement for the 16-hour teaching class for barber instructors is proposed to be rescinded. The proposed amendments replace the current discipline chapter with a newly updated and revised discipline chapter that contains standard language that is consistent with other boards’ discipline chapters.

Any interested person may make written comments on the proposed amendments no later than September 10, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on September 10, 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.

ITEM 6. Amend subrule 21.10(6) as follows:

21.10(6) Reinstatement of inactive license. The following chart illustrates the requirements for reinstatement based on the length of time a license has been considered on inactive status.

An applicant shall satisfy the following requirements:	1 renewal	2 renewals	3 or more renewals
Submit written application for reinstatement to the board	Required	Required	Required
Pay the reinstatement fee	\$50	\$50	\$50
Pay the renewal fee	\$50	\$50	\$50
Submit license verification(s) from every state in which the licensee has practiced since obtaining inactive status	Required	Required	Required

These amendments are intended to implement Iowa Code chapters 21, 147, 158 and 272C.

The following amendments are proposed.

ITEM 1. Rescind subrules 20.4(2) and 20.4(3) and adopt the following **new** subrules in lieu thereof:

20.4(2) Notice of change of address. Each licensee and licensed entity shall notify the board of a change of the licensee’s current mailing address within 30 days after the occurrence.

a. If a barbershop changes location, the barbershop shall be required to apply for a new license, as required in 645—subrule 21.2(3), paragraph “b.”

b. If a barber school changes location, the barber school shall be required to apply for a new license, as required in 645—subrule 23.2(6).

20.4(3) Notice of change of name.

a. Barbers and barber instructors. Each licensee shall notify the board in writing of a change of name within 30 days after the occurrence. A reissued certificate fee referenced in paragraph “b” will not apply unless the licensee wishes to obtain a certificate with the new name.

b. Barbershops and barber schools. An owner shall notify the board in writing of a change of name within 30 days after the occurrence and, in addition, shall return the current certificate and pay the reissued certificate fee as specified in 645—subrule 26.1(13).

ITEM 2. Amend rule 645—20.6(17A), parenthetical implementation, as follows:
645—20.6(17A 21)

ITEM 3. Adopt **new** subrules 20.6(3) and 20.6(4) as follows:

20.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

20.6(4) Cameras and recording devices may be used at open meetings provided the cameras and 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 20** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 158 and 272C.

ITEM 5. Rescind and reserve subparagraph **21.2(2)“a”(4)** and paragraph **21.4(2)“c.”**

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

An applicant shall satisfy the following requirements:	1 renewal	2 renewals	3 or more renewals
Furnish evidence of completion of approved continuing education hours completed within the prior two bienniums of date of application for reinstatement	8 hours	16 hours	24 hours
OR			
Furnish evidence of current full-time practice in another state of the United States or District of Columbia and completion of substantially equivalent continuing education	8 hours	16 hours	24 hours
OR			
Furnish evidence of successful completion of the professional examinations within one year immediately prior to reinstatement (<i>Examination fee is \$50.</i>)	Successful completion of examinations	Successful completion of examinations	Successful completion of examinations
Total fees and continuing education hours required for reinstatement:	\$100 and 8 hours <i>Add \$50 for examination fee if applicable.</i>	\$100 and 16 hours <i>Add \$50 for examination fee if applicable.</i>	\$100 and 24 hours <i>Add \$50 for examination fee if applicable.</i>

ITEM 7. Amend subrule 21.11(7) as follows:

21.11(7) Reinstatement of a lapsed license. The following chart illustrates the requirements for reinstatement based on the length of time a license has lapsed.

An applicant shall satisfy the following requirements:	30 days after expiration date up to 1 renewal	2 renewals	3 renewals	4 or more renewals
Submit written application for reinstatement	Required	Required	Required	Required
Pay the renewal fee(s)	\$50	\$100	\$150	\$200
Pay the late fee	\$50	\$50	\$50	\$50
Pay the reinstatement fee	\$50	\$50	\$50	\$50
Furnish verification of license(s) from every state in which the licensee has practiced since the Iowa license lapsed	Required	Required	Required	Required
Furnish evidence of completion of continuing education during the two most recent bienniums prior to reinstatement	8 hours	16 hours	24 hours	24 hours
OR				
Furnish evidence of current full-time practice in another state of the United States or District of Columbia and completion of substantially equivalent continuing education	8 hours	16 hours	24 hours	24 hours
OR/AND				
Take the professional license examinations within one year immediately prior to reinstatement (<i>Examination fee is \$50.</i>)	OR Successful completion of examinations	OR Successful completion of examinations	OR Successful completion of examinations	AND Successful completion of examinations required
Total fees and continuing education hours required for reinstatement:	\$150 and 8 hours <i>Add \$50 for examination fee if applicable.</i>	\$200 and 16 hours <i>Add \$50 for examination fee if applicable.</i>	\$250 and 24 hours <i>Add \$50 for examination fee if applicable.</i>	\$300 350 and 24 hours and successful completion of examinations

ITEM 8. Renumber rule **645—21.12(272C)** as **645—21.15(272C)** and adopt the following **new** rules:

645—21.12(158) Barbershop license renewal.

21.12(1) The biennial license renewal period for a barbershop license shall begin on July 1 of each even-numbered year and end on June 30 of the next even-numbered year.

21.12(2) The renewal application shall be mailed to the barbershop at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the barbershop of the obligation to pay the biennial renewal fee on or before the renewal date.

21.12(3) The completed application and renewal fee shall be submitted to the board office before the license expiration date.

21.12(4) The barbershop shall be in full compliance with this chapter and 645—Chapter 22 to be eligible for license

renewal.

21.12(5) When all requirements for license renewal are met, a license wallet card will be sent by regular mail.

21.12(6) A barbershop that is issued an initial license within six months prior to the renewal date will not be required to renew the license until the next renewal two years later.

21.12(7) Barbershop license late renewal. If the renewal fee and renewal application are received within 30 days after the license renewal expiration date, the late fee for failure to renew before expiration shall be charged.

21.12(8) Lapsed barbershop license. If the renewal fee is received more than 30 days after the license expiration date, the barbershop license is lapsed. To reinstate the barbershop license, the reinstatement fee, renewal fee for each year the

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

license is lapsed and the late fee shall be submitted to the board.

a. After the reinstatement of a lapsed license, the barber-shop shall renew at the next scheduled renewal date.

b. A barbershop that has not renewed its license within the required time frame will have a lapsed license and shall not provide services until the license is reinstated.

645—21.13(147) Duplicate certificate or wallet card.

21.13(1) A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or duplicate certificate shall only be issued under such circumstances.

21.13(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application and receipt of the fee as specified in rule 645—26.1(147,158).

21.13(3) If the board is notified by the holder of the barber license that the wallet 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 wallet card or certificate.

645—21.14(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card to a licensee or a licensed barbershop upon:

1. Receipt of a written request from the holder of the barber license;
2. Return of the current certificate or wallet card or both the certificate and wallet card; and
3. Payment of the fee(s) as specified in rule 645—26.1(147,158).

ITEM 9. Rescind rule 645—22.3(158) and adopt the following **new** rule in lieu thereof:

645—22.3(147) Display of licenses.

22.3(1) The license of the barbershop or barber school along with the current wallet card shall be posted and visible to the public.

22.3(2) The original license certificate, duplicate certificate, reissued certificate or temporary permit shall be visibly displayed for each licensee and temporary permit holder employed by the barbershop or barber school.

22.3(3) Each licensee shall:

- a. Display the current wallet card with the certificate, or
- b. Have the current wallet card in the licensee's possession.

EXCEPTION: A licensee who was issued an initial license between January 1, 2002, and July 15, 2004, will not be required to meet this requirement until the first renewal of the license.

ITEM 10. Renumber rules **645—23.5(158)** to **645—23.14(158)** as **645—23.6(158)** to **645—23.15(158)** and adopt the following **new** rule:

645—23.5(147) Duplicate certificate or wallet card.

23.5(1) A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or duplicate certificate shall only be issued under such circumstances.

23.5(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application and receipt of the fee as specified in rule 645—26.1(147,158).

23.5(3) If the board is notified by the owner of the barber school that the certificate or wallet card has not been received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate certificate or duplicate wallet card.

ITEM 11. Rescind and reserve paragraph **24.4(1)“e.”**

ITEM 12. Rescind 645—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
DISCIPLINE FOR BARBERS,
BARBER INSTRUCTORS, BARBERSHOPS
AND BARBER SCHOOLS

645—25.1(158) Definitions.

“Board” means the board of barber examiners.

“Discipline” means any sanction the board may impose upon licensees, barbershops or barber schools.

“Licensure” means the granting of a license to practice as a barber or barber instructor or to operate a barbershop or barber school in Iowa.

645—25.2(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—25.3(152A,272C) when the board determines that any of the following acts or offenses have been committed:

25.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to:

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

25.2(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 barbers 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 a barber acting in the same or similar circumstances; and
- d. Failure to conform to the minimal standard of acceptable and prevailing practice of licensed barbers in this state.

25.2(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.

25.2(4) Practice outside the scope of the profession.

25.2(5) 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.

25.2(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.

25.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

25.2(8) Falsification of client records.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

25.2(9) Acceptance of any fee by fraud or misrepresentation.

25.2(10) Negligence in the practice of the profession. Negligence 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 licensee's ability to safely and skillfully practice the profession.

25.2(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.

25.2(12) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of barbering.

25.2(13) Revocation, suspension, or other disciplinary action taken by the professional licensing authority of this state or 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.

25.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice in another state, district, territory or country.

25.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

25.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

25.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

25.2(18) Failure to respond within 30 days to a communication of the board which was sent by registered or certified mail.

25.2(19) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

25.2(20) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

25.2(21) Failure to pay costs assessed in any disciplinary action.

25.2(22) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

25.2(23) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

25.2(24) Knowingly aiding, assisting, or advising a person to unlawfully practice as a barber.

25.2(25) Failure to report a change of name or address within 30 days after it occurs.

25.2(26) Representing oneself as a licensed barber or barber instructor 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.

25.2(27) Representing a barbershop or barber school as being licensed when the license has been suspended or revoked, or when the license is lapsed.

25.2(28) Permitting another person to use one's barber license for any purpose.

25.2(29) Permitting an unlicensed employee or person under the licensee's or the entity's control to perform activities that require a license.

25.2(30) Permitting a licensed person under the licensee's or the entity's control to practice outside the scope of the person's license.

25.2(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 or coworker.
- 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.

25.2(32) 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—25.3(152A,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—25.4(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 a high standard of professional care for citizens of this state;
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, 158 and 272C.

ITEM 13. Amend rule 645—26.1(147,157), parenthetical implementation, as follows:

645—26.1(147,157 158)

ITEM 14. Amend subrule 26.1(13) as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

26.1(13) Duplicate or reissued license certificate fee is \$10.

ITEM 15. Renumber subrules **26.1(14)** to **26.1(16)** as **26.1(15)** to **26.1(17)** and adopt the following new subrule:

26.1(14) Duplicate or reissued wallet card fee is \$10.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 39, “Filing Return and Payment of Tax,” Chapter 40, “Determination of Net Income,” Chapter 41, “Determination of Taxable Income,” Chapter 42, “Adjustments to Computed Tax,” Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” Chapter 53, “Determination of Net Income,” and Chapter 59, “Determination of Net Income,” Iowa Administrative Code.

These amendments are proposed as a result of 2003 Iowa Acts, Senate File 442.

Item 1 amends subrule 39.6(3) to provide that, to the extent that any preferences or adjustments for alternative minimum tax are determined by an individual’s adjusted gross income, the adjusted gross income must be computed without regard to the additional first-year depreciation allowance set forth in Section 168(k) of the Internal Revenue Code.

Item 2 adopts new rule 40.60(422), which provides that the additional first-year depreciation allowance (special 30 percent bonus depreciation) set forth in Section 168(k) of the Internal Revenue Code does not apply for individual income tax.

Item 3 adopts new subrule 41.5(10) to provide that, to the extent any itemized deductions are determined by an individual’s adjusted gross income, the adjusted gross income must be computed without regard to the additional first-year depreciation allowance set forth in Section 168(k) of the Internal Revenue Code.

Item 4 amends subrule 42.2(11) to include federal revisions made in 2002 in the research activities credit for individuals.

Items 5 and 6 are amendments to subrule 52.7(3) and subrule 52.7(5) regarding the research activities credit for corporations and the research activities credit for increasing research activities in a quality job enterprise zone. The amendments show that the Department has adopted 2002 federal income tax changes which might impact the calculation of the Iowa research activities credit.

Items 7 and 8 are amendments to the implementation clauses for rules 52.10(15) and 52.14(422) regarding the research activities credit for research activities conducted by an eligible business and for the research activities credit conducted in an enterprise zone. The amendments show that those research activities credits are to be computed with changes in the federal research credit that occurred in the 2002 calendar year.

Item 9 amends rule 53.1(422) to reference new rule 53.22(422).

Item 10 adopts new rule 53.22(422), which provides that the additional first-year depreciation allowance (special 30 percent bonus depreciation) set forth in Section 168(k) of the Internal Revenue Code does not apply for corporation income tax. To clarify the statutory provision, examples are included.

Item 11 adopts new rule 59.23(422), which provides that the additional first-year depreciation allowance (special 30 percent bonus depreciation) set forth in Section 168(k) of the Internal Revenue Code does not apply for franchise tax.

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

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than September 22, 2003, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 9, 2003. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 12, 2003.

These amendments are intended to implement Iowa Code sections 15.335, 15A.9, 422.3, 422.5, 422.7, 422.9, 422.10, 422.32, 422.33 and 422.35 as amended by 2003 Iowa Acts, Senate File 442.

The following amendments are proposed.

ITEM 1. Amend subrule **39.6(3)**, paragraph “a,” introductory paragraph, and the implementation clause for rule **701—39.6(422)** as follows:

a. Method for computation of the minimum tax. For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that the minimum tax exceeds the taxpayer’s regular income tax liability. The minimum tax rate is 75 percent of the maximum regular tax rate for individual income tax. For tax years beginning on or after January 1, 1987, through December 31, 1997, the tax rate is 7.5 percent of the taxpayer’s minimum taxable income. For tax years beginning on or after January 1, 1998, the tax rate is 6.7 percent of the taxpayer’s minimum taxable income. Minimum taxable income is computed as follows:

REVENUE DEPARTMENT[701](cont'd)

Iowa Taxable Income

Plus: *Applicable Adjustments and **Tax Preference Items (from Form IA 6251)

Subtotal

Less: ***Applicable Exemption Amount

Minimum Taxable Income

(1) *The federal adjustments that are also applicable in computing state minimum taxable income are:

(1) 1. Depreciation of property placed in service after 1986.

(2) 2. Circulation and research and experimental expenditures paid or incurred after 1986.

(3) 3. Mining, exploration, and development costs paid or incurred after 1986.

(4) 4. Long-term contracts entered into after 2-28-86.

(5) 5. Pollution control facilities placed in service after 1986.

(6) 6. Installment sales of certain property.

(7) 7. Basis adjustment.

(8) 8. Certain loss limitations.

(9) 9. Tax shelter farm loss.

(10) 10. Passive activity loss.

(11) 11. Adjustments related to beneficiaries of estates and trusts.

(2) **The federal tax preference items which are also applicable in computing state minimum taxable income are:

(1) 1. Accelerated depreciation of real property placed in service before 1987.

(2) 2. Accelerated depreciation on leased personal property placed in service before 1987.

(3) 3. Amortization of certified pollution control facilities placed in service before 1987.

(4) 4. Appreciated property charitable deduction.

(5) 5. Incentive stock options.

(6) 6. Reserves for losses on bad debts of financial institutions.

Note that in the case of taxpayers that file claims for the special refunds described in rule 701—43.7(422) for tax years beginning in 1987, the capital gain deductions determined for purposes of the special refunds are tax preference items for state minimum tax purposes. *For tax periods ending on or after September 10, 2001, any federal adjustments or tax preference items that are determined based on a percentage of taxpayer's federal adjusted gross income may have to be adjusted for Iowa alternative minimum tax purposes. These adjustments and preferences for Iowa alternative minimum tax purposes are based on federal adjusted gross income as adjusted by the disallowance of the additional first-year depreciation allowance authorized in Section 168(k) of the Internal Revenue Code as described in rule 701—40.60(422).*

(3) ***Exemption amounts are: \$17,500 for a married person filing a separate return or separately on the combined return form or for an estate or trust; \$26,000 for a single person or an unmarried head of household or qualifying widow(er); \$35,000 for a married couple filing a joint return. However, the applicable exemption amounts will be reduced, but not below zero, by 25 percent of the amount by which the minimum taxable income of the taxpayer determined without the exemption amount exceeds the following amounts: \$75,000 for a married taxpayer filing separate returns or separately on the combined return or for an estate or trust; \$112,500 for a single person, an unmarried head of household, or a surviving spouse (qualifying widow(er)); \$150,000 for a married couple that files a joint state return.

This rule is intended to implement Iowa Code section 422.5 as amended by 1997 2003 Iowa Acts, *House Senate File 388 442*.

ITEM 2. Amend 701—Chapter 40 by adopting the following **new** rule:

701—40.60(422) Additional first-year depreciation allowance. For tax periods ending on or after September 10, 2001, the additional first-year depreciation allowance (“bonus depreciation”) authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets placed in service after September 10, 2001, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets placed in service after September 10, 2001, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, *Senate File 442*.

ITEM 3. Amend rule 701—41.5(422) by adopting the following **new** subrule and by amending the implementation clause:

41.5(10) Additional first-year depreciation allowance. For tax periods ending on or after September 10, 2001, any federal itemized deductions that are determined based on a percentage of a taxpayer's federal adjusted gross income may have to be adjusted for Iowa tax purposes. These itemized deductions for Iowa individual tax purposes are based on federal adjusted gross income as adjusted by the disallowance of the additional first-year depreciation allowance authorized in Section 168(k) of the Internal Revenue Code as described in rule 701—40.60(422).

EXAMPLE: Mr. and Mrs. Jones reported \$50,000 in federal adjusted gross income on their 2002 federal income tax return. Mr. and Mrs. Jones paid medical expenses of \$5,000 for 2002, but could only claim an itemized deduction for medical expenses for federal tax purposes equal to \$1,250, or to the extent the medical expenses exceeded 7.5 percent of their federal adjusted gross income (\$50,000 times 7.5% = \$3,750. \$5,000 - \$3,750 = \$1,250). Mr. and Mrs. Jones reported a \$5,000 increase in Iowa adjusted gross income due to the disallowance of additional first-year depreciation on their Iowa return for 2002. Mr. and Mrs. Jones can claim an itemized deduction on the 2002 Iowa return for medical expenses of \$875, or to the extent the medical expenses exceeded 7.5 percent of their adjusted gross income for Iowa purposes of

REVENUE DEPARTMENT[701](cont'd)

\$55,000 (\$55,000 times 7.5% = \$4,125. \$5,000 - \$4,125 = \$875).

This rule is intended to implement Iowa Code section 422.9 as amended by ~~2001~~ 2003 Iowa Acts, ~~chapter 132~~ *Senate File 442*.

ITEM 4. Amend subrule **42.2(11)**, paragraph “b,” second paragraph, and the implementation clause for rule ~~701—42.2(422)~~ as follows:

For purposes of this subrule, the terms “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph “b” of this subrule, such amounts are limited to research activities conducted within this state. For purposes of this subrule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, ~~2002~~ 2003.

This rule is intended to implement Iowa Code section 15.333; ~~Iowa Code Supplement section 15.333 as amended by 2002 Iowa Acts, House File 2625;~~ Iowa Code section 422.10 as amended by ~~2001 Iowa Acts, chapter 127 and by 2002~~ 2003 Iowa Acts, ~~House Senate File 2116~~ *442*; and Iowa Code sections 422.11A, 422.12, and 422.12B.

ITEM 5. Amend subrule **52.7(3)**, paragraph “c,” as follows:

c. For purposes of this subrule, the terms “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph “b” of this subrule, such amounts are limited to research activities conducted within this state. For purposes of this rule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, ~~2002~~ 2003.

ITEM 6. Amend subrule **52.7(5)**, paragraph “c,” and the implementation clause for rule ~~701—52.7(422)~~ as follows:

c. For purposes of this subrule, the terms “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in subrule 52.7(3) of this rule, such amounts are limited to research activities conducted within the quality jobs enterprise zone. For purposes of this rule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, ~~2002~~ 2003.

This rule is intended to implement Iowa Code section 422.33 as amended by ~~2002~~ 2003 Iowa Acts, ~~House Senate File 2116~~ *442*.

ITEM 7. Amend the implementation clause for rule ~~701—52.10(15)~~ as follows:

This rule is intended to implement Iowa Code section 15.333; ~~Iowa Code Supplement section 15.333 as amended by 2002 Iowa Acts, House File 2625;~~ and Iowa Code section 15.335 as amended by ~~2001 Iowa Acts, chapter 127 and 2002~~ Iowa Acts, ~~House File 2116~~ *2003 Iowa Acts, Senate File 442*.

ITEM 8. Amend the implementation clause for rule ~~701—52.14(422)~~ as follows:

This rule is intended to implement Iowa Code ~~Supplement~~ section 15A.9(8) as amended by ~~2002~~ 2003 Iowa Acts, ~~House Senate File 2116~~ *442*, and section 15E.186.

ITEM 9. Amend rule 701—53.1(422), introductory paragraph, as follows:

701—53.1(422) Computation of net income for corporations. Net income for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in 53.2(422) to 53.13(422) and 53.17(422) to 53.21 22(422). The remaining provisions of this rule and 53.14(422) to 53.16(422) shall also be applicable in determining net income.

ITEM 10. Amend 701—Chapter 53 by adopting the following **new** rule:

701—53.22(422) Additional first-year depreciation allowance. For tax periods ending on or after September 10, 2001, the additional first-year depreciation allowance (“bonus depreciation”) authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets placed in service after September 10, 2001, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets placed in service after September 10, 2001, can be calculated on Form IA 4562A.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Taxpayer purchased a \$100,000 qualifying asset on January 1, 2002, which has a five-year life for depreciation purposes. Using the bonus depreciation provision in Section 168(k) of the Internal Revenue Code, taxpayer was entitled to a \$44,000 depreciation deduction on the federal return for 2002. For Iowa purposes, taxpayer must use the MACRS depreciation method which results in a \$20,000 depreciation deduction on the Iowa return for 2002. Therefore, a \$24,000 (\$44,000 - \$20,000) increase to net income relating to this depreciation adjustment must be made on the Iowa return for 2002.

EXAMPLE 2: Taxpayer purchased a \$1,000,000 qualifying asset on January 1, 2002, which has a ten-year life for depreciation purposes. This asset was sold on December 31, 2005, for \$500,000. Using the bonus depreciation provision, taxpayer claimed \$677,440 of depreciation deductions on the federal returns for 2002-2005. This results in a basis for this asset of \$322,560 (\$1,000,000 - \$677,440), and a gain of \$177,440 (\$500,000 - \$322,560) on the federal return for 2005 on the sale of the asset.

Using the MACRS depreciation method, taxpayer claimed \$539,200 of depreciation deductions on the Iowa returns for 2002-2005. This results in a basis for this asset of \$460,800 (\$1,000,000 - \$539,200), and a gain of \$39,200 (\$500,000 - \$460,800) on the Iowa return for 2005 on the sale of the asset. Therefore, a decrease to net income of \$138,240 (\$177,440 - \$39,200) relating to this gain adjustment must be made on the Iowa return for 2005.

REVENUE DEPARTMENT[701](cont'd)

This rule is intended to implement Iowa Code section 422.35 as amended by 2003 Iowa Acts, Senate File 442.

ITEM 11. Amend 701—Chapter 59 by adopting the following **new** rule:

701—59.23(422) Additional first-year depreciation allowance. For tax periods ending on or after September 10, 2001, the additional first-year depreciation allowance (“bonus depreciation”) authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets placed in service after September 10, 2001, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets placed in service after September 10, 2001, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

This rule is intended to implement Iowa Code sections 422.35 and 422.61 as amended by 2003 Iowa Acts, Senate File 442.

ARC 2710B

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax,” and Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” Iowa Administrative Code.

These amendments are proposed as a result of 2003 Iowa Acts, House File 689.

Item 1 amends rule 42.16(422) to provide that individual income taxpayers having a fiscal year ending in 2002 are eligible for the ethanol blended gasoline tax credit, provided that a claim for refund is filed prior to October 1, 2003.

Item 2 updates an implementation clause.

Item 3 amends rule 52.19(422) to provide that corporation income taxpayers having a fiscal year ending in 2002 are eligible for the ethanol blended gasoline tax credit, provided that a claim for refund is filed prior to October 1, 2003.

Item 4 updates an implementation clause.

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

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than September 22, 2003, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 9, 2003. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 12, 2003.

These amendments are intended to implement Iowa Code sections 422.11C and 422.33 as amended by 2003 Iowa Acts, House File 689.

The following amendments are proposed.

ITEM 1. Amend rule **701—42.16(422)** by adopting the following **new** unnumbered paragraph to appear after the introductory paragraph:

For fiscal years ending in 2002, the tax credit is available for each eligible service station based on the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at the taxpayer’s service station from January 1, 2002, until the end of the taxpayer’s fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 43.3(8) has not yet expired.

ITEM 2. Amend rule **701—42.16(422)**, implementation clause, as follows:

This rule is intended to implement 2001 Iowa Acts, House File 716, section 2, chapter 123, section 6, subsection 2, as amended by 2003 Iowa Acts, House File 689.

ITEM 3. Amend rule **701—52.19(422)** by adopting the following **new** unnumbered paragraph to appear after the introductory paragraph:

For fiscal years ending in 2002, the tax credit is available for each eligible service station based on the total number of

REVENUE DEPARTMENT[701](cont'd)

gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at the taxpayer's service station from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 55.3(5) has not yet expired.

ITEM 4. Amend rule **701—52.19(422)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 422.33 as amended by 2004-2003 Iowa Acts, House File 746 689.

ARC 2697B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

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 8D.3, the Iowa Telecommunications and Technology Commission gives Notice of Intended Action to amend Chapter 5, "Purchasing," Iowa Administrative Code.

The proposed amendments are designed to make the Iowa Telecommunications and Technology Commission's purchasing rules more consistent with Department of Administrative Services rules that establish standards for state agencies to use when purchasing services. Competitive bidding thresholds are increased so that the Commission's rules are in accordance with the rules governing other state agencies. These amendments allow the Commission to take advantage of a new electronic purchasing system that will be available to state agencies in the near future. The electronic purchasing system is designed to streamline agency processes, reduce paperwork, and provide a means for vendors to conduct business with the state electronically. The proposed amendments also delete some items that are unnecessary for administrative rules.

Any interested party may comment on the proposed amendments on or before September 9, 2003. Comments should be directed to Ron Koontz, Administrative Rules Coordinator, Iowa Telecommunications and Technology Commission, P.O. Box 587, Johnston, Iowa 50131-0587; telephone (515)725-4708; E-mail ron.koontz@icn.state.ia.us.

There will be a public hearing on September 9, 2003, beginning at 1 p.m. in the Thompson Conference Room, Building W-4, Camp Dodge, Johnston, Iowa 50131, at which time all interested parties 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 re-

marks to the subject of the amendments. Persons with special needs should contact the Commission prior to the hearing if accommodations need to be made.

These amendments are intended to implement Iowa Code chapter 8D.

The following amendments are proposed.

ITEM 1. Amend rules 751—5.1(8D) to 751—5.4(8D) as follows:

751—5.1(8D) Applicability of competitive bidding.

5.1(1) ~~Items, including goods or services, with a value over the life of the contract including optional renewals in amounts between \$0 to \$5,000 are exempt from the bidding requirements described in this rule. Items, including goods and services, which are expected to cost in the aggregate in excess of \$5,000 will be obtained as a result of a competitive selection process conducted by the commission or through the department of general services whenever appropriate and when such procurement is in the best interests of the commission. The commission shall use competitive bidding to purchase goods and services from private agencies when the estimated annual value of the contract is equal to or greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is equal to or greater than \$15,000, unless there is adequate justification for a sole-source procurement pursuant to subrule 5.1(2) or another provision of law.~~

a. ~~When the estimated annual value of the contract is equal to or greater than \$5,000, but less than \$50,000, or the estimated value of the multiyear contract in the aggregate, including any renewals, does not exceed \$150,000, the commission, in its sole discretion, shall use either a formal or informal competitive selection process to procure the goods or services.~~

b. ~~When the estimated annual value of the contract is equal to or greater than \$50,000 or the estimated value of the multiyear contract in the aggregate, including any renewals, exceeds \$150,000, the commission shall use a formal competitive bidding process to procure the goods or services.~~

5.1(2) ~~The commission may exempt an item from competitive bidding for any of the following reasons: The commission shall avoid sole-source procurements unless clearly necessary and justifiable. The commission may purchase goods or services using a sole-source procurement under the following circumstances:~~

~~*a.* If the item is noncompetitive or available from a single source;~~

~~*b.* If the item is purchased in quantities too small to be effectively purchased through a competitive selection process;~~

~~*c.* If there is an immediate or emergency need for the item;~~

~~*d.* If the purchase of the item facilitates compliance with set-aside procurement provisions;~~

~~*e.* If the item is maintenance services for the network for which the vendor supplies remote maintenance service for network components or software or the vendor supplies software upgrades, patches, modifications or the like electronically or for which the service will preserve equipment or software warranties; or~~

~~*f.* If the commission determines that the best interests of the commission will be served by exemption from the bidding process.~~

~~*a.* The executive director or commission's designee determines that one vendor is the only one qualified or eligible~~

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

or is quite obviously the most qualified or eligible to provide the goods or perform the services; or

b. The goods or services being purchased involve work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the service; or

c. The commission is hiring the services of experts, advisors, counsel, or consultants to assist in any type of legal proceeding including but not limited to testifying or assisting in the preparation of quasi-judicial or judicial proceedings; or

d. The federal government or other provider of funds for the services being purchased, other than the state of Iowa, has imposed clear and specific restrictions on the commission's use of the funds in a way that restricts the commission to only one service provider; or

e. Applicable law requires, provides for, or permits the use of a sole-source procurement; or

f. If there is an immediate or emergency need for the item; or

g. If the item is maintenance services for the network for which the vendor supplies remote maintenance service for network components or software or the vendor supplies software upgrades, patches, modifications or the like electronically or for which the service will preserve equipment or software warranties; or

h. If the executive director or the commission's designee determines that the best interests of the commission will be served by exemption from the bidding process.

5.1(3) When the annual value of the contract exceeds \$5,000 or when the estimated value of the multiyear contract in the aggregate, including renewals, is equal to or greater than \$15,000, the commission shall complete a sole-source justification form. The executive director or the executive director's designee shall sign the sole-source justification form.

751—5.2(8D) Methods of obtaining bids or proposals used by the commission. Bids The commission shall obtain bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the commission shall choose the method of bidding to be utilized. For any method used, the commission may provide notice of the solicitation electronically and vendors may submit proposals electronically unless the bidding documents provide otherwise.

5.2(1) Invitation Formal invitations to bid.

a. A formal invitation to bid may be required for any item if cost is the major criterion for selection. Other criteria may also be used, provided that the commission describes the criteria in the bid documents. If cost is the major criterion for selection, formal bids shall be required for all items costing in the aggregate more than \$50,000. The commission shall prepare a written invitation-to-bid form and shall transmit the form either by mail, electronically, or digitally to selected vendors in the business of providing the goods or services sought by the commission. The commission shall comply with the notice requirements for targeted small businesses. The bid shall also be placed in the necessary local and regional newspapers and posted on the Internet.

b. The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

c. Bids received prior to the time set for the bid opening on the bidding document shall be opened publicly and made

available to any interested party on the date and hour designated on the bid form. As the bids are opened they will be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations will be maintained at the commission for one year following the date on which the bids were opened.

An award shall be made within the time frame stated by the commission in the bidding documents or subsequently agreed to by the vendors.

The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

5.2(2) Informal bids selection process.

a. Informal bids may be required for any item if the item is expected to cost in the aggregate \$5,001 to \$49,999. The commission may use an informal selection process when permitted by rule 5.1(8D). An informal selection process is a streamlined competitive bidding process in which the commission makes an effort to contact at least three prospective vendors to solicit bids or proposals to provide the goods or services sought by the commission. Informal bids or proposals may be obtained by the commission through use of a written bid form faxed or mailed to selected vendors, E-mail, posting a notice on the commission's Web site and inviting bids or proposals electronically or over the telephone. When requesting informal bids, the commission shall contact selected vendors supplying the goods or services sought by the commission and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid.

b. Written informal bids and proposals shall be opened as received, and informal telephone bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If a bid is received by E-mail, the E-mail shall be printed or stored in a secure electronic format so that the bid can be retrieved and read in machine-readable form. The information contained in the E-mail shall be recorded on a form similar to the telephone bid form. If an informal bid is received by fax, the information on the fax shall be recorded on a form similar to the form used for telephone bids. Following the bid due date, the commission shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the bid due date and shall be maintained by the commission for one year following the date on which the bids were due.

If an award is not made within the time frame indicated by the commission when requesting bids, all bids shall be deemed rejected.

5.2(3) Requests Formal requests for proposals.

a. Whenever a requirement exists for an item and cost may not be the sole criterion for selection and rule 5.1(8D) requires the commission to conduct a formal competitive selection process, the commission shall issue a formal request for proposal. The purpose of a request for proposal is to provide the vendor with sufficient information about the commission's requirements and goals to allow the vendor to propose a solution to the commission's requirements. Requests for proposals may be issued when the aggregate value for the item to be purchased exceeds \$50,000.

b. The commission shall prepare a written request for proposal and shall mail the proposal, along with a specially

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marked envelope or label, to selected vendors in the business of supplying the goods or services sought by the commission.

e.—Proposals shall be opened publicly at the time designated in the proposal and made available to any interested party on the date and hour designated in the proposal.

d b. An award shall be made within the time frame stated by the commission in the request for proposal or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

c. *The commission may request best and final offers as part of the request-for-proposal process.*

e.—At a minimum, a request for proposal shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process including the due date for the proposal and the date and hour of the proposal opening; administrative requirements for submitting the proposal and the format required by the commission; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the commission anticipates may affect the terms of the vendor's proposal.

5.2(4) No change.

751—5.3(8D) Items purchased through the department of general administrative services. Goods and services may be obtained by the commission through the department of general administrative services whenever procurement through general administrative services is appropriate and in the best interests of the commission. Items procured through general administrative services may be obtained by general administrative services in any manner deemed appropriate by general administrative services.

751—5.4(8D) Advertising solicitations. Formal Notice of formal bids and formal requests for proposals issued by the commission shall be advertised in a daily paper in Iowa posted on the Internet. The advertisement shall indicate that it is a notice to prospective bidders, contain the bid due date and time of opening, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

ITEM 2. Amend rules 751—5.12(8D) and 751—5.13(8D) as follows:

751—5.12(8D) Time of submission. All Vendors shall submit all formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the commission prior to the date and time set for the opening of the bids or proposals. All Vendors shall submit all informal bids shall be submitted by the vendor in time to reach the commission prior to the time specified by the commission. Bids and proposals shall be marked by the commission with the date and time received by the commission. Bids and proposals received after the date and time set for opening or for submission shall be returned to the vendor unopened. All The commission shall notify all vendors to whom which invitations to bid or requests for proposals are were sent shall be notified of any changes in the time of submission. If a formal invitation to bid or request for proposal is canceled prior to the time set for opening the bids or proposals, the commission shall return unopened any responses already received shall be returned unopened. If an informal invitation to bid is canceled prior to the time set for receiving bids, the commission shall destroy any bids already received shall be destroyed.

751—5.13(8D) Modification or withdrawal of bids or proposals. Bids Vendors may modify or withdraw bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope which properly identifies the correct bid or proposal to be modified or withdrawn. A Vendors may withdraw a bid or proposal may be withdrawn after opening only with the approval of the commission if the commission finds that an honest error was made by the vendor which will cause undue financial hardship to the vendor and which will not cause undue financial hardship or inconvenience to the commission.

ITEM 3. Amend rule 751—5.15(8D) as follows:

751—5.15(8D) Rejection of bids and proposals. The commission reserves the right to reject any or all bids or proposals. Bids The commission may reject bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the commission's requirements, or for any other reason if the commission determines that the best interests of the commission will be served by rejecting any or all bids. Following the rejection of bids or proposals, the commission may request new bids or proposals may be requested by the commission at any time deemed convenient by the commission.

ITEM 4. Amend rules 751—5.17(8D) to 751—5.19(8D) as follows:

751—5.17(8D) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who that is aggrieved by the commission's notice of intent to award of the commission may appeal the decision by filing a written notice of appeal within five days before the Iowa telecommunications and technology commission, within five days of the date of the notice of intent to award, exclusive of Saturdays, Sundays, and legal state holidays. The commission's physical address is Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131-0587. The commission's mailing address is P.O. Box 587, Johnston, Iowa 50131-0587. A written notice of appeal may be filed by a fax transmission within five days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The fax number is (515)725-4751. The commission must actually receive the notice of appeal must actually be received at this address within the specified time frame specified to be considered timely. The notice shall state the following:

1. The relief demanded and the facts and law relied upon for relief;
2. The particular provisions of the statutes and rules involved with specific reference to the grounds identified in Iowa Code section 17A.19(10);
3. On whose behalf the petition is filed; and
4. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

751—5.18(8D) Procedures for vendor appeal. The aggrieved vendor appeal shall be shall file a contested case proceeding and shall be conducted in accordance with 751 IAC 4, unless the provisions of this rule provide otherwise, and follow the procedure set out below when filing a vendor appeal.

5.18(1) Hearing. Upon receipt of a notice of vendor appeal, the commission shall contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

vendor or vendors. The presiding officer shall hold a hearing on the vendor appeal within 45 days of the date the notice of appeal was received by the commission.

5.18(2) Discovery. ~~Any~~ *The parties shall serve any discovery requests shall be served simultaneously on the upon the other parties at least 20 days prior to the date set for hearing. The parties must serve responses to discovery at least 10 days prior to the date set for the hearing. within 15 days of the notice of appeal.*

5.18(3) Witnesses and exhibits. ~~Within 30 days following the notice of appeal, the parties shall contact each other regarding witnesses and exhibits. There is no requirement for witness and exhibit lists. However, the~~ *The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the time set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.*

5.18(4) Evidence for a telephone or network hearing. If the hearing is conducted by telephone or on the fiberoptic network, ~~the parties must deliver~~ *all exhibits must be delivered* to the office of the presiding officer three days prior to the time the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least seven days prior to the hearing.

5.18(5) Contents of decision. The administrative law judge shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform with Iowa Code chapter 17A. The decision shall be sent to all parties by first-class mail.

5.18(6) Record requirements. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). The record shall also include any request for a contested case hearing and other relevant procedural documents regardless of their form.

a. Method of recording. Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs.

b. Transcription. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Tapes. Copies of tapes of oral proceedings may be obtained from the presiding officer at the requester's expense.

d. Retention time. The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the commission for at least ~~two~~ *five* years from the date of the proposed decision.

5.18(7) Dismissal. A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

5.18(8) Stay of agency action for vendor appeal.

a. When available.

(1) Any party appealing the issuance of a notice of intent to award a contract may petition the presiding officer for a stay of the award pending its review. The petition for stay shall be filed with the notice of appeal and shall state the reasons justifying a stay.

(2) Any party adversely affected by a final decision and order may petition the commission which issued the decision for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the executive director

within ten days of receipt of the final decision and order and shall state the reasons justifying a stay.

b. When granted. The presiding officer or commission, as appropriate, shall grant a stay when it concludes that the movant has satisfied the standards for the grant of a stay included in rule 751—subrule 4.29(2).

c. Vacation. A stay may be vacated by the issuing authority upon application of the commission or any other party.

751—5.19(8D) Review of proposed decision.

5.19(1) The proposed decision shall become the final decision of the commission 15 days after mailing of the proposed decision, unless prior to that time a party submits an appeal from, or a commission member requests a review of the proposed decision.

5.19(2) ~~Notice~~ *A party appealing the proposed decision shall mail a copy of the notice of an appeal from or a commission member's request for review of a proposed decision shall be mailed to all parties by the executive director to all other parties. If a commission member requests a review of the proposed decision, the commission will mail a copy of the request for review to all parties.* Within 15 days after mailing of a notice of appeal or of a request for review, any party may submit to the commission (in an original and eight copies) exceptions to and a brief in support of or opposition to the proposed decision, copies of which exceptions or brief shall be mailed by the submitting party to all other parties to the proceeding. The executive director shall notify the parties if the commission deems oral arguments by the parties to be appropriate. The executive director will schedule review of the proposed decision at the next commission meeting occurring not less than 30 days after mailing of the notice of appeal or request for review.

5.19(3) ~~Notices of an appeal shall be mailed or delivered by either party~~ *A party appealing a proposed decision shall mail or deliver the notice of appeal to the Executive Director, Iowa Telecommunications and Technology Commission, Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131-0587. The mailing address is P.O. Box 587, Johnston, Iowa 50131-0587. Failure to request review will preclude judicial review unless the commission reviews a decision on its own motion. Notice of the review will be sent to all parties participating in the appeal.*

5.19(4) ~~Review of a proposed decision shall be~~ *The commission shall review the proposed decision based on the record and limited to issues raised in the hearing. The commission shall not take any further evidence and shall not consider issues that were not raised at the hearing. The issues shall be specified in the party's request for review. The party seeking review shall be responsible for transcribing any tape of the proceeding before the presiding officer and file the transcript as part of the record for review. The party seeking review shall bear the cost of the transcription regardless of the method used to transcribe the tape.*

5.19(5) Each party shall have opportunity to file exceptions to the proposed decision and to present briefs in support of or in opposition to the proposed decision. The commission may set a deadline for submission of briefs. When the commission consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. All parties shall be notified in advance of the scheduled time and place.

5.19(6) ~~The commission shall not take any further evidence with respect to issues of fact heard in the hearing except as set forth below. Application may be filed for leave to present evidence in addition to that found in the record of the~~

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case. If it is shown to the satisfaction of the commission that the additional evidence is material and that there were good reasons for failure to present it in the hearing, the commission may order the additional evidence taken upon conditions determined by the commission.

5.19(7) A final decision shall be issued by the commission. The decision shall be in writing and shall conform with the requirements of Iowa Code chapter 17A.

5.19(8) Requests for rehearing shall be made to the commission within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision fails to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

5.19(9) Judicial review of the commission's final decisions may be sought in accordance with Iowa Code section 17A.19.

ARC 2688B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to adopt Chapter 28, "Iowa Transportation Map," Iowa Administrative Code.

This new chapter implements Department policy concerning the use of the Iowa transportation map.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed rules or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: tracy.george@dot.state.ia.us.

5. Be received by the Director's Staff Division no later than September 9, 2003.

A meeting to hear requested oral presentations is scheduled for Thursday, September 11, 2003, at 10 a.m. in the Administration Building, First Floor South Conference Room of the Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed rules may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code

section 17A.4A must be submitted to the Director's Staff Division at the address listed in this Notice no later than September 22, 2003.

These rules are intended to implement Iowa Code chapter 307.

Proposed rule-making action:

Adopt **new** 761—Chapter 28 as follows:

**CHAPTER 28
IOWA TRANSPORTATION MAP****761—28.1(307) Definition.**

"Iowa transportation map" is the multicolored official map that is produced by the department to provide the motoring public with basic information on the location of cities and the highways connecting them.

761—28.2(307) Information. Information regarding the use of the Iowa transportation map may be obtained from: Director's Staff Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1642.

761—28.3(307) Policy. The Iowa transportation map is to be distributed to the public without charge. The map is not to be sold or used for purposes of personal or professional gain. The paper version of the map is not to be altered for distribution in any way, including adding a name or address of an individual, business or organization.

These rules are intended to implement Iowa Code sections 307.12 and 307.14.

ARC 2689B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 326.33, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 500, "Interstate Registration and Operation of Vehicles," Iowa Administrative Code.

This new rule eliminates unnecessary paper files and allows the Office of Motor Carrier Services to maintain in electronic form all records required under this chapter to the fullest extent possible. This efficiency will reduce filing and record retention costs.

Any person or agency may submit written comments concerning this proposed rule or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa

TRANSPORTATION DEPARTMENT[761](cont'd)

50010; fax (515)239-1639; Internet E-mail address: tracy.george@dot.state.ia.us.

5. Be received by the Director's Staff Division no later than September 9, 2003.

A meeting to hear requested oral presentations is scheduled for Thursday, September 11, 2003, at 1 p.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code chapter 326.

Proposed rule-making action:

Amend 761—Chapter 500 by adopting the following **new** rule:

761—500.24(326) Electronic information. To the greatest extent possible, the office of motor carrier services shall maintain in electronic form all records required under this chapter. The retention period for electronic records must follow the guidelines of the IRP.

500.24(1) IRP vehicle transaction. The office of motor carrier services shall destroy paper copies of IRP vehicle transaction requests 90 days after the IRP invoice is generated.

500.24(2) Heavy highway vehicle schedule. The office of motor carrier services shall destroy paper copies of the heavy highway vehicle schedule once the electronic record is updated.

500.24(3) MCS 150. The office of motor carrier services shall forward the updated Federal Highway Administration's motor carrier identification information report (MCS 150) to the Federal Motor Carrier Safety Administration office after the update is marked on the electronic record. The office of motor carrier services shall not retain paper copies of this form.

This rule is intended to implement Iowa Code section 326.33.

ARC 2690B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

Iowa Code section 321.449 as amended by 2003 Iowa Acts, Senate File 97, section 17, requires the Iowa Department of Transportation to adopt rules consistent with the federal Motor Carrier Safety Regulations promulgated under United States Code, Title 49, and found in 49 CFR Parts 385 and 390 to 399. 2003 Iowa Acts, Senate File 97, section 17, added Part 385.

Item 1 adds Part 385 to the list of federal regulations adopted by the Department. Adoption of this part will allow the Department to conduct safety audits of new motor carriers. The purpose of a safety audit is to provide the new carrier

with educational and technical assistance and to gather safety data needed to assess the new carrier's safety performance and the adequacy of the carrier's basic safety management controls. The safety audit will be performed at the new carrier's place of business and will be completed within 18 months from the day the motor carrier commences business.

Item 1 also adopts 68 FR 22455, dated April 28, 2003. This Federal Register final rule amends the hours-of-service regulations in 49 CFR Parts 385, 390 and 395. The adoption of the revised hours-of-service regulations by the Department will extend the enforcement of these regulations to commercial vehicles operated intrastate unless the vehicles are exempted by statute. The compliance date for the revised regulations is January 4, 2004. Major changes in the hours-of-service regulations are as follows:

- Driving time is increased from 10 to 11 hours.
- On-duty time is decreased from 15 to 14 hours.
- Off-duty time is increased from 8 to 10 hours.
- Sleeper berth requirements are basically unchanged.

The hours are increased from 8 hours to 10 hours. A minimum of 2 hours is required.

- The rules regarding 60 hours on duty in seven days and 70 hours on duty in eight days are unchanged, except for a 34-hour restart provision.

- A 16-hour on-duty time period is permitted for short-haul property carriers under certain circumstances.

There is no on-board recorder requirement. Motor coach operators are subject to existing rules.

Item 2 adopts a rule clarifying the authority of the Department's Office of Motor Vehicle Enforcement to conduct new motor carrier safety audits.

Item 3 contains editorial corrections.

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: julie.fitzgerald@dot.state.ia.us.

5. Be received by the Director's Staff Division no later than September 9, 2003.

A meeting to hear requested oral presentations is scheduled for Thursday, September 11, 2003, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Director's Staff Division at the address listed in this Notice by September 22, 2003.

These amendments are intended to implement Iowa Code sections 321.449 and 321.450.

TRANSPORTATION DEPARTMENT[761](cont'd)

Proposed rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, 2002). *The department also adopts “Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations; Final Rule” as published in the Federal Register on April 28, 2003 (68 FR 22455).*

ITEM 2. Adopt new rule 761—520.5(321) as follows:

761—520.5(321) New motor carrier safety audits. Peace officers in the office of motor vehicle enforcement of the Iowa department of transportation shall perform safety audits of new motor carriers and shall have the authority to enter a motor carrier’s place of business for the purpose of performing these audits. These audits shall be performed in compliance with 49 CFR Part 385 and shall be completed within 18 months from the day the motor carrier commences business.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

ITEM 3. Amend rule 761—520.6(307,321) as follows:

761—520.6(307,321) Out-of-service order.

520.6(1) A person shall not operate a commercial vehicle or transport hazardous material in violation of an out-of-service order issued by an Iowa peace officer. An out-of-service order for noncompliance shall be issued when either the vehicle operator is not qualified to operate the vehicle or the vehicle is unsafe to be operated until required repairs are made. The out-of-service order shall be consistent with the North American Uniform Out-of-Service Criteria issued by the Federal Motor Carrier Safety Administration.

~~**520.6(2)** Rescinded IAB 5/2/01, effective 6/6/01.~~

This rule is intended to implement Iowa Code sections 307.12, 321.3, 321.208A, 321.449, and 321.450.

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 August is 5.25%.

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 August 12, 2003, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum 0.60%
32-89 days	Minimum 0.60%
90-179 days	Minimum 0.70%
180-364 days	Minimum 0.70%
One year to 397 days	Minimum 0.80%
More than 397 days	Minimum 1.30%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 2696B

WORKFORCE DEVELOPMENT DEPARTMENT[871]

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 96.11, the Director of the Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 25, “Benefit Payment Control,” and Chapter 42, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The amendments to these chapters make corrections that were identified as a result of reviews conducted in accordance with Executive Order Number 8.

Interested persons, governmental agencies and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m. on September 9, 2003, to Joseph Bervid, Workforce Development Department, Unemployment Insurance Services Division, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

A public hearing will be held at 9:30 a.m. on September 9, 2003, at the above address. The proposed amendments are subject to revision after the Department considers all written and oral presentations. Persons who wish to convey their views orally should contact Joseph Bervid at (515)281-5526 or at the above address.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

These amendments are intended to implement Iowa Code sections 96.3(3), 96.3(7), 96.4(3), 96.5(1), 96.5(3), 96.5(8), 96.6(1), 96.8(5), 96.11(1), 96.11(6), 96.11(7), 96.11(10), 96.16, 96.17(2), 96.19(38), and 421.17(26,29).

The following amendments are proposed.

ITEM 1. Amend rule 871—25.1(96), definition of “wages,” paragraph “b,” subparagraph (3), as follows:

(3) In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in subparagraph (4) of this paragraph.

Full board and room per week	\$126.35	272.00
Meals (without lodging) per week	56.35	92.00
Meals (without lodging) per day	8.05	18.40
Lodging (without meals) per week	70.00	180.00
Lodging (without meals) per day	10.00	36.00
Individual meals:		
Breakfast	2.05	4.00
Lunch	2.60	4.80
Dinner	3.40	9.60
A meal not identifiable as either breakfast, lunch or dinner	2.00	4.00

ITEM 2. Amend subrule 25.3(1), introductory paragraph, as follows:

25.3(1) Investigate and make determinations on issues within the scope of the investigation and recovery ~~section bureau~~ which are referred by the general public, employing units, agency personnel, other agencies, and anonymous sources. The ~~section bureau~~ shall examine allegations of the following type:

ITEM 3. Amend subrules 25.4(1), 25.4(3) and 25.4(5) as follows:

25.4(1) Upon receipt of an allegation of claimant fraud, if the alleging party ~~should supply~~ *supplies* sufficient information to proceed *with an investigation*. ~~The the~~ alleging party shall be advised that the investigation and recovery ~~section bureau~~ will make a full investigation of the allegation. ~~and that the The~~ *The* alleging party will be advised of the ~~section's bureau's~~ findings, if such investigation could affect the employer account of the alleging party or affect a claim for benefits of the alleging party.

25.4(3) If the findings revealed through the investigation by the investigation and recovery ~~section bureau~~ indicate that a disqualification would have resulted for the period benefits were paid, an informal fact-finding interview shall be scheduled to allow the party making the allegation and the claimant an opportunity to give testimony. The investigation and recovery ~~section bureau~~ will determine if separate fact-finding interviews are necessary for the claimant and party making the allegations and any other party with pertinent information.

25.4(5) In the event a local office receives an allegation by anonymous communication, the office will forward such information to the investigation and recovery ~~section bureau~~; ~~provided the communication identifies the claimant or employer or supplies sufficient information to proceed with an investigation.~~

ITEM 4. Amend rule 871—25.5(96) as follows:

Amend the introductory paragraph as follows:

871—25.5(96) Allegation of employing unit fraud. The following is the general procedure to be followed by the in-

vestigation and recovery ~~section bureau~~ in an employing unit fraud investigation:

Amend subrules 25.5(2) to 25.5(6) as follows:

25.5(2) The allegation will be promptly forwarded to the investigation and recovery ~~section bureau~~ for investigation.

25.5(3) The investigation and recovery ~~section bureau~~ may seek the assistance and expertise of the field auditors in investigating suspected cases of employing unit fraud.

25.5(4) If the findings, revealed through the investigation by the investigation and recovery ~~section bureau~~, indicate that misrepresentation occurred on the part of the employer, an informal fact-finding interview will be scheduled for the party or parties to allow them an opportunity to present testimony either refuting or affirming the allegation of employer fraud.

25.5(5) If the employer wishes to invoke the fifth amendment ~~right to remain silent~~, the investigator can require the employer to answer all questions. However, the employer cannot be prosecuted on the basis of any transaction, matter, or ~~thing~~ *issue* concerning which such employer is compelled, after having invoked the privilege against self-incrimination, to testify or produce evidence.

25.5(6) In the event the ~~local a~~ workforce development ~~center office~~ receives an allegation by ~~anonymous commu-nication~~, the office will forward such information to the investigation and recovery ~~section bureau~~, provided the communication identifies and supplies sufficient information to proceed with an investigation.

ITEM 5. Amend rule 871—25.6(96) as follows:

Amend subrules 25.6(4), 25.6(5) and 25.6(7) as follows:

25.6(4) An investigator shall have the authority to request all pertinent books, papers, correspondence, memoranda, and other records necessary in the investigation of any error or potential fraudulent activity committed by a claimant, employing unit, or other party. Likewise, testimony may be taken from any person who has relevant information or records concerning the matter or events under investigation. Any person, when requested by an investigator to produce records or give testimony, must be available personally to give testimony *to* or to produce records within a reasonable time ~~to for~~ the investigator. If any person does not comply with the investigator's request to give testimony to the department or produce records, a subpoena may be issued summoning the individual to appear before the investigator to give testimony or present the records.

If the investigator determines *that* any request for the voluntary production of pertinent records might endanger the existence of such records, the investigation and recovery ~~section bureau~~ may immediately issue a subpoena duces tecum which orders an individual to produce some document or paper that is pertinent to a pending investigation by the investigation and recovery ~~section bureau~~, in order to secure the production of such records.

25.6(5) The investigation and recovery ~~section bureau~~ may seek the assistance and expertise of the field auditors.

25.6(7) Upon completion of the investigation, a determination shall be made as to whether or not fraudulent activity has occurred. If there is fraudulent activity, appropriate corrective action shall be initiated and the alleging party shall be advised of the investigation and recovery ~~section's bureau's~~ findings, if such investigation could affect the employer account of the alleging party ~~or affect a claim for benefits of the alleging party~~. The case may be prepared for prosecution if prosecution is warranted.

Amend the implementation clause as follows:

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

This rule is intended to implement Iowa Code sections 96.16, 96.11(6) and 96.11(7).

ITEM 6. Amend subrules 25.7(1) to 25.7(4) as follows:

25.7(1) A determination that a claimant, by reason of the claimant's own fault or fraud as provided in Iowa Code section 96.16, has received benefits to which such claimant was not entitled shall be made by the investigation and recovery ~~section~~ *bureau* on the basis of such facts as it may obtain.

25.7(2) A notice of such determination shall be promptly given to the affected claimant. Such notice shall be dated and shall advise the claimant as to the benefit weeks involved and shall advise the claimant as to the reason for overpayment and the total amount of said overpayment. Unless the claimant, within ten days after such notification was mailed to the claimant's last-known address, files with the department a written request for review of, or an appeal from, such determination, the determination shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the ~~hearing and appeals bureau~~ *department* within ten calendar days from the date of mailing.

25.7(3) Upon receiving a written request for review, the investigation and recovery ~~section~~ *bureau* may, based upon such facts as it has or may acquire, *may* affirm, modify, or reverse the prior decision or refer the matter to an administrative law judge. The claimant shall be promptly notified of such decision or referral. Unless the claimant files an appeal within ten calendar days after the date of mailing, such decision shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the ~~appeals section~~ *department* within ten calendar days from the date of mailing.

25.7(4) The claimant may directly appeal the decision of the investigation and recovery ~~section~~ *bureau* without a request for review, in which case the appeal will be referred directly to the appeals section of the department.

ITEM 7. Amend rule 871—25.8(96) as follows:

Rescind and reserve subrule **25.8(1)**, paragraph "c."

Amend subrule **25.8(1)**, paragraph "d," as follows:

d. If an individual has acted in good faith and is without fault in claiming federal unemployment compensation under any of the following programs:

(1) Unemployment Compensation Federal Employees (UCFE)

(2) Unemployment Compensation Ex-servicemembers (UCX)

(3) Trade Readjustment Allowances (TRA)

(4) *Disaster Unemployment Assistance (DUA)*

and it is subsequently determined that the individual is not entitled to the benefits, the department shall have the right to recover the benefits in accordance with the procedure outlined in subrule 25.8(1). Any federal unemployment compensation overpayments recovered shall be credited to the appropriate account of the United States. Three years after the instance of the federal unemployment compensation overpayment, if the department concludes that continued collection efforts would result in diminishing returns, then the unrecovered amount will be removed from the department accounting records. An administrative record will be maintained for possible collection through offset or other appropriate method. If no collection action has taken place during the three years after the department has removed the overpayment from its accounting records, then the overpayment will be disposed of.

Any overpayment of Trade Readjustment Allowances or Trade Adjustment Assistance or *Disaster Unemployment As-*

stance will be offset at the rate of 50 percent of the benefit amount otherwise payable to the individual for unemployment insurance, extended benefits or any other federal unemployment compensation program.

ITEM 8. Amend rule 871—25.9(96) as follows:

Amend subrule **25.9(2)**, paragraph "c," subparagraph (2), as follows:

(2) The determination shall be based on the facts obtained and shall become final within ten days after the decision was mailed to the claimant's last-known address, unless an appeal is made to the department by filing a notice of appeal at any ~~local office or at of the administrative office of the department~~ of workforce development. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received ~~in by the appeal section~~ *department* within ten calendar days from the date of mailing.

Amend subrule **25.9(3)** by adopting new paragraph "f" as follows:

f. Cross-checking of information from the Iowa centralized employer registry.

Amend subrule 25.9(4) as follows:

25.9(4) The claimant shall be notified of the possible application of the administrative penalty by Form 65-5315, Notice of ~~Job Insurance Unemployment Insurance~~ *Fact-finding Finding* Interview, in the same manner a claimant is notified of a possible overpayment.

Rescind and reserve subrule **25.9(7)**.

Amend subrule 25.9(9) as follows:

25.9(9) A criminal conviction of a claimant for fraud or an order of the court requiring restitution for the amount of the overpayment shall not preclude the investigation and recovery ~~section~~ *bureau* from also imposing an administrative penalty denying further benefits to the claimant for a period of time not to exceed the remainder of said claimant's benefit year and including the week in which such determination is made by the investigation and recovery ~~section~~ *bureau*.

ITEM 9. Amend rule 871—25.10(96) as follows:

Amend subrule 25.10(1), introductory paragraph and paragraph "b," as follows:

25.10(1) When an overpayment occurs due to misrepresentation, the case shall be given a thorough and detailed review of the facts, as obtained by the investigation and recovery ~~section~~ *bureau*, to determine, ~~in most cases, if a prosecution for fraud meets would meet~~ the county attorney's criteria.

b. The investigation and recovery ~~section~~ *bureau* will issue a decision concerning the overpayment.

Amend subrule 25.10(2) as follows:

25.10(2) Restitution or the establishment of a repayment plan of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the investigation and recovery ~~section~~ *bureau* from instituting criminal proceedings against ~~such~~ *the* claimant.

ITEM 10. Amend subrule 25.11(4) as follows:

25.11(4) Upon request by the county attorney, the investigator may make recommendations regarding plea bargaining, dismissals, and sentencing *and participate in the mediation process*.

ITEM 11. Amend subrule 25.12(2) as follows:

25.12(2) The form, upon completion by the employer, is sent to the investigation and recovery bureau for entering in the Iowa workforce development database system. If the

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

form is not completed properly, it is sent to the employing unit for correct information and then returned for processing. Any potential cases of conflict generated by the computer program will result in an investigation assignment and investigation packet. Claimants will be notified by means of Form 65-5332 (Preliminary Audit Notice 214-B) and given an opportunity to respond. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031 on which the amount, weeks, type, and reason for the overpayment are identified. Claimants are notified of the determination on Form 65-5323.

ITEM 12. Amend rule 871—25.13(96) as follows:

Amend subrules 25.13(1) and 25.13(2) as follows:

25.13(1) Undelivered warrant. If any warrant issued in payment of benefits is returned undelivered to the department by the postmaster, such warrant will be canceled 90 days after the original issue date unless it can be mailed to the new correct address. If a warrant remains outstanding beyond a period of six months from the date of issuance after the end of the quarter in which the warrant was issued, this warrant will be canceled when the ~~records management section~~ *department* receives notification from the state comptroller's office.

25.13(2) Canceled warrant. On a quarterly basis, the comptroller shall cause to be canceled each benefit warrant which, at this time, has been outstanding six months or longer. Any individual who has an outdated warrant less than five years old may contact ~~any local office~~ *the department* for assistance. ~~They~~ *The individual* will be instructed to return the outdated warrant to the ~~records management section~~ *unemployment insurance service center* with a request that a duplicate warrant be issued. If the outdated warrant is more than five years old, miscellaneous claim Form 60-0224 should be used to request reissuance of the warrant. The miscellaneous claim form shall be transmitted to the state board of appeals for determination, at ~~their~~ *its* regular monthly meeting, as to payment or nonpayment of the warrant.

Amend subrule **25.13(3)**, paragraph "a" as follows:

a. In the event that a warrant issued in payment of benefits is lost, stolen, mutilated, destroyed, or canceled under conditions cited in subrules 25.13(1) and 25.13(2), the payee shall contact the ~~local office~~ *department* representative of the ~~workforce development center~~ for assistance. ~~The local office~~ *All information will forward be forwarded the necessary information to the administrative office to the unemployment insurance service center.*

Amend subrule **25.13(3)**, paragraph "b," introductory paragraph, and subparagraph (2), as follows:

b. The ~~administrative office~~ *department* will ascertain whether the warrant has been cashed and take the following action:

(2) If the warrant has not been cashed, the ~~administrative office~~ *department* shall issue a stop payment order on the

warrant, and a Form 68-0163, Affidavit and Agreement for Issuance of Duplicate Warrant, will be mailed to the ~~local office~~ *individual* for completion ~~by the individual~~. The affidavit is a sworn statement that the original warrant was not received and that the warrant will be surrendered voluntarily if received by the claimant. The claimant should be warned ~~by the local office~~ that the warrant cannot be cashed after the stop payment order is in effect.

Amend subrule **25.13(3)**, paragraphs "c," "d" and "f," as follows:

c. The affidavit shall be personally prepared in duplicate by the claimant, and the claimant's signature on the affidavit must be notarized. The affidavit shall ~~then~~ be transmitted in duplicate to the ~~administrative office~~ *unemployment insurance service center*.

d. The ~~administrative office~~ *department* will then request that the state comptroller reissue a duplicate warrant, and this warrant will be mailed to the claimant by the ~~administrative office~~ *department*.

f. If the claimant should find the original warrant after the duplicate warrant has been issued, the original warrant shall be sent to the ~~administrative office~~ *unemployment insurance service center*.

Amend subrule **25.13(4)**, paragraph "b," subparagraphs (2) and (3), and paragraph "c" as follows:

(2) The claimant shall be required to file a police report with the local law enforcement agency and return a copy of the police report to the ~~local office~~ *unemployment insurance service center*.

(3) ~~The local office will forward the~~ *A copy of the original warrant, the notarized affidavit and the copy of the police report to the administrative office will be sent to the unemployment insurance service center for action. The local office department will explain to the claimant that the documents will be reviewed by the administrative office and that a handwriting analysis will may be completed.*

c. The investigation and recovery ~~section~~ *bureau* will make a handwriting analysis to determine if the warrant was forged. If the handwriting is determined to be a forgery, a duplicate warrant will be issued to the payee only after the state comptroller has recouped the money.

ITEM 13. Amend subrule 25.16(4) as follows:

25.16(4) Any appeal by the individual is limited to the validity of ~~job service's~~ *the department's* authority to recoup the overpayment through offset.

ITEM 14. Amend subrule **42.12(2)** by adopting new paragraph "j" as follows:

j. Unemployment insurance division tax and claim records pursuant to Iowa Code section 96.11(6) unless the records become part of the record in a hearing before an administrative law judge in a contested case pursuant to Iowa Code chapter 96.

ARC 2698B

GROW IOWA VALUES BOARD[264]

Adopted and Filed Emergency

Pursuant to the authority of 2003 Iowa Acts, House File 692, section 79(5), the Grow Iowa Values Board hereby adopts Chapter 1, "Rules Applicable to All Chapters," and Chapter 3, "Grow Iowa Values Fund Financial Assistance," Iowa Administrative Code.

These emergency rules establish interim application requirements, evaluation criteria and procedures by which the Board will process requests for financial assistance from the Iowa Values Fund and enable the state of Iowa to compete with other states for business projects before the adoption of final rules. It is the intention of the Board to take more time to develop proposed rules and seek public comment before adopting final rules. These emergency rules are designed to ensure that procedures are in place to allow a quick response on pending projects, in the event such action becomes necessary before final rules are adopted. These emergency rules will expire 90 days from their effective date.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are impracticable and contrary to the public interest because the Board is aware of several business opportunities that are currently available which may not remain in existence if a process is not in place to allow Board action on pending projects. Having application and evaluation procedures in place prior to the adoption of final rules is in the public's best interests because this will allow the Board to provide quick responses on time-sensitive projects. This preparedness reduces the chances of missed economic opportunities for the state.

The Board finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the rules be made effective on July 30, 2003, upon filing. These temporary, emergency rules confer a benefit on the public because they preserve the opportunity for the Board to act promptly on projects, in the event such action becomes necessary before final rules are completed. The Board is aware of pending projects that involve substantial investments and the creation or retention of high quality jobs in Iowa. These projects would further the stated goals of the Grow Iowa Values Fund: expanding and stimulating the economy, increasing the wealth of Iowans and increasing the population of the state.

The Board is committed to seeking public input prior to the adoption of final rules. Prior to the expiration of these temporary, emergency rules, the Board intends to create opportunities for interested individuals, organizations, businesses, communities, members of the Administrative Rules Review Committee and other legislators to offer comment and provide feedback on proposed rules. Following a review of the comments received, the Board will adopt final rules.

The Board is taking the following steps to notify potentially affected parties of the effective date of the rules: publishing the rules in the Iowa Administrative Bulletin, posting the rules on the Iowa Department of Economic Development's Web site: www.iowasmartidea.com, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These rules are intended to implement 2003 Iowa Acts, House Files 692 and 683.

The Grow Iowa Values Board adopted these rules on July 30, 2003.

These rules became effective on July 30, 2003. The following amendment is adopted.

Adopt the following **new** chapters:

CHAPTER 1

RULES APPLICABLE TO ALL CHAPTERS

264—1.1(80GA, HF692, HF683) Definitions. Unless otherwise stated, the following definitions shall apply:

"Advisory board" means the 7-member loan and credit guarantee advisory board established in 2003 Iowa Acts, House File 692, section 106.

"Applicant" means a business that submits an application for Iowa values fund financial assistance.

"Board" or "Iowa values board" means the grow Iowa values board established in 2003 Iowa Acts, House File 692, section 78, composed of 11 voting members and 4 ex officio members.

"Business" includes, but is not limited to, a sole proprietorship, partnership or corporation organized for profit or not-for-profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

"Committee" or "due diligence committee" means the 5-member due diligence committee established in 2003 Iowa Acts, House File 692, section 80.

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

"Director" means the director of the Iowa department of economic development.

"Fund" or "values fund" means the grow Iowa values fund created in 2003 Iowa Acts, House File 692, section 84.

"Marketing board" means the 7-member economic development marketing board created in 2003 Iowa Acts, House File 692, section 85.

"Project" means the activity or set of activities proposed by the applicant which will require state assistance to accomplish and will result in the achievement of the goals established in 2003 Iowa Acts, House File 692, section 83.

"Recipient" means a business that receives financial assistance from the fund.

"Review commission" means the 3-member Iowa values review commission established in 2003 Iowa Acts, House File 692, section 81.

264—1.2(80GA, HF692, HF683) Values fund.

1.2(1) Purpose. The statutory purpose of the grow Iowa values fund is to expand and stimulate the state economy, increase the wealth of Iowans, and increase the population of the state. The fund is structured to provide financial assistance for business start-ups, business expansions, business modernization, business attraction, and business retention. The fund may also be used for marketing and to procure technical assistance from either the public or private sector, for information technology purposes, and for rail, air, or river port transportation-related purposes. The use of moneys appropriated for rail, air, or river port transportation-related purposes must be directly related to an economic development project and the moneys must be used to leverage other financial assistance moneys.

1.2(2) Values fund and board authority. The values fund includes moneys appropriated to the fund by the general assembly, interest earned, repayments and recaptures of loans and grants. The fund is under the control of the board. The board shall approve or deny applications for financial assis-

GROW IOWA VALUES BOARD[264](cont'd)

tance from moneys appropriated to the fund pursuant to 2003 Iowa Acts, House File 683, section 66.

1.2(3) Allocation of moneys in the fund. Moneys are appropriated to the fund to be used for the purposes stated in subrule 1.2(1), including funding for programs administered by the department. The board shall allocate a percentage of the moneys for business start-ups, business expansion, business modernization, business attraction, business retention, and marketing. Applications submitted by businesses seeking assistance through department programs that are funded with values fund moneys shall follow the department's application procedures for those programs. Notwithstanding the foregoing, the board shall have final decision-making authority on these applications.

264—1.3(80GA, HF692, HF683) Planning principles. In reviewing applications for values fund assistance, the board, the committee and the department will encourage applicants to take the following planning principles into consideration:

1.3(1) Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

1.3(2) Provision for a variety of transportation choices, including pedestrian traffic.

1.3(3) Maintenance of unique sense of place by respecting and enhancing local cultural, historical and natural environmental features.

1.3(4) Conservation of open space and farmland and preservation of critical environmental areas.

1.3(5) Promotion of the safety, livability, and revitalization of existing urban and rural communities.

264—1.4(80GA, HF692, HF683) Federal funds and the Section 106 process. All recipients receiving awards of federal moneys from the fund shall cooperate with the board, the department and the department of cultural affairs in ensuring compliance with the requirements of Section 106 of the National Historic Preservation Act (Section 106). The Section 106 process requires recipients of federal funds to take into account the effects of their undertakings on historic properties and afford the state historic preservation office (SHPO) a reasonable opportunity to comment on the undertakings. Compliance with the Section 106 process shall be a condition of disbursement of funds.

264—1.5(80GA, HF692, HF683) Contract administration.

1.5(1) Notice of award. Successful applicants will be notified in writing of the board's award of assistance, including any conditions or terms of the award.

1.5(2) Contract required. The department shall prepare an agreement, which includes, but is not limited to, a description of the project to be completed by the business, the high-wage, high-skill jobs to be created or retained, length of the project period, conditions to disbursement as approved by the board, and the repayment requirements of the business in the event the business does not fulfill its obligations. Successful applicants will be required to execute an agreement within 60 days of the award. Failure to do so may result in the board's rescinding the award. The 60-day limit may be extended by the board for good cause shown.

1.5(3) Amendments. Any substantive change to a funded project will require a contract amendment approved by the board. Substantive changes include, but are not limited to, contract time extensions, budget revisions, and significant al-

terations of existing activities or beneficiaries. No amendment will be valid until approved by the board.

264—1.6(80GA, HF692, HF683) Rules expiration date. This chapter shall expire on October 28, 2003.

These rules are intended to implement 2003 Iowa Acts, House Files 692 and 683.

CHAPTER 2

Reserved

CHAPTER 3

GROW IOWA VALUES FUND
FINANCIAL ASSISTANCE

264—3.1(80GA, HF692, HF683) Eligible applicants. Only businesses are eligible to apply to the department for financial assistance under the grow Iowa values fund.

264—3.2(80GA, HF692, HF683) Eligibility requirements.

3.2(1) Applications from businesses in one of the three following industry clusters shall be given priority consideration regarding their request for assistance:

- a. Life sciences.
- b. Advanced manufacturing.
- c. Information solutions.

3.2(2) All applications must meet the high-wage, high-skill job and education requirements of the grow Iowa values fund.

3.2(3) Retail businesses shall not be eligible to apply for funding.

264—3.3(80GA, HF692, HF683) Forms of assistance. Forms of financial assistance include, but are not limited to, loans, forgivable loans, grants and other forms of assistance the board deems appropriate.

264—3.4(80GA, HF692, HF683) Application.

3.4(1) To apply for moneys from the grow Iowa values fund, a business shall submit an application to the department on a form provided by the department.

3.4(2) A business may submit an application individually or as part of a group of businesses.

3.4(3) Requests for an application should be directed to the Iowa Department of Economic Development, Division of Business Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

3.4(4) An applicant shall be required to include in the application a statement regarding the intended return on investment. A recipient of values fund moneys shall annually submit a statement to the department regarding the progress achieved in meeting the intended return on investment stated in the application.

264—3.5(80GA, HF692, HF683) Application contents. An application to request assistance from the grow Iowa values fund shall include, but not be limited to, the following:

1. A business plan that describes the business's current operations and future plans.
2. A description of the proposed project.
3. Documentation that the business meets the eligibility requirements.
4. A description of the quality of jobs to be created or retained, including information on wage rates and progression, turnover rate, type of job (e.g., full-time, part-time, career-type), health benefits, and other factors impacting the quality of the jobs.

GROW IOWA VALUES BOARD[264](cont'd)

5. An identification of the business's competitors in Iowa and elsewhere.

6. An analysis of the impact to the state of the proposed project in terms of return on investment.

7. A description of any violations of law in the preceding three years including, but not limited to, environmental and worker safety statutes, rules and regulations. The description must include violations of a federal or state environmental protection statute, regulation or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the business shall provide an explanation of any mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation(s), any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department, the committee and the board in assessing the nature of any violation(s).

8. A certification by the business that the information provided in the application is true and accurate to the best of its knowledge.

9. A release of information to permit the department, the committee and the board, their respective attorneys and agents, to reasonably evaluate the business's application.

10. Detailed financial information that includes information about the applicant's owners, investors, and business structure.

11. A certification by the applicant that it plans to stay in Iowa and evidence to support this commitment.

264—3.6(80GA, HF692, HF683) Selection criteria. In reviewing applications for funding, the board, the department and the committee shall consider, in addition to the overall re-

quirements detailed in 264—Chapter 1, the following criteria:

1. The proportion of local match to be provided as compared to local resources.

2. The proportion of private contribution to be provided, including the involvement of financial institutions.

3. The need of the business for financial assistance from governmental sources. Primary consideration shall be given to projects in which the department determines that governmental assistance is most necessary to the success of the project.

4. The amount of other governmental financial assistance the applicant will apply for to complete the proposed project.

5. The level of need of the business and the community and region in which it is located as compared to the state as a whole.

6. The impact of the proposed project on the economy of the local and regional area, and the state.

7. The capacity of the business and the methodology to be used to document the return on investment by the state.

264—3.7(80GA, HF692, HF683) Rules expiration date. This chapter shall expire on October 28, 2003.

These rules are intended to implement 2003 Iowa Acts, House Files 692 and 683.

[Filed Emergency 7/30/03, effective 7/30/03]

[Published 8/20/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/20/03.

ARC 2693B

**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1, the Department of Agriculture and Land Stewardship hereby amends Chapter 60, "Poultry," Iowa Administrative Code.

The purpose of this amendment is to update animal exhibition requirements to be used at Iowa county fairs, 4-H fairs or exhibitions, or similar exhibitions. The amendment restricts the sale of poultry at unregulated facilities and gatherings and requires that exhibitions involving poultry be registered with and approved by the state veterinarian at least 30 days prior to the exhibition.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 14, 2003, as **ARC 2458B**. No public comments were received. These amendments were also Adopted and Filed Emergency as **ARC 2479B**. There were no changes made from the Notice of Intended Action.

No waiver provision is included in this amendment because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to this amendment.

Pursuant to 2003 Iowa Acts, House File 636, the Department finds that the fiscal impact of this amendment does not meet the threshold requirements.

This amendment is intended to implement Iowa Code chapter 163.

This amendment will become effective September 24, 2003.

The following amendment is adopted.

Amend 21—Chapter 60 by adding the following **new** rule:

21—60.4(163) Registration of exhibitions involving poultry. For the purposes of this rule, poultry includes egg-type chickens, meat-type chickens, turkeys, domestic waterfowl, domestic game birds, and exhibition poultry. All exhibitions which include the exhibition of poultry must be registered with and approved by the state veterinarian at least 30 days prior to the exhibition.

60.4(1) A licensed accredited veterinarian shall inspect all poultry on the premises of the poultry exhibition, show or sale the day of the activity. All poultry showing signs of any contagious disease shall be removed from the premises immediately.

60.4(2) All poultry present at exhibitions, shows or sales must come from U.S. Pullorum-Typhoid clean or equivalent flocks, or have had a negative Pullorum-Typhoid test within 90 days prior to the event, and the test must have been performed by an authorized tester.

60.4(3) Sales of poultry will not be allowed at unregulated facilities or events, such as flea markets and swap meets, unless such facilities or events have been registered with and approved by the state veterinarian at least 30 days prior to the event.

[Filed 7/25/03, effective 9/24/03]

[Published 8/20/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/20/03.

ARC 2712B

**EDUCATIONAL EXAMINERS
BOARD[282]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The 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.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 28, 2003, as **ARC 2501B**. A public hearing on the amendment was held on June 26, 2003. No one attended the public hearing, and no written comments were received.

This amendment is identical to that published under Notice.

This amendment shall become effective September 24, 2003.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is adopted.

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 training 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 the rule 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 completing 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.*

[Filed 8/1/03, effective 9/24/03]

[Published 8/20/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/20/03.

ARC 2713B
EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 17, "Renewal of Licenses," Iowa Administrative Code.

The 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.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 28, 2003, as **ARC 2502B**. A public hearing on the amendments was held on June 26, 2003. No one attended the public hearing, and no written comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective September 24, 2003.

The following amendments are adopted.

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 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 completed 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.

[Filed 8/1/03, effective 9/24/03]

[Published 8/20/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/20/03.

ARC 2714B

EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 21, "Behind-the-Wheel Driving Instructor Authorization," Iowa Administrative Code.

The 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.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 28, 2003, as **ARC 2503B**. A public hearing on the amendment was held on June 26, 2003. No one attended the public hearing, and no written comments were received.

This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective September 24, 2003.

The following amendment is adopted.

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

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

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.*

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.*

[Filed 8/1/03, effective 9/24/03]

[Published 8/20/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/20/03.

ARC 2692B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby rescinds Chapter 2, "Iowa Election Campaign Fund," and adopts new Chapter 2, "Public Records and Fair Information Practices"; adopts new Chapter 3, "Iowa Election Campaign Fund"; rescinds Chapter 6, "Civil Penalties," and Chapter 10, "Public Records and Fair Information Practices"; and adopts new Chapter 10, "Civil Penalties for Late Campaign Reports," Iowa Administrative Code.

The 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 is temporarily rescinded and reserved. The Board is in the process of placing similar subject matters together by chapter in the Board's rules. The amendments also reflect current Board policies and procedures.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on May 28, 2003, as **ARC 2486B**. No oral or written comments on the amendments were received. These amendments are identical to those published under Notice.

The Board adopted these amendments on July 24, 2003.

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

These amendments will become effective on September 24, 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 [rescind Chs 2, 6, 10; adopt Chs 2, 3, 10] is

being omitted. These amendments are identical to those published under Notice as **ARC 2486B**, IAB 5/28/03.

[Filed 7/25/03, effective 9/24/03]

[Published 8/20/03]

[For replacement pages for IAC, see IAC Supplement 8/20/03.]

ARC 2691B**LANDSCAPE ARCHITECTURAL
EXAMINING BOARD[193D]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 544B.5, the Landscape Architectural Examining Board hereby rescinds Chapters 1 to 8 and adopts new Chapter 1, "Description of Organization," Chapter 2, "Examinations and Licensing," Chapter 3, "Continuing Education," and Chapter 4, "Rules of Professional Conduct," Iowa Administrative Code.

Chapters 1 to 4 contain rules specific to the practice of landscape architecture. Rescinded Chapters 5, 6, 7 and 8 are chapters that contain rules identical or similar to rules outlined in each of the professions within the Professional Licensing and Regulation Division [193] and are now a part of that Division's rules.

This amendment implements 2002 Iowa Acts, chapter 1045, which became effective July 1, 2002. This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Notice of Intended Action was published in the May 14, 2003, Iowa Administrative Bulletin as **ARC 2477B**. The Board received one comment from the Assistant Attorney General and as a result made one modification to the rules published under Notice. Rule 193D—1.2(544B,17A) now reads as follows:

"193D—1.2(544B,17A) Organization and duties. The board consists of five members who are licensed professional landscape architects and two members who are not licensed professional landscape architects and who represent the general public. The board elects annually from its members a chairperson and a vice chairperson. A quorum of the board shall be four members, and all final motions and actions must receive a majority of a quorum vote. The board enforces the provisions of Iowa Code chapter 544B and maintains a roster of all licensed professional landscape architects in the state."

The Board adopted this amendment on June 19, 2003.

This amendment will become effective September 24, 2003.

This amendment is intended to implement Iowa Code chapters 17A, 272C, and 544B.

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 [rescind Chs 1 to 8; adopt Chs 1 to 4] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 2477B**, IAB 5/14/03.

[Filed 7/24/03, effective 9/24/03]

[Published 8/20/03]

[For replacement pages for IAC, see IAC Supplement 8/20/03.]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

***EXECUTIVE ORDER NUMBER TWENTY-EIGHT**

WHEREAS, the delivery of services by state government agencies can be greatly enhanced by encouraging state agencies to become more innovative and results oriented; and

WHEREAS, Iowa Code Section 7J.1 permits greater administrative flexibility for agencies that are designated by this office as Charter Agencies; and

WHEREAS, specifically, Iowa Code Section 7J.1 provides that Charter Agencies may experience greater flexibility to exercise discretion in agency personnel and procurement decision-making, and may receive access to special support services, provided that these agencies identify new, more efficient methods for achieving results that benefit Iowans, and agree to be held accountable for achieving those results; and

WHEREAS, seven state agencies have agreed to assume the responsibilities of pursuing a more innovative and results oriented approach.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the laws and the Constitution of the State of Iowa, do hereby designate: the Alcoholic Beverages Division of the Department of Commerce, the Department of Corrections, the Department of Human Services, the Iowa Veteran's Home, the Department of Natural Resources, Department of Public Safety, and the Department of Revenue and Finance as Charter Agencies, under Iowa Code Section 7J.1. Although periodically reviewable, this designation shall extend through June 30, 2008.

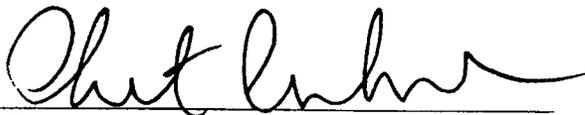
The Iowa Department of Management and the Iowa Department of Administrative Services shall provide each of these charter Agencies with the maximum degree of administrative flexibility allowed under Iowa law, to ensure that these agencies produce the results and savings/revenues that each has committed to in their Charter Agency Agreement.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 1st day of July, in the year of our Lord two thousand three.


THOMAS J. VILSACK
GOVERNOR

ATTEST:


CHESTER J. CULVER
SECRETARY OF STATE

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of Administrative Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

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