



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXIX

NUMBER 2

July 19, 2006

Pages 61 to 132

CONTENTS IN THIS ISSUE

Pages 73 to 130 include **ARC 5230B** to **ARC 5234B** and **ARC 5236B** to **ARC 5257B**

AGENDA

Administrative rules review committee 66

ALL AGENCIES

Schedule for rule making 64
 Publication procedures 65
 Administrative rules on CD-ROM 65
 Agency identification numbers 71

CITATION OF ADMINISTRATIVE RULES 63

CIVIL REPARATIONS TRUST FUND

Notice 73

CIVIL RIGHTS COMMISSION[161]

Filed, Mailing documents to and from the agency,
 amendments to chs 2, 3, 9 **ARC 5238B** 105

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice, Definition of "employee,"
 168.301, 168.302 **ARC 5234B** 73

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Filed, Proof of legal presence, ch 7
ARC 5247B 105

Filed Emergency, Requirements for an
 administrator license, 14.114 **ARC 5249B** 96

Filed Emergency, Renewal of license—board
 review of sex offender registry information,
 central registry for child abuse information
 and dependent adult abuse records, 17.1
ARC 5250B 96

Filed, Audit of applications for license
 renewal, 17.12 **ARC 5248B** 105

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Filed, Environmental covenants, adopt ch 14;
 amend chs 135, 137 **ARC 5245B** 106

Filed, Air quality, amendments to chs 22, 23
ARC 5246B 109

Filed, Fee structure for wastewater permits,
 64.16 **ARC 5244B** 111

Filed, Definition of "designated wetland,"
 "grandfather" treatment of pending operations,
 65.1, 65.11 **ARC 5242B** 112

Filed, Animal feeding operations, 65.5(3),
 65.103(5) **ARC 5243B** 113

HUMAN SERVICES DEPARTMENT[441]

Notice, Subsidized guardianship program,
 amendments to ch 204 **ARC 5251B** 74

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Notice, Construction contractor registration, asbestos
 removal license, 150.1, 150.2, 150.4(8), 150.6(2),
 150.11(11), 155.6(10), 155.9(2) **ARC 5253B** 76

Filed Emergency, Construction contractor
 registration, 150.1, 150.6(2) **ARC 5252B** 97

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Filed, Mandatory reporting; grounds for discipline;
 complaints and investigations; contested case
 proceedings; reinstatement after disciplinary action,
 rescind ch 12; adopt chs 22 to 26 **ARC 5236B** ... 114

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Filed, Athletic trainers—retention of licensure
 overpayments, 350.1 **ARC 5230B** 130

PUBLIC HEALTH DEPARTMENT[641]

Notice, Shared newborn hearing screening
 information—department agreement with states
 bordering Iowa, parental refusal form,
 3.10(3)"e," 3.12 **ARC 5233B** 77

PUBLIC HEARINGS

Summarized list 69

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 and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [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.

Subscriptions and Distribution	Telephone:	(515)281-6766
	Fax:	(515)281-6625
KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Deputy Editor	Fax:	(515)281-8157
		(515)281-5534

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly.

July 1, 2006, to June 30, 2007	\$328
October 1, 2006, to June 30, 2007	\$246
January 1, 2007, to June 30, 2007	\$164
April 1, 2007, to June 30, 2007	\$ 82

Single copies may be purchased for \$23.

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets by subscription. Supplement (replacement pages) subscriptions must be for the complete year and will expire on June 30 of each year.

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code – \$1,520

(Price includes complete set of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders may be purchased for \$20.)

Iowa Administrative Code Supplement – \$510

(Subscription expires June 30, 2006)

All checks should be made payable to the Treasurer, State of Iowa. Send all inquiries and subscription orders to:

Attn: Nicole Navara
Legislative Services Agency
Miller Building
Des Moines, IA 50319
Telephone: (515)281-6766

PUBLIC SAFETY DEPARTMENT[661]

Notice, International fire code; fire extinguishing systems, 5.16, 5.35, 5.40, 5.41, 5.230(2), 5.500, 5.615(3), 5.625(7) **ARC 5240B** 77

Notice, Regional emergency response training center program, 259.301 to 259.305 **ARC 5257B** 78

Notice, Peace officers’ retirement, accident, and disability system, 400.2, 400.10, ch 401, 402.300 to 402.306 **ARC 5231B** 79

Filed Emergency, International fire code; fire extinguishing systems, 5.16, 5.35, 5.40, 5.41, 5.230(2), 5.500, 5.615(3), 5.625(7) **ARC 5241B** 97

Filed Emergency, Regional emergency response training center program, 259.301 to 259.305 **ARC 5256B** 99

Filed Emergency, Peace officers’ retirement, accident, and disability system, 400.2, 402.300 to 402.306 **ARC 5232B** 101

REVENUE DEPARTMENT[701]

Notice, School tuition organization tax credit, 42.30 **ARC 5255B** 93

TRANSPORTATION DEPARTMENT[761]

Notice, Consent for the sale of goods and services, rescind ch 26 **ARC 5237B** 95

TREASURER OF STATE

Notice—Public funds interest rates 95

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Filed, Interstate natural gas pipelines, 9.1 to 9.7, 12.1, 12.3 to 12.5, 12.7 **ARC 5239B** 130

WORKERS’ COMPENSATION DIVISION[876]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Filed Emergency, Payroll tax tables, 8.8 **ARC 5254B** 103

CITATION of Administrative Rules

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

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

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

Schedule for Rule Making 2006

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
Aug. 23	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
Nov. 3	Nov. 22	Dec. 12	Dec. 27	***Dec. 27***	Jan. 17 '07	Feb. 21 '07	May 21 '07
Nov. 15	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
Dec. 13	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
Dec. 27	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
4	Friday, July 28, 2006	August 16, 2006
5	Friday, August 11, 2006	August 30, 2006
6	Wednesday, August 23, 2006	September 13, 2006

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

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

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.west@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM

2006 IOWA LAW CD-ROM

Containing: **Iowa Administrative Code** (updated through December 2005)
Iowa Administrative Bulletins (July 2005 through December 2005)
Iowa Court Rules (updated through December 2005)

For free brochures and order forms contact:

Legislative Services Agency
Attn: Nicole Navara
Miller Building
Des Moines, Iowa 50319
Telephone: (515)281-6766 Fax: (515)281-6625
nicole.navara@legis.state.ia.us

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, August 8, 2006, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the August 2, 2006, Iowa Administrative Bulletin.

CIVIL RIGHTS COMMISSION[161]

Mailing of documents, 2.1(6), 3.4(3), 3.5(3), 3.5(5)“c,” 3.5(6), 3.5(7)“c,”
3.5(8)“e” and “f,” 3.5(9), 3.5(10), 3.6, 3.10(5), 3.12(1)“b”(2), 3.12(2)“c,”
3.13(3), 3.13(6), 3.14(8)“a,” 3.16(2)“b,” 3.16(3)“e” to “g,” 3.16(10),
9.5(4)“a”(1), 9.5(4)“b”(1), 9.5(4)“d,” Filed ARC 5238B 7/19/06

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

Federal family education loan programs, ch 10, Notice ARC 5226B, also Filed Emergency ARC 5227B 7/5/06
Student loan debt collection, ch 37, Notice ARC 5224B, also Filed Emergency ARC 5225B 7/5/06

CORRECTIONS DEPARTMENT[201]

Sex offender management and treatment—hormonal intervention therapy,
38.4(3)“a”(2), 38.4(5)“b,” Filed ARC 5192B 7/5/06

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Definition of “employee,” ch 168 div V, 168.301, 168.302 Notice ARC 5234B 7/19/06

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

Proof of legal presence, adopt ch 7, Filed ARC 5247B 7/19/06
Administrator license, 14.114, Filed Emergency ARC 5249B 7/19/06
Renewal information, 17.1, Filed Emergency ARC 5250B 7/19/06
Audit of application for license renewal, 17.13, Filed ARC 5248B 7/19/06

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Environmental covenants, adopt ch 14; 135.12(8)“a”“4,” ch 135 appendix C, 137.7(2)“e,” 137.7(3),
137.7(6), 137.7(8), Filed ARC 5245B 7/19/06
Air quality—adoption of federal regulations, clarification of construction permit exemptions,
22.1(1)“b,” 22.1(2)“x”(5), 22.4(1), 22.100, 22.101(1) to 22.101(3), 22.102, 22.105(2),
23.1(2), 23.1(2)“www,” 23.1(4), 23.1(4)“be,” Filed ARC 5246B 7/19/06
Fee structure for wastewater permits, 64.16, Filed ARC 5244B 7/19/06
Animal feeding operations—definition of “designated wetland,” 65.1, 65.11(3) to 65.11(6), Filed ARC 5242B 7/19/06
Animal feeding operations, 65.5(3), 65.103(5), Filed ARC 5243B 7/19/06
Commercial septic tank cleaners, ch 68, 69.17, 69.17(1), (Notice ARC 5042B, 4/12/06 IAB) Regulatory Analysis 7/5/06

HUMAN SERVICES DEPARTMENT[441]

Aftercare services and supports, 7.1, adopt ch 187, Notice ARC 5202B,
also Filed Emergency ARC 5220B 7/5/06
Medicaid for independent young adults, 75.1(42), 75.57(7)“ai,” Notice ARC 5200B,
also Filed Emergency ARC 5219B 7/5/06
Medicaid applicants—documentation of citizenship or nationality, 75.11(2)“c” to e,”
Filed Emergency After Notice ARC 5217B 7/5/06
Medicaid eligibility for limited services to aliens, 75.11(4), 76.7(5),
Filed Emergency After Notice ARC 5215B 7/5/06
Increase in personal needs allowance for nursing facility residents, 75.16(2)“a,”
81.23, Notice ARC 5212B, also Filed Emergency ARC 5211B 7/5/06
Nursing facility care, institutional care—update of statewide average costs and charges,
75.23(3), 75.24(3)“b”(1) and (4) to (6), Filed Emergency ARC 5213B 7/5/06
Family medical assistance program—determination of resource eligibility,
75.56(1)“d,” Filed Emergency ARC 5214B 7/5/06
Continuation of increased reimbursement rate for mileage,
78.13(5)“a,” 93.110(6)“b,” Notice ARC 5195B, also Filed Emergency ARC 5209B 7/5/06
Reimbursement rate increase for providers of medical and remedial care, 79.1(2),
79.1(8)“g,” Notice ARC 5194B, also Filed Emergency ARC 5210B 7/5/06
Medicaid providers’ obligation to report changes and to pay tax-reporting penalties,
79.14(11), Filed ARC 5216B 7/5/06

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

- IowaCare, ch 92 preamble, 92.1, 92.2(1)"a"(1), 92.3(1), 92.4(1), 92.7, 92.7(1)"a,"
92.11(1), 92.11(2), Notice ARC 5201B, also Filed Emergency ARC 5218B 7/5/06
- Waiver of foster or adoptive parent preservice training, 113.8(1)"c," 200.4(4)"a"(3),
Notice ARC 5196B, also Filed Emergency ARC 5208B 7/5/06
- Reimbursement rate increase for social service providers, 150.3(5)"p"(1) and (2), 150.3(5)"p"(2)"1,"
156.11(3)"a"(2) to (4), 156.11(3)"c," Notice ARC 5203B, also Filed Emergency ARC 5207B 7/5/06
- Reimbursement rate increase for foster care, adoption maintenance subsidy,
156.6(1), 156.6(4)"e," 156.8(7), 156.8(8), 156.8(8)"e" and "f,"
Notice ARC 5197B, also Filed Emergency ARC 5206B 7/5/06
- Reimbursement rate increase for rehabilitative treatment and supportive services, 185.112(1)"k,"
185.112(14)"c" and "d," Notice ARC 5199B, also Filed Emergency ARC 5204B 7/5/06
- Subsidized adoptions—reimbursement rate increase for nonrecurring expenses,
201.6(1)"a"(7), Notice ARC 5198B, also Filed Emergency ARC 5205B 7/5/06
- Subsidized guardianship program, ch 204 preamble, 204.1, 204.2(1), 204.2(3), 204.2(4), 204.3(2),
204.3(4), 204.4(2) to 204.4(4), 204.5 to 204.7, Notice ARC 5251B 7/19/06

IOWA FINANCE AUTHORITY[265]

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

- Low-income housing tax credits—2007 qualified allocation plan, 12.1, 12.2 Notice ARC 5228B 7/5/06
- State housing trust fund—2007 allocation plan, 19.1, 19.2, Filed ARC 5229B 7/5/06

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Agency procedures; adoption by reference of federal occupational safety and health
regulations, 1.102, 10.20, 26.1, 28.1, Filed ARC 5191B 7/5/06
- Wage collection payment, ch 35, Filed ARC 5190B 7/5/06
- Elevators, escalators and related equipment, chs 65 to 70, 72.5, 73.25, 73.26, Filed ARC 5223B 7/5/06
- Construction contractor registration; asbestos removal and encapsulation, 150.1, 150.2, 150.4(8)"a,"
150.6(2), 150.11(11), 155.6(10), 155.9(2), Notice ARC 5253B 7/19/06
- Construction contractor registration—exemptions, 150.1, 150.6(2), Filed Emergency ARC 5252B 7/19/06

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Mandatory reporting; discipline; contested cases, rescind ch 12; adopt chs 22 to 26,
Filed ARC 5236B 7/19/06

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

- Game harvest reporting and landowner-tenant registration, adopt ch 95, Filed ARC 5222B 7/5/06
- Deer hunting by residents, 106.1(1), 106.1(6) to 106.1(8), 106.2(5), 106.6, 106.7,
106.8(3), 106.9, 106.10(1)"a" and "b," 106.12(1), 106.12(7), 106.13, Filed ARC 5221B 7/5/06

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Electronic processing of records, 11.5(1) to 11.5(3), 11.5(5), Filed ARC 5193B 7/5/06

PAROLE BOARD[205]

CORRECTIONS DEPARTMENT[201]"umbrella"

- Board address updated, 1.3, 2.5(1), 2.6(2), 3.1, 3.3, 4.1, 4.3(3), 4.5, 4.6(2), 5.3(1), 5.6, Notice ARC 5188B 7/5/06

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Mortuary science examiners—overpayments, 99.1, 103.6"14," Filed ARC 5182B 7/5/06
- Mortuary science examiners—course in Iowa law and rules, 101.3(1)"c," 101.3(2)"d,"
101.4(2), 101.8(6), 101.10(2), 101.18(3)"a"(3), 101.18(3)"b"(3), 102.2(1),
102.3(2)"f," Filed ARC 5187B 7/5/06
- Massage therapy examiners—overpayments, 130.1, 131.14(3)"a"(2), 134.2(30), Filed ARC 5183B 7/5/06
- Speech pathology and audiology examiners—overpayments, 299.1, Filed ARC 5181B 7/5/06
- Athletic training examiners—overpayments, 350.1, Filed ARC 5230B 7/19/06

PUBLIC HEALTH DEPARTMENT[641]

- Sharing of newborn hearing screening information, 3.10(3)"e," 3.12(1),
3.12(2), Notice ARC 5233B 7/19/06

PUBLIC SAFETY DEPARTMENT[661]

- Local adoption of 2006 edition of International Fire Code; automatic fire extinguishing systems, 5.16(1), 5.35, 5.40, 5.41, 5.230(2), 5.500, 5.615(3), 5.625(7), Notice ARC 5240B,
also Filed Emergency ARC 5241B 7/19/06
- Sprinklers in elevators, 5.52, Notice ARC 5186B 7/5/06
- Regional emergency response training center program, 259.301 to 259.305, Notice ARC 5257B,
also Filed Emergency ARC 5256B 7/19/06
- Energy conservation for residential and nonresidential construction, 303.2, 303.3, Notice ARC 5185B 7/5/06
- Use of home heating index for residential construction, 303.2(9), Filed Emergency ARC 5184B 7/5/06
- Peace officers' retirement, accident, and disability system—line-of-duty death benefit,
service purchases, 400.2, ch 402 div III, 402.300 to 402.306, Filed Emergency ARC 5232B 7/19/06
- Peace officers' retirement, accident, and disability system—line-of-duty death benefit,
medical board, administrative procedures, service purchases, 400.2, 400.10, ch 401,
ch 402 div III, 402.300 to 402.306, Notice ARC 5231B 7/19/06

REVENUE DEPARTMENT[701]

- School tuition organization tax credit, 42.30, Notice ARC 5255B 7/19/06

TRANSPORTATION DEPARTMENT[761]

- Consent for the sale of goods and services, rescind ch 26, Notice ARC 5237B 7/19/06
- Driver's license renewal, 605.25(2), Filed ARC 5189B 7/5/06

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Interstate natural gas pipelines, 9.1 to 9.3, 9.7, 12.1, 12.3 to 12.5, 12.7, Filed ARC 5239B 7/19/06

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

- Injured veterans grant program, adopt ch 11, Notice ARC 5180B, also Filed Emergency ARC 5179B 7/5/06

WORKERS' COMPENSATION DIVISION[876]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Payroll tax tables, 8.8, Filed Emergency ARC 5254B 7/19/06

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 Michael Connolly
2600 Renaissance Drive, #3
Dubuque, Iowa 52001

Senator Thomas Courtney
2200 Summer Street
Burlington, Iowa 52601

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

Senator Paul McKinley
21884 483rd Lane
Chariton, Iowa 50049

Senator James Seymour
901 White Street
Woodbine, Iowa 51579

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

Representative Danny Carroll
244 400th Avenue
Grinnell, Iowa 50112

Representative George Eichhorn
P.O. Box 140
Stratford, Iowa 50249

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

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

Representative Geri Huser
213 Seventh Street NW
Altoona, Iowa 50009

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Definition of "employee," 168.301, 168.302 IAB 7/19/06 ARC 5234B	ICN Conference Room, 2nd Floor 200 E. Grand Ave. Des Moines, Iowa	August 10, 2006 1:30 p.m.
EDUCATION DEPARTMENT[281]		
School buses, amendments to ch 44 IAB 6/7/06 ARC 5136B	Airport Holiday Inn 6111 Fleur Dr. Des Moines, Iowa	July 20, 2006 1 to 2:30 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Commercial septic tank cleaners, Regulatory Analysis IAB 7/5/06 (See also ARC 5042B , IAB 4/12/06)	Conference Rooms, Suite M 401 SW Seventh St. Des Moines, Iowa	July 26, 2006 1:30 p.m.
IOWA FINANCE AUTHORITY[265]		
Low-income housing tax credits, 12.1, 12.2 IAB 7/5/06 ARC 5228B (ICN Network)	State Library, Third Floor Miller State Office Building Des Moines, Iowa (For other hearing locations, see the Authority's Web site at www.ifahome.com)	July 25, 2006 9 to 11 a.m.
LABOR SERVICES DIVISION[875]		
Contractor registration; asbestos removal, 150.1, 150.2, 150.4(8), 150.6(2), 150.11(11), 155.6(10), 155.9(2) IAB 7/19/06 ARC 5253B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	August 8, 2006 9 a.m. (If requested)
PUBLIC SAFETY DEPARTMENT[661]		
Adoption of fire code— solicitation of comments prior to rule making IAB 7/5/06	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	August 4, 2006 10 a.m.
International fire code; fire extinguishing systems, 5.16, 5.35, 5.40, 5.41, 5.230, 5.500, 5.615(3), 5.625(7) IAB 7/19/06 ARC 5240B (See also ARC 5241B herein)	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 10, 2006 10:30 a.m.
Sprinklers in elevators, 5.52 IAB 7/5/06 ARC 5186B	Fire Marshal Division Conference Rm. 401 SW Seventh St. Des Moines, Iowa	August 4, 2006 9:30 a.m.

PUBLIC SAFETY DEPARTMENT[661] (Cont'd)

Regional emergency response training center program, 259.301 to 259.305 IAB 7/19/06 ARC 5257B (See also ARC 5256B herein)	Fire Services Training Bureau 3100 Fire Service Rd. Ames, Iowa	August 17, 2006 10 a.m.
Energy conservation for residential and nonresidential construction, 303.2, 303.3 IAB 7/5/06 ARC 5185B	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	August 15, 2006 10 a.m.
Peace officers' retirement, accident, and disability system, 400.2, 400.10, ch 401, 402.300 to 402.306 IAB 7/19/06 ARC 5231B	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 10, 2006 10 a.m.

TRANSPORTATION DEPARTMENT[761]

Consent for the sale of goods and services, rescind ch 26 IAB 7/19/06 ARC 5237B	First Floor North Conference Room 800 Lincoln Way Ames, Iowa	August 10, 2006 10 a.m. (If requested)
---	--	--

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Injured veterans grant program, ch 11 IAB 7/5/06 ARC 5180B (See also ARC 5179B)	Building A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	July 25, 2006 10 a.m.
--	---	--------------------------

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

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 Grow Iowa Values Board[264]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 HUMAN INVESTMENT COUNCIL[417]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]
 HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
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]

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, 2006, is approximately \$1,761.00. 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 above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

ARC 5234B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 168, “Additional Program Requirements,” Iowa Administrative Code.

The proposed amendment adds a definition of “employee” that is applicable to all state direct financial assistance programs and tax credit programs administered by the Department. The proposed definition provides that the term “employee” means a full-time employee on the payroll of a business receiving state financial assistance from the Department. The term “employee” may also mean a business’s leased or contract employee provided there is a binding contract between the business receiving financial assistance and a third-party provider. That contract must clearly specify the wages and benefits to be paid to the leased or contract employee, and the term of the contract must correspond to the term of the contract between the Department and the business receiving financial assistance.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on August 10, 2006. Interested persons may submit written or oral comments by contacting: Melanie Johnson, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4862.

A public hearing to receive comments about the proposed amendment will be held on August 10, 2006, at 1:30 p.m. at the above address in the ICN Conference Room on the second floor.

This amendment is intended to implement Iowa Code chapters 15 and 17A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend 261—Chapter 168 by adopting the following **new** Division V as follows:

DIVISION V DEFINITION OF EMPLOYEE

261—168.301(15) Definition of employee. “Employee” means:

a. An individual filling a full-time position that is part of the payroll of the business receiving financial assistance from any of the programs identified in rule 261—168.302(15).

b. A business’s leased or contract employees, provided all of the following elements are satisfied:

1. The business receiving the state financial assistance has a legally binding contract with a third-party provider to provide the leased or contracted employees.

2. The contract between the third-party provider and the business specifically requires the third-party provider to pay the wages and benefits at the levels required and for the time period required by the Iowa department of economic development as conditions of the financial assistance award to the business.

3. The contract between the third-party provider and the business specifically requires the third-party provider to submit payroll records to the department, in form and content and at the frequency found acceptable to the Iowa department of economic development, for purposes of verifying that the business’s job creation/retention and benefit requirements are being met.

4. The contract between the third-party provider and the business specifically authorizes the Iowa department of economic development, or its authorized representatives, access to records related to the funded project.

5. The business receiving the state financial assistance agrees to be contractually liable to the department for the performance or nonperformance of the third-party provider.

261—168.302(15) Applicability. The definition of the term “employee” described in this division is applicable to the high quality job creation program (HQJCP) (261—Chapter 68), the value-added agricultural products and processes financial assistance program (VAAPFAP) (261—Chapter 57), the community economic betterment (CEBA) program (261—Chapter 53), the entrepreneurial ventures assistance (EVA) program (261—Chapter 60), the targeted small business financial assistance program (TSBFAP) (261—Chapter 55), the physical infrastructure assistance program (PIAP) (261—Chapter 61), the brownfield redevelopment program (261—Chapter 65), and all other state financial assistance programs administered by the department, including all programs receiving funding from the Iowa values fund.

These rules are intended to implement Iowa Code chapters 15 and 17A.

ARC 5251B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 204, “Subsidized Guardianship Program,” Iowa Administrative Code.

In 1999, the Department of Human Services adopted Chapter 204 to establish a subsidized guardianship program to provide financial assistance to guardians of eligible children who cannot be adopted and are not able to return home. Pursuant to 2000 Iowa Acts, chapter 1228, section 43, implementation of these rules was delayed until funding was appropriated by the General Assembly. These rules have never been implemented.

In 2006 Iowa Acts, House File 2734, section 17, subsection 10, the General Assembly gave the Department authority to operate a subsidized guardianship program, notwithstanding 2000 Iowa Acts, chapter 1228, section 43, if:

- The United States Department of Health and Human Services approves a waiver under Title IV-E of the federal Social Security Act or the federal Social Security Act is amended to allow Title IV-E funding to be used for subsidized guardianship, and
- The subsidized guardianship program can be operated without loss of Title IV-E funds.

The United States Department of Health and Human Services has approved a Title IV-E waiver to allow the Department to implement a five-year demonstration project for a subsidized guardianship program to provide financial assistance to guardians of eligible children and to test new approaches to service delivery for improving outcomes for children. The federal government may extend or reauthorize this project after the initial five-year period.

These amendments incorporate the requirements of the demonstration waiver into Chapter 204. Under the demonstration project, eligible children will be randomly assigned to a control group or to an experimental group. Children assigned to the control group will not be eligible to receive subsidized guardianship. Children assigned to the experimental group will be eligible to receive subsidized guardianship if all other conditions are met.

The Department will contract with an independent entity to evaluate the project. The evaluator will approve the algorithm used to make the assignments and assist the Department in selecting the sample. The Department plans to select two-thirds of the sample for the experimental group and one-third for the control group. If the evaluation produces strong preliminary evidence of positive findings in favor of the experimental group, the state may request an adjustment to the sampling ratio to increase the proportion of children assigned to the experimental group.

Currently, about 900 children have the age, permanency goal, and foster care experience to qualify for the project. After the initial selection, assignment will be made monthly for new cases that qualify. Over the course of the five-year

demonstration, the Department expects that nearly 3000 children will qualify for project assignment. The number of children who actually enter subsidized guardianship will depend on how many have caregivers who are willing to serve as guardians.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted 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 August 9, 2006. Comments should be directed to Mary Ellen Imlau, 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 234.6 and 2006 Iowa Acts, House File 2734, section 17, subsection (10).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 204**, preamble, as follows:

CHAPTER 204 SUBSIDIZED GUARDIANSHIP PROGRAM

PREAMBLE

This chapter implements a *five-year demonstration waiver project* for a subsidized guardianship program to provide financial assistance to guardians of eligible children who are not able to be adopted and who are not able to return home. ~~This program will~~ *The purpose of the project is to test new approaches to service delivery for improving outcomes for children and families and to allow children a more permanent placement than they have in foster care.*

Eligible children will be randomly assigned to a control group or to an experimental group. Children assigned to the control group will not be eligible to receive subsidized guardianship. Children assigned to the experimental group will be eligible to receive subsidized guardianship if all other conditions are met. This waiver project may be extended or renewed after the five years through reauthorization by the federal government.

ITEM 2. Amend rule **441—204.1(234)** by adding the following **new** definitions in alphabetical order:

“Nonrecurring expenses” means reasonable and necessary guardianship fees, court costs, attorney fees, and other expenses that are directly related to finalizing the legal guardianship of a child. These expenses shall be limited to attorney fees, court filing fees and other court costs.

“Sibling group” means at least two children who are whole or half-siblings. A sibling group may include adopted children who have a common parent. Stepsiblings are not included as part of the sibling group.

ITEM 3. Amend rule 441—204.2(234) as follows:

Amend subrules 204.2(1) and 204.2(3) as follows:

204.2(1) General conditions of eligibility. The guardian named in a permanency order under Iowa Code section 232.104(2)“d”(1) or Iowa Code chapter 633 for a child who

HUMAN SERVICES DEPARTMENT[441](cont'd)

was previously in the custody of the department is eligible for subsidy when all of the following conditions exist:

a. ~~The department has determined the option of reunification has been eliminated and termination of parental rights is not appropriate. The child has a documented permanency goal of:~~

- (1) Long-term foster care;
- (2) Guardianship; or
- (3) Another planned permanent living arrangement.

b. ~~The child is has been in a licensed foster care subsidized by the department at the time of application placement and has lived in foster care for at least 12 months 6 of the last 18 12 months.~~

c. The child is either:

- (1) 14 years of age or older ~~and consents to the guardianship;~~ or;
- (2) 12 years of age or older ~~and guardianship has been determined to be in the child's best interest;~~ or
- (3) ~~if under 14 Under 12 years of age, is and part of a sibling group with a child aged 14 12 or older and cannot be made available for adoption.~~

d. ~~The child has lived in continuous placement does not require departmental supervision with the prospective guardian for the six months before initiation of the guardianship subsidy.~~

e. The guardian is a person, ~~not an agency who has a significant relationship with the child and demonstrates a willingness to make a long-term commitment to the child's care.~~

- (1) The guardian may be a relative or nonrelative,
- (2) Placement with that guardian must be in the best interest of the child. The best-interest determination must be documented in the case file.

f. ~~The child has been randomly selected to participate in the waiver demonstration project.~~

~~204.2(3) Unearned income. Unearned income of the child from sources such as social security, veterans administration, railroad compensation, trust funds, and the family's insurance shall also be used before subsidy funds are expended. The family or the guardian shall provide to the department worker documentation from any the source of the child's unearned income.~~

Rescind subrule **204.2(4)**.

ITEM 4. Amend rule 441—204.3(234) as follows:

Amend subrule 204.3(2) as follows:

204.3(2) Eligibility determination. The determination of whether a child meets eligibility requirements ~~is shall be~~ made by the department. ~~The person shall be notified in writing of the decision of the county office regarding the person's eligibility for the program and the amount of the subsidy to be made.~~

Rescind subrule **204.3(4)**.

ITEM 5. Amend rule 441—204.4(234) as follows:

Amend subrules 204.4(2) and 204.4(3) as follows:

204.4(2) Amount of subsidy. The department shall enter into the agreement based upon available funds. ~~A guardianship subsidy shall be no less than \$10 per month. The maximum monthly payment for a child in subsidized guardianship shall be made equal to the foster family care maintenance rate according to the age and special needs of the child as found at 441—subrule 156.6(1) and 441—paragraphs 156.6(4) "a" and "b."~~ Each time negotiations are completed, the department worker and guardian shall complete Form 470-3631, *Guardianship Subsidy Agreement*.

a. ~~The guardianship subsidy shall be based on a flat daily foster care rate adjusted according to the needs of the child and the circumstances of the family.~~

(1) ~~The rate for the guardianship subsidy shall not exceed the state's current daily basic foster care rate plus any daily special needs allowance or sibling allowance for which the child is eligible, as found at 441—subrule 156.6(1) and 441—paragraph 156.6(4) "a."~~

(2) ~~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 this payment in a subsidized adoptive placement.~~

b. ~~If the payment is less than the maximum amount allowed, the guardian may request an increase if the child or family's needs and circumstances require additional resources.~~

204.4(3) Placement outside of home. If a child needs to be placed out of the guardian's home for treatment and the plan is for the child to return to the family guardian within six months, a partial subsidy amount may be negotiated.

Adopt the following **new** subrule:

204.4(4) Nonrecurring expenses. The nonrecurring expenses necessary to finalize a guardianship shall be limited to the amount found in 441—subparagraph 201.6(1) "a"(7).

ITEM 6. Amend rule 441—204.5(234) as follows:

441—204.5(234) Parental residual rights and responsibilities liability. Parental residual rights and responsibilities are not affected by the subsidy. These may be set out or limited in the guardianship order and may include visitation, consent to adoption, support and lines of inheritance. These subsidy payments are considered foster care payments for purposes of child support recovery and as such create a support debt for the parents.

ITEM 7. Amend rule 441—204.6(234) as follows:

441—204.6(234) Termination of subsidy. The subsidy shall terminate when any of the following occur, and a notice shall be sent which states the reason for the termination:

1. ~~The child no longer meets the definition of "child." reaches the age of 18, unless the department determines that the subsidy may continue until the child reaches the age of 19 to facilitate the child's completion of high school or a high school equivalency diploma.~~

2. The child marries or enlists in the military.

3. ~~The guardian is child no longer using the maintenance payments to support the child lives with the guardian, except for placement outside the home as limited by subrule 204.4(3).~~

4. ~~Upon The relationship ends due to the death of the child, or the death of the guardian of the child (one in a single-parent family and or both in a two-parent family).~~

5. ~~Upon conclusion of the The terms of the agreement Form 470-3631, Guardianship Subsidy Agreement, are concluded.~~

6. ~~Upon request of the The guardian requests that the guardianship payment cease.~~

7. ~~The Due to incapacity, the guardian is can no longer legally responsible discharge the responsibilities necessary to protect and care for the child, and the guardianship has been or will be vacated.~~

8. ~~The family guardian fails to participate in the renewal process abide by the terms of Form 470-3631, Guardianship Subsidy Agreement.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

9. The juvenile court closes its guardianship case *is terminated by court order*.

10. The department funds for subsidized guardianship are no longer available.

ITEM 8. Amend rule 441—204.7(234) as follows:

441—204.7(234) Reinstatement of subsidy. Reinstatement of the subsidy shall be made when the subsidy was terminated because of a *the* reason in rule 441—204.6(234), numbered paragraph “3,” “6,” or “8,” and the reason for termination no longer exists.

ITEM 9. Amend **441—Chapter 204**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 234.6 and 1999 2006 Iowa Acts, House File 760 2734, section 15 17, subsection 9 10.

ARC 5253B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 88B.3(2) and section 91C.6, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 150, “Construction Contractor Registration,” and Chapter 155, “Asbestos Removal and Encapsulation,” Iowa Administrative Code.

The proposed amendments update references contained in the rules; require that contractors relinquish registration certificates that are revoked; and substitute the North American Industrial Classification System for the Standard Industrial Classification. The amendments allow an asbestos worker to perform covered activities for up to 14 days from issuance of the proper license if the issuance of the license is reflected on the Division of Labor Services’ Web site.

In order to conform to 2006 Iowa Acts, House File 2459, section 21, the limits for being exempt from Iowa Code chapter 91C and for being exempt from the registration fee in chapter 91C are raised from \$1,000 to \$2,000. Items 1, 4, and 6 of this Notice were also Adopted and Filed Emergency with a July 1, 2006, effective date and are published herein as **ARC 5252B**.

The purposes of these amendments are to protect the health and safety of the public, to implement legislative intent, and to keep the rules current.

If requested by the close of business on August 7, 2006, a public hearing will be held on August 8, 2006, at 9 a.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption must be submitted by interested persons no later

than August 8, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.state.ia.us.

These amendments are intended to implement Iowa Code chapters 88B and 91C and 2006 Iowa Acts, House File 2459.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 875—150.1(91C) as follows:

875—150.1(91C) Scope. This chapter implements Iowa Code chapter 91C. The rules in this chapter apply to all construction contractors, except for a person who earns less than \$1,000 \$2,000 annually or who performs work or has work performed on the person’s own property.

ITEM 2. Amend rule **875—150.2(91C)**, definitions of “construction” and “contractor,” as follows:

“Construction” means new work, additions, alterations, reconstruction, installations, repairs and demolitions. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites which may be dispersed geographically. Examples of construction activities, adopted by reference, are in 345—3.82(96) 871—23.82(96) for purposes of the Iowa employment security law.

“Contractor” means a person who engages in the business of construction as the term is defined in 345—3.82(96) 871—23.82(96), for purposes of the Iowa employment security law, including subcontractors and special trade contractors. Also included are persons who conduct or perform construction on an incidental or occasional basis, regardless of whether the person is classified as being engaged in construction by the unemployment insurance services division of the workforce development department.

ITEM 3. Amend subrule **150.4(8)**, paragraph “a,” as follows:

a. The employer’s ~~standard industrial classification (SIC)~~ *North American Industrial Classification System (NAICS)* code; or

ITEM 4. Amend subrule 150.6(2) as follows:

150.6(2) Exemption from fee. A contractor shall not be required to pay the fee if the application contains an affidavit which shows the contractor is self-employed, does not pay more than \$1,000 \$2,000 annually to employ other persons in the business, and does not work with or for other contractors in the same phase of construction. At any time that a contractor no longer meets the provision for an exemption from the fee, the fee shall be paid to the division.

ITEM 5. Amend rule 875—150.11(91C) by adding the following **new** subrule:

150.11(11) Relinquishing registration certificate. A contractor shall return the original registration certificate to the division when a revocation or suspension becomes final.

ITEM 6. Amend **875—Chapter 150**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 91C as amended by 2006 Iowa Acts, House File 2459.

ITEM 7. Amend subrule 155.6(10) as follows:

LABOR SERVICES DIVISION[875](cont'd)

155.6(10) License on job site. While conducting asbestos work that requires a license, the license or a legible copy of the license shall be in the licensee's possession at the work site. *However, if the division of labor services' Web site reflects a license has been issued to a particular person, that person may perform work consistent with the type of license issued without the license or a copy of the license for up to 14 days from the issuance date.*

ITEM 8. Amend subrule 155.9(2) as follows:

155.9(2) Procedures. The labor commissioner shall serve a notice of intended action by restricted certified mail, return receipt requested, or by other service as permitted by Iowa Code section 17A.8 17A.18. A notice of contest must be received by the labor commissioner within 20 days after service of the notice of intended action. If a notice of contest is not timely filed, the action stated in the notice of intended action shall automatically be effective. Hearing procedures for asbestos contested cases are set forth in 875—Chapter 1, Division V. However, if a contested case is based on receipt by the division of a certificate of noncompliance, procedures outlined in Iowa Code chapter 252J or 261 shall apply.

ARC 5233B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 135.11 and 135.131, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 3, "Early Hearing Detection and Intervention," Iowa Administrative Code.

This chapter contains rules for the universal hearing screening of all newborns and infants in Iowa and the transfer of data to the Department to enhance the capacity of agencies and practitioners to provide services to children and their families. The goal of universal hearing screening of all newborns and infants in Iowa is early detection of hearing loss to allow children and their families the opportunity to obtain early intervention services.

These amendments allow sharing of newborn hearing screening information with states bordering Iowa through an agreement with the Department to the extent that the information is necessary to perform newborn hearing screening follow-up. The amendments also clarify which form is to be used if a parent objects to the hearing screening.

Any interested person may make written comments on the proposed amendments on or before August 8, 2006. Such written comments should be directed to Tammy O'Hollearn, Early Hearing Detection and Intervention Coordinator, Department of Public Health, Bureau of Family Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to tohollea@idph.state.ia.us.

These amendments are intended to implement Iowa Code section 135.131.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **3.10(3)** by adding the following **new** paragraph "e":

e. A representative of a state agency, or an entity bound by that state, that completes an agreement with the department to the extent that the information is necessary to perform newborn hearing screening follow-up. The state agency or the entity bound by that state will be subject to confidentiality regulations that are the same as or more stringent than those in the state of Iowa. The state agency or the entity bound by that state shall not use the information obtained from the department to market services to patients or non-patients or identify patients for any purposes other than those expressly provided in this rule.

ITEM 2. Amend subrule 3.12(1) as follows:

3.12(1) If a parent objects to the screening, the birthing hospital, birth center, physician, or other health care professional shall obtain a written refusal from the parent or guardian on the *department newborn hearing screening refusal form* and shall maintain the original copy of the written refusal in the newborn's or infant's medical record.

ITEM 3. Amend subrule 3.12(2) as follows:

3.12(2) The birthing hospital, birth center, physician, or other health care professional shall send a copy of the written *newborn hearing screening refusal form* to the department within six days of the birth of the newborn.

ARC 5240B**PUBLIC SAFETY
DEPARTMENT[661]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 100.35, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 5, "Fire Marshal," Iowa Administrative Code.

Iowa Code chapter 100 assigns broad authority to the Fire Marshal to adopt rules establishing fire safety requirements which apply to a broad range of occupancies across the state. In addition, political subdivisions are authorized to adopt local fire ordinances which apply within the subdivision, while the rules of the Fire Marshal continue to apply. Also, the Fire Marshal is responsible for certifying fire extinguishing system contractors under a program which became operational on July 1, 2006.

The rules contained herein address two issues. First, rules of the Fire Marshal currently accept compliance with the International Fire Code, 2000 edition or 2003 edition, in lieu of compliance with the rules of the Fire Marshal, for most occupancies if either edition of the International Fire Code has been adopted and is enforced by a local jurisdiction. Item 1 adds a reference to the 2006 edition of the International Fire

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Code to codes the local adoption and enforcement of which are recognized by the Fire Marshal in lieu of compliance with the rules of the Fire Marshal. Several local jurisdictions in Iowa have already adopted the 2006 edition of the International Fire Code, and the number doing so is likely to continue to grow.

The second issue addressed herein relates to requirements for fire extinguishing systems in Iowa. Many of the references to national standards having to do with extinguishing systems are obsolete, and the coverage of these requirements in the rules of the Fire Marshal is incomplete. Fire extinguishing system contractors under the new certification program administered by the Fire Marshal will be required to be trained to meet and to adhere to the latest standards. To promote consistency and reduce potential conflicts and confusion in the requirements of fire extinguishing systems, various such requirements are updated and requirements are added.

A public hearing on these proposed amendments will be held on August 10, 2006, at 10:30 a.m. in the Third Floor Conference Room of the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515)281-5524; or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on August 11, 2006.

These amendments are intended to implement Iowa Code sections 100.1 and 100.35.

These amendments were also Adopted and Filed Emergency effective July 1, 2006, and are published herein as **ARC 5241B**. The content of that submission is incorporated by reference.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 5257B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 100B.10, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 259, “Fire Fighter Training and Equipment Funds,” Iowa Administrative Code.

Iowa Code chapter 100B establishes the Fire Service Training Bureau and the State Fire Service and Emergency Response Council within the Fire Marshal Division of the Department of Public Safety. The Fire Service Training Bureau and the State Fire Service and Emergency Response Council have broad responsibility to provide training for fire fighters and to coordinate fire fighter training offered by various providers across the state. Since 2003, the Bureau also has administered limited funds for planning of fire training facilities in the state. Legislation enacted during the 2006 session of the Iowa General Assembly, 2006 Iowa Acts, House File 2782, dramatically increased the funds available for construction of regional training facilities, designated lead and partner agencies for these facilities, established specific areas to be served by each facility, made specific funding allocations to each, established requirements for receipt and use of the funds, and authorized the Fire Marshal to establish administrative rules to implement the regional emergency response training center program.

The rules proposed herein provide for administration of the regional emergency response training center program established in 2006 Iowa Acts, House File 2782.

A public hearing on these proposed rules will be held on August 17, 2006, at 10 a.m. in the classroom of the Fire Services Training Bureau, 3100 Fire Service Road, Ames, Iowa 50010. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed rules may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on August 17, 2006.

In order to meet the time lines established in the law, these rules were also Adopted and Filed Emergency effective July 1, 2006, and are published herein as **ARC 5256B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code chapter 100B as amended by 2006 Iowa Acts, House File 2782.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 5231B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 97A.5, the Board of Trustees of the Iowa Department of Public Safety Peace Officers' Retirement, Accident, and Disability System hereby gives Notice of Intended Action to amend Chapter 400, “Peace Officers' Retirement, Accident, and Disability System—Governance and Administration,” to rescind Chapter 401, “Peace Officers' Retirement, Accident, and Disability System—Administrative Procedures,” and adopt a new Chapter 401 with the same title, and to amend Chapter 402, “Peace Officers' Retirement, Accident, and Disability System—Eligibility, Benefits, and Payments,” Iowa Administrative Code.

The amendment to the definition of “line-of-duty death” in Item 1 is intended to implement changes to Iowa Code section 100B enacted in 2006 Iowa Acts, House File 2665. Item 1 also includes a definition of the term “temporary” for the purposes of better defining the time period for the eligibility for temporary incapacity benefits.

The amendment in Item 2 sets forth the make-up and duties of the medical board that serves the Public Safety Peace Officers' Retirement, Accident, and Disability System.

Item 3 in effect reorganizes the content of Chapter 401 and includes a procedural section on declaratory orders.

The amendment in Item 4 adds to Chapter 402 a new division, which is intended to implement 2006 Iowa Acts, Senate File 2199. This division provides procedures and criteria for purchase of permissive service credit, which will enable some members to “buy back” certain periods of previous service as a fire fighter or peace officer and to receive credit in the Public Safety Peace Officers' Retirement, Accident, and Disability System for that service.

The amendment to the definition of “line-of-duty death” and the new division in Chapter 402 were Adopted and Filed Emergency at the same time that this Notice was submitted and are published herein as **ARC 5232B**. The Adopted and Filed Emergency amendments became effective July 1, 2006, and are included in this Notice of Intended Action to allow for public comment on them.

A public hearing on these proposed amendments will be held on August 10, 2006, at 10 a.m. in the Third Floor Conference Room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines,

Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail at admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated above by 4:30 p.m. on August 11, 2006, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Bureau office by 4:30 p.m. on August 11, 2006.

These amendments are intended to implement Iowa Code chapter 97A as amended by 2006 Iowa Acts, House File 2665, and 2006 Iowa Acts, Senate File 2199.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **661—400.2(97A)** as follows:

Amend the definition of “line-of-duty death” as follows:

“Line-of-duty death” means the death of a member in service which was the direct and proximate result of a traumatic personal injury incurred in the line of duty. Line-of-duty death does not include the death of a member which resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the member's death. *Line-of-duty death does not include the death of a member if the death results in eligibility for payment of a line-of-duty death benefit pursuant to Iowa Code section 100B.11 and 661—Chapter 291.*

Insert the following **new** definition in alphabetical order:

“Temporary” means no more than 12 consecutive months in duration.

ITEM 2. Amend 661—Chapter 400 by adopting the following **new** rule:

661—400.10(97A) Medical board.

400.10(1) The medical board shall consist of three physicians, including at least one occupational medicine specialist, with the knowledge and experience to adequately evaluate the fitness for duty of a peace officer.

400.10(2) The board of trustees shall ratify the composition of the medical board and all subsequent changes to the composition of the medical board. The board of trustees may review the composition of the medical board at any time.

ITEM 3. Rescind **661—Chapter 401** and adopt in lieu thereof the following **new** chapter:

CHAPTER 401

PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM—ADMINISTRATIVE PROCEDURES

661—401.1(97A) Applications. Applications for benefits under Iowa Code chapter 97A shall be filed with the secretary on forms provided by the secretary. Applications for service retirement shall be made not more than 90 days nor less than 30 days in advance of the date of retirement. Applications for service retirement, ordinary or accidental disability, or temporary incapacity shall be reviewed by the secretary for completeness and then forwarded to the board of trustees.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

401.1(1) Manner of review for ordinary or accidental disability or for temporary incapacity. The secretary shall compile the following materials, if available and applicable, for the board's review of a claim:

- a. The application;
- b. Any materials provided by the applicant;
- c. Any available medical information in the possession of the board or the state;
- d. Any information available through any workers' compensation claims made by the applicant; and
- e. Recommendations and reports from the medical board.

NOTE: This subrule does not impose a responsibility on the secretary to discover documents or evidence not in the secretary's possession. It is only intended to outline the types of evidence the secretary should provide to the board if available.

401.1(2) Commissioner's application. The commissioner may file an application for ordinary or accidental disability on behalf of a member in service. The secretary shall review such applications in the same manner as those filed by a member. The fact that the commissioner has filed an application on a member's behalf shall not prevent the commissioner or the board from denying the application. All applications for accidental disability benefits shall be deemed cross-filed by the commissioner for the purpose of considering disability benefits. Nothing in this rule prevents the board from denying any application.

661—401.2(97A) Determination on initial review.

401.2(1) Board approval. The board may approve or deny the application as presented or may direct the applicant to provide further medical information.

401.2(2) Denial and appeal. A decision by the board to deny the application may be appealed by the applicant. Written notice of a denial shall be provided to the applicant by certified mail. The written notice shall disclose the applicant's right to appeal, the procedure for filing an appeal, and the deadline for filing an appeal. An appeal must be filed in writing with the secretary within 30 calendar days after the applicant receives written notice of the decision of the board. The board may extend the deadline for filing an appeal. At a minimum, an appeal shall include a short and concise statement of the basis for the appeal.

661—401.3 to 401.100 Reserved.

PROCEDURE FOR RULE MAKING

661—401.101(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

661—401.102(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action, solicit comments from the public on a subject or subjects of possible rule making by the board by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment, or by otherwise publicizing the interest of the board in soliciting comment on a subject or subjects of possible rule making. Any such effort shall include publication of the interest of the board on the department of public safety's Web site and may include publication in any other venue deemed appropriate by the board or officials or staff of the department.

661—401.103(17A) Public rule-making docket. Pursuant to Executive Order 9, the department maintains a current public rule-making docket. All rule-making activity of the board of trustees of the peace officers' retirement, accident, and disability system shall be included in the rule-making docket of the department, including a rule making which has formally commenced with a Notice of Intended Action and an anticipated rule making identified by the board or staff. The rule-making docket is maintained on the Web site of the department.

661—401.104(17A) Notice of proposed rule making.

401.104(1) Contents. At least 35 days before the adoption of rules, the agency rules administrator of the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rules;
- b. The specific legal authority for the proposed rules;
- c. Except to the extent impracticable, the text of the proposed rules;
- d. Where, when, and how persons may present their views on the proposed rules; and
- e. The date, time and place of an oral proceeding at which any interested party may comment on the proposed rules, or where, when, and how persons may demand an oral proceeding on the proposed rules if the notice does not already provide for one.

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

401.104(2) Incorporation by reference. A proposed rule may incorporate other materials by reference.

661—401.105(17A) Public participation.

401.105(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, or to the person or office designated in the Notice of Intended Action.

401.105(2) Oral proceedings. The department may, at any time, schedule an oral proceeding on a proposed rule. If an oral proceeding has not previously been scheduled regarding proposed rules, the department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons.

An oral proceeding may be scheduled or conducted by the board at the discretion of the board or of the chair of the board.

401.105(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make

PUBLIC SAFETY DEPARTMENT[661](cont'd)

oral presentations is authorized or required by Iowa Code section 17A.4(1)“b” or this chapter.

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

c. Presiding officer. The agency rules administrator of the department of public safety or the administrator’s designee shall preside at the oral proceeding on a proposed rule, unless the board conducts the oral proceeding. If the board does not conduct the oral proceeding, the presiding officer may prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding if the administrator determines that such a memorandum would be helpful to the board.

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

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

(2) Persons making oral presentations are encouraged to summarize matters which have already been submitted in writing.

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

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

(5) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing. The presiding officer may provide for the record of an oral proceeding to be held open for a specific length of time, announced at the oral proceeding, to allow for the submission of additional information.

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

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

401.105(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

401.105(5) Accessibility. The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515) 281-5524, or by electronic mail at admrule@dps.state.ia.us, in advance to arrange access or other needed services.

661—401.106(17A) Regulatory analysis. The agency rules administrator shall prepare a regulatory analysis of proposed rules in compliance with Iowa Code section 17A.4A if requested pursuant to Iowa Code section 17A.4A, subsection 1.

661—401.107(17A,25B) Fiscal impact statement. For each Notice of Intended Action or emergency adoption of rules filed, the staff of the system and the department shall develop a fiscal impact statement in compliance with Iowa Code section 17A.4, subsection 3, and procedures established by the legislative services agency, if the preparation of a fiscal impact statement is required.

661—401.108(17A) Time and manner of rule adoption.

401.108(1) Time of adoption. The board shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

EXCEPTION: The board may waive the notice requirements or time periods specified in Iowa Code chapter 17A, in compliance with Iowa Code section 17A.4, subsection 2, or Iowa Code section 17A.5, subsection 2, paragraph “b,” or both.

401.108(2) Consideration of public comment. Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

401.108(3) Reliance on department expertise. Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment, or that of department staff, in the adoption of a rule.

401.108(4) Adoption by reference. The board may, by adoption of an administrative rule, adopt by reference another document produced by the board, the department, another agency of Iowa government, a federal agency, or any other organization. If any document or portion of any document is adopted by reference and is not already available in the state law library, the department shall provide a copy of the document for filing in the state law library, in compliance with Iowa Code section 17A.6, subsection 4.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—401.109(17A) Variance between adopted rule and published notice of proposed rule adoption.

401.109(1) The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

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

401.109(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

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

401.109(3) The board shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

401.109(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

661—401.110(17A) Concise statement of reasons. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received. After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request. If the board does not meet during the time between the receipt of a request and the deadline for issuance of the concise statement, the staff may issue the concise statement with the approval of the board chair.

661—401.111(17A,97A) Agency rule-making record. The department shall maintain an official rule-making record for each rule proposed by the board by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or

adopts. The rule-making record and materials incorporated by reference shall be available for public inspection. Requests to view material from the rule-making record may be addressed to the agency rules administrator of the department.

661—401.112(17A,97A) Petitions for rule making. Any person or agency may file a petition for rule making with the secretary at the location specified in rule 661—400.6(97A). A petition is deemed filed when it is received by the secretary. The secretary shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The secretary shall transmit a copy of the petition to the agency rules administrator. The petition must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

PUBLIC SAFETY PEACE OFFICERS' RETIREMENT,
ACCIDENT, AND DISABILITY SYSTEM

Petition by (name of petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING
--	---	-----------------------------

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by subrule 401.112(5).

401.112(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

401.112(2) The board may deny a petition because it does not substantially conform to the required form. However, the board may consider any petition received, regardless of errors or variations in form, provided that the content of the request for rule making is clear or has been clarified through communication with the petitioner. Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

401.112(3) The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

401.112(4) Inquiries concerning the status of a petition for rule making may be made to the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, or via electronic mail at admrule@dps.state.ia.us.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

401.112(5) Upon request by petitioner in the petition, the chair of the board may schedule a brief and informal meeting between the petitioner and the board, a member of the board, the secretary, or other staff of the department to discuss the petition. Such meeting shall include the agency rules administrator of the department or another employee of the department knowledgeable about the administrative rule-making process who is jointly designated by the agency rules administrator and the director of the administrative services division of the department. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

401.112(6) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall, in writing, deny the petition and notify petitioner of its action and the specific grounds for the denial or grant the petition and notify petitioner that it will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the secretary to the petitioner by regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date when the secretary mails the required notification to the petitioner.

401.112(7) Inquiries concerning the status of a petition for rule making may be made to the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, or by electronic mail to admrule@dps.state.ia.us.

661—401.113(17A,97A) Waivers of rules. This rule outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from the rule in question.

401.113(1) Requests for waivers of rules shall be addressed to the secretary. A request shall state specifically what provisions are requested to be waived, a concise statement of the reasons for requesting the waiver, and any conditions proposed to be placed on the waiver, including conditions which would substitute for compliance with the provisions requested to be waived.

401.113(2) Applicability of rule. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

401.113(3) Criteria for waiver or variance. In response to a petition completed pursuant to this rule, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

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

scribed in the particular rule for which the waiver is requested.

401.113(4) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

a. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

b. If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

c. A petition is deemed filed when it is received in the secretary's office. A petition should be sent to the Board of Trustees, Peace Officers' Retirement, Accident, and Disability System, Attention: Secretary of the Board, Wallace State Office Building, Des Moines, Iowa 50319-0050.

401.113(5) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, telephone number, and electronic mail address of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

b. A description of and citation to the specific rule from which a waiver is requested.

c. The specific waiver requested, including the precise scope and duration.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 401.113(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

e. A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to benefits or potential benefits or eligibility requirements affected by the proposed waiver, including a description of each affected benefit or eligibility requirement held or requested by the requester, any formal charges filed, notices of violation, contested case hearings, or investigations relating to the membership in the system within the last five years.

f. Any information known to the requester regarding the board's action in similar cases.

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

h. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition. This does not create any duty to individually notify other members of the system, unless they are known to have requested or received a waiver of the identical provisions.

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

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

401.113(6) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meet-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ing between the petitioner and a representative or representatives of the board related to the waiver request.

401.113(7) Notice. The secretary shall acknowledge a petition upon receipt and shall notify the members of the board, the legal counsel to the board and the agency rules administrator of the department of the receipt of the petition as soon as practical after its receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, including the petitioner. In addition, the board may give notice to any other person. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

401.113(8) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

401.113(9) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

a. Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

b. Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

c. Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

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

e. Conditions. The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

f. Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impractical. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

g. Time for ruling. The board shall grant or deny a petition for a waiver as soon as practical but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

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

i. Service of order. Within seven days of its issuance, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law. A copy of the order shall be provided to the agency rules administrator of the department to facilitate compliance with this rule.

401.113(10) All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. If petitions or orders may contain information the board is authorized or required to keep confidential, the board may instruct the secretary to accordingly redact confidential information from petitions or orders prior to public inspection.

401.113(11) Summary reports. Summary information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests shall be included in semiannual reports prepared by the agency rules administrator of the department which contain such information for administrative rules of the department.

401.113(12) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

- a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
- c. The subject of the waiver order has failed to comply with all conditions contained in the order.

401.113(13) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

401.113(14) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

401.113(15) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

401.113(16) Sample petition for waiver. A petition for waiver filed in accordance with this rule must meet the requirements specified herein and must substantially conform to the following form:

PUBLIC SAFETY PEACE OFFICERS' RETIREMENT,
ACCIDENT, AND DISABILITY SYSTEM

Petition by (name of petitioner) for the waiver/variance of (insert rule citation) relating to (insert the subject matter).

} PETITION FOR
WAIVER/VARIANCE

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also provide the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement

PUBLIC SAFETY DEPARTMENT[661](cont'd)

indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in the answer all of the following:

- Why application of the rule would result in undue hardship to the petitioner;
- Why waiver of the rule would not prejudice the substantial legal rights of any person;
- Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and petitioner relating to the benefits or rights affected by the requested waiver. Include a description of each contested case hearing held, or any investigations related to the benefits or rights.

6. Provide information known to the petitioner regarding the board's action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver or variance.

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

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

(Date) (Petitioner's Signature)

661—401.114 to 401.200 Reserved.

DECLARATORY ORDERS

661—401.201(17A) **Petition for declaratory order.** Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board, with the secretary. A petition is deemed filed when it is received by that office. The secretary shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER
--	---	--------------------------------

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.

2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.

3. The questions petitioner wants answered, stated clearly and concisely.

4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by rule 401.207(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

661—401.202(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 401.206(17A) to whom notice is required by any provision of law. The department may also give notice to any other persons.

661—401.203(17A) Intervention.

401.203(1) Any person who qualifies under any applicable provision of law as an intervenor and who files a petition for intervention within 20 days of the filing of a petition for declaratory order (after time for notice under rule 401.202(17A) and before 30-day time for agency action under rule 401.208(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

401.203(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

401.203(3) A petition for intervention shall be filed with the secretary. Such a petition is deemed filed when it is received by the secretary. The department shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

PUBLIC SAFETY PEACE OFFICERS' RETIREMENT,
ACCIDENT, AND DISABILITY SYSTEM

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION
--	---	------------------------------

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

661—401.204(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

661—401.205(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the secretary.

661—401.206(17A) Service and filing of petitions and other papers.

401.206(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

401.206(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the secretary. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the secretary.

401.206(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by subrule 401.301(7).

661—401.207(17A) Consideration. Upon request by petitioner, the department may schedule a brief and informal meeting between the original petitioner, all intervenors, and

the board, a member of the board, or a member of the staff of the department to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

661—401.208(17A) Action on petition.

401.208(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the commissioner of public safety or the commissioner's designee shall take action on the petition as required by Iowa Code section 17A.9(5).

401.208(2) The date of issuance of an order or of a refusal to issue an order is the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

661—401.209(17A) Refusal to issue order.

401.209(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9, subsection 1, and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- a. The petition does not substantially comply with the required form.
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- c. The board does not have jurisdiction over the questions presented in the petition.
- d. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding that may definitively resolve them.
- e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
- i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
- j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.
- k. The petition relates to any criminal investigation.
- l. The petition concerns any procedure or practice of the board or any other agency related to initiation or conduct of criminal investigations or referral of matters for possible criminal investigation or prosecution.
- m. The petition states facts and circumstances which are theoretical in nature to the extent that issuance of a declaratory order is unlikely to assist in guiding future conduct or the petitioner is not a person with interest in the operation of the system or a representative of a such a person. "Representative of such a person" includes any organization with members or participants who are active or retired members of the

PUBLIC SAFETY DEPARTMENT[661](cont'd)

system, or family members or survivors of active or retired members of the system.

401.209(2) A refusal to issue a declaratory order shall indicate the specific grounds for the refusal, unless the refusal pertains to a matter under criminal investigation, or which has been referred for possible criminal prosecution, in which event no information which might compromise the investigation or prosecution shall be released to the petitioner or any intervenor. A refusal to issue a declaratory order constitutes final agency action on the petition.

401.209(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

661—401.210(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

661—401.211(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to each original petitioner and to each intervenor.

661—401.212(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition.

661—401.213 to 401.300 Reserved.

CONTESTED CASES

661—401.301(17A) Contested case proceeding. Consideration of an appeal of a decision of the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A.

401.301(1) Delivery of notice. Delivery of the notice of hearing by the secretary constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the applicant, the applicant's attorney if known, and the assistant attorney general designated to represent the public interest.

401.301(2) Contents of notice. The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a statement that it is the applicant's burden to prove each of the statutory elements relative to the application. The notice shall also contain a reference to the applicable statute and rules.

401.301(3) Scope of issues. The applicant shall prove each of the statutory elements required before the application may be granted. Denial of an application shall be upheld based on the applicant's failure to prove any of the statutory elements. When an applicant has requested accidental disability benefits, the board has the option of denying accidental disability benefits, but granting ordinary disability benefits based on the evidence.

401.301(4) Legal representation. Following the filing of the notice of hearing, the office of the attorney general shall

be responsible for the legal representation of the public interest in all proceedings before the board. The public interest, as referenced in this rule, shall include the responsibility to protect the assets of the system from applications that do not meet the standards set by the statute for disability benefits. Any private party to a contested case shall be entitled to legal representation at the discretion and expense of that party.

401.301(5) Presiding officer. The presiding officer in a contested case shall be an administrative law judge assigned by the department of inspections and appeals.

401.301(6) Procedural matters. Procedural matters and motions, including, but not limited to, motions to continue, may be heard and ruled upon by the presiding officer.

401.301(7) Service and filing.

a. Service—when required. Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the assistant attorney general designated as attorney for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

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

c. Filing—when required. After the notice of hearing, all documents in a contested case proceeding shall be filed with the secretary. All documents that are required to be served upon a party shall be filed simultaneously with the secretary.

d. Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the secretary at the location set forth in rule 661—400.6(97A), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

e. Proof of mailing. Proof of mailing includes either:

(1) A legible United States Postal Service postmark on the envelope;

(2) A certified mail return receipt;

(3) A notarized affidavit; or

(4) A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Secretary of the Board of Trustees, Iowa Department of Public Safety, Peace Officers' Retirement System, Wallace State Office Building, Third Floor, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

661—401.302(17A) Discovery.

401.302(1) Pursuant to Iowa Code chapter 17A, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

401.302(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

661—401.303(17A) Subpoenas in a contested case. Pursuant to Iowa Code section 17A.13, subsection 1, the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board's authority may seek evidence whether or not privileged or confidential under law.

401.303(1) The board chair shall, upon the written request of the applicant or the state, issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

401.303(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- a. The name, address and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other evidence requested;
- f. The date, time and location for production, or inspection and copying.

401.303(3) Each subpoena shall contain, as applicable:

- a. The caption of the case;
- b. The name, address and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records or other evidence the person is commanded to produce;
- g. The date, time and location for production, or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address and telephone number of the board administrator or designee;
- j. The date of issuance;
- k. A return of service attached to the subpoena.

401.303(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the board administrator or designee shall mail copies of all

subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

401.303(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

401.303(6) Upon receipt of a timely motion to quash or modify a subpoena, the board chair shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

401.303(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board's secretary, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

401.303(8) If the person contesting the subpoena is not the member whose application for benefits is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the member whose application for benefits is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

661—401.304(17A) Motions.

401.304(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

401.304(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

401.304(3) The presiding officer may schedule oral argument on any motion.

401.304(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

401.304(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for

PUBLIC SAFETY DEPARTMENT[661](cont'd)

hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 401.314(17A) and appeal pursuant to subrule 401.312(2).

661—401.305(17A) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by the assistant attorney general appointed to represent the public interest or by the applicant. The board shall not be involved in negotiation until a written proposed settlement is submitted for approval, unless both parties waive this prohibition.

661—401.306(17A) Prehearing conference.

401.306(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

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

401.306(2) Each party shall bring to the prehearing conference:

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

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

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

401.306(3) In addition to the requirements of subrule 401.306(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters that the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters that will expedite the hearing.

401.306(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

661—401.307(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

401.307(1) A written application for a continuance shall:

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

An oral application for a continuance may be made if the presiding officer waives the requirement for a written mo-

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

401.307(2) In determining whether to grant a continuance, the presiding officer may consider:

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

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

661—401.308(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

661—401.309(17A) Hearing procedures.

401.309(1) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

401.309(2) All objections shall be timely made and stated on the record.

401.309(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

401.309(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

401.309(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

401.309(6) Witnesses may be sequestered during the hearing.

401.309(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.

b. The parties shall be given an opportunity to present opening statements.

c. The parties shall present their cases in the sequence determined by the presiding officer.

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.

e. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

f. The presiding officer may enter a default judgment against a party who fails to appear at the hearing.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

401.309(8) The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

401.309(9) The hearing shall be open to the public, except as otherwise provided by law.

401.309(10) Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription. A record of the proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the secretary for five years after the resolution of the case.

401.309(11) Default.

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

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

c. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 401.312(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

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

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

f. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

g. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

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

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

661—401.310(17A) Evidence.

401.310(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

401.310(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

401.310(3) Evidence in the proceeding shall be confined to the contested issues as provided in Iowa Code section 97A.6.

401.310(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

401.310(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

401.310(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

661—401.311(17A) Ex parte communication.

401.311(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this rule is intended to preclude board members from communicating with other board members or members of the board staff, including the secretary, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

401.311(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

401.311(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

401.311(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communica-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

tions may be initiated through conference telephone call including all parties or their representatives.

401.311(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

401.311(6) The secretary may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the secretary is not disqualified from participating.

401.311(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

401.311(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order; or

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

401.311(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13, subsection 2, or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

401.311(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff shall be reported to the board and to the director of the administrative services division of the department.

661—401.312(17A) Decisions.

401.312(1) Proposed decision. The decision prepared by the presiding officer is a proposed decision. The proposed decision becomes the final decision of the board without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in subrule 401.312(2).

401.312(2) Appeals and review.

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

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

c. Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The parties initiating the appeal;
- (2) The proposed decision or order appealed from;
- (3) The specific findings and conclusions to which exception is taken and any other exceptions to the decision or order;
- (4) The relief sought;
- (5) The grounds for relief.

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

e. Scheduling. The board shall issue a schedule for consideration of the appeal.

f. Briefs and arguments. Unless otherwise ordered, briefs, if any, must be filed within five days of meeting.

661—401.313(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

661—401.314(17A) Applications for rehearing.

401.314(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

401.314(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

401.314(3) Time of filing. The application shall be filed with the board within 20 days after issuance of the final decision.

401.314(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

401.314(5) Disposition. The board may meet telephonically to consider an application for rehearing. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

These rules are intended to implement Iowa Code chapters 17A and 97A.

ITEM 4. Amend 661—Chapter 402 by adding the following **new** division:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

DIVISION III
SERVICE PURCHASES

661—402.300(97A) Purchase of eligible service credit. Effective July 1, 2006, and no later than July 2, 2007, an active member may make contributions to the system to purchase up to the maximum amount of permissive service credit for eligible qualified service.

661—402.301(97A) Determination of eligible service.

402.301(1) Eligible qualified service.

a. Eligible qualified service is either of the following:

(1) Service with the department prior to July 1, 1994, in a position as a gaming enforcement officer, fire prevention inspector peace officer, or employee of the division of capitol police except clerical workers, for which service has not previously been credited.

(2) Service as a member of a city fire retirement system or police retirement system operating under Iowa Code chapter 411 prior to January 1, 1992, for which service has not previously been credited.

b. Eligible qualified service does not include service if the receipt of credit for such service would result in the member receiving a retirement benefit under more than one retirement plan for the same period of service.

402.301(2) Permissive service credit.

a. Permissive service credit is credit that will be recognized by the system for purposes of calculating a member's benefit, for which the member did not previously receive service credit in the system, and for which the member voluntarily contributes to the system the amount required by the system, not in excess of the amount necessary to fund the benefit attributable to such service.

b. Permissive service credit shall be calculated in years at the rate of one year of service for six months or more of a year actually worked with no more than one year of service to be credited for all service in one calendar year.

c. An active member may make contributions to the system to purchase up to the maximum amount of permissive service credit for eligible qualified service as determined by the system, pursuant to Internal Revenue Code Section 415(n).

661—402.302(97A) Determination of cost to member.

402.302(1) Determination of service credit. A member may determine the amount of permissive service credit for either or both types of eligible qualified service. Eligible qualified service shall be documented on forms provided by the secretary. Such documentation shall include the notarized certification by an official of the agency by which the member was employed. In the event that information is not available from the employing city or agency, documentation may be obtained from another authorized source acceptable to the department.

a. A member may obtain certification of prior service with the department, pursuant to paragraph 402.301(1)"a," by submitting the request to the department. The department shall return the certification of service to the member.

b. A member may obtain certification of prior service with a city, pursuant to paragraph 402.301(1)"b." The member shall obtain such certification from the chief of police, fire chief, or other official of the city by which the member was employed with access to the employment records needed to verify eligible qualified service.

402.302(2) Actuarial cost quote of permissive service credit.

a. A member may submit certification of service credit to the department to obtain a cost quote of permissive service credit.

b. The department shall review and verify the submitted certification of service credit.

c. When service credit has been verified, the secretary shall submit it to the actuary contracted by the system to determine the cost to purchase permissive service credit. Requests received by the department from members on or before July 17, 2006; September 15, 2006; December 15, 2006; March 15, 2007; or May 15, 2007, shall be submitted to the actuary in groups of similarly submitted requests. A member may request cost quotes to purchase permissive service credit for a maximum of two time periods at no cost to the member.

d. If a member submits a request for the cost quote of permissive service credit to be processed at a time different from the group processing schedule in paragraph "c," the member shall be required to pay for the cost of the quote.

e. If a member requests a third or subsequent cost quote, the member shall be required to pay for the cost of the quote.

f. A second or subsequent cost quote for the same time period of permissive service credit shall replace all previous cost quotes for that time period.

g. If the department does not verify the submitted certification of service credit, the secretary shall not submit the service credit to the actuary but rather shall refer it to the board for review at the next regularly scheduled meeting.

661—402.303(97A) Application process.

402.303(1) Actuarial cost quote of permissive service credit. When the cost quote of permissive service credit is returned to the secretary, it shall be forwarded to the member promptly. Such delivery may be made through electronic mail, facsimile transmission, regular mail, or personal service. The cost quote of permissive service credit shall remain valid for six months from the date of the cost quote unless replaced by a subsequent cost quote for the same time period of permissive service credit.

402.303(2) Submission of application to purchase permissive service credit. The member may submit to the secretary an application to purchase years of permissive service credit in an amount no greater than the maximum certified years of permissive service credit at a rate quoted by the actuary. Full payment in the form of a check or money order payable to the Peace Officers' Retirement, Accident, and Disability System, or certification of intent to pay through a qualified plan, or a combination thereof, shall accompany the application to purchase permissive service credit.

402.303(3) Acceptance of application to purchase permissive service credit. If the department accepts the application, the secretary, upon receipt of the full payment, shall deposit the payment in the system's accounts and shall adjust the member's time of service to reflect the increase in years of service under the system. Prior to the receipt of full payment, the secretary shall make no adjustment to the member's years of service.

402.303(4) Rejection of application to purchase permissive service credit. If the department rejects the application, the secretary shall return the payment to the member and shall refer the rejected application to the board for review at the next regularly scheduled meeting.

661—402.304(97A) Service adjustment irrevocable. An adjustment of a member's years of service which has been completed pursuant to subrule 402.303(3) is irrevocable. However, this rule shall not be interpreted to limit the system's ability to refund service credit purchase amounts when

PUBLIC SAFETY DEPARTMENT[661](cont'd)

required in order to meet the provisions of the Internal Revenue Code.

661—402.305(97A) Board review.

402.305(1) Rejection of certification of service credit. The board shall review a rejected certification of service credit. If the board overrules the rejection, the secretary shall submit the certification of service credit to the actuary to determine the member's cost to purchase permissive service credit. If the board sustains the rejection, the member may appeal the action pursuant to rule 661—401.3(17A).

402.305(2) Review of rejection of application to purchase service credit. The board shall review any application to purchase service credit which has been rejected. If the board overrules the action, the secretary shall process the application pursuant to subrule 402.303(3). If the board sustains the rejection, the member may appeal the action pursuant to rule 661—401.3(17A).

661—402.306(97A) Other provisions.

402.306(1) Within 60 days following the entry of an adjustment to a member's years of service based on a purchase of permissive service credit, the secretary shall report the purchase to the system under which the service credit was originally earned.

NOTE: This notification is intended to prevent the member from receiving a retirement benefit under more than one retirement plan for the same period of service.

402.306(2) The average final compensation of the member shall not be affected by the purchase of permissive service credit.

ARC 5255B**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 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, "Adjustments to Computed Tax," Iowa Administrative Code.

Rule 701—42.30(422) is proposed as a result of 2006 Iowa Acts, Senate File 2409, which provides for a school tuition organization tax credit.

The proposed rule 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 this rule 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 this proposed rule 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 August 21, 2006, 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 this proposed rule on or before August 8, 2006. 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 August 9, 2006.

This rule is intended to implement 2006 Iowa Acts, Senate File 2409, section 1.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend 701—Chapter 42 by adopting the following **new** rule:

701—42.30(422) School tuition organization tax credit. Effective for tax years beginning on or after January 1, 2006, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash contributions made by a taxpayer to a school tuition organization.

42.30(1) Definitions. The following definitions are applicable to this rule:

"Certified enrollment" means the enrollment at schools served by school tuition organizations as of the third Friday of September of the appropriate year.

"Contribution" means a voluntary cash contribution to a school tuition organization that is not used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

"Eligible student" means a student residing in Iowa who is a member of a household whose total annual income during the calendar year prior to the school year in which the student receives a tuition grant from a school tuition organization does not exceed an amount equal to three times the most recently published federal poverty guidelines in the Federal Register by the United States Department of Health and Human Services.

"Qualified school" means a nonpublic elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11 and adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216, and which is represented by only one school tuition organization.

"School tuition organization" means a charitable organization in Iowa that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code and that does all of the following:

1. Allocates at least 90 percent of its annual revenue in tuition grants for children to allow them to attend a qualified school of their parents' choice.
2. Awards tuition grants only to children who reside in Iowa.
3. Provides tuition grants to students without limiting availability to students of only one school.

REVENUE DEPARTMENT[701](cont'd)

4. Provides tuition grants only to eligible students.

5. Prepares an annual financial statement certified by a public accounting firm.

“Tuition grant” means a grant to a student to cover all or part of the student’s tuition at a qualified school.

42.30(2) Initial registration. In order for contributions to a school tuition organization to qualify for the credit, the school tuition organization must initially register with the department. The following information must be provided with this initial registration:

a. Verification from the Internal Revenue Service that Section 501(c)(3) status was granted and that the school tuition organization is exempt from federal income tax.

b. A list of all qualified schools that the school tuition organization serves.

c. The names and addresses of the seven members of the board of directors of the school tuition organization.

Once the school tuition organization is registered with the department, it is not required to subsequently register unless there is a change in the qualified schools that the organization serves. The school tuition organization must notify the department by letter of any changes in the qualified schools it serves.

42.30(3) Participation forms. Each qualified school that is served by a school tuition organization must annually submit a participation form to the department by October 15. The following information must be provided with this participation form:

a. The certified enrollment of the qualified school as of the third Friday of September.

b. The name of the school tuition organization that represents the qualified school.

For the tax year beginning in the 2006 calendar year only, each qualified school served by a school tuition organization must submit to the department a participation form postmarked on or before August 1, 2006, which provides the certified enrollment as of the third Friday of September 2005, along with the name of the school tuition organization that represents the qualified school.

42.30(4) Authorization to issue tax credit certificates.

a. By November 15 of each year, the department will authorize school tuition organizations to issue tax credit certificates for the following tax year. For the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, will authorize school tuition organizations to issue tax credit certificates for the 2006 calendar year only. The total amount of tax credit certificates that may be authorized is \$2.5 million for the 2006 calendar year and \$5.0 million for the 2007 and subsequent calendar years.

b. The amount of authorized tax credit certificates for each school tuition organization is determined by dividing the total amount of tax credit available by the total certified enrollment of all qualified participating schools. This result, which is the per-student tax credit, is then multiplied by the certified enrollment of each school tuition organization to determine the tax credit authorized to each school tuition organization.

EXAMPLE: For determining the authorized tax credits for the 2007 calendar year, if the certified enrollment of each qualified school in Iowa, as provided to the department by October 15, 2006, were 25,000, the per-student tax credit would be \$200 (\$5 million divided by 25,000). If a school tuition organization located in Scott County represents four qualified schools with a certified enrollment of 1,400 students, the school tuition organization would be authorized to issue \$280,000 (\$200 times 1,400) of tax credit certificates

for the 2007 calendar year. The department would notify this school tuition organization by November 15, 2006, of the authorization to issue \$280,000 of tax credit certificates for the 2007 calendar year. This authorization would allow the school tuition organization to solicit contributions totaling \$430,769 (\$280,000 divided by 65%) during the 2007 calendar year which would be eligible for the tax credit.

42.30(5) Issuance of tax credit certificates. The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash contribution to the school tuition organization. The tax credit certificate, which will be designed by the department, will contain the name, address and tax identification number of the taxpayer, the amount and date that the contribution was made, the amount of the credit, the tax year that the credit may be applied, the school tuition organization to which the contribution was made, and the tax credit certificate number.

42.30(6) Claiming the tax credit. The taxpayer must attach the tax credit certificate to the tax return for which the credit is claimed. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

a. The taxpayer may not claim an itemized deduction for charitable contributions for Iowa income tax purposes for the amount of the contribution made to the school tuition organization.

b. Married taxpayers who file separate returns or file separately on a combined return must allocate the school tuition organization tax credit to each spouse in the proportion that each spouse’s respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa must determine the school tuition organization tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or to file separately on a combined return, the school tuition organization tax credit must be allocated between the spouses in the ratio of each spouse’s Iowa source net income to the combined Iowa source net income.

42.30(7) Reporting requirements. Each school tuition organization that issues tax credit certificates must report to the department, postmarked by January 12 of each tax year, the following information:

a. The names and addresses of the seven members of the board of directors of the school tuition organization, along with the name of the chairperson of the board.

b. The total number and dollar value of contributions received by the school tuition organization for the previous tax year.

c. The total number and dollar value of tax credit certificates issued by the school tuition organization for the previous tax year.

d. A list of each taxpayer who received a tax credit certificate for the previous tax year, including the amount of the contribution and the amount of tax credit issued to each taxpayer for the previous tax year. This list should also include the tax identification number of the taxpayer and the tax credit certificate number for each certificate.

e. The total number of children utilizing tuition grants for the school year in progress as of January 12, along with the total dollar value of the tuition grants.

f. The name and address of each qualified school represented by the school tuition organization at which tuition grants are being utilized for the school year in progress.

g. The number of tuition grant students and the total dollar value of tuition grants being utilized for the school year in

REVENUE DEPARTMENT[701](cont'd)

progress at each qualified school served by the school tuition organization.

This rule is intended to implement 2006 Iowa Acts, Senate File 2409, section 1.

ARC 5237B

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 rescind Chapter 26, "Consent for the Sale of Goods and Services," Iowa Administrative Code.

2005 Iowa Acts, chapter 76, section 3, shifted the requirement to adopt rules to specify the method by which officials of a regulatory agency may obtain agency consent to sell goods or services to a person subject to the regulatory authority of the agency from the regulatory agency itself to the Ethics and Campaign Disclosure Board. Therefore, the Department of Transportation is no longer required to have these rules and is rescinding them. The Ethics and Campaign Disclosure Board has adopted rules to comply with 2005 Iowa Acts, chapter 76, section 3; the rules were effective April 5, 2006.

Any person or agency may submit written comments concerning this amendment 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, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than August 8, 2006.

A meeting to hear requested oral presentations is scheduled for Thursday, August 10, 2006, at 10 a.m. in the First Floor North 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.

This amendment is intended to implement Iowa Code chapter 68B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making action:

Rescind and reserve **761—Chapter 26.**

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 July is 7.00%.

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 July 10, 2006, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 2.00%
- 32-89 days Minimum 3.00%
- 90-179 days Minimum 3.20%
- 180-364 days Minimum 3.55%
- One year to 397 days Minimum 3.70%
- More than 397 days Minimum 5.15%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 5249B

EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed Emergency

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 carries out the directive of 2006 Iowa Acts, House File 2792, and creates new requirements for administrators in obtaining full licensure.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because the Board is carrying out the requirements of legislation that became effective July 1, 2006.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective on July 1, 2006, as the legislation became effective July 1, 2006.

The Board of Educational Examiners adopted this amendment on June 23, 2006.

This amendment became effective on July 1, 2006.

This amendment is intended to implement Iowa Code chapter 284A as amended by 2006 Iowa Acts, House File 2792, section 28.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend rule 282—14.114(272) as follows:

282—14.114(272) Requirements for a professional administrator's an administrator license. A professional administrator's license valid for five years may be issued to an applicant who:

14.114(1) Requirements for an initial administrator license. An initial administrator license valid for two years may be issued to an applicant who:

- 1 a. Is the holder of or eligible for a standard license; and
- 2 b. Has three years of teaching experience; and
- 3 c. Has completed the requirements for an administrative endorsement, a state-approved administrator education program at a college or university approved by the state board of education or the state board of educational examiners in the individual's preparation state; and
- d. Is assuming a position as a school district administrator for the first time or has one year of out-of-state or non-public administrative experience; and
- e. Has completed an approved human relations component; and
- f. Has completed an exceptional learner component; and
- g. Has completed an evaluator approval program.

Renewal requirements for this license are set out in ~~282—Chapter 17~~ rule 282—17.7(272).

14.114(2) Requirements for a professional administrator license. A professional administrator license valid for five years may be issued to an applicant who completes the requirements in 14.114(1)"a" to "g."

Renewal requirements for this license are set out in rule 282—17.7(272).

[Filed Emergency 6/28/06, effective 7/1/06]

[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5250B

EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed Emergency

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 amendment carries out the directive of 2006 Iowa Acts, Senate File 2272, which requires the Board to review the sex offender registry information, the central registry for child abuse information, and the dependent adult abuse records for every applicant for license renewal.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because the Board is carrying out the requirements of legislation that became effective July 1, 2006.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective July 1, 2006, as the legislation became effective July 1, 2006.

The Board of Educational Examiners adopted this amendment on June 23, 2006.

This amendment became effective on July 1, 2006.

This amendment is intended to implement Iowa Code section 272.2 as amended by 2006 Iowa Acts, Senate File 2272, section 9.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend rule 282—17.1(272) as follows:

282—17.1(272) Renewal information. Rules 17.1(272) to 17.10(272) contain renewal information for those individuals desiring to renew the initial, standard, master educator, professional administrator, area education agency administrator, or substitute license.

Individuals desiring to renew a license issued under some other title are referred to 282—Chapter 18.

17.1(1) Every renewal applicant is required to submit a completed application form with the applicant's signature to facilitate a check of the sex offender registry information under Iowa Code section 692A.13, the central registry for child abuse information established under Iowa Code chapter 235A, and the dependent adult abuse records maintained under Iowa Code chapter 235B.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

17.1(2) The board may assess the applicant a fee no greater than the costs associated with obtaining and evaluating the background check.

[Filed Emergency 6/28/06, effective 7/1/06]
[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5252B

LABOR SERVICES DIVISION[875]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 91C.6, the Labor Commissioner hereby amends Chapter 150, "Construction Contractor Registration," Iowa Administrative Code.

These amendments change the limits for exemption from Iowa Code chapter 91C and exemption from the chapter 91C registration fee from \$1,000 to \$2,000. These amendments are necessary to make the rules conform to 2006 Iowa Acts, House File 2459, section 21, which became effective July 1, 2006.

These amendments were also included in a Notice of Intended Action and are published herein as **ARC 5253B** with an opportunity for public comment.

In compliance with Iowa Code section 17A.4(2), the Labor Commissioner finds that notice and public participation are impracticable because of the immediate need to implement the legislation.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Labor Commissioner finds that an effective date of July 1, 2006, is required by 2006 Iowa Acts, House File 2459, section 21. The Labor Commissioner also finds that the amendments remove a restriction on small construction contractors.

The purpose of these amendments is to implement legislative intent.

These amendments are intended to implement Iowa Code chapter 91C and 2006 Iowa Acts, House File 2459.

These amendments became effective July 1, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 875—150.1(91C) as follows:

875—150.1(91C) Scope. This chapter implements Iowa Code chapter 91C. The rules in this chapter apply to all construction contractors, except for a person who earns less than \$1,000 \$2,000 annually or who performs work or has work performed on the person's own property.

ITEM 2. Amend subrule 150.6(2) as follows:

150.6(2) Exemption from fee. A contractor shall not be required to pay the fee if the application contains an affidavit which shows the contractor is self-employed, does not pay more than \$1,000 \$2,000 annually to employ other persons in the business, and does not work with or for other contractors in the same phase of construction. At any time that a contractor no longer meets the provision for an exemption from the fee, the fee shall be paid to the division.

ITEM 3. Amend **875—Chapter 150**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 91C as amended by 2006 Iowa Acts, House File 2459.

[Filed Emergency 6/28/06, effective 7/1/06]
[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5241B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 100.35, the Department of Public Safety hereby adopts amendments to Chapter 5, "Fire Marshal," Iowa Administrative Code.

Iowa Code chapter 100 assigns broad authority to the Fire Marshal to adopt rules establishing fire safety requirements which apply to a broad range of occupancies across the state. In addition, political subdivisions are authorized to adopt local fire ordinances which apply within the subdivision, while the rules of the fire marshal continue to apply. Also, the Fire Marshal is responsible for certifying fire extinguishing system contractors under a program which became operational on July 1, 2006.

The rules contained herein address two issues. First, rules of the Fire Marshal currently accept compliance with the International Fire Code, 2000 edition or 2003 edition, in lieu of compliance with the rules of the Fire Marshal, for most occupancies if either edition of the International Fire Code has been adopted and is enforced by a local jurisdiction. Item 1 adds a reference to the 2006 edition of the International Fire Code to codes the local adoption and enforcement of which are recognized by the Fire Marshal in lieu of compliance with the rules of the Fire Marshal. Several local jurisdictions in Iowa have already adopted the 2006 edition of the International Fire Code, and the number doing so is likely to continue to grow.

The second issue addressed herein relates to requirements for fire extinguishing systems in Iowa. Many of the references to national standards having to do with extinguishing systems are obsolete, and the coverage of these requirements in the rules of the Fire Marshal is incomplete. Fire extinguishing system contractors under the new certification program administered by the Fire Marshal will be required to be trained to meet and to adhere to the latest standards. To promote consistency and reduce potential conflicts and confusion in the requirements of fire extinguishing systems, various such requirements are updated and new requirements are added.

Iowa Code section 100.1(5) requires that the Fire Marshal adopt rules only after a public hearing even when emergency rule-making procedures are followed. A public hearing was held on June 5, 2006. This hearing is not an "opportunity for oral presentation" described in Iowa Code chapter 17A, but was held pursuant to Iowa Code section 100.1, subsection 5.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments are impracticable. While a public hearing was held prior to adoption of these amendments, the procedures followed were not equivalent to those specified for

PUBLIC SAFETY DEPARTMENT[661](cont'd)

public notice and participation by Iowa Code chapter 17A. In the absence of the language added herein which recognizes local adoption and enforcement of the 2006 edition of the International Fire Code, occupancies which are in jurisdictions which have adopted the 2006 edition of this code may be subjected to separate state and local fire safety requirements which may be inconsistent and even in conflict with one another, while occupancies which are in jurisdictions which have earlier editions of the International Fire Code in place are subject to a single, internally consistent code. Also, fire extinguishing systems may be subject to requirements which differ from those with which the contractors working on such systems are required to comply. The language on standards for fire extinguishing systems contained herein eliminates the likelihood of such inconsistencies arising.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments made effective July 1, 2006, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by reducing potential confusion between rules of the fire marshal and local fire ordinances and between requirements for fire extinguishing systems and for contractors working on such systems.

These amendments are also being adopted through the normal rule-making process. A Notice of Intended Action proposing changes identical to those enacted here is published herein as **ARC 5240B** to allow for public comment. A public hearing on the amendments proposed in the Notice of Intended Action will be held on August 10, 2006, at 10:30 a.m. in the Third Floor Conference Room, Wallace State Office Building, 502 East 9th St., Des Moines, Iowa 50309.

These amendments became effective on July 1, 2006.

These amendments are intended to implement Iowa Code sections 100.1 and 100.35.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule **661—5.16(100)**, numbered paragraph “1,” as follows:

1. The building or facility is in a local jurisdiction which has adopted a local fire ordinance which adopts by reference the International Fire Code, 2000 edition, ~~or~~ 2003 edition, *or 2006 edition*, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

ITEM 2. Adopt the following new rule:

661—5.35(100) Standards for automatic fire extinguishing systems. The following standards are adopted as the requirements for automatic fire extinguishing systems:

5.35(1) NFPA 11, Standard for Low-, Medium-, and High-Expansion Foam, 2005 edition.

5.35(2) NFPA 12, Standard on Carbon Dioxide Extinguishing Systems, 2005 edition.

5.35(3) NFPA 12A, Halon 1301 Fire Extinguishing System, 2004 edition.

5.35(4) NFPA 13, Installation of Sprinkler Systems, 2002 edition.

5.35(5) NFPA 13D, Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, 2002 edition.

5.35(6) NFPA 13R, Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 2002 edition.

5.35(7) NFPA 14, Standard for the Installation of Standpipe and Hose Systems, 2003 edition.

5.35(8) NFPA 15, Water Spray Fix System for Fire Protection, 2002 edition.

5.35(9) NFPA 16, Standard for Installation of Foam Sprinkler and Foam Water Spray, 2003 edition.

5.35(10) NFPA 17, Standard for Dry Chemical Extinguishing Systems, 2002 edition.

5.35(11) NFPA 17A, Standard for Wet Chemical Extinguishing Systems, 2002 edition.

5.35(12) NFPA 20, Installation of Stationary Pumps, 2003 edition.

5.35(13) NFPA 22, Standard for Water Tanks for Private Fire Protection, 2003 edition.

5.35(14) NFPA 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, 2002 edition.

5.35(15) NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2002 edition.

5.35(16) NFPA 72, National Fire Alarm Code, 2002 edition.

5.35(17) NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition.

5.35(18) NFPA 750, Standard on Water Mist Fire Protection System, 2006 edition.

5.35(19) NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems, 2004 edition.

ITEM 3. Amend rule 661—5.40(17A,80,100) as follows:

661—5.40(17A,80,100) Portable fire extinguishers—generally. ~~The standard for “Portable Fire Extinguishers,” No. 10, 1988 edition of the National Fire Protection Association, together with its reference to other specific standards referred to and contained within the volumes of the National Fire Code, 1988 edition of the National Fire Protection Association published in 1988, shall be the rule governing portable fire extinguishers in the state of Iowa. Except as otherwise provided in rules for a specific occupancy, portable fire extinguishers shall comply with NFPA 10, 2006 edition.~~

5.40(1) Portable halogenated fire extinguishers. Approved portable halogenated fire extinguishers may be permitted for use in electrical, telephone, or computer equipment areas in public buildings referred to in Iowa Code section 100.35.

5.40(2) Reserved.

ITEM 4. Rescind and reserve rule **661—5.41(17A,80,100)**.

ITEM 5. Rescind and reserve subrule **5.230(2)**.

ITEM 6. Amend rule **661—5.500(100)**, definition of “fire extinguisher rating,” as follows:

“Fire extinguisher rating” shall be *determined* as stated in National Fire Protection Association pamphlet No. 10 *NFPA 10, 2006 edition, Appendix G*.

ITEM 7. Amend subrule 5.615(3) as follows:

5.615(3) A five-pound 2A:10B:C fire extinguisher shall be installed in the primary caregiver's sleeping room. Additional extinguishers may be provided. Each extinguisher in the facility shall be inspected yearly by a third party in accordance with NFPA Standard 10, Standard for Portable Fire Extinguishers, 2002 2006 edition, ~~published by the National~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~Fire Protection Association, Batterymarch Park, Quincy, MA 02269.~~

ITEM 8. Amend subrule 5.625(7) as follows:

5.625(7) Fire extinguishers. Fire extinguishers shall be provided on each floor and shall be located so that a person will not have to travel any more than 75 feet from any point in the home to reach the nearest extinguisher. An additional extinguisher shall be provided in, or adjacent to, the kitchen. Type, distribution, inspection, maintenance, and recharging of extinguishers shall conform to ~~National Fire Protection Association # NFPA 10, Standard for Portable Fire Extinguishers, 1990 2006 edition.~~

[Filed Emergency 6/27/06, effective 7/1/06]
[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5256B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 100B.10, the State Fire Marshal hereby amends Chapter 259, "Fire Fighter Training and Equipment Funds," Iowa Administrative Code.

Iowa Code chapter 100B establishes the Fire Service Training Bureau and the State Fire Service and Emergency Response Council within the Fire Marshal Division of the Department of Public Safety. The Fire Service Training Bureau and the State Fire Service and Emergency Response Council have broad responsibility to provide training for fire fighters and to coordinate fire fighter training offered by various providers across the state. Since 2003, the Bureau also has administered limited funds for planning of fire training facilities in the state. Legislation enacted during the 2006 session of the Iowa General Assembly, 2006 Iowa Acts, House File 2782, dramatically increased the funds available for construction of regional training facilities, designated lead and partner agencies for these facilities, established specific areas to be served by each facility, made specific funding allocations, established requirements for receipt and use of the funds, and authorized the Fire Marshal to establish administrative rules to implement the regional emergency response training center program.

The rules adopted herein provide for administration of the regional emergency response training center program established in 2006 Iowa Acts, House File 2782. In order to meet the time lines established in the law, these rules have been adopted through emergency procedures, so that they could become effective on July 1, 2006. Notice of Intended Action for these rules is published herein as **ARC 5257B** to allow for a period of public comment, including a public hearing. The public hearing will be held on August 17, 2006, at 10 a.m. in the classroom of the Fire Service Training Bureau, 3100 Fire Service Road, Ames, Iowa 50011.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of these rules are impractical. 2006 Iowa Acts, House File 2782, establishes ambitious time lines for the application process and distribution of funds appropriated for regional

training facilities for state fiscal year 2007. Meeting these time lines will be impossible unless the application process starts immediately upon the effective date of the legislation, July 1, 2006.

Pursuant to Iowa Code section 17A.5(2)"b"(1) and (2), the Department further finds that the normal effective date of these rules, 35 days after publication, should be waived and these rules made effective July 1, 2006, after filing with the Administrative Rules Coordinator. These rules confer a benefit upon the public by allowing the development of regional training facilities to proceed as promptly as possible. Further, 2006 Iowa Acts, House File 2782, contains language explicitly authorizing rule making to proceed using emergency procedures.

These rules are intended to implement Iowa Code chapter 100B as amended by 2006 Iowa Acts, House File 2782.

These rules became effective on July 1, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Rescind rule **661—259.301(80GA,ch177)** and adopt the following **new** rules:

661—259.301(100B) Regional training center program.

259.301(1) There is established in the fire marshal division the regional emergency response training center program. The program shall operate under the authority of the fire marshal and shall operate within the fire service training bureau. Day-to-day administration of the program shall be under the supervision of the chief of the fire service training bureau.

259.301(2) The purposes of the regional emergency response training center program are:

- a. To administer funds appropriated for the program as directed by the general assembly, under the direction of the fire marshal, and in cooperation with the state fire service and emergency response council.
- b. To develop training curricula in cooperation with regional emergency response training facilities.
- c. To encourage cooperation among regional emergency response training facilities, between regional emergency response training facilities and the fire service training bureau, and among the fire service training bureau, regional emergency response training facilities, and other providers of training to emergency responders.

661—259.302(100B) Definitions. The following definitions apply to rules 661—259.301(100B) through 661—259.305(100B):

"Allocated funds" means funds allocated for the construction of a particular regional emergency response training center.

"Bureau" means the fire service training bureau in the fire marshal division of the department of public safety.

"Competitive funds" means funds which are appropriated or otherwise available to the regional emergency response training center program for construction of regional emergency response training facilities, but which are not designated for the use of a particular regional emergency response training center.

"Department" means the department of public safety.

"Division" means the fire marshal division of the department of public safety.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

“Lead agency” means one of the community colleges identified as lead agencies in 2006 Iowa Acts, House File 2782, section 44.

“Partner agency” means one of the agencies identified as partners in 2006 Iowa Acts, House File 2782, section 44.

“Regional emergency response training center” means one of the centers identified in 2006 Iowa Acts, House File 2782, section 44.

“Training facility” includes, but is not limited to, the following:

1. Burn building.
2. Smokehouse.

3. Drill tower.
4. Skills building.
5. Training pads with specialized training props.
6. Maintenance facilities.

661—259.303(100B) Availability of funds. Lead agencies of regional emergency response training facilities, acting in concert with their respective partner agencies, may apply for and receive funds appropriated or otherwise available for construction of regional emergency response training facilities.

NOTE: The following amounts have been allocated for regional training facilities for state fiscal year 2007:

Merged Area	Lead Agency/Partners	Amount
I	Northeast Iowa Community College Partner: Dubuque County Firemen’s Association	\$150,000
II	North Iowa Area Community College Partner: Mason City Fire Department	\$400,000
III	Iowa Lakes Community College	\$400,000
V	Iowa Central Community College	\$400,000
VII	Hawkeye Community College Partner: Waterloo Regional Hazardous Materials Center	\$150,000 (allocated to Waterloo Regional Hazardous Materials Training Center)
IX	Eastern Iowa Community College Partner: Davenport Fire Department	\$400,000
X	Kirkwood Community College Partners: Coralville Fire Department and Iowa City Fire Department	\$400,000 (allocated to Coralville Fire Department)
XI	Des Moines Area Community College	\$400,000
XII	Western Iowa Technical Community College Partner: Sioux City Fire Department	\$400,000 (allocated to Sioux City Fire Department)
XIII, XIV	Iowa Western Community College Partners: Southwestern Community College and Council Bluffs Fire Department	\$500,000 (allocated to Council Bluffs Fire Department)
XV, XVI	Southeastern Iowa Community College Partners: Indian Hills Community College and Fort Madison Fire Department	\$400,000
Not specified	Any lead agency (Priority is given to the two regional emergency response training centers which serve two merged areas each.)	\$300,000

661—259.304(100B) Application process.

259.304(1) Applications for funds.

a. Application for either allocated funds or competitive funds shall be submitted to the fire service training bureau on a form specified by the fire marshal.

b. Each lead agency may submit a completed application for allocated funds.

c. Any lead agency may submit a completed application for competitive funds. An application for competitive funds shall be submitted separately from an application from the same lead agency for allocated funds.

d. Each completed application shall be signed by an official of the lead agency authorized to enter into contracts on behalf of the lead agency and shall be signed by an official of each partner of the lead agency, each of whom shall be a person authorized to enter into contracts on behalf of the partner agency.

e. Each application shall be accompanied by at least two letters of support from public or private agencies employing emergency responders and located in the area to be served by the regional emergency response training center.

f. Each application shall include signed assurances stating that the lead agency, the partner agency or agencies, if any, and the regional emergency response training center shall comply with all federal and state laws applicable to the administration of any funds awarded, the planning, design, and construction of the regional emergency response training

center, and the operation of the center after construction is completed.

g. All information required on the application shall be completed, and all attachments required by the fire marshal shall be submitted with the application. An application shall not be considered complete unless the application is in compliance with this paragraph.

h. The deadline for submission of each completed application for funding during state fiscal year 2007 is September 15, 2006.

259.304(2) Initial applications. The initial application received from a lead agency on behalf of a regional emergency response training center shall include the following information:

a. Proposed location of the regional emergency response training center.

b. Justification for the proposed location. The justification shall include descriptions of each of the following and explanations of how each was taken into account in the selection of the location:

(1) The availability and proximity of quality classroom space with adequate audiovisual support.

(2) The availability and adequate supply from area emergency response service entities of equipment which supports training.

(3) A site where limited, safe open burning would not be challenged or prohibited due to environmental issues or com-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

munity concerns.

- (4) Proximity to a medical facility.
- (5) The availability of water mains, roadway, drainage, electrical service, and reasonably flat terrain.
- (6) Accessibility to area fire departments.

c. List of training facilities needed for the regional emergency response training center to provide training to fire fighters and other emergency responders. If any needed facility already exists and is owned by the lead agency or a partner agency, this fact shall be identified. Funds allocated through the regional emergency response training center program may not be used to duplicate an existing facility owned by a lead agency or any of its partners. However, funds may be used to replace a facility which is obsolete or out of repair, provided that the facility being replaced will not be used for the same purpose as a new facility constructed with these funds.

661—259.305(100B) Processing of submitted applications.

259.305(1) All completed applications received shall be reviewed by the state fire service and emergency response council or by a subcommittee of the council appointed by the fire marshal in consultation with the chair of the council. The council or subcommittee shall recommend funding, partial funding, or denial of each application to the fire marshal.

259.305(2) After receiving the recommendations of the council or subcommittee, the fire marshal shall make a determination as to whether funding will be awarded in whole or in part for each application or whether the application will be denied. Each applicant shall be notified promptly of the disposition of the applicant's application. If the application is denied or partial funding is awarded, the applicant shall be informed as to the reasons for the denial or partial funding. Applications for allocated funding shall be evaluated based on the criteria for funding included in 2006 Iowa Acts, House File 2782, section 44. Applications for competitive funding shall be evaluated on the basis of these same criteria and the criterion for establishing priority for this funding included in 2006 Iowa Acts, House File 2782, section 11. Competitive funding may not be used for facilities the primary purpose of which is to provide advanced training.

259.305(3) Appeals.

a. An applicant who is denied funding or whose application is funded in part may appeal this decision to the fire marshal. Such an appeal shall be treated as a contested case subject to the provisions of rules 661—10.301(17A) through 661—10.322(17A).

b. Prior to appealing a decision, the applicant may submit a revised application to the fire marshal. If an applicant intends to submit a revised application, the applicant shall so notify the fire marshal within the time frame established for filing an appeal. Upon receipt of a revised application, the fire marshal shall cause the revised application to be processed in accordance with subrules 259.305(1) and 259.305(2). If a revised application is denied or funded in part, the applicant may appeal in accordance with paragraph "a" of this subrule.

These rules are intended to implement Iowa Code chapter 100B as amended by 2006 Iowa Acts, House File 2782.

[Filed Emergency 6/28/06, effective 7/1/06]

[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5232B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 97A.5, the Board of Trustees of the Iowa Department of Public Safety Peace Officers' Retirement, Accident, and Disability System hereby amends Chapter 400, "Peace Officers' Retirement, Accident, and Disability System—Governance and Administration," and Chapter 402, "Peace Officers' Retirement, Accident, and Disability System—Eligibility, Benefits, and Payments," Iowa Administrative Code.

2006 Iowa Acts, House File 2665, and 2006 Iowa Acts, Senate File 2199, took effect on July 1, 2006. 2006 Iowa Acts, House File 2665, excludes payment for a line-of-duty death from the peace officers' retirement system for the death of a member which also results in eligibility for a line-of-duty death benefit as a volunteer emergency services provider pursuant to Iowa Code section 100B.11.

2006 Iowa Acts, Senate File 2199, allows active members in the Peace Officers' Retirement, Accident, and Disability System to make contributions to the system to purchase up to the maximum amount of permissive service credit for eligible qualified prior service. Members with prior service eligible for permissive service credit will be able to make contributions and receive permissive service credit only for one year, until July 2, 2007. The time is extended until July 2, 2007, because July 1, 2007, falls on a Sunday. Permissive service credit will be available for two types of prior service only: (1) service as a peace officer member of the Department of Public Safety prior to July 1, 1994, in a position which was then covered by the Iowa Public Employees' Retirement System, rather than by the Public Safety Peace Officers' Retirement, Accident, and Disability System; and (2) service covered by a municipal fire or police retirement system operating under Iowa Code chapter 411 prior to January 1, 1992.

The amendments adopted herein implement the provisions of 2006 Iowa Acts, House File 2665, and 2006 Iowa Acts, Senate File 2199.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments are impracticable, as it is desirable that the exclusion of certain line-of-duty death benefits, as provided in 2006 Iowa Acts, House File 2665, and the procedures for processing the contributions to the system to purchase service credit for prior qualified service, as required by 2006 Iowa Acts, Senate File 2199, be implemented beginning July 1, 2006, which is the day on which both pieces of legislation took effect.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2006, after filing with the Administrative Rules Coordinator. The amendment to Chapter 400 confers a benefit upon the public by clarifying line-of-duty death benefits when the death results within 24 hours of the member's performance of volunteer service but occurs when the member is on duty as a peace officer member of the Department of Public Safety. The amendment to Chapter 402 affords active members in the Peace Officers' Retirement, Accident, and Disability System the full one-year time period allowed by 2006 Iowa Acts, Senate File

PUBLIC SAFETY DEPARTMENT[661](cont'd)

2199, to purchase permissive service credit for eligible prior service.

Notice of Intended Action for these amendments is published herein as **ARC 5231B**. The Notice of Intended Action will provide an opportunity for public comment and participation through the normal rule-making process, including a public hearing, which will be held on August 10, 2006, at 10 a.m., in the Third Floor Conference Room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. The Notice of Intended Action includes various additional proposed amendments to the rules of the system.

These amendments are intended to implement Iowa Code chapter 97A as amended by 2006 Iowa Acts, House File 2665, and 2006 Iowa Acts, Senate File 2199.

These amendments became effective July 1, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule **661—400.2(97A)**, definition of "line-of-duty death," as follows:

"Line-of-duty death" means the death of a member in service which was the direct and proximate result of a traumatic personal injury incurred in the line of duty. Line-of-duty death does not include the death of a member which resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the member's death. *Line-of-duty death does not include the death of a member if the death results in eligibility for payment of a line-of-duty death benefit pursuant to Iowa Code section 100B.11 and 661—Chapter 291.*

ITEM 2. Amend 661—Chapter 402 by adding the following **new** division:

DIVISION III
SERVICE PURCHASES

661—402.300(97A) Purchase of eligible service credit. Effective July 1, 2006, and no later than July 2, 2007, an active member may make contributions to the system to purchase up to the maximum amount of permissive service credit for eligible qualified service.

661—402.301(97A) Determination of eligible service.

402.301(1) Eligible qualified service.

a. Eligible qualified service is either of the following:

(1) Service with the department prior to July 1, 1994, in a position as a gaming enforcement officer, fire prevention inspector peace officer, or employee of the division of capitol police except clerical workers, for which service has not previously been credited.

(2) Service as a member of a city fire retirement system or police retirement system operating under Iowa code chapter 411 prior to January 1, 1992, for which service has not previously been credited.

b. Eligible qualified service does not include service if the receipt of credit for such service would result in the member's receiving a retirement benefit under more than one retirement plan for the same period of service.

402.301(2) Permissive service credit.

a. Permissive service credit is credit that will be recognized by the system for purposes of calculating a member's benefit, for which the member did not previously receive ser-

vice credit in the system, and for which the member voluntarily contributes to the system the amount required by the system, not in excess of the amount necessary to fund the benefit attributable to such service.

b. Permissive service credit shall be calculated in years at the rate of one year of service for six months or more of a year actually worked with no more than one year of service to be credited for all service in one calendar year.

c. An active member may make contributions to the system to purchase up to the maximum amount of permissive service credit for eligible qualified service as determined by the system, pursuant to Internal Revenue Code Section 415(n).

661—402.302(97A) Determination of cost to member.

402.302(1) Determination of service credit. A member may determine the amount of permissive service credit for either or both types of eligible qualified service. Eligible qualified service shall be documented on forms provided by the secretary. Such documentation shall include the notarized certification by an official of the agency by which the member was employed. In the event that information is not available from the employing city or agency, documentation may be obtained from another authorized source acceptable to the department.

a. A member may obtain certification of prior service with the department, pursuant to paragraph 402.301(1)"a," by submitting the request to the department. The department shall return the certification of service to the member.

b. A member may obtain certification of prior service with a city, pursuant to paragraph 402.301(1)"b." The member shall obtain such certification from the chief of police, fire chief, or other official of the city by which the member was employed with access to the employment records needed to verify eligible qualified service. In the event that certification from any such person is not available, documentation may be obtained from another authorized source acceptable to the department.

402.302(2) Actuarial cost quote of permissive service credit.

a. A member may submit certification of service credit to the department to obtain a cost quote of permissive service credit.

b. The department shall review and verify the submitted certification of service credit.

c. When service credit has been verified, the secretary shall submit it to the actuary contracted by the system to determine the cost to purchase permissive service credit. Requests received by the department from members on or before July 17, 2006; September 15, 2006; December 15, 2006; March 15, 2007; or May 15, 2007, shall be submitted to the actuary in groups of similarly submitted requests. A member may request cost quotes to purchase permissive service credit for a maximum of two time periods at no cost to the member.

d. If a member submits a request for the cost quote of permissive service credit to be processed at a time different from the group processing schedule in paragraph "c," the member shall be required to pay for the cost of the quote.

e. If a member requests a third or subsequent cost quote, the member shall be required to pay for the cost of the quote.

f. A second or subsequent cost quote for the same time period of permissive service credit shall replace all previous cost quotes for that time period.

g. If the department does not verify the submitted certification of service credit, the secretary shall not submit the service credit to the actuary but rather shall refer it to the board for review at the next regularly scheduled meeting.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—402.303(97A) Application process.

402.303(1) Actuarial cost quote of permissive service credit. When the cost quote of permissive service credit is returned to the secretary, it shall be forwarded to the member promptly. Such delivery may be made through electronic mail, facsimile transmission, regular mail, or personal service. The cost quote of permissive service credit shall remain valid for six months from the date of the cost quote unless replaced by a subsequent cost quote for the same time period of permissive service credit.

402.303(2) Submission of application to purchase permissive service credit. The member may submit to the secretary an application to purchase years of permissive service credit in an amount no greater than the maximum certified years of permissive service credit at a rate quoted by the actuary. Full payment in the form of a check or money order payable to the Peace Officers' Retirement, Accident, and Disability System, or certification of intent to pay through a qualified plan, or a combination thereof, shall accompany the application to purchase permissive service credit.

402.303(3) Acceptance of application to purchase permissive service credit. If the department accepts the application, the secretary, upon receipt of the full payment, shall deposit the payment in the system's accounts and shall adjust the member's time of service to reflect the increase in years of service under the system. Prior to the receipt of full payment, the secretary shall make no adjustment to the member's years of service.

402.303(4) Rejection of application to purchase permissive service credit. If the department rejects the application, the secretary shall return the payment to the member and shall refer the rejected application to the board for review at the next regularly scheduled meeting.

661—402.304(97A) Service adjustment irrevocable. An adjustment of a member's years of service which has been completed pursuant to subrule 402.303(3) is irrevocable. However, this rule shall not be interpreted to limit the system's ability to refund service credit purchase amounts when required in order to meet the provisions of the Internal Revenue Code.

661—402.305(97A) Board review.

402.305(1) Rejection of certification of service credit. The board shall review a rejected certification of service credit. If the board overrules the rejection, the secretary shall submit the certification of service credit to the actuary to determine the member's cost to purchase permissive service credit. If the board sustains the rejection, the member may appeal the action pursuant to rule 661—401.3(17A).

402.305(2) Review of rejection of application to purchase service credit. The board shall review any application to purchase service credit which has been rejected. If the board overrules the action, the secretary shall process the application pursuant to subrule 402.303(3). If the board sustains the rejection, the member may appeal the action pursuant to rule 661—401.3(17A).

661—402.306(97A) Other provisions.

402.306(1) Within 60 days following the entry of an adjustment to a member's years of service based on a purchase of permissive service credit, the secretary shall report the purchase to the system under which the service credit was originally earned.

NOTE: This notification is intended to meet the requirement that a member not receive a retirement benefit under more than one retirement plan for the same period of service.

402.306(2) The average final compensation of the member shall not be affected by the purchase of permissive service credit.

[Filed Emergency 6/26/06, effective 7/1/06]
[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5254B

**WORKERS' COMPENSATION
DIVISION[876]**

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

This amendment provides reference to the current tables which determine payroll taxes.

In compliance with Iowa Code section 17A.4(2), the Workers' Compensation Commissioner finds that notice and public participation are unnecessary. Rule 876—8.8(85,17A) is noncontroversial and, further, Iowa Code section 85.61(6) requires adoption of current tables to determine payroll taxes by July 1 of each year. The Division must wait until the Internal Revenue Service and Iowa Department of Revenue determine whether there will be changes in their publications on July 1 of the current year.

The Workers' Compensation Commissioner also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment be made effective July 1, 2006, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division's legislative mandate.

The Division has determined that this amendment will not necessitate additional annual expenditures exceeding \$100,000 or combined expenditures exceeding \$500,000 within five years by all affected persons, including the agency. Therefore, no fiscal impact statement accompanies this rule making.

The Division has determined that this amendment will have no impact on small business within the meaning of Iowa Code section 17A.4A.

The Division has determined that this amendment will not necessitate additional annual expenditures exceeding \$100,000, or \$500,000 within five years, by political subdivisions or agencies which contract with political subdivisions. Therefore, no fiscal impact statement accompanies this rule making.

This amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

This amendment is intended to implement Iowa Code section 85.61(6).

This amendment became effective on July 1, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

WORKERS' COMPENSATION DIVISION[876](cont'd)

The following amendment is adopted.

Amend rule 876—8.8(85,17A) as follows:

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, ~~2005~~ 2006, through June 30, ~~2006~~ 2007, are the tables in effect on July 1, ~~2005~~ 2006, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [Rev. January ~~2005~~ 2006].)

2. Iowa Withholding Tax Guide. (Iowa Department of Revenue Iowa Withholding Tax Rate Tables, [Effective April 1, ~~2005~~ 2006].)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [Rev. January ~~2005~~ 2006].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed Emergency 6/28/06, effective 7/1/06]

[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5238B**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 216.5(10) and 17A.3, the Civil Rights Commission hereby amends Chapter 2, "General Definitions," Chapter 3, "Complaint Process," and Chapter 9, "Discrimination in Housing," Iowa Administrative Code.

The rules in these chapters illustrate various methods and give instructions for mailing documents to or from the Civil Rights Commission. These amendments remove certain limitations requiring documents to be mailed by certified mail and provide the option of using cost-efficient alternatives by the Commission.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 4, 2006, as **ARC 4790B**. Pursuant to Iowa Code section 216.5(10), a public hearing was held on January 26, 2006. No comments were received at the hearing.

These amendments were also Adopted and Filed Emergency After Notice and published in the March 15, 2006, Iowa Administrative Bulletin as **ARC 4964B**. Informal, verbal suggestions were received during June 2006 requesting that rule 161—3.6(216) in Item 10 be clarified. The clarification is reflected in revised rule 161—3.6(216), which now reads as follows:

"161—3.6(216) Notice of the complaint. After jurisdictional review and within 20 days of receipt of the complaint, the executive director or designee shall serve the first named respondent with a copy of the complaint by certified mail. If the first named respondent on a complaint is not a governmental entity, service of a true copy on the first named respondent shall be by certified mail. A letter of acknowledgment shall advise the complainant of the right to withdraw the complaint and sue in the appropriate district court according to Iowa Code section 216.16."

These amendments are intended to implement Iowa Code chapter 216.

These amendments will become effective August 23, 2006, at which time the Adopted and Filed Emergency After Notice amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 2, 3, 9] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 4790B**, IAB 1/4/06, and Adopted and Filed Emergency After Notice as **ARC 4964B**, IAB 3/15/06.

[Filed 6/23/06, effective 8/23/06]
[Published 7/19/06]

[For replacement pages for IAC, see IAC Supplement 7/19/06.]

ARC 5247B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby adopts Chapter 7, "Proof of Legal Presence," Iowa Administrative Code.

These rules address the procedural responsibilities of the Board in licensing applicants who are not U.S. citizens.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 10, 2006, as **ARC 5101B**. A public hearing on the amendments was held on May 30, 2006. No one attended the public hearing, and no written comments were received.

These rules are identical to those published under Notice.

These rules are intended to implement the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621).

These rules will become effective August 23, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 7] is being omitted. These rules are identical to those published under Notice as **ARC 5101B**, IAB 5/10/06.

[Filed 6/28/06, effective 8/23/06]
[Published 7/19/06]

[For replacement pages for IAC, see IAC Supplement 7/19/06.]

ARC 5248B**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.

This amendment changes the procedural requirements for practitioners renewing their licenses. The amendment accommodates the online renewal process and subjects only a small number of applicants to an audit of the credits they are submitting for the renewal of their licenses.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 10, 2006, as **ARC 5100B**. A public hearing on the amendment was held on May 30, 2006. 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 August 23, 2006.

The following amendment is adopted.

Adopt the following **new** rule:

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

282—17.12(272) Audit of applications for license renewal. The board will randomly audit a minimum of 10 percent of the applications for renewal of the standard, master educator, and administrator licenses.

17.12(1) Verification required. If audited, the licensee must submit verification of compliance with renewal credit requirements. Licensees are required to keep transcripts of courses taken during the term of the license. Original transcripts and all other documents as required by 282—Chapter 17 must be submitted within 30 calendar days after the date of the audit. An extension of time may be granted on an individual basis.

17.12(2) Results of audit.

a. The board shall notify the licensee of satisfactory completion of the audit by issuing the license.

b. A licensee's failure to complete the audit satisfactorily or falsification of information shall be considered a violation of 282—Chapter 25, Code of Professional Conduct and Ethics, and the executive director may initiate a complaint against the licensee.

c. A licensee's failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement; completion of an audit will be required prior to further license renewal.

[Filed 6/28/06, effective 8/23/06]

[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5245B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.474 and 455H.105, the Environmental Protection Commission adopts new Chapter 14, "Environmental Covenants," and amends Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," and Chapter 137, "Iowa Land Recycling Program and Response Action Standards," Iowa Administrative Code.

These amendments implement provisions of 2005 Iowa Acts, Senate File 375, which amends sections of Iowa Code chapters 455B and 455H (codified in the 2005 Iowa Code Supplement) and which creates new Iowa Code Supplement chapter 455I entitled "Uniform Environmental Covenants Act." 2005 Iowa Acts, Senate File 375, established a new real estate instrument called an "environmental covenant," which may be used by owners of property, responsible parties and other interested parties, the Department and other state and federal regulatory agencies as a type of institutional control for the purpose of restricting land use activities and managing the risk of future exposure to existing contaminant conditions.

Iowa Code Supplement section 455B.474(1)"f"(4) authorizes the Commission to adopt rules regarding the application of institutional controls and specifically the use of environmental covenants created in accordance with Iowa Code Supplement chapter 455I as part of a Department-approved corrective action plan at leaking underground storage tank (LUST) sites regulated under Commission rules in Chapter

135. Iowa Code Supplement section 455H.206 authorizes the use of environmental covenants created in accordance with Iowa Code Supplement chapter 455I as one form of institutional control to satisfy remedial standards under the Land Recycling Program (LRP) established in Iowa Code Supplement chapter 455H and implemented by Commission rules in Chapter 137. Iowa Code Supplement section 455B.103 grants the Director of the Department broad discretion to enter into environmental covenants and to accept and maintain other types of real property interests.

Notice of Intended Action for these amendments was published in the March 15, 2006, Iowa Administrative Bulletin as **ARC 4983B**. The Department held a public hearing in Des Moines on April 5, 2006, and written comments were due by April 7, 2006.

The Notice of Intended Action specifically solicited comments on a number of issues, but no comments were received on those matters. The Department received only one written comment as a follow-up to an oral presentation at the public hearing. The commenter expressed the view that these rules were not necessary to implement 2005 Iowa Acts, Senate File 375, since the Act was self-implementing. The commenter stressed the value in maintaining flexibility for the Department and other parties to negotiate provisions on a case-by-case basis. The commenter stated that the rules might discourage participation in the Department's land recycling program but did not offer any specific examples of proposed rules which were objectionable. The commenter also suggested the Department develop some form of mapping areas subject to an environmental covenant. The other participant at the public hearing limited comment to the intent of the rules.

The amendments to Chapters 135 and 137 were necessary because these chapters were inconsistent with 2005 Iowa Acts, Senate File 375. The Department agrees that much of 2005 Iowa Acts, Senate File 375, is self-implementing and one option would have been to establish no policies of general applicability and implement all aspects of document preparation, content, submission and review on a case-by-case basis. However, the Department deliberately intended to establish some policy which would be of general applicability, such as submission procedures, requirements for supporting documentation, certain mandatory provisions not specified in 2005 Iowa Acts, Senate File 375, and to highlight provisions that would be discretionary. Much of the submission and review process and supporting documentation policy comes from the guidance the Department has used in the underground storage tank program for several years without objection.

Iowa Code section 17A.3(1)"c" creates a strong legislative preference for implementing policy by rule. Any policy of general applicability constitutes a "rule" as defined in Iowa Code section 17A.2(11). The Department has deliberately written the rules with the objective of maintaining flexibility but also providing the public with model forms which, if utilized, would streamline the submission, review and approval process. Although not part of this rule making, the Department is developing a Web-based mapping system which would allow easy access to areas subject to environmental covenants and other types of institutional controls.

The Commission is adopting the amendments as proposed in the Notice of Intended Action except for the following changes. New Chapter 13 has been renumbered as Chapter 14. In rule 567—14.5(455B,455H), numbered paragraph "1" has been incorporated into the last sentence of the rule.

Item 2 of the Notice rescinded paragraph 135.12(8)"a," numbered paragraph "4," which cross-references Appen-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

dix B. The cross-reference to Appendix B was an obvious error and should have referenced Appendix C, entitled "Declaration of Restrictive Covenants." Because of the rescission of numbered paragraph "4," Appendix C is being rescinded.

These amendments are intended to implement Iowa Code sections 455B.474 and 455H.105 and Iowa Code Supplement chapter 455I.

The Commission adopted the amendments at its public meeting on June 19, 2006.

These amendments shall become effective August 23, 2006.

The following amendments are adopted.

ITEM 1. Adopt the following **new** chapter:

CHAPTER 14
ENVIRONMENTAL COVENANTS

567—14.1(455B,455H) Definitions. The definitions in 2005 Iowa Code Supplement section 455I.2 are incorporated by reference. In addition, as used in this chapter:

"Department" means the Iowa department of natural resources.

"Director" means the director of the Iowa department of natural resources.

"Source site" means the property(ies) on which the source(s) of contamination exists and which extends to or has a causal relationship to the area of concern subject to the terms and conditions of the environmental covenant.

567—14.2(455B,455H) Environmental covenants. A person requesting department approval of an environmental covenant is responsible for the preparation and submittal of a draft environmental covenant using a model form(s) and model language developed by the department and submittal of supporting documentation. The department will grant presumptive approval to environmental covenants which conform to department model forms and model language. The parties to the environmental covenant may propose revisions to the model language and model form by clearly noting any proposed revisions and making a written request for consideration and approval. The department recommends that the activity and use limitation language in the environmental covenant conform to model language developed by the department.

567—14.3(455B,455H) Supporting documentation. Supporting information and documentation shall be submitted with the proposed environmental covenant. Supporting documentation must be sufficient for the department to determine the legal capacity of all legal and equitable interests in the property, to verify the accuracy of the legal description of the affected property and its relationship to the contaminated area of concern, and to ensure that all legal and equitable interests necessary to establish a valid and enforceable environmental covenant have been accurately identified. Documentation shall include, but not be limited to:

14.3(1) An opinion which is prepared by an attorney and which represents that sufficient research has been conducted to identify all persons with a recorded interest in the affected property and other legal and equitable interests necessary to establish a valid and enforceable covenant free of any competing or subordinate property interests. Persons other than an attorney may submit supporting documentation in accordance with department guidance developed to assist them in conducting property interest research and identification of all legal and equitable interests necessary to establish a valid and enforceable covenant. The department may require on a

case-by-case basis that an attorney prepare the covenant and supporting documentation and that an abstract of title be prepared or updated when necessary to identify and confirm all legal and equitable interests necessary to establish a valid and enforceable covenant. Property interests which must be identified include, but are not limited to, fee title and equitable titleholders (i.e., contract sellers and buyers), lessees of the property, and consensual lienholders such as mortgagees.

14.3(2) Copy of a current deed, contract for deed, or other property transfer instrument verifying the person(s) or business entity(ies) holding fee and equitable title in the property subject to the covenant. Proof of the legal capacity of other equitable interests and signatories to the covenant must be documented by provision of a copy of the applicable real estate instrument such as a mortgage or other consensual lien instrument.

14.3(3) A plat map or other official document which accurately depicts the boundaries of the affected property by legal description and as legally described in the environmental covenant. The map must be adequate to verify the relationship of the legally described property subject to the environmental covenant to (a) the contaminant source(s) areas, (b) the source site(s) subject to regulation such as an underground storage tank site, (c) the contaminated area of concern to which the terms of the environmental covenant are intended to apply, and (d) other adjoining or affected properties.

567—14.4(455B,455H) Recording and approval. An environmental covenant shall be recorded as provided in 2005 Iowa Code Supplement section 455I.8. An environmental covenant shall not be recorded without the approval and written signatures of the director or the director's appointed designee and all designated signatories. Signatures shall not be obtained on an environmental covenant until the environmental covenant and all supporting documentation have been reviewed and approved by the department.

567—14.5(455B,455H) Mandatory provisions. The environmental covenant shall contain provisions which adequately address the subject areas designated in 2005 Iowa Code Supplement section 455I.4(1). The language to address these mandatory provisions is contained in the department's model forms but may be revised as provided in rule 567—14.2(455B,455H). The environmental covenant and any other accompanying documents shall satisfy the formatting and recording requirements of Iowa law and specifically Iowa Code section 331.606B. All environmental covenants must have a proper signature acknowledgment as provided in Iowa Code sections 9E.14 and 9E.15. In addition to these mandatory provisions, the environmental covenant shall contain provisions that require any signatory to the environmental covenant to notify the department of conditions which would constitute a breach of the activity and use limitations contained in the environmental covenant.

567—14.6(455B,455H) Optional provisions. On a case-by-case basis, the department may require additional provisions in the environmental covenant within the subject areas authorized in 2005 Iowa Code Supplement section 455I.4(2) and otherwise within the department's authority. These provisions may include, but are not limited to:

14.6(1) A provision which requires a standard disclosure in a groundwater hazard statement in accordance with Iowa Code section 558.69 and department rules in 561—Chapter 9. A standard notice could be required if the department or the grantor determines that the property subject to the cove-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

nant constitutes a solid waste disposal site which is potentially hazardous or if hazardous waste exists on the property as provided in Iowa Code section 558.69.

14.6(2) A provision which requires notice to the department of any transfer of legal or equitable title in the property, notice of the establishment of a long-term lease, or notice of substantial change in use of the property subject to the environmental covenant. This provision may be added when the department finds the need to monitor compliance with and maintenance of the activity and use limitations and when the risks to health, safety and the environment warrant a higher degree of oversight.

14.6(3) A provision which places affirmative duties on subsequent transferees of equitable or legal title in the property or long-term lessees to inspect, monitor and report on conditions and continued compliance related to the activity and use limitations at the property subject to the environmental covenant. This provision may be added when the department finds the need to monitor compliance with and maintenance of the activity and use limitations and when the risks to health, safety and the environment warrant a higher degree of oversight.

567—14.7(455B,455H) Modification and termination. Modification or termination of the environmental covenant shall be in accordance with 2005 Iowa Code Supplement chapter 455I and the terms of the environmental covenant.

567—14.8(455B,455H) Signatories to the environmental covenant.

14.8(1) Agency. The department will generally not be a "holder" as defined in 2005 Iowa Code Supplement section 455I.2(7) and will generally sign the environmental covenant as an "agency" as defined in 2005 Iowa Code Supplement section 455I.2(2), without taking an interest in the property as provided in 2005 Iowa Code Supplement section 455I.3(2). However, the department reserves the right to sign as a holder on a case-by-case basis when it determines that holding an interest in the property is beneficial to satisfying the regulatory objectives of the environmental covenant.

14.8(2) Holders. The fee title owner of the affected property is required to sign the environmental covenant in the capacity as a grantor and may be required to sign as a holder/grantee as provided in 2005 Iowa Code Supplement section 455I.2(7) if necessary to establish a valid instrument. A contract buyer holding equitable title is required to sign as a holder. When the grantor of the environmental covenant is not the owner of the source site subject to regulation, or is not the person or entity responsible for conducting corrective action at the source site, the department may require the owner of the source site, a person or entity that is the party responsible for corrective action or the person or entity that has conducted the corrective action at the source site to sign on to the environmental covenant as a holder. The department may require a participant in an enrolled site regulated under 567—Chapter 137 to sign the environmental covenant as a holder if the participant has an interest in ensuring compliance with the terms of the environmental covenant and particularly if the participant has responsibility for corrective action or has undertaken corrective action at the enrolled site.

14.8(3) Subordinated interests. As provided in 2005 Iowa Code Supplement section 455I.3, all equitable or other property interests affected by the environmental covenant must consent to and subordinate their interests to the environmental covenant either by signing it or by signing a separate subordination and consent agreement approved by the depart-

ment. These interests include, but are not limited to, lessees, mortgagees and other consensual lienholders.

567—14.9(455B,455H) Notice. In accordance with 2005 Iowa Code Supplement section 455I.7, persons requesting approval of the environmental covenant shall certify that copies of a recorded environmental covenant have been sent to:

1. Each person signing the environmental covenant.
2. Each person holding a recorded interest in the property subject to the environmental covenant but which is not a signatory.

3. Each person in possession of the property subject to the environmental covenant, including lessees, sublessees, assignees of a lease, and current owners and operators of the business assets on the affected property.

4. Each municipality or other unit of local government in which the property subject to the environmental covenant is located. The department may identify the appropriate official or specific unit of government depending on the applicable activity and use limitations specified in the environmental covenant.

5. Each current owner or operator of the underground storage tank to which the environmental covenant relates.

6. Any other person which the department designates, including an adjoining property owner.

These rules are intended to implement Iowa Code sections 455B.474 and 455H.105 and 2005 Iowa Code Supplement chapter 455I.

ITEM 2. Amend paragraph **135.12(8)"a"** by rescinding numbered paragraph **"4"** and adopting in lieu thereof the following **new** numbered paragraph:

4. An environmental covenant as provided in 2005 Iowa Code Supplement section 455B.474(1)"f"(4)(f) and in accordance with the provisions of 2005 Iowa Code Supplement chapter 455I and 567—Chapter 14;

ITEM 3. Rescind **567—Chapter 135, Appendix C, "Declaration of Restrictive Covenants."**

ITEM 4. Amend subrule **137.7(2)** by rescinding paragraph **"e"** and adopting in lieu thereof the following **new** paragraph:

e. An environmental covenant established in accordance with 2005 Iowa Code Supplement chapter 455I, 2005 Iowa Code Supplement section 455H.206, and 567—Chapter 14.

ITEM 5. Rescind subrule 137.7(3) and adopt the following **new** subrule in lieu thereof:

137.7(3) Environmental covenants. Participants may submit a draft environmental covenant to the department for review and approval in accordance with 567—Chapter 14.

ITEM 6. Amend subrule 137.7(6) as follows:

137.7(6) Enforcement of institutional and technological controls. Institutional and technological controls which have been incorporated into a no further action certificate pursuant to rule 137.10(455H), or have been approved prior to issuance of a no further action certificate, may be enforced in Iowa district court by the department, a political subdivision of this state, the participant or any successor in interest to the participant as provided in Iowa Code Supplement section 455H.206(4). *Enforcement of the terms of an environmental covenant shall be in accordance with 2005 Iowa Code Supplement chapter 455I, 567—Chapter 14, and the terms of the environmental covenant.*

ITEM 7. Amend subrule 137.7(8) as follows:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

137.7(8) Modification and termination of institutional and technological controls. A participant or successor in interest to a participant, or an owner of property subject to an institutional or technological control, may seek approval from the department for the removal, discontinuance, modification or termination of an institutional or technological control. The persons *person* must demonstrate that the control in its present form is no longer required to ensure compliance with applicable standards. The person seeking revision must undertake sufficient risk assessment and provide sufficient assessment data to establish that the applicable compliance standards can be met based on the proposed modification. The department may also determine based on a revised assessment that the applicable controls are no longer effective to meet compliance standards and may require other response action. The department shall issue an amendment to any previously issued no further action letter specifying the approved modification of the institutional or technological controls. *Modification and termination of an environmental covenant shall be consistent with these rules and shall conform with 2005 Iowa Code Supplement chapter 455I and 567—Chapter 14.*

[Filed 6/28/06, effective 8/23/06]

[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5246B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, "Controlling Pollution," and Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

The purpose of the amendments is to adopt into the state air quality rules several federal regulations that were finalized over the last year. The amendments also include one clarification to state air quality rules for construction permit exemptions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 12, 2006, as **ARC 5041B**. A public hearing was held on May 12, 2006. No comments were presented at the hearing. No written comments were received prior to the close of the public comment period. The public comment period closed on May 16, 2006.

Since the publication of the Notice, minor corrections and clarifications have been made to the preamble in the descriptions of Items 3 and 13; however, no changes have been made to the amendments in Items 3 and 13.

Item 1 amends paragraph 22.1(1)"b," which contains the requirements for a new or reconstructed major source of hazardous air pollutants to obtain a construction permit. A reference to the Code of Federal Regulations (CFR) is updated to reflect the most current amendment date for the applicable part. On April 22, 2004, the U.S. Environmental Protection Agency (EPA) amended 40 CFR 63.2 to add definitions for "pollution prevention" and "source at a Performance Track member facility." EPA did not change the federal definition

of "major source" contained in 40 CFR 63.2 and cited in 22.1(1)"b."

Item 2 amends subparagraph 22.1(2)"x"(5) to clarify that this exemption from construction permitting includes only laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site.

Item 3 amends subrule 22.4(1) to reflect the EPA's November 9, 2005, amendments to 40 CFR Part 51, Appendix W, Guideline on Air Quality Models. The most substantive change in the EPA amendments was the promulgation of American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) as the preferred guideline model. AERMOD replaces the Industrial Source Complex (ISC3) model. The federal amendments, and the Notice preamble for this rule making, specified November 9, 2006, as the implementation date for AERMOD. However, EPA has since indicated on its modeling Web site and at EPA workshops that December 9, 2006, will be the AERMOD implementation deadline. The Department will therefore not require use of AERMOD until December 9, 2006. During the transition period, the Department will accept modeling conducted with either ISC3 or AERMOD.

Item 4 amends 567—22.100(455B) to add the definition of "area source" to the Title V program definitions. This term refers to nonmajor sources of hazardous air pollutants. This definition of "area source" is consistent with the federal definitions contained in Section 112 of the Clean Air Act and in 40 CFR 63.2.

Item 5 amends rule 567—22.100(455B) to delete the chemical "methyl ethyl ketone" from the list of air pollutants listed under the "hazardous air pollutant" definition in the Title V program rules. On December 19, 2005, EPA removed methyl ethyl ketone from the list of hazardous air pollutants contained in Section 112 of the Clean Air Act. The federal amendments were promulgated in 40 CFR Parts 63, 70 and 71.

Item 6 amends subrule 22.101(1) to better organize the provisions that specify which sources are required to obtain Title V operating permits. The Department did not make any substantive changes to this subrule.

Item 7 rescinds subrule 22.101(2) and adopts a new subrule to add clarity to the requirements for nonmajor (area) sources to obtain a Title V operating permit. The Department did not make substantive changes to the requirements.

Item 8 rescinds subrule 22.101(3) to remove the provisions for Title V exempt sources that elect to apply for a Title V operating permit. On December 19, 2005, EPA deleted these provisions from 40 CFR 70.3(b)(3).

Item 9 rescinds rule 567—22.102(455B) and adopts a new rule to list source categories that are exempt from the requirement to obtain a Title V operating permit. On December 19, 2005, EPA promulgated amendments to 40 CFR Parts 63 and 70 to permanently exempt five categories of nonmajor (area) sources that are subject to national emissions standards for hazardous air pollutants (NESHAP). The five area source categories that are now exempt from the requirements to obtain a Title V operating permit are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide sterilizers, and secondary aluminum smelters. On October 21, 2002, EPA exempted from Title V the area sources that are subject to the NESHAP for publicly owned treatment works (40 CFR Part 63, Subpart VVV). New rule 567—22.102(455B) includes this source category in the list of exemptions. Additionally, this new rule will add clarity to the

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

state's Title V rules and will make provisions for source category exemptions more consistent with 40 CFR 70.3.

Item 10 amends subrule 22.105(2) to update a cross reference so that it is consistent with the amendments specified in Item 5.

Item 11 amends the introductory paragraph of subrule 23.1(2) for new source performance standards (commonly known as NSPS) to reflect the recent federal amendments to 40 CFR Part 60. EPA made a number of minor technical and administrative changes to the federal NSPS regulations. In addition, EPA amended the standards for steel plants (Subparts AA and AAa) on February 22, 2005, to add alternative requirements for monitoring emissions from furnace exhausts and to make minor editorial corrections.

EPA also amended the NSPS regulations in 40 CFR Part 60 for combustion turbines, for boilers used in electrical generating units, and for boilers in industrial, commercial, and institutional settings. With respect to boilers, EPA amended the emission limits for sulfur dioxide (SO₂), nitrogen oxides (NO_x) and particulate matter (PM) for electric utility boilers (Subpart Da), the SO₂ and PM emission limits for industrial-commercial-institutional (ICI) boilers (Subpart Db) and the SO₂ and PM emission limits for small ICI boilers (Subpart Dc). ICI boilers burning low-sulfur fuel can demonstrate compliance by certifying the fuels burned. With respect to combustion turbines, EPA amended the standards for NO_x to allow the turbine owner or operator the choice of a concentration-based or output-based emission standard. The NO_x limits differ based on the fuel input at peak load, fuel type, combustion turbine application, and location of the combustion turbine. The emissions standard for SO₂ is the same for all turbines, regardless of turbine size or fuel type.

Item 12 amends subrule 23.1(2) to adopt a new NSPS. On December 16, 2005, EPA finalized standards for Other Solid Waste Incineration (OSWI) units. This amendment adopts the standards for "new" OSWI units for which construction is commenced after December 9, 2004, or for which modification or reconstruction is commenced on or after June 16, 2006 (Part 60, Subpart EEEE). The Department is not aware of any current or proposed facilities that would be potentially subject to the NSPS for "new" OSWI units.

On December 16, 2005, EPA also finalized emission guidelines for "existing" OSWI units for which construction commenced on or before December 9, 2004 (Part 60, Subpart FFFF). The Department is not proposing rules to adopt emission guidelines for existing OSWI units at this time. The Department will first determine if there are any facilities potentially subject to the federal emission guidelines. If necessary, the Department will propose administrative rules for existing OSWI units at a later date.

Item 13 amends the introductory paragraph of subrule 23.1(4), which contains the NESHAP for source categories, to reflect recent amendments to 40 CFR Part 63. From January 2005 through February 2006, EPA made numerous minor changes to 40 CFR Part 63, which included both technical and administrative updates and corrections.

The substantive changes to 40 CFR Part 63 include the following:

- EPA amended Subpart C to delete methyl ethyl ketone from the list of hazardous air pollutants.
- EPA amended Subparts M (dry cleaning facilities), N (chromium electroplating), O (ethylene oxide sterilizers), T (halogenated solvent cleaning) and RRR (secondary aluminum production) to specify that area sources subject to these subparts are not required to obtain a Title V operating permit.

- EPA amended the standards for Industrial, Commercial and Institutional Boilers and Process Heaters (Subpart DDDDD). EPA issued the amendments concurrently with a final response to petitions for reconsideration on the final rule. EPA elected to retain the health-based compliance alternatives to the final rule. EPA did make a limited number of amendments to clarify the process for demonstrating eligibility to comply with the health-based compliance alternatives contained in the final rule.

- EPA amended the standards for Plywood and Composite Wood Products (Subpart DDDD). EPA issued the amendments to Subpart A (General Conditions), Subpart DDDD and Appendix B to Subpart DDDD (Methodology and Criteria for Demonstrating that an Affected Source is Part of a Low-Risk Subcategory of Plywood and Composite Wood Products) concurrently with a final response to petitions for reconsideration on the final rule. EPA amended all three of these sections to allow use of a new test method for measuring hazardous air pollutants. Further, EPA elected to retain and clarify the low-risk subcategory and low-risk demonstration (LRD) requirements contained in Appendix B, while making a number of amendments to clarify these requirements. In Subpart DDDD, EPA made further clarifications, including amendments to several of the definitions. The amendments to Subpart DDDD also revise the compliance deadline for the final rule to one year later than the deadline originally promulgated.

EPA had issued "direct final" amendments to the standards for Refractory Products Manufacturing (Subpart SSSSS) for new and existing sources on February 13, 2006. However, EPA withdrew the amendments in a Federal Register notice published on April 14, 2006. The federal amendments are therefore not adopted by reference in this rule making.

Item 14 amends paragraph 23.1(4) "be," the NESHAP for hazardous waste combustors, to reflect changes to the federal standards. On October 12, 2005, EPA promulgated amendments to 40 CFR Part 63, Subpart EEE. The amendments included adding hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers and hazardous waste hydrochloric acid production furnaces to the list of source categories subject to this rule. EPA made additional, technical amendments to Subpart EEE on December 19, 2005. The Department is not aware of any facilities that are potentially subject to the NESHAP for hazardous waste combustors.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments shall become effective August 23, 2006.

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 [22.1(1)"b," 22.1(2)"x"(5), 22.4(1), 22.100, 22.101(1) to 22.101(3), 22.102, 22.105(2), 23.1(2), 23.1(2)"www," 23.1(4), 23.1(4)"be"] is being omitted. These amendments are identical to those published under Notice as **ARC 5041B**, IAB 4/12/06.

[Filed 6/28/06, effective 8/23/06]

[Published 7/19/06]

[For replacement pages for IAC, see IAC Supplement 7/19/06.]

ARC 5244B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.173 and 455B.105(11), the Environmental Protection Commission hereby amends Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

The amendments add and implement a fee structure for wastewater permits.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 9, 2005, as **ARC 4652B**. The adopted amendments are modified from the ones published under Notice to clarify language concerning the individual storm water permits, to define the term "non-storm water NPDES permit," to clarify language concerning NPDES permit amendment requests, to change the fee due date, and to include changes to the fee structure made by the Iowa Legislature. The adopted amendments implement 2006 Iowa Acts, House File 2540. Changes from the Notice include the following:

(1) 64.16(1) is changed to remove the annual fee option for individual storm water only permits, to clarify the need for some facilities to pay both storm water only permit fees and non-storm water NPDES permit fees, to define the term "storm water only permit," and to define the term "non-storm water NPDES permit."

(2) 64.16(2) is changed to direct all fees to the Department of Natural Resources.

(3) 64.16(2) is changed to clarify the requirements for facilities that need to pay both storm water only permit fees and non-storm water NPDES fees.

(4) 64.16(3)"a"(5) is changed to add references to the fees for General Permit No. 5 as established in 2006 Iowa Acts, House File 2540, section 25.

(5) 64.16(3)"b" is changed to add references to the application and annual non-storm water NPDES fees as established in 2006 Iowa Acts, House File 2540, section 25, and to change the fee due date.

(6) 64.16(3)"b"(3) is changed to clarify the submittal of an application fee for an approved non-storm water NPDES permit amendment request.

(7) 64.16(3)"c" is changed to add a reference to the single construction permit fee as established in 2006 Iowa Acts, House File 2540, section 25.

Public comments received were summarized, and a responsiveness summary was prepared and is available from the Department.

These amendments were adopted by the Environmental Protection Commission on June 19, 2006.

These amendments are intended to implement Iowa Code sections 455B.173 and 455B.105(11) and 2006 Iowa Acts, House File 2540, section 25.

These amendments shall become effective August 23, 2006.

The following amendments are adopted.

Amend rule 567—64.16(455B) as follows:

567—64.16(455B) Fees.

64.16(1) A person who applies for an individual permit or coverage under a general permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee and or a permit fee or both as

specified in 64.16(3). *Certain individual facilities shall also be required to submit annual fees as specified in 64.16(3)"b."* Fees shall be assessed based on the type of permit coverage the applicant requests, either as general permit coverage or as an individual permit. ~~At the time the application is submitted,~~ *For a construction permit, an application fee must be submitted with the application. For General Permits Nos. 1, 2, 3 and 5, the applicant has the option of paying an annual permit fee or a multiyear permit fee at the time the Notice of Intent for coverage is submitted.*

For individual storm water only permits, a one-time, multiyear permit fee must be submitted at the time of application. A storm water only permit is defined as an NPDES permit that authorizes the discharge of only storm water and any allowable non-storm water as defined in the permit. For all other non-storm water NPDES permits and operation permits, the applicant must submit an application fee at the time of application and the appropriate annual fee on a yearly basis. A non-storm water NPDES permit is defined as any individual NPDES permit or operation permit issued to a municipality, industry, semipublic entity, or animal feeding operation that is not an individual storm water only permit. If a facility needs coverage under more than one NPDES permit, fees for each permit must be submitted appropriately.

Fees are nontransferable. If the application is returned to the applicant by the department, the permit fee will be returned. No fees will be returned if the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued. Failure to submit the appropriate permit fee at the time of application renders the application incomplete, and the department shall suspend processing of the application until the fee is received. *Failure to submit the appropriate annual fee may result in revocation or suspension of the permit as noted in 64.3(11)"f."*

64.16(2) Payment of fees. Fees shall be paid by check or money order made payable to the "Iowa Department of Natural Resources."

For facilities needing coverage under both a storm water only permit and a non-storm water NPDES permit, separate payments shall be made according to the fee schedule in 64.16(3).

64.16(3) Fee schedule. The following fees have been adopted:

a. For coverage under the NPDES General Permit general permits, the following fees apply:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1.

Annual Permit Fee \$150 (per year)
or

Five-year Permit Fee \$600
Four-year Permit Fee \$450
Three-year Permit Fee \$300

(Coverage provided by the five-year, four-year, and three-year permit fees expires no later than the expiration date of the general permit. Maximum coverage is five years, four years, and three years, respectively.) *All fees are to be submitted with the Notice of Intent for coverage under the general permit.*

(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3. The

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(4) "Discharge from Onsite Wastewater Treatment and Disposal Systems," NPDES Permit No. 4. No fees shall be assessed.

(5) "Discharge from Mining and Processing Facilities," NPDES General Permit No. 5. No fees shall be assessed. Fees as established in 2006 Iowa Acts, House File 2540, section 25, are to be submitted by August 30 of every year unless a multiyear fee payment was received in an earlier year. New facilities seeking General Permit No. 5 coverage in any month but August shall submit fees with the Notice of Intent for coverage. Coverage provided by the five-year, four-year, or three-year permit fees expires no later than the expiration date of the general permit. Maximum coverage is five years, four years, and three years, respectively. In the event a facility is no longer eligible to be covered under General Permit No. 5, the remainder of the fees previously paid by the facility shall be applied toward its individual permit fees.

b. Individual NPDES and operation permit fees. The following fees are applicable for the described individual NPDES permit:

(1) For permits that authorize the discharge of only storm water discharge associated with industrial activity and any allowable non-storm water, submitted on Form 2F, where the storm water is composed entirely of storm water or combined with process wastewater or other non-storm water wastewater, a five-year permit fee of \$1,250 must accompany the application.

Annual Permit Fee \$300 (per year)
or

Five-year Permit Fee \$1,250

(2) For permits that authorize the discharge of only storm water discharges from municipal separate storm sewer systems and any allowable non-storm water, a five-year permit fee of \$1,250 must accompany the application.

Annual Permit Fee \$300 (per year)
or

Five-year Permit Fee \$1,250

(3) For participants in an approved group application and EPA has issued a model general permit and no industry-specific general permit is available or being developed.

Annual Permit Fee \$300 (per year)
or

Five-year Permit Fee \$1,250

(3) For permits not subject to subparagraphs (1) and (2), a single application fee of \$85 as established in 2006 Iowa Acts, House File 2540, section 25, is due at the time of application. The application fee is to be submitted with the application form (Form 30 for municipal and semipublic facilities; Form 1, 2, 2F, 3, or 4 for industrial facilities) at the time of a new application, renewal application, or amendment application. Before an approved amendment request submitted by a facility holding a non-storm water NPDES permit can be processed by the department, the application fee must be submitted. Application fees will not be charged to facilities holding non-storm water NPDES permits when an amendment request is submitted by DNR staff, or when the requested amendment is to correct an error in the permit.

(4) For every major and minor municipal facility, every semipublic facility, every major and minor industrial facility, every facility that holds an operation permit (no wastewater discharge into surface waters), and every open feedlot animal feeding operation required to hold a non-storm water NPDES permit, an annual fee as established in 2006 Iowa

Acts, House File 2540, section 25, is due by August 30 of each year.

(5) For every municipal water treatment facility with a non-storm water NPDES permit, no fee is charged (as established in 2006 Iowa Acts, House File 2540, section 25).

(6) For a confinement animal feeding operation required to hold a non-storm water NPDES permit, an annual fee of \$250 per year is due by August 30 of each year.

(7) For a new facility, an annual fee as established in 2006 Iowa Acts, House File 2540, section 25, is due 30 days after the new permit is issued.

c. Wastewater construction permit fees. A single construction permit fee as established in 2006 Iowa Acts, House File 2540, section 25, is due at the time of construction permit application submission.

[Filed 6/28/06, effective 8/23/06]

[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5242B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455A.6 and 459.103, the Environmental Protection Commission hereby adopts amendments to Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The amendments establish a list of designated wetlands in a new document which will be available at the State Law Library and via the Internet. The definition of "designated wetland" in Iowa Code subsection 459.102(21) was utilized in determining the wetlands that are designated.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 21, 2005, as ARC 4771B. No oral comments were received at four public hearings. However, written comments were received.

As a result of the written comments, the following changes have been made to the amendments as set forth in the Notice of Intended Action:

1. Forty-two wetlands have been removed from the list of designated wetlands, reducing the number from 700 to 681; and

2. New subrule 65.11(3) has been added to rule 567—65.11(455B) to provide "grandfather" treatment for existing and specified pending operations before the list of designated wetlands becomes effective August 23, 2006.

These amendments are intended to implement Iowa Code sections 459.102 and 459.310.

These amendments will become effective August 23, 2006.

The following amendments are adopted.

ITEM 1. Amend rule 567—65.1(455B) by adopting the following new definition in alphabetical order:

"Designated wetland" means land designated as a protected wetland by the United States Department of the Interior or the department of natural resources, including but not limited to a protected wetland as defined in Iowa Code section 456B.1, if the land is owned and managed by the federal government or the department of natural resources. Howev-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

er, a designated wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district. Designated wetlands in the state are listed in "Designated Wetlands in Iowa," effective August 23, 2006, which is incorporated by reference; this document is on file at the state law library where it is also available via the Internet at <http://www.iowadnr.gov/afo/files/deswetlands.pdf>.

ITEM 2. Amend rule 567—65.11(455B) by renumbering subrules **65.11(3)** to **65.11(5)** as **65.11(4)** to **65.11(6)** and adopting **new** subrule 65.11(3) as follows:

65.11(3) A confinement feeding operation structure shall not be constructed closer than 2,500 feet away from a "designated wetland" as defined and referenced in rule 567—65.1(455B). This requirement shall not apply to a confinement feeding operation structure if any of the following occur before the wetland is included in "Designated Wetlands in Iowa," effective August 23, 2006:

- a. The confinement feeding operation structure already exists. This exemption also applies to additional confinement feeding operation structures constructed at the site of such an existing confinement feeding operation structure after a wetland is included in "Designated Wetlands in Iowa," effective August 23, 2006.
- b. Construction of a confinement feeding operation structure has begun as provided in subrule 65.8(1).
- c. An application for a permit to construct a confinement feeding operation structure has been submitted to the department.
- d. A manure management plan concerning a proposed confinement feeding operation structure for which a construction permit is not required has been submitted to the department.

[Filed 6/28/06, effective 8/23/06]

[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5243B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 459.103 and 2005 Iowa Code Supplement section 459A.104, the Environmental Protection Commission hereby adopts amendments to Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The amendments authorize the Director to condition or deny a construction permit, to modify or disapprove a manure management plan, or to prohibit construction of a proposed confinement feeding operation at the proposed location if the Director concludes, after an evaluation by the Department, that the proposed confinement feeding operation or proposed expansion of a confinement feeding operation would reasonably be expected to cause: pollution of a water of the state; violation of state water quality standards; or an unreasonable burden on natural resources or the environment due to the current concentration of confinement feeding operations or associated manure application fields in a specific area. The amendments also authorize the Director, after De-

partment evaluation and conclusion of similar impacts, to deny a construction permit, to disapprove a nutrient management plan, or to prohibit construction of a proposed open feedlot operation or the proposed expansion of an existing open feedlot operation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 15, 2006, as **ARC 4898B**. Oral comments were received at five public hearings; written comments were also received. As a result of the comments, the words "unacceptable burden" in subparagraphs 65.5(3)"b"(3) and 65.103(5)"b"(3) have been changed to "adverse effect." No other changes have been made to the amendments as set forth in the Notice of Intended Action.

These amendments will become effective August 23, 2006.

These amendments are intended to implement Iowa Code sections 459.103, 459.303 and 459.312 and 2005 Iowa Code Supplement section 459A.104.

The following amendments are adopted.

ITEM 1. Amend rule 567—65.5(455B) by adopting the following **new** subrule:

65.5(3) The department may evaluate any proposed confinement feeding operation or proposed expansion of a confinement feeding operation that requires a construction permit or manure management plan with respect to its potential adverse impacts on natural resources or the environment.

a. In conducting the evaluation, the department shall consider the following factors:

- (1) The likelihood manure will be applied to frozen or snow-covered cropland.
- (2) The proximity of the structures or manure application areas to sensitive areas, including but not limited to publicly owned land, designated areas, trout streams and karst terrain.
- (3) Topography, slope, vegetation, potential means or routes of conveyance of manure spilled or land-applied. This factor includes but is not limited to whether the manure application areas involve cropland with predominant slopes greater than 9 percent without a conservation plan approved by the local soil and water conservation district or its equivalent and whether manure for land application is hauled or otherwise transported more than five miles.
- (4) Whether the operation or manure application area is or will be located in a two-year capture zone for a public water supply.

b. In addition to the requirements in rules 65.9(455B), 65.10(455B), 65.11(455B), 65.15(455B) and 65.17(459), the department may deny a construction permit, disapprove a manure management plan or prohibit construction of the proposed operation at the proposed location if the director determines from the evaluation conducted pursuant to this subrule that the operation would reasonably be expected to result in any of the following impacts:

- (1) Manure from the operation will cause pollution of a water of the state.
- (2) Manure from the operation will cause a violation of state water quality standards.
- (3) An adverse effect on natural resources or the environment in a specific area will occur due to the current concentration of animal feeding operations or the associated manure application areas.

c. The department also may establish permit conditions or require amendments to the manure management plan in addition to the minimum requirements established for such operations, on the location of structures or manure applica-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

tion, or other operational conditions necessary to avoid or minimize the adverse impacts.

d. A construction permit denial or condition, a manure management plan disapproval or required amendment, or a prohibition of construction pursuant to this subrule may be appealed according to the contested case procedures set forth in 561—Chapter 7.

ITEM 2. Amend rule 567—65.103(455B,459A) by adopting the following **new** subrule:

65.103(5) The department may evaluate any proposed open feedlot operation or proposed expansion of an open feedlot operation that requires a construction permit with respect to its potential adverse impacts on natural resources or the environment. For the purpose of this subrule, open feedlot effluent includes manure, process wastewater, settled open feedlot effluent and settleable solids.

a. In conducting the evaluation, the department shall consider the following factors:

(1) The likelihood open feedlot effluent will be applied to frozen or snow-covered cropland.

(2) The proximity of the open feedlot operation structures or open feedlot effluent application areas to sensitive areas, including but not limited to publicly owned land, designated areas, trout streams and karst terrain.

(3) Topography, slope, vegetation, potential means or routes of conveyance of open feedlot effluent spilled or land-applied. This factor includes but is not limited to whether the open feedlot effluent application areas involve cropland with predominant slopes greater than 9 percent without a conservation plan approved by the local soil and water conservation district or its equivalent and whether open feedlot effluent for land application is hauled or otherwise transported more than five miles.

(4) Whether the operation or open feedlot effluent application area is or will be located in a two-year capture zone for a public water supply.

b. In addition to the requirements in rules 65.105(459A), 65.109(459A) and 65.112(459A), the department may deny a construction permit, disapprove a nutrient management plan or prohibit construction of the proposed operation at the proposed location if the director determines from the evaluation conducted pursuant to this subrule that the operation would reasonably be expected to result in any of the following impacts:

(1) Open feedlot effluent from the operation will cause pollution of a water of the state.

(2) Open feedlot effluent from the operation will cause a violation of state water quality standards.

(3) An adverse effect on natural resources or the environment in a specific area will occur due to the current concentration of animal feeding operations or the associated open feedlot effluent application areas.

c. The department also may establish permit conditions or require amendments to the nutrient management plan in addition to the minimum requirements established for such operations, on the location of structures or open feedlot effluent application, or other operational conditions necessary to avoid or minimize the adverse impacts.

d. A construction permit denial or condition, a nutrient management plan disapproval or required amendment, or a prohibition of construction pursuant to this subrule may be

appealed according to the contested case procedures set forth in 561—Chapter 7.

[Filed 6/28/06, effective 8/23/06]

[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5236B**MEDICAL EXAMINERS
BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76, 148E.7, 272C.3, 272C.4, and 272C.5, the Board of Medical Examiners hereby rescinds Chapter 12, "Mandatory Reporting and Grounds for Discipline," and adopts new Chapter 22, "Mandatory Reporting," Chapter 23, "Grounds for Discipline," Chapter 24, "Complaints and Investigations," Chapter 25, "Contested Case Proceedings," and Chapter 26, "Reinstatement after Disciplinary Action," Iowa Administrative Code.

The current Chapter 12 is rescinded and the chapter number is reserved. New Chapters 22 to 26 in effect replace Chapter 12. Chapter 22 addresses a licensee's obligation to report the following to the Board: adverse judgments or settlements, wrongful acts or omissions, and disciplinary action in another jurisdiction. The licensee's responsibility to report child abuse and dependent adult abuse to the appropriate authorities is also outlined.

Chapter 23 describes the 35 grounds for which the Board has authority to impose discipline, including civil penalties up to \$10,000.

Chapter 24 outlines the requirements to file a complaint and the immunity that exists for the complainant. The investigative process for the staff and Board is detailed, and the actions that the Board may take as the result of an investigation are described. The chapter addresses investigative subpoenas, doctor-patient privileged communications, and peer review. Ordering a physician to have a mental, physical, or clinical competency examination, including substance abuse evaluation or alcohol or drug screening, is included with instructions that explain how a physician may object to the order and how the Board may handle the objection.

Chapter 25 presents the rules that describe how the Board should handle contested case proceedings.

Chapter 26 addresses how a license that has been suspended or revoked may be reinstated.

Notice of Intended Action regarding these amendments was published in the February 15, 2006, Iowa Administrative Bulletin as **ARC 4871B**. A public hearing was held on March 7, 2006. Comments were received from the Iowa Osteopathic Medical Association and the Iowa Medical Society. In addition to making several nonsubstantive changes, the Board made changes to the rules based on those comments. New paragraph "f," which describes the immunity afforded to licensees who report the wrongful acts or omissions of other licensees, was added to subrule 22.2(2). The word "professional" was inserted before the words "licensing authority" in rule 653—22.3(272C) and subrule 23.1(22) to indicate that a physician must report discipline from another licensing authority if the individual had held another professional license and had been disciplined. A change was made

MEDICAL EXAMINERS BOARD[653](cont'd)

to subrule 23.1(19) to further clarify under what circumstances receiving remuneration for the referral of patients to other healthcare professionals is improper and, therefore, grounds for discipline. A new subrule 23.1(34), which makes a licensee's failure to transfer patient medical records in a timely manner a separate ground for discipline, was added to the rule on grounds for discipline. The Board did not adopt subrule 25.4(6), which would have established that the statement of charges is a public record. A sentence was added to subrule 25.7(1) to indicate that license denial proceedings are nondisciplinary contested cases. Subrule 25.21(6) was divided into two sentences for clarity.

The Board adopted the amendments during its regularly held meeting on June 22, 2006.

These amendments are intended to implement Iowa Code chapters 17A, 148 and 148E and Iowa Code Supplement chapters 147 and 272C.

These amendments will become effective August 23, 2006.

The following amendments are adopted.

ITEM 1. Rescind and reserve **653—Chapter 12**.

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

CHAPTER 22
MANDATORY REPORTING

653—22.1(272C) Mandatory reporting—judgments or settlements. Each licensee, including a licensee holding an inactive license, shall report to the board every adverse judgment and every settlement of a claim against the licensee in a malpractice action to which the licensee is a party. The report, together with a copy of the judgment or settlement, must be filed with the board within 30 days from the date of said judgment or settlement. Failure to report judgments or settlements in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

653—22.2(272C) Mandatory reporting—wrongful acts or omissions.

22.2(1) Definitions. For the purposes of this rule, the following definitions apply:

“Knowledge” means any information or evidence of reportable conduct acquired by personal observation, from a reliable or authoritative source, or under circumstances causing the licensee to believe that wrongful acts or omissions may have occurred.

“Reportable conduct” means a wrongful act or omission that may constitute a basis for disciplinary action under this chapter or any state law or administrative rule that gives the board jurisdiction over the conduct of a licensee.

22.2(2) Reporting requirement. A report shall be filed with the board when a licensee has knowledge as defined in this rule that another person licensed by the board may have engaged in reportable conduct.

a. The report shall be filed with the board no later than 30 days from the date the licensee acquires knowledge of the reportable conduct.

b. The report shall contain the name and address of the licensee who may have engaged in the reportable conduct, the date, time, place and circumstances in which the conduct occurred, and a statement explaining how knowledge of the reportable conduct was acquired.

c. The final determination of whether or not wrongful acts or omissions have occurred is the responsibility of the board.

d. A physician is not required to report confidential communication obtained from a physician in the course and as a result of a physician-patient relationship or when a state or federal statute prohibits such disclosure.

e. Failure to report a wrongful act or omission in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

f. A licensee who makes a good-faith report pursuant to this chapter and Iowa Code section 272C.6(7) shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed.

653—22.3(272C) Mandatory reporting—disciplinary action in another jurisdiction. Each licensee, including a licensee holding an inactive license, shall report to the board every license revocation, suspension or other disciplinary action taken against the licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction. The report must be filed with the board within 30 days from the date of the action against the physician's license. Failure to report such disciplinary action in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee.

653—22.4(272C) Mandatory reporting—child abuse and dependent adult abuse. Each licensee shall report child abuse and dependent adult abuse as required by state and federal law. Failure to report child abuse and dependent adult abuse as required by state and federal law in accordance with this rule shall constitute a basis for disciplinary action against the licensee.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

CHAPTER 23
GROUNDS FOR DISCIPLINE

653—23.1(272C) Grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 150, 150A, 252J, 261 or 272C or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

23.1(1) Violating any of the grounds for the revocation or suspension of a license as listed in Iowa Code section 147.55, 148.6, 148E.8 or 272C.10.

23.1(2) Professional incompetency. Professional incompetency includes, but is not limited to, any of the following:

a. Willful or repeated gross malpractice;

b. Willful or gross negligence;

c. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;

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

e. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily ex-

MEDICAL EXAMINERS BOARD[653](cont'd)

exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances;

f. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in the state of Iowa;

g. Failure to meet the acceptable and prevailing standard of care when delegating or supervising medical services provided by another physician, health care practitioner, or other individual who is collaborating with or acting as an agent, associate, or employee of the physician responsible for the patient's care, whether or not injury results.

23.1(3) Practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the same or similar circumstances in this state, or when a physician is unable to practice medicine with reasonable skill and safety as a result of a mental or physical impairment or chemical abuse.

23.1(4) Unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise, and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics or 653—13.7(147,148,272C) or 653—13.20(147,148,150) as interpreted by the board.

23.1(5) Sexual misconduct. Engaging in sexual misconduct includes, but is not limited to, engaging in conduct set out at 653—subrule 13.7(4) or 13.7(6) as interpreted by the board.

23.1(6) Substance abuse. Substance abuse includes, but is not limited to, excessive use of alcohol, drugs, narcotics, chemicals or other substances in a manner which may impair a licensee's ability to practice the profession with reasonable skill and safety.

23.1(7) Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose includes, but is not limited to:

a. Self-prescribing or self-dispensing controlled substances.

b. Prescribing or dispensing controlled substances to members of the licensee's immediate family.

(1) Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the licensee conducts an examination, establishes a medical record, and maintains proper documentation.

(2) Immediate family includes the physician's spouse or domestic partner and either of the physician's, spouse's, or domestic partner's parents, stepparents or grandparents; the physician's natural or adopted children or stepchildren and any child's spouse, domestic partner or children; the siblings of the physician or the physician's spouse or domestic partner and the sibling's spouse or domestic partner; or anyone else living with the physician.

23.1(8) Physical or mental impairment. Physical or mental impairment includes, but is not limited to, any physical, neurological or mental condition which may impair a physician's ability to practice the profession with reasonable skill and safety. Being adjudged mentally incompetent by a court of competent jurisdiction shall automatically suspend a license for the duration of the license unless the board orders otherwise.

23.1(9) Felony criminal conviction. Being convicted of a felony in the courts of this state, another state, the United States, or any country, territory or other jurisdiction, as defined in Iowa Code section 148.6(2)“b.”

23.1(10) Violation of the laws or rules governing the practice of medicine or acupuncture of this state, another state, the United States, or any country, territory or other jurisdiction. Violation of the laws or rules governing the practice of medicine includes, but is not limited to, willful or repeated violation of the provisions of these rules or the provisions of Iowa Code chapter 147, 148, 148E, 150, 150A or 272C or other state or federal laws or rules governing the practice of medicine.

23.1(11) Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

23.1(12) Violation of an initial agreement or health contract entered into with the Iowa physician health program (IPHP).

23.1(13) Failure to comply with an evaluation order. Failure to comply with an order of the board requiring a licensee to submit to evaluation under Iowa Code section 148.6(2)“h” or 272C.9(1).

23.1(14) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy or by an acupuncturist.

23.1(15) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice acupuncture or medicine and surgery, osteopathic medicine and surgery or osteopathy in this state, and includes false representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

23.1(16) Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a licensee's having made misleading, deceptive or untrue representations as to the acupuncturist's or physician's competency to perform professional services for which the licensee is not qualified to perform by education, training or experience.

23.1(17) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making known to the public information or intention which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

a. Inflated or unjustified claims which lead to expectations of favorable results;

b. Self-laudatory claims that imply that the licensee is skilled in a field or specialty of practice for which the licensee is not qualified;

c. Representations that are likely to cause the average person to misunderstand; or

MEDICAL EXAMINERS BOARD[653](cont'd)

d. Extravagant claims or claims of extraordinary skills not recognized by the medical profession.

23.1(18) Obtaining any fee by fraud or misrepresentation.

23.1(19) Acceptance of remuneration for referral of a patient to other health professionals in violation of the law or medical ethics.

23.1(20) Knowingly submitting a false report of continuing education or failure to submit the required reports of continuing education.

23.1(21) Knowingly aiding, assisting, procuring, or advising a person in the unlawful practice of acupuncture or medicine and surgery, osteopathic medicine and surgery or osteopathy.

23.1(22) Failure to report disciplinary action. Failure to report a license revocation, suspension or other disciplinary action taken against the licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction 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.

23.1(23) Failure to report voluntary agreements. Failure to report any voluntary agreement to restrict the practice of acupuncture or medicine and surgery, osteopathic medicine and surgery or osteopathy entered into with this state, another state, the United States, an agency of the federal government, or any country, territory or other jurisdiction.

23.1(24) Failure to notify the board within 30 days after occurrence of any settlement or adverse judgment of a malpractice claim or action.

23.1(25) Failure to file the reports required by 653—22.2(272C) within 30 days concerning wrongful acts or omissions committed by another licensee.

23.1(26) Failure to comply with a valid subpoena issued by the board pursuant to Iowa Code sections 17A.13 and 272C.6 and 653—subrule 24.2(6) and rule 653—25.12(17A).

23.1(27) Failure to submit to a board-ordered mental, physical, clinical competency, or substance abuse evaluation or drug or alcohol screening.

23.1(28) The inappropriate use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a disability, to make a written signature or mark, however, may substitute in lieu of a signature a rubber stamp which is adopted by the disabled person for all purposes requiring a signature and which is affixed by the disabled person or affixed by another person upon the request of the disabled person and in the presence of the disabled person.

23.1(29) Maintaining any presigned prescription which is intended to be completed and issued at a later time.

23.1(30) Failure to comply with the recommendations issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, or with the protocols established pursuant to Iowa Code chapter 139A.

23.1(31) Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings initiated under this rule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

23.1(32) Student loan default or noncompliance with an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 and 653—16.2(261).

23.1(33) Improper management of medical records. Improper management of medical records includes, but is not limited to, failure to maintain timely, accurate, and complete medical records.

23.1(34) Failure to transfer medical records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient.

23.1(35) Failure to respond to or comply with a board investigation initiated pursuant to Iowa Code section 272C.3 and 653—24.2(17A,147,148,272C).

23.1(36) Failure to comply with the direct billing requirements for anatomic pathology services established in Iowa Code Supplement section 147.106.

This rule is intended to implement Iowa Code chapters 17A, 147, 148 and 272C.

CHAPTER 24

COMPLAINTS AND INVESTIGATIONS

653—24.1(17A,147,148,272C) Complaints.

24.1(1) Form and content of the complaint. A complaint shall be made in the form deemed acceptable by the board. The complaint shall contain the following information:

a. The full name, address and telephone number of the complainant, except in instances in which the identity of the complainant is unknown.

b. The full name, address and telephone number, if known, of the licensee.

c. A clear and accurate statement of the facts that apprises the board of the allegations against the licensee.

24.1(2) Place and time of filing of the complaint. A written complaint may be delivered in person, by mail or electronically to the board office. The office address is Iowa Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686. The board's Web site address is www.docboard.org/ia.

24.1(3) Immunity. A person shall not be civilly liable as a result of filing a report or complaint with the board or peer review committee, or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of the board. However, such immunity from civil liability shall not apply if such act is done with malice.

653—24.2(17A,147,148,272C) Investigations.

24.2(1) Investigations. Board staff shall open an investigative file upon receipt of a complaint or other appropriate information, or upon a motion of the board.

24.2(2) Complaint review committee.

a. The complaint review committee shall include the medical advisor, executive director, director of legal affairs and chief investigator. The complaint review committee shall review each case received by the board and shall utilize the following criteria to determine whether, and to what extent, each case shall be investigated by the board.

(1) If a case involves serious public safety issues, including but not limited to the following, the complaint review committee shall assign the case for investigation:

MEDICAL EXAMINERS BOARD[653](cont'd)

1. A clear violation of the laws and rules governing the practice of medicine;

2. Significant investigative history which raises serious concerns about the licensee's ability to practice medicine in a competent and safe manner;

3. Significant investigative history which raises serious concerns that the licensee has engaged in a pattern of unprofessional conduct or disruptive behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff;

4. Serious quality of care cases including severe patient harm, a pattern of inappropriate treatment, or serious medical errors;

5. Serious criminal conduct;

6. Substance abuse or other impairment that significantly impacts the physician's ability to practice medicine in a competent and safe manner;

7. Sexual misconduct;

8. Severe unprofessional conduct or disruptive behavior;

9. Disciplinary action by another regulatory authority; or

10. Unlicensed practice of medicine.

(2) If a case involves less serious public safety issues, including but not limited to the following, the complaint review committee may close the case administratively without investigation or review by the board:

1. Less serious quality of care cases that do not involve serious patient harm and are isolated occurrences rather than a part of a pattern of inappropriate treatment or serious medical errors;

2. A single incident involving a billing dispute;

3. A single incident involving rude behavior or personal conflicts;

4. A single incident of communication problems; or

5. Poor record-keeping practices that are not repeated or ongoing in nature and do not significantly affect patient care.

(3) If the board does not have legal jurisdiction over a matter, the complaint review committee may close the case administratively without investigation or review by the board.

(4) If a case involves a matter that is already being addressed by the board, the complaint review committee may close the case administratively without investigation or review by the board.

(5) If a case is appropriate for referral to the board's Iowa physician health program (IPHP) as provided in the board's rules, the complaint review committee may refer the case to the IPHP administratively without investigation or review by the board.

b. The board may reopen any case that has been closed administratively by the complaint review committee at any time for review and reconsideration.

c. The complaint review committee shall prioritize cases that are assigned for investigation. The committee may provide recommendations to investigators regarding the nature of investigation to be completed. The medical advisor shall provide medical advice to the investigators as part of the investigative process.

24.2(3) Licensee response. Prior to the commencement of a contested case proceeding, the licensee who is the subject of the investigation shall be contacted and given the opportunity to respond to the allegations under investigation. Contact with the licensee and the licensee's response to the allegations may be made in writing or through a personal interview.

24.2(4) Investigative reports. Upon completion of an investigation, the investigator shall prepare a report for the board's consideration. The report shall set forth the information obtained in the course of the investigation and the response of the licensee.

24.2(5) Review of investigations. The full board shall review each case that is not closed by the complaint review committee to determine the appropriate board action.

a. Closure without action. If the board closes the case without action, the investigative file shall be closed and the board shall notify the complainant and the licensee by letter. The board may reconsider and reopen a closed investigation at a later date should it be deemed appropriate.

b. Further investigation. The board may determine that a case requires further investigation.

c. Peer review. The board may refer a case to a peer review committee for further review.

d. Appearance. The board or the licensee may request that the licensee appear before the board to discuss a pending investigation. The board has discretion on whether to grant a licensee's request for an appearance. By electing to participate in the appearance, the licensee waives any objection to a board member's both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds that:

(1) Board members have personally investigated the case, and

(2) Board members have combined investigative and adjudicative functions.

If the executive director or director of legal affairs participates in the appearance, the licensee further waives any objection to having the executive director or director of legal affairs assist the board in the contested case proceeding.

e. Informal letter. If the board concludes that there is not probable cause to file disciplinary charges, the board may issue the licensee an informal letter of warning or education. A letter of warning or education is an informal communication between the board and the licensee and is not formal disciplinary action or a public record.

f. Statement of charges. If the board determines that there is probable cause for taking formal disciplinary action against a licensee, the board shall file a statement of charges, thereby commencing a contested case proceeding.

g. Combined statement of charges and settlement agreement. At the board's discretion, the board and the licensee may enter into a combined statement of charges and settlement agreement to resolve a contested case proceeding.

h. Referral to the board of physician assistant examiners. Prior to the initiation of formal disciplinary charges in a case involving the supervision of a physician assistant, the board shall forward a copy of the investigative report to the board of physician assistant examiners for its advice and recommendations. The board of physician assistant examiners shall respond within six weeks or sooner if requested by the board. The board shall consider the advice and recommendations of the board of physician assistant examiners.

24.2(6) Investigative subpoenas.

a. Issuance of an investigative subpoena. The executive director or a designee may, upon the written request of a board investigator or on the executive director's own initiative, subpoena books, papers, records, and other real evidence which is necessary for a board investigation.

b. Request for subpoena. A written request for a subpoena shall contain the following:

MEDICAL EXAMINERS BOARD[653](cont'd)

(1) The name and address of the person to whom the subpoena will be directed;

(2) A specific description of the books, papers, records or other real evidence requested;

(3) An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

(4) In the case of a subpoena request for mental health records, confirmation that the conditions described in paragraph 24.2(6)“d” have been satisfied.

c. Contents of subpoena. Each subpoena shall contain the following:

(1) The name and address of the person to whom the subpoena is directed;

(2) A description of the books, papers, records or other real evidence requested;

(3) The date, time and location for production or inspection and copying;

(4) The time within which a motion to quash or modify the subpoena must be filed;

(5) The signature, address and telephone number of the executive director or designee;

(6) The date of issuance; and

(7) A return of service attached to the subpoena.

d. Subpoena for mental health records. In addition to the requirements above, the board shall document the following prior to the issuance of a subpoena for mental health records:

(1) The nature of the complaint reasonably justifies the issuance of a subpoena;

(2) Adequate safeguards have been established to prevent unauthorized disclosure;

(3) An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

(4) An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

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

f. Hearing on motion. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

g. Appeal of decision on motion. A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

h. Final agency action. If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has

been concluded with no formal action, or (2) there is a final decision in the contested case.

24.2(7) Licensee-patient privileged communications. The privilege of confidential communication between the recipient and the provider of health care services shall not extend to afford confidentiality to medical records maintained by or on behalf of the subject of an investigation by the board, or records maintained by any public or private agency or organization, which relate to a matter under investigation by the board. No provision of Iowa Code section 622.10, except as it relates to an attorney of the licensee, or the stenographer or confidential clerk of the licensee's attorney, shall be interpreted to restrict access by the board or its staff or agents to information sought in an investigation being conducted by the board.

24.2(8) Investigation of malpractice lawsuits, judgments and settlements. The board shall review reports received from insurance carriers and licensees involving malpractice lawsuits, adverse judgments, and settlements. The board may choose to investigate such reports in the same manner as is prescribed in these rules for the review and investigation of other complaints to determine whether there is probable cause under applicable statutes or administrative rules for licensee discipline.

24.2(9) Confidentiality of investigative information. All investigative information obtained by the board or its employees or agents, including peer reviewers acting under the authority of the board, in the investigative process is privileged and confidential. Board investigative information is not subject to discovery, subpoena, or other means of legal compulsion for its release to any person other than the licensee and the board or its employees and agents and is not admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, the statement of charges, settlement agreement or decision of the board in a contested case disciplinary proceeding shall be a public record.

653—24.3(272C) Peer review. The board may assign any case to peer review for evaluation of the professional services rendered by the licensee and report to the board.

24.3(1) Registration of peer reviewers. The board may register peer reviewers by maintaining a list of peer reviewers in the board office. The board shall enter into a contract with peer reviewers to provide peer review services.

24.3(2) Case referral for peer review. The board or board staff shall determine which peer reviewers will review a case and what investigative information shall be referred to a peer reviewer.

24.3(3) Board assistance to peer reviewers. The board may provide investigatory and related services to assist the peer reviewers.

24.3(4) Confidentiality. Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).

24.3(5) Liability, defense and indemnity. Peer reviewers shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice. Peer reviewers shall be provided a defense by the state for civil lawsuits related to board peer review and shall be indemnified for all such judgments or settlements as provided by applicable law and administrative rules.

24.3(6) Written peer review report. Peer reviewers shall review the information provided by the board and provide a written report to the board.

MEDICAL EXAMINERS BOARD[653](cont'd)

a. The written report shall contain a statement of facts, an opinion of the peer reviewers whether the licensee violated the standard of care, and the rationale supporting the opinion.

b. The written report shall be signed by the peer reviewers concurring in the report.

c. If the peer reviewers find that they are unable to review the case, the investigative information shall be returned to the board.

653—24.4(272C) Order for mental, physical, substance abuse or clinical competency evaluation or alcohol or drug screening. All licensees of this board, as a condition of licensure, have a duty to submit to a mental, physical, substance abuse or clinical competency evaluation, or alcohol or drug screening, within a time specified by order of the board. Such evaluation may be ordered upon a showing of probable cause that the licensee suffers from a physical, physiological, mental or psychological condition, including substance abuse or addiction, which may impair the licensee's ability to discharge professional duties. The board may order a clinical competency evaluation upon a showing of probable cause of professional incompetence. The evaluation order and all information developed during the evaluation process shall remain part of a confidential investigative file pursuant to Iowa Code section 272C.6(4). The evaluation or screening shall be at the licensee's expense. All such orders shall be delivered to the licensee via personal service or by certified mail, return receipt requested.

24.4(1) Content of order. A board order shall include the following items:

a. Probable cause. A showing by the board that there is probable cause to order the licensee to complete an evaluation.

b. Nature of evaluation or screening. A description of the type of evaluation or screening that the licensee must complete.

c. Evaluation facility. The name and address of the examiner or evaluation or treatment or screening facility that the board has identified to perform the evaluation.

d. Scheduling the evaluation. The amount of time in which the licensee must schedule the required evaluation.

e. Completion of the evaluation. The amount of time in which the licensee must complete the evaluation.

f. Board release. A requirement that the licensee sign all necessary releases for the board to communicate with the evaluator or the evaluation or treatment program and to obtain any reports generated by the program.

24.4(2) Alternatives. Following issuance of the evaluation order, the licensee may request additional time to schedule or complete the evaluation or to request the board to approve an alternative evaluator or treatment facility. The board shall determine whether to grant such a request.

24.4(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request shall be filed within 14 days of issuance of the evaluation order. A licensee who fails to file a request for hearing to object to an evaluation order waives any future objection to the evaluation order in the event formal disciplinary charges are filed for failure to comply with the evaluation order or on any other grounds. The request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 653—Chapter 25.

24.4(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

24.4(5) Order and reports confidential. An evaluation order and any subsequent evaluation reports issued in the course of a board investigation are confidential investigative information pursuant to Iowa Code section 272C.6(4).

24.4(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the licensee's testimony or evaluation reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

24.4(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, clinical competency or substance abuse evaluation or alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

CHAPTER 25

CONTESTED CASE PROCEEDINGS

653—25.1(17A) Definitions. Except where otherwise specifically defined by law:

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

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

"Party" means the state of Iowa or the respondent.

"Presiding officer" means the board of medical examiners or a panel of the board. In a disciplinary contested case proceeding, the board may request that an administrative law judge make initial rulings on prehearing matters, and assist and advise the board in presiding at the disciplinary contested case hearing.

"Proposed decision" means a hearing panel's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full board did not preside.

"Quorum of the board" means a majority of the members of the board. Official action, including filing of formal charges or imposition of discipline, requires a majority vote of the members present.

653—25.2(17A) Scope and applicability. These rules apply to contested case proceedings conducted by the board of medical examiners.

653—25.3(17A) Combined statement of charges and settlement agreement. Upon a determination by the board that probable cause exists to take formal disciplinary action, the board and the licensee may enter into a combined statement of charges and settlement agreement.

25.3(1) Board discretion. The board has the sole discretion to determine whether to offer a licensee a combined statement of charges and settlement agreement.

25.3(2) Voluntary agreement. Entering into a combined statement of charges and settlement agreement is completely voluntary.

25.3(3) Contents. The combined statement of charges and settlement agreement shall include a brief statement of the

MEDICAL EXAMINERS BOARD[653](cont'd)

charges, the circumstances that led to the charges and the terms of settlement.

25.3(4) Resolution of the contested case. A combined statement of charges and settlement agreement shall constitute the resolution of a contested case proceeding.

25.3(5) Public record. A combined statement of charges and settlement agreement is a public record.

653—25.4(17A) Statement of charges.

25.4(1) Probable cause. In the event that the board finds there is probable cause for taking disciplinary action against a licensee, the board shall order that a contested case hearing be commenced by the filing of a statement of charges.

25.4(2) Legal review. Every statement of charges prepared by the board shall be reviewed by the office of the attorney general before it is filed.

25.4(3) Time requirements.

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

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

25.4(4) Delivery. Delivery of the statement of charges constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Restricted certified mail, return receipt requested; or

c. Publication, as provided in the Iowa Rules of Civil Procedure.

25.4(5) Contents. The statement of charges shall contain the following information:

a. A statement by the board showing that there is probable cause to file the statement of charges;

b. A statement of the time, place, and nature of the hearing;

c. A statement of the legal authority and jurisdiction under which the hearing is to be held;

d. A reference to the particular sections of the statutes and rules involved;

e. A short and plain statement of the matters asserted. This statement shall contain sufficient detail to give the respondent fair notice of the allegations so the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;

f. A statement that the party may be represented by legal counsel at the party's own expense;

g. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and of parties' counsel where known;

h. Reference to the procedural rules governing conduct of the contested case proceeding;

i. Reference to the procedural rules governing informal settlement;

j. Identification of the board as the presiding officer;

k. A statement requiring the respondent to submit an answer pursuant to subrule 25.10(2) within 20 days after receipt of the statement of charges; and

l. When applicable, notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1)"a" and rule 25.7(17A), that the presiding officer be an administrative law judge.

653—25.5(17A) Legal representation. Following the filing of the statement of charges, the office of the attorney general shall be responsible for the legal representation of the public interest in all proceedings before the board.

653—25.6(17A) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case shall be the board or a panel of the board. The board may request that an administrative law judge assist the board with initial rulings on prehearing matters. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 25.23(17A). In addition, an administrative law judge may assist and advise the board presiding at the contested case hearing.

653—25.7(17A) Presiding officer in a nondisciplinary contested case.

25.7(1) A "nondisciplinary contested case" includes licensure denial proceedings. Any party in a nondisciplinary contested case, including an appeal of a denial of licensure, who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a statement of charges which identifies or describes the presiding officer as the board.

25.7(2) The board may deny the request only upon a finding that one or more of the following apply:

a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

b. An administrative law judge with the qualifications identified in subrule 25.7(4) is unavailable to hear the case within a reasonable time.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

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

25.7(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 25.7(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

25.7(4) An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case shall have a juris doctorate degree.

25.7(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies. Such appeals must be filed within 10 days of the date of the issuance of the challenged ruling but no later than the time for compliance with the order or the date of hearing, whichever is first.

25.7(6) Unless otherwise provided by law, when reviewing a proposed decision of an administrative law judge in a nondisciplinary contested case upon intra-agency appeal, the board shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

MEDICAL EXAMINERS BOARD[653](cont'd)

653—25.8(17A) Disqualification.

25.8(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party.

b. Has personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties. If the licensee elects to appear before the board in the investigative process pursuant to 653—paragraph 24.2(5)“d,” the licensee waives this provision.

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties.

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years.

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case.

f. Has a spouse or relative within the third degree of relationship who:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case.

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

25.8(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include:

a. General direction and supervision of assigned investigators;

b. Unsolicited receipt of information which is relayed to assigned investigators;

c. Review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or

d. Exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 25.8(3) and 25.21(8).

By electing to participate in an appearance before the board pursuant to 653—paragraph 24.2(5)“d,” the licensee waives any objection to a board member’s both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds that the board member “personally investigated” the matter under this provision.

25.8(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall pro-

vide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

25.8(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 25.8(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The board shall determine the matter as part of the record in the case.

653—25.9(17A) Consolidation—severance.

25.9(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

25.9(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

653—25.10(17A) Pleadings.

25.10(1) Pleadings may be required by rule, by the statement of charges, or by order of the presiding officer.

25.10(2) Answer or appearance. An answer or appearance may be filed by the respondent within 20 days of service of the statement of charges. The answer or appearance shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any. If the attorney is not licensed to practice law in Iowa, the attorney must fully comply with Iowa Court Rule 31.14.

25.10(3) Amendment. Amendments to the statement of charges and to an answer may be allowed with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

653—25.11(17A) Service and filing.

25.11(1) Service—when required. Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the assistant attorney general designated as prosecutor for the state, simultaneously with its filing. Except for the original statement of charges and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

25.11(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person’s last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

25.11(3) Filing—when required. After the statement of charges, all documents in a contested case proceeding shall be filed with the board. All documents that are required to be served upon a party shall be filed simultaneously with the board.

25.11(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

MEDICAL EXAMINERS BOARD[653](cont'd)

25.11(5) Proof of mailing. Proof of mailing includes either:

- a. A legible United States Postal Service postmark on the envelope;
- b. A certificate of service;
- c. A notarized affidavit; or
- d. A certification in substantially the following form:
I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
(Date) (Signature)

653—25.12(17A) Discovery.

25.12(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, or by agreement of the parties, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

25.12(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 25.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

653—25.13(17A,272C) Subpoenas in a contested case.

25.13(1) Subpoenas issued in a contested case may compel the attendance of witnesses at depositions or hearing and may compel the production of books, papers, records, or other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas shall be issued by the executive director or designee upon written request. A request for a subpoena of mental health records must confirm the conditions described in 653—paragraph 24.2(6)“d” have been satisfied prior to the issuance of the subpoena.

25.13(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes:

- a. The name, address and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other real evidence requested;
- f. The date, time and location for production, or inspection and copying; and
- g. In the case of a subpoena request for mental health records, confirmation that the conditions described in 653—paragraph 24.2(6)“d” have been satisfied.

25.13(3) Each subpoena shall contain, as applicable:

- a. The caption of the case;
- b. The name, address and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records or other real evidence the person is commanded to produce;
- g. The date, time and location for production, or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address and telephone number of the board administrator or designee;
- j. The date of issuance; and
- k. A return of service attached to the subpoena.

25.13(4) Unless a subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail the subpoena to the requesting party, with a copy to the opposing party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

25.13(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case, who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

25.13(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct the hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

25.13(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

25.13(8) If the person contesting the subpoena is not a party to the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

653—25.14(17A) Motions.

25.14(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

25.14(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

25.14(3) The presiding officer may schedule oral argument on any motion.

MEDICAL EXAMINERS BOARD[653](cont'd)

25.14(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

653—25.15(17A) Prehearing conferences.

25.15(1) Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive director or designee, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the executive director's own motion shall be filed prior to the contested case hearing, but no later than 20 days prior to the hearing date.

25.15(2) The parties at a prehearing conference shall be prepared to discuss the following subjects, and the executive director or administrative law judge may issue appropriate orders concerning:

- a. The possibility of settlement.
- b. The entry of a scheduling order to include deadlines for completion of discovery.
- c. Stipulations of law or fact.
- d. Stipulations on the admissibility of exhibits.
- e. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.
- f. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.
- g. Stipulations for waiver of any provision of law.
- h. Identification of matters which the parties intend to request be officially noticed.
- i. Consideration of any additional matters which will expedite the hearing.

25.15(3) Prehearing conferences may be conducted by telephone unless otherwise ordered.

653—25.16(17A) Continuances. Unless otherwise provided, applications for continuances shall be filed with the board at least seven days before the date scheduled for hearing. If the application for continuance is not contested, the executive director or designee shall issue the appropriate order. If the application for continuance is contested, the matter shall be heard by the board as presiding officer or may be delegated by the board to an administrative law judge. No continuance shall be granted within seven days of the date of hearing except for extraordinary, extenuating or emergency circumstances.

25.16(1) A written application for a continuance shall:

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

An oral application for a continuance may be made if the board or the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within two days after the oral request unless that requirement is waived by the board or the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

25.16(2) The board or presiding officer may require documentation of any grounds for continuance. In determining whether to grant a continuance, the presiding officer may consider:

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

653—25.17(272C) Settlement agreements.

25.17(1) A contested case may be resolved by settlement agreement. Settlement negotiations may be initiated by any party at any stage of a contested case. No party is required to participate in the settlement process. The executive director, director of legal affairs, or prosecuting attorney shall have authority to negotiate on behalf of the board.

25.17(2) The full board shall not be involved in negotiations until a written proposed settlement is submitted to the full board for approval, unless both parties waive this prohibition.

25.17(3) Consent to negotiation by the respondent during settlement negotiation constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17. Thereafter, the prosecuting attorney is authorized to discuss settlement with the board chairperson or designee.

25.17(4) Settlement negotiations shall be completed at least seven days prior to the date scheduled for hearing whenever possible.

25.17(5) A settlement agreement is a public record.

653—25.18(17A) Hearing procedures.

25.18(1) A hearing may be conducted before the board or a panel of not less than three members of the board, at least two of whom are licensed by the board.

25.18(2) When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

25.18(3) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. The presiding officer may request that an administrative law judge perform any of these functions and may be assisted and advised by an administrative law judge.

25.18(4) All objections shall be timely made and stated on the record.

25.18(5) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to

MEDICAL EXAMINERS BOARD[653](cont'd)

their case. Any party may be represented by an attorney at the party's own expense.

25.18(6) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

25.18(7) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

25.18(8) Witnesses may be sequestered during the hearing.

25.18(9) The presiding officer shall have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

25.18(10) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.

b. The parties shall be given an opportunity to present opening statements.

c. The parties shall present their cases in the sequence determined by the presiding officer.

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.

e. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

25.18(11) The board members and administrative law judge have the right to question a witness. Examination of witnesses by board members is subject to properly raised objections.

25.18(12) The hearing shall be open to the public unless the licensee requests that the hearing be closed. At the request of either party, or on the board's own motion, the presiding officer may issue a protective order to protect documents which are privileged or confidential by law.

653—25.19(17A) Evidence.

25.19(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

25.19(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

25.19(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

25.19(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

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

25.19(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a

brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

25.19(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

653—25.20(17A) Default.

25.20(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

25.20(2) Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

25.20(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 25.24(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

25.20(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

25.20(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

25.20(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under the Iowa Rules of Civil Procedure.

25.20(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 25.23(17A).

25.20(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another statement of charges and the contested case shall proceed accordingly.

25.20(9) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 25.27(17A).

MEDICAL EXAMINERS BOARD[653](cont'd)

653—25.21(17A) Ex parte communication.

25.21(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the statement of charges, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 25.8(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

25.21(2) Prohibitions on ex parte communications commence with the issuance of the statement of charges in a contested case and continue for as long as the case is pending before the board.

25.21(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

25.21(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 25.11(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

25.21(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate to the extent necessary to carry out their function as presiding officer.

25.21(6) The executive director or director of legal affairs may be present during deliberations as long as that person is not disqualified from participating under rule 25.8(17A). The executive director or director of legal affairs shall not attempt to influence the board’s decision in the proceeding.

25.21(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 25.16(17A).

25.21(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the contested case process must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex

parte communication shall be submitted for inclusion in the record under seal by protective order.

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

25.21(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

25.21(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the board and its executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

653—25.22(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

653—25.23(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the executive director, administrative law judge, or hearing panel. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first. In determining whether to do so, the board shall consider:

1. The extent to which its granting the interlocutory appeal would expedite final resolution of the case; and
2. The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.

653—25.24(17A) Decisions.

25.24(1) Final decisions. When a quorum of the board presides over the reception of the evidence at the hearing, its decision is a final decision. A majority of the members of the board shall constitute a quorum. A final decision of the board is a public record. Final decisions shall be served on the parties in accordance with subrule 25.11(2).

25.24(2) Proposed panel decisions.

a. Panel of specialists. When a panel of three specialists presides over the hearing, the panel shall issue a proposed panel decision which shall include findings of fact but shall not include conclusions of law. A proposed decision of a panel of specialists, together with a transcript of the proceedings and the exhibits presented, shall be reviewed by the board within 30 days of the date the proposed decision was issued.

b. Panel of board members. When a panel of three or more board members presides over the hearing, the panel shall issue a proposed panel decision which shall include pro-

MEDICAL EXAMINERS BOARD[653](cont'd)

posed findings of fact, conclusions of law, and order. A proposed panel decision shall be reviewed by the board within 30 days of the date the proposed panel decision was issued. A proposed panel decision becomes a final decision without further proceedings unless appealed in accordance with paragraph 25.24(2)“c.”

c. Appeal of proposed panel decisions. A proposed panel decision pursuant to paragraph 25.24(2)“a” or “b” may be appealed to the full board by either party by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party.

(1) Following receipt of a notice of appeal, the board shall enter an order establishing a schedule for submission of briefs and oral argument. The parties shall serve their briefs on the board and shall furnish an additional copy to each party by first-class mail.

(2) Oral argument shall be heard by the board unless waived by both parties. The time granted each party for oral argument shall be established by the board.

(3) The record on appeal shall be the entire record made before the hearing panel or administrative law judge.

d. Confidentiality. At no time prior to the release of the final decision by the board shall a proposed decision be made public or distributed to any person other than the parties.

e. Requests to present additional evidence. A party may request the taking of additional evidence after the issuance of a proposed decision only by establishing that:

- (1) The evidence is material; and
- (2) The evidence arose after the completion of the original hearing; or
- (3) Good cause exists for failure to present the evidence at the original hearing; and
- (4) The party has not waived the right to present additional evidence.

A written request to present additional evidence must be filed with the notice of appeal or by a nonappealing party within 14 days of service of the notice of appeal. The board may remand a case to the hearing panel for further hearing or may itself preside at the taking of additional evidence.

653—25.25(272C) Disciplinary sanctions.

25.25(1) If the board concludes following a contested case hearing that discipline is warranted, the board has authority to impose any of the following disciplinary sanctions:

- a. Revocation.
- b. Suspension.
- c. Restriction.
- d. Probation.
- e. Additional education or training.
- f. Reexamination.
- g. Physical or mental evaluation or substance abuse evaluation, or alcohol or drug screening or clinical competency evaluation.
- h. Civil penalties not to exceed \$10,000.
- i. Citation and warning.
- j. Imposition of such other sanctions allowed by law as may be appropriate.

25.25(2) At the discretion of the board, the following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

- a. The relative seriousness of the violation.
- b. The facts of the particular violation.
- c. Any extenuating circumstances or other countervailing considerations.
- d. Number of prior complaints, informal letters or disciplinary charges.

e. Seriousness of prior complaints, informal letters or disciplinary charges.

f. Whether the licensee has taken remedial action.

g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

653—25.26(17A) Application for rehearing.

25.26(1) Who may file. Any party to a contested case proceeding may file an application for rehearing from a final order.

25.26(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in paragraph 25.24(2)“e” and subrule 25.26(5), the applicant requests an opportunity to submit additional evidence.

25.26(3) Filing deadline. The application shall be filed with the board within 20 days after issuance of the final decision.

25.26(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

25.26(5) Additional evidence. A request that additional evidence be considered on rehearing shall be governed by paragraph 25.24(2)“e.”

25.26(6) Disposition. Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

25.26(7) Only remedy. Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

653—25.27(17A) Stays of agency actions.

25.27(1) When available. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy.

25.27(2) When granted. In determining whether to grant a stay, the board shall consider the factors listed in Iowa Code section 17A.19(5)“c.” The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay.

653—25.28(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

653—25.29(17A) Emergency adjudicative proceedings.

25.29(1) Emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudica-

MEDICAL EXAMINERS BOARD[653](cont'd)

tive order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

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

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

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

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

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

25.29(2) Issuance of order.

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

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

(1) Personal delivery;

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

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

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

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

25.29(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order is issued, the board shall make reasonable immediate efforts to contact by telephone the person who is required to comply with the order.

25.29(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for hearing. The licensee subject to the emergency adjudicative order may request a continuance of the hearing at any time upon written application to the board. The board will be granted a continuance only in compelling circumstances upon written application.

653—25.30(17A) Appeal of license denial. An applicant may appeal a preliminary notice of denial of license by filing a written notice of appeal and request for hearing with the board within 30 days of the date that the preliminary notice of denial of license was mailed by the board. The hearing shall be a contested case and shall be conducted in accordance with this chapter.

653—25.31(17A) Judicial review and appeal. Judicial review of the board's action may be sought in accordance with

the terms of the Iowa administrative procedure Act, from and after the date of the board's order.

653—25.32(17A) Public record. The final decision of the board is a public record. The board shall report final decisions to the appropriate organizations, including but not limited to the National Practitioner Data Bank, the Federation of State Medical Boards and all media and other organizations that have filed a request for public information.

653—25.33(272C) Disciplinary hearings—fees and costs.

25.33(1) Definitions. As used in this rule in relation to a formal disciplinary action filed by the board against a licensee:

“Deposition” means the testimony of a person taken pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“Evaluation fees” means actual costs incurred by the board in a physical, mental, chemical abuse, other impairment-related examination or evaluation or clinical competency evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

“Expenses” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

“Transcript” means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

“Witness fees” means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purpose of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72, as applicable.

25.33(2) Disciplinary hearing fee. The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board.

An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the board as provided in subrule 25.33(6).

25.33(3) Recovery of related hearing costs. The board may also recover from the licensee the costs for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable in accordance with the following:

a. Transcript costs. The board may recover the costs for the court reporter and assess the transcript costs against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

(1) The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

(2) In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the agency appeal process.

MEDICAL EXAMINERS BOARD[653](cont'd)

b. Witness fees and expenses. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing. In addition, the board may assess a licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa, provided that the costs are calculated as follows:

(1) The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(2) The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(3) The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue guidelines in effect on January 1, 2005.

c. Deposition costs. Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

(1) The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

(2) If the deposition is of an expert witness, the deposition cost includes a reasonable fee for an expert witness. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such deposition, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

d. Medical examination fees. All costs of physical or mental examinations or substance abuse evaluations or drug screening or clinical competency evaluations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case shall be paid directly by the licensee.

25.33(4) Certification of reimbursable costs. The executive director or designee shall certify any reimbursable costs incurred by the board. The executive director shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on the party responsible for payment of the certified costs at the time of the filing.

25.33(5) Assessment of fees and costs. A final decision of the board imposing disciplinary action against a licensee shall include the amount of any disciplinary hearing fee assessed, which shall not exceed \$75. If the board also assesses reimbursable costs against the licensee, the board shall file a Certification of Reimbursable Costs which includes a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

a. Prior to seeking judicial review, a party shall file an objection to any fees or costs imposed by the board in order to exhaust administrative remedies. An objection shall be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application shall be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

25.33(6) Payment of fees and costs. All fees and costs assessed pursuant to this rule shall be made in the form of a check or money order made payable to Iowa Board of Medical Examiners and delivered by the licensee to the board office.

25.33(7) Failure to make payment. Failure of a licensee to pay any fees and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

25.33(8) Repayment receipts. Fees and costs collected by the board pursuant to this rule shall be considered repayment receipts as defined in Iowa Code section 8.2.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

CHAPTER 26

REINSTATEMENT AFTER DISCIPLINARY ACTION

653—26.1(17A) Reinstatement. Any person whose license has not been permanently suspended or revoked by the board may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

26.1(1) If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board order or the date of voluntary surrender.

26.1(2) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other cases before the board.

26.1(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

26.1(4) At the board's discretion, the board and the licensee may agree to enter into a reinstatement order by agreement, in lieu of a formal reinstatement hearing before the board.

26.1(5) A reinstatement order must be based upon the affirmative vote of a quorum of the board. The reinstatement order is public information pursuant to 653—25.32(17A).

26.1(6) A physician seeking reinstatement under this rule whose license became inactive during the period of suspension or revocation is also required to complete the reactivation process set forth in 653—9.13(147,148,150,150A) or 653—9.14(147,148,150,150A).

MEDICAL EXAMINERS BOARD[653](cont'd)

This rule is intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

[Filed 6/27/06, effective 8/23/06]
[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5230B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Athletic Training Examiners hereby amends Chapter 350, "Administrative and Regulatory Authority for the Board of Athletic Training Examiners," Iowa Administrative Code.

The amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 12, 2006, as **ARC 5027B**. A public hearing was held on May 2, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to the one published under Notice.

The amendment was adopted by the Board of Athletic Training Examiners on June 20, 2006.

This amendment will become effective August 23, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 148A and 272C.

The following amendment is adopted.

Amend rule **645—350.1(17A)** by adding the following **new** definition in alphabetical order:

"Overpayment" means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

[Filed 6/22/06, effective 8/23/06]
[Published 7/19/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/06.

ARC 5239B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to 2005 Iowa Acts, chapter 32, section 2, and Iowa Code sections 17A.4, 476.1, 479.29, and 479B.20 (2005), the Utilities Board (Board) gives notice that on June 27, 2006, the Board issued an order in Docket No. RMU-06-2, In re: Amendments to 199 IAC Chapters 9 and 12: Interstate Natural Gas Pipelines, "Order Adopting Amendments and Rescissions" amending 199 IAC Chapter 9 and rule 199 IAC 12.1(479A) and rescinding rules 199 IAC 12.3(479A), 12.4(479A), 12.5(479A), and 12.7(479A). The amendments and rescissions bring the Board's rules on restoration of agricultural land during and after construction of interstate natural gas pipelines into compliance with a recent federal court decision and the repeal of the provisions in Iowa Code chapter 479A providing for regulation by the Board of the construction of interstate natural gas pipelines.

Notice of Intended Action with the proposed amendments and rescissions was published in IAB Vol. XXVIII, No. 24 (5/24/06) p. 1710, as **ARC 5124B**. Comments concerning the proposed amendments were filed by the Consumer Advocate Division of the Department of Justice, Interstate Power and Light Company, and MidAmerican Energy Company. These amendments are identical to those published under Notice.

The order containing the background and support for this rule making can be found on the Board's Web site, www.state.ia.us/iub, or in hard copy in the Board's Record Center, 350 Maple Street, Des Moines, Iowa 50319-0069.

These amendments are intended to implement 2005 Iowa Acts, chapter 32, section 2, and Iowa Code sections 17A.4, 476.1, 479.29, and 479B.20 (2005).

These amendments will become effective August 23, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [9.1 to 9.7, 12.1, 12.3 to 12.5, 12.7] is being omitted. These amendments are identical to those published under Notice as **ARC 5124B**, IAB 5/24/06.

[Filed 6/28/06, effective 8/23/06]
[Published 7/19/06]

[For replacement pages for IAC, see IAC Supplement 7/19/06.]

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of Administrative Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

PRSRT STD
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195
