



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action 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.

KATHLEEN K. WEST, Administrative Code Editor

Telephone: (515)281-3355

STEPHANIE A. HOFF, Deputy Editor

(515)281-8157

Fax: (515)281-5534

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CITATION of Administrative Rules

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

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

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

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making 2007

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. 27 '06	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	***June 27***	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 27	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
Aug. 22	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	***Dec. 12***	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	***Dec. 26***	Jan. 16 '08	Feb. 20 '08	May 19 '08
Nov. 14	Dec. 5	Dec. 25	Jan. 9 '08	Jan. 11 '08	Jan. 30 '08	Mar. 5 '08	June 2 '08
Nov. 30	Dec. 19	Jan. 8 '08	Jan. 23 '08	Jan. 25 '08	Feb. 13 '08	Mar. 19 '08	June 16 '08
Dec. 12	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
8	Friday, September 21, 2007	October 10, 2007
9	Friday, October 5, 2007	October 24, 2007
10	Friday, October 19, 2007	November 7, 2007

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*****

SUBSCRIPTION INFORMATION

In 2008, mail subscriptions to the Iowa Administrative Bulletin and the Iowa Administrative Code will be discontinued, and Internet updating and printing options will be instituted through the Iowa General Assembly's Internet home page: www.legis.state.ia.us.

Iowa Administrative Bulletin

July 2007 through December 2007 \$169

Iowa Administrative Code Supplement

*July 2007 through December 2007 \$263

***Please note that if the Internet updating and printing options are not operational in January 2008, the above six-month subscriptions (July 2007 – December 2007) will be continued at no cost to the subscriber until the Internet updating and printing options become operational.**

Iowa Administrative Code

NOTE: In 2008, the format of the Iowa Administrative Code will change to 8 ½" x 11" pages.

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As an initial, one-time offer, subscribers may opt to receive at no cost up to five titles of the IAC. Subsequent replacement pages for these selected titles will be available only through the Internet printing options. Binders are not included in this option, but may be purchased separately.

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8 ½" x 11" Iowa Administrative Code binders \$20 each

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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Regional tourism marketing grant program, ch 35 IAB 9/12/07 ARC 6216B	Main Conference Rm., Second Floor 200 East Grand Ave. Des Moines, Iowa	October 8, 2007 3 to 4:30 p.m.
Demonstration fund, ch 105 IAB 9/12/07 ARC 6215B (See also ARC 6217B herein)	Main Conference Rm., Second Floor 200 East Grand Ave. Des Moines, Iowa	October 8, 2007 3 to 4:30 p.m.
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Initiation of complaints; duties of executive director, 11.4(1) IAB 9/12/07 ARC 6246B	Rm 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	October 3, 2007 1 p.m.
Initial administrator license, 14.114 IAB 9/12/07 ARC 6237B	Rm 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	October 3, 2007 1 p.m.
Renewal of administrator license, 17.7(3) IAB 9/12/07 ARC 6238B	Rm 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	October 3, 2007 1 p.m.
EDUCATION DEPARTMENT[281]		
Core content standards; phase II accreditation visit; accountability, 12.3, 12.4(11), 12.5, 12.8 IAB 8/15/07 ARC 6156B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 14, 2007 9 to 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Air quality regulations for grain elevators, 20.2, 22.1(1), 22.10, 22.100, 23.4(7) IAB 8/29/07 ARC 6186B	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	September 24, 2007 1 p.m.
	Amana Room Kirkwood Community College Cedar Rapids, Iowa	September 26, 2007 1 p.m.
	Clay County Regional Events Ctr. 800 W. 18th St. Spencer, Iowa	October 2, 2007 1 p.m.
INSURANCE DIVISION[191]		
Licensure and continuing education, 10.4, 10.5(2), 10.24, 11.3, 11.14 IAB 8/29/07 ARC 6202B	330 Maple St. Des Moines, Iowa	September 18, 2007 9 a.m.

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Military sales practices, ch 25 IAB 8/29/07 ARC 6203B	330 Maple St. Des Moines, Iowa	September 18, 2007 11 a.m.
Licensing of adjusters, ch 55 IAB 8/29/07 ARC 6204B	330 Maple St. Des Moines, Iowa	September 18, 2007 10 a.m.

NATURAL RESOURCE COMMISSION[571]

REAP selection criteria, 33.30(4), 33.40(5), 33.50(5) IAB 8/29/07 ARC 6200B	4th Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 28, 2007 10:30 a.m.
Zoning of Clear Lake, Cerro Gordo County40.55 IAB 8/29/07 ARC 6201B	4th Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 25, 2007 9 a.m.

NURSING BOARD[655]

Nursing education programs, ch 2 IAB 7/18/07 ARC 6040B	Des Moines West Room Holiday Inn Downtown 1050 Sixth Ave. Des Moines, Iowa	September 12, 2007 6 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Cosmetology, amendments to chs 59 to 65 IAB 9/12/07 ARC 6224B	Fifth Floor Board Conference Rm. Lucas State Office Bldg.. Des Moines, Iowa	October 2, 2007 9 to 9:30 a.m.
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PUBLIC SAFETY DEPARTMENT[661]

Sheriff and deputy sheriff uniforms, rescind ch 3; adopt ch 125 IAB 9/12/07 ARC 6222B	Rm 125, First Floor Conference Rm. Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 18, 2007 8:30 a.m.
Liquified petroleum gas piping—damage reporting and repair, 226.5(1), 226.6 IAB 9/12/07 ARC 6223B	Rm 125, First Floor Conference Rm. Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 17, 2007 8:30 a.m.
State building code, 300.4, 300.5, 301.3, 303.1, 303.4, 303.5 IAB 9/12/07 ARC 6214B	Rm 125, First Floor Conference Rm. Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 9, 2007 10 a.m.

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IAB 8/29/07 **ARC 6180B**
(See also **ARC 6181B** herein)

Conference Room 422
Lucas State Office Bldg.
Des Moines, Iowa

September 20, 2007
9 a.m.

UTILITIES DIVISION[199]

Certificates of franchise authority
for cable and video service, ch 44
IAB 8/1/07 **ARC 6124B**

350 Maple St.
Des Moines, Iowa

September 20, 2007
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:

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ARC 6216B**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 adopt new Chapter 35, “Regional Tourism Marketing Grant Program,” Iowa Administrative Code.

The proposed rules implement a new grant program. The source of funding for this new program is 2007 Iowa Acts, Senate File 302. Funds shall be used for purposes of regional tourism marketing. The rules describe the application requirements, the review process, and contract administration requirements.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on October 8, 2007. Interested persons may submit written or oral comments by contacting Nancy Landess, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4702.

The Department will hold a public hearing on Monday, October 8, 2007, from 3 to 4:30 p.m. to receive comments on these rules. The public hearing will be held in the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa.

These rules are intended to implement 2007 Iowa Acts, Senate File 302.

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.

Adopt the following **new** chapter:

CHAPTER 35
REGIONAL TOURISM MARKETING
GRANT PROGRAM

261—35.1(82GA,SF302) Purpose. The purpose of the regional tourism marketing grant program is to establish the procedures and guidelines for the distribution of department funding for out-of-state cooperative advertising grants.

261—35.2(82GA,SF302) Definitions.

“Cooperative advertising” means advertising placement that will appear in an out-of-state market targeted by the office of tourism of the Iowa department of economic development.

“Department” means the Iowa department of economic development.

“Eligible applicant” means a public or private member in a county in good standing in one of the three tourism regions.

“Match” means the local cash provided by the eligible applicant for advertising placement.

“Out-of-state market” means Illinois, Kansas, Minnesota, Missouri, Nebraska, South Dakota, or Wisconsin.

“Review committee” means a panel of members appointed by each tourism region (two per region) and a member of the department’s advertising agency of record to read and score submitted applications.

“Tourism regions” means these three tourism regions: Western Iowa Tourism Region (WITR), Central Iowa Tourism Region (CITR), and Eastern Iowa Tourism Association (EITA).

261—35.3(82GA,SF302) Eligible applicants.

35.3(1) Only members of tourism regions in good standing with the department are eligible to receive funding under this grant program.

35.3(2) The county in which the applicant is located must also be in good standing with its tourism region.

35.3(3) An organization may only submit one application for out-of-state advertising, either individually or as a partner in a joint advertising project. All partners in a joint advertising project must meet the eligible applicant criteria.

261—35.4(82GA,SF302) Use of funds.

35.4(1) Grant funds shall only be used to place advertising in out-of-state markets targeted by the department’s office of tourism. Grant funds shall not be used to pay for production costs. Grant funds may be used to place advertising in newspapers, magazines, radio, television, billboards or online.

35.4(2) Grant funds shall be used to pay for up to 50 percent of the advertising placement costs. The match for the advertising placement must be cash.

261—35.5(82GA,SF302) Application procedures and content.

35.5(1) Applications must be completed and submitted to the department.

35.5(2) Application materials may be obtained from the western (www.traveliowa.org), central (www.iowatourism.com), or eastern (www.easterniowatourism.org) Iowa tourism regions.

35.5(3) The source of funding for this grant program is a portion of gaming revenues that are allotted to the department quarterly. The grant application materials will indicate how much funding is available for the fiscal year and the maximum grant amount available.

35.5(4) An application shall include, at a minimum, the following:

a. The applicant’s name, mailing address, E-mail address, telephone number, contact person and federal employer identification number.

b. A description of the advertising to be placed including the market targeted, the date or dates on which the advertising will appear, and the size or length of the advertising.

c. An advertising plan and budget for the advertising including source of match dollars.

d. A timetable for the advertising.

e. The project goals.

f. The proposed method for tracking and measuring the effectiveness of the advertising and the return on investment.

261—35.6(82GA,SF302) Application review and approval procedures.

35.6(1) The review committee shall read and score all applications.

35.6(2) The review committee shall review applications to ensure that the following program eligibility requirements are met: the application is from an eligible applicant; the advertising will be placed out of state in a market targeted by

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

the office of tourism; a 50 percent match in cash is available; an advertising plan has been developed; and a method to measure the effectiveness of the advertising has been developed.

35.6(3) The review committee shall recommend to the department the applications to be approved for funding.

261—35.7(82GA,SF302) Funding of grants; contracting.

35.7(1) Funding amount. For fiscal year 2008, \$100,000 is available to the department for regional tourism marketing. The amount of funding available in subsequent years is contingent upon the amount allotted to the department pursuant to 2007 Iowa Acts, Senate File 302.

35.7(2) Contracts with tourism regions. The department will enter into a contract with a tourism region to provide funding for those applicants located in that tourism region that were approved by the department to receive grant funds.

35.7(3) Notice of approval. Successful applicants will be notified by their tourism region in writing of the approval of a grant, including any conditions and terms of the approval.

35.7(4) Contracts. Each successful applicant shall contract with its respective tourism region (WITR, CITR, EITA) for cooperative advertising funding approved by the department. The tourism region shall prepare an agreement that includes, but is not limited to, a description of the advertising placement, terms and conditions to receipt of grant funds, and the repayment requirements or other penalties imposed in the event the grant recipient does not fulfill its obligations in the agreement.

35.7(5) Each successful applicant shall submit to its tourism region within 60 days of the placement of advertising a written evaluation summarizing the results of the out-of-state marketing grant.

35.7(6) Each tourism region shall maintain adequate records to document and verify that grant funds were spent in accordance with the terms of the agreement.

These rules are intended to implement 2007 Iowa Acts, Senate File 302.

ARC 6215B**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 adopt new Chapter 105, “Demonstration Fund,” Iowa Administrative Code.

The rules implement a new program authorized by 2007 Iowa Acts, House File 829, section 1(3). The rules describe the purpose of the fund; the application submittal, review and approval procedures; and the contract administration provisions.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on October 8, 2007. Interested persons may submit written or oral comments by contacting Karen Merrick, Iowa Department of Economic De-

velopment, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4833.

The Department will hold a public hearing on Monday, October 8, 2007, from 3 to 4:30 p.m. to receive comments on these rules. The public hearing will be held in the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 6217B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2007 Iowa Acts, House File 829, section 1(3).

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 6246B**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 11, “Complaints, Investigations, Contested Case Hearings,” Iowa Administrative Code.

The proposed amendment reflects changes made in legislation to Iowa Code section 272.15 as amended by 2007 Iowa Acts, Senate File 588, section 33. The statute has been amended to expand who may initiate a complaint and also the duties of the executive director when reports of misconduct and inappropriate assignment are received.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, October 3, 2007, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, October 5, 2007. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secre-

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tary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272 and section 272.15 as amended by 2007 Iowa Acts, Senate File 588, section 33.

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 subrule 11.4(1) as follows:

11.4(1) Who may initiate. The following entities may initiate a complaint:

a. to c. No change.

d. The executive director of the board of educational examiners if the following circumstances have been met:

(1) The executive director receives information that a practitioner:

1. Has been convicted of a felony criminal offense, or a misdemeanor criminal offense wherein the victim of the crime was 18 years of age or younger, and the executive director expressly determines within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

2. Has been the subject of a founded report of child abuse placed upon the central registry maintained by the department of human services pursuant to Iowa Code section 232.71D and the executive director expressly determines within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

3. *Has not met a reporting requirement stipulated by Iowa Code section 272.15 as amended by 2007 Iowa Acts, Senate File 588, section 33, Iowa Code section 279.43, 281—subrule 102.11(2), 282—Chapter 11, or 282—Chapter 25; or*

3 4. Has falsified a license or authorization issued by the board; or

4 5. Has submitted false information on a license or authorization application filed with the board; and or

6. *Does not hold the appropriate license for the assignment for which the practitioner is currently employed; or*

7. *Has assigned another practitioner to perform services for which the practitioner is not properly licensed; and*

(2) The executive director verifies the information *or the alleged misconduct* through review of official records maintained by a court, ~~or~~ the department of human services registry of founded child abuse reports, ~~or~~ the practitioner licensing authority of another state, *the department of education, or the local school district, area education agency, or authorities in charge of the nonpublic school;* or the executive director is presented with the falsified license; and

(3) No other complaint has been filed.

e. The department of transportation if the licensee named in the complaint holds a behind-the-wheel instructor's certification issued by the department and the complaint relates to an incident or incidents arising during the course of driver's education instruction.

f. *An employee of the department of education who, while performing official duties, becomes aware of any alleged misconduct by an individual licensed under Iowa Code section 272.2.*

ARC 6237B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendment reflects changes made in legislation to Iowa Code section 272.9A as amended by 2007 Iowa Acts, Senate File 277, section 10. The length of the initial administrator license was changed to shorten the time an administrator has an initial license from two years to one.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, October 3, 2007, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, October 5, 2007. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272 and section 272.9A as amended by 2007 Iowa Acts, Senate File 277, section 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 amendment is proposed.

Amend rule 282—14.114(272) as follows:

282—14.114(272) Requirements for an administrator license.

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

a. Is the holder of or eligible for a standard license; and

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- b. Has three years of teaching experience; and
- c. Has completed 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 nonpublic 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 rule ~~282—17.7(272)~~ 282—17.13(272).

14.114(2) No change.

ARC 6238B**EDUCATIONAL EXAMINERS
BOARD[282]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 17, "Renewal of Licenses," Iowa Administrative Code.

The proposed amendment is needed to make subrule 17.7(3) consistent with changes made to rule 282—20.57(272) and will give practitioners a clearer understanding of the requirements to renew an administrator license.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, October 3, 2007, at 1 p.m. in Room 3 South-west, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, October 5, 2007. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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 subrule 17.7(3) as follows:

17.7(3) An applicant renewing an administrator license must submit documentation of completion of the evaluator training required in Iowa Code section 284.10.

A waiver of the evaluator training may apply under the following conditions with appropriate documentation of any of the following:

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

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

~~c. The person is an administrator in an accredited non-public school.~~

~~d. c.~~ The person is practicing in a licensed profession outside this state.

~~e. The person is practicing in a nonadministrative or nonevaluative position.~~

ARC 6226B**ELDER AFFAIRS
DEPARTMENT[321]****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 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 2, "Department of Elder Affairs," Iowa Administrative Code.

The proposed amendments clarify the complaint and contested case procedures for persons affected by actions of an Area Agency on Aging, the Department of Elder Affairs or the Commission of Elder Affairs and add a severability clause to the chapter. These changes will align the rules with Iowa Code chapter 17A.

Any interested person may make written suggestions or comments on the proposed amendments before 4:30 p.m. on November 1, 2007. Such written comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319; E-mailed to sherry.james@iowa.gov; or faxed to (515)725-3300.

These amendments are intended to implement Iowa Code chapter 231.

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 321—2.9(231) as follows:

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—2.9(231) Department complaint procedure and appeal procedures.

2.9(1) Aggrieved party identified. An aggrieved party is any agency, organization, or individual that alleges that the party's rights have been denied ~~by or that services provided were not in compliance with regulations or were substandard because of an action of the department, or the commission of elder affairs, an AAA or an AAA subcontractor.~~

2.9(2) Appeals ~~Complaints or appeals~~ to the department from the AAA level.

a. ~~Complaints and grievances Except in cases where an AAA is acting in its capacity as a Medicaid provider, complaints at the AAA level by participants, senior internship program applicants and enrollees, applicants to provide service, service providers, or subcontractors any aggrieved party shall be heard first by the AAA using the AAA's procedures.~~

b. Local complaint procedures ~~of an AAA or an AAA subcontractor shall be exhausted before contacting the department of elder affairs is contacted.~~

c. ~~Senior internship program applicants and enrollees shall use the procedure set forth in 321—subrule 10.5(5).~~

2.9(3) Request ~~Requests for an informal review or a contested case hearing.~~

a. *Informal review.* An aggrieved party or a party appealing an AAA-level decision has 30 calendar days from receipt of written notice of action ~~from the AAA or the department to request a an informal review by the department or a contested case hearing.~~

(1) *Any person who desires to pursue an informal settlement of any complaint may request a meeting with appropriate department staff. The request shall be in writing and shall be delivered to the Director, Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.*

(2) *The request must contain the subject matter(s) of the complaint and an explanation of all steps taken to resolve the matter prior to requesting an informal review.*

(3) *Upon receipt of the request for informal review, all formal contested case proceedings, if begun, are stayed.*

(4) *The department may, as a result of the informal review, negotiate a settlement of the complaint or, if appropriate, may send the matter back to the AAA for reconsideration.*

(5) *Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.*

(6) *When signed by the parties to a controversy, a proposed settlement shall represent final disposition of the matter in place of contested case proceedings, which shall be terminated.*

(7) *If the parties are unable to reach agreement during the informal review, the matter may, if requested, be handled by the department as a request for a contested case proceeding under Iowa Code chapter 17A and 321 IAC 13.**

(8) *A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding.*

b. *Contested case proceeding.*

(1) Within 15 calendar days of receipt of a request for a contested case hearing, the department ~~will transmit the requests to the department of inspections and appeals pursuant to rule 481—10.4(10A) and will notify the aggrieved party of this transmittal shall initiate a contested case proceeding under 321 IAC 13.* The department of inspections and appeals shall provide the hearing pursuant to 481—subrules 10.4(1) to 10.4(4).~~

(2) *If the controversy is a matter that is subject to a contested case proceeding under Iowa Code chapter 17A, parties may request a contested case proceeding at the conclusion of an unresolved informal review pursuant to 321 IAC 13.**

2.9(4) Appeals.

a. ~~Parties have 30 calendar days from the mailing date of the decision by the department of inspections and appeals to appeal the decision to the commission. If no appeal is filed, the hearing decision becomes final 30 days from the date of decision.~~

b. ~~Appeals to the commission shall be filed with the executive director of the department of elder affairs at the location identified in subrule 2.3(2).~~

c. ~~On appeal, the commission shall permit each party to file exceptions, present briefs and, with the consent of the commission, present oral arguments to the commission. The commission will establish a deadline for submission of the written exceptions, briefs and requests for continuances and will notify the parties of the deadline.~~

d. ~~The commission will base its decision on the evidence contained in the record made before the department of inspections and appeals and may permit the parties to submit new evidence at the commission's discretion.~~

e. ~~The commission will render a decision on the appeal within 60 days of the date that the appeal was filed unless either party has requested and received a continuance. For purposes of this paragraph, the 60 days shall exclude Saturdays, Sundays and holidays.~~

f. ~~Request for continuance shall be made in writing and the reasons for the request shall be stated. The request shall be filed with the department at the address given in subrule 2.3(2).~~

g. ~~The commission's decision on appeal is effective immediately unless otherwise specified in the decision.~~

2.9(5 4) Appeal by applicants denied designation as a planning and service area. Any applicant for designation as a planning and service area whose application is denied and who has been provided a hearing by the department of inspections and appeals ~~of elder affairs~~ and has received a written appeal decision by the commission may appeal the denial to the federal commissioner ~~assistant secretary~~ of the Administration on Aging in writing within 30 calendar days of receipt of the commission's decision.

2.9(6 5) Judicial review. A party that seeks judicial review shall first exhaust all administrative remedies as follows:

a. A party shall appeal the decision of the administrative law judge as provided in subrule 2.9(4) and receive a decision from the commission as provided in subrule 2.9(4), ~~paragraph "e."~~

b. Petition for judicial review of the commission's decision shall be filed within 30 calendar days after the decision is issued.

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

321—2.10(231) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

* See **ARC 6231B** herein.

ARC 6228B**ELDER AFFAIRS
DEPARTMENT[321]****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 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 10, “Senior Internship Program,” Iowa Administrative Code, and to adopt a new Chapter 10 with the same title.

The new chapter will align the rules with the recently amended laws contained in the federal Older Americans Act and the Iowa Code, specifically Iowa Code chapter 17A. The chapter also clarifies the procedures for appealing decisions of subproject sponsors related to enrollees and removes an obsolete word in the reference to the director of the Department of Elder Affairs.

Any interested person may make written suggestions or comments on the proposed rules before 4:30 p.m. on November 1, 2007. Such written comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319; E-mailed to sherry.james@iowa.gov; or faxed to (515)725-3300.

These rules are intended to implement Iowa Code chapter 231.

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.

Rescind 321—Chapter 10 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 10
SENIOR INTERNSHIP PROGRAM (SIP)**

321—10.1(231) Scope and purpose.

10.1(1) Scope. The senior internship program (SIP) encourages and promotes employment opportunities in both public and private sectors for individuals aged 55 and older. All procedures and rules used to operate this program shall be in accordance with Title V of the Older Americans Act as amended October 17, 2006, and implemented under 20 CFR 641, these rules, and the contractual agreement between the department and the subproject sponsor.

10.1(2) Purpose. The purpose of the senior internship program (SIP) is to promote meaningful employment opportunities for persons aged 55 and older under two different funding sources and differing criteria for eligibility: The first eligibility group receives federal dollars authorized under Title V of the Older Americans Act as amended October 17, 2006 (OAA Amendments), Pub L. No. 06-501, U.S.C. 3056, and implemented under 20 CFR Part 641 (April 9, 2004) to promote part-time, work-based training opportunities in local communities for unemployed, low-income individuals. The second eligibility group is funded by state appropriations and offers the services needed to assist underemployed or un-

employed job seekers in such areas as skill assessment, résumé and interview assistance, completion of applications, and job counseling. The goal of both groups is to obtain unsubsidized employment for eligible individuals.

321—10.2(231) Definitions. Words and phrases used in this chapter shall be as defined in 321—Chapter 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

“Assessment of job skills” means a process by which the senior internship program coordinator develops a written history of the work experience and related qualities that an individual possesses that would make the individual marketable as an employee.

“Authorized position” means an enrollment opportunity with the Senior Community Services Employment Program (SCSEP), or Title V, allocated by the department of elder affairs during a program year.

“Core services” means labor market information, an initial assessment of skill levels, and job search and placement assistance offered to a job applicant.

“Eligible individual” means a person who is 55 years of age or older who is served by SIP and who meets one of the two eligibility groups’ criteria.

“Equitable distribution” means the ratio of the total Title V authorized positions operated by the department and national sponsors compared to the number of authorized positions established on the basis of the eligible population.

“Host agency” means a public agency, private nonprofit organization, or private sector employer, other than a political party, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, which provides a work site and supervision for a participant.

“Individual employment plan” or “IEP” means the plan developed in partnership with a participant to reflect the participant’s needs as indicated by the assessment, as well as the expressed interests and desires of the participant.

“Low income” (SIP) means any person or persons whose actual individual or family income is not more than 125 percent of the poverty guidelines issued annually by the U.S. Department of Labor in accordance with Section 507(2) of the Older Americans Act.

“National sponsor” means Experience Works, AARP, Senior Services of America, Inc., or any other national organization which is allocated positions by the U.S. Department of Labor.

“One-stop delivery system” means a workforce system connecting employment, education, and training services into a coherent network of resources at the local, state, and national levels.

“Physical examination” means a medical examination performed by a physician or a medical professional under the supervision of a physician to determine if a participant is capable of fulfilling the duties of a work assignment.

“Physical examination waiver” means a signed statement by a participant or an applicant which verifies that the participant or applicant was offered the opportunity to take a physical examination but refused.

“Quarterly progress report” means the report on participant activity and characteristics submitted to the U.S. Department of Labor from information gathered from the subproject sponsors at the end of every three-month period during the fiscal year.

“Senior Community Services Employment Program” or “SCSEP” means the U.S. Department of Labor’s commonly

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referred to name for the Title V program.

“Senior internship program” or “SIP” means the program established under Iowa Code section 231.52.

“Senior internship program coordinator” means a person employed by the subproject sponsor whose responsibility is to develop jobs, advocate for the employment of eligible individuals, and provide employment services for eligible individuals, including Title V participants.

“Subproject sponsor” means a public or private nonprofit organization that provides program services on behalf of the grantee. Subproject sponsors are required to follow all applicable laws, rules, regulations and policy advisories.

“Temporary position” means the authorized positions which exceed the number allocated by the U.S. Department of Labor.

“Termination” means a separation from the program.

“Title V” means that portion of the federal Older Americans Act with that designation.

“Unsubsidized employment” means a position where wages, fringe benefits and other expenses for a terminated participant are not paid with SIP funds.

“Workforce Investment Act of 1998” means the law providing the framework for a national workforce preparation and employment system designed to meet both the needs of the nation’s businesses and the needs of job seekers and those who want to further their careers.

“Work site” means the actual location where participants perform their duties.

321—10.3(231) Eligibility for service.

10.3(1) To be eligible for participation for core services in the SIP, an applicant shall:

- a. Be aged 55 or older;
- b. Be a current resident of the state of Iowa; and
- c. Be unemployed or underemployed at the time of application.

10.3(2) To be eligible for the SIP Title V subsidized employment program, participants shall meet the following criteria:

- a. Be aged 55 or older;
- b. Be unemployed; and
- c. Meet income guidelines established annually by the U.S. Department of Labor relating to Title V eligibility.

10.3(3) Priority eligibility. A person who is eligible for Title V and who has priority status as defined in paragraph 10.5(2)“c” will be given first consideration for a Title V position.

321—10.4(231) Funding.

10.4(1) SIP shall be funded by:

- a. Title V of the Older Americans Act as amended October 17, 2006.
- b. SIP state appropriations.
- c. Other nonfederal sources.

10.4(2) Title V funds and state funds shall be allotted among the SIP subproject sponsors according to the number of Title V slots designated for contracted projects.

10.4(3) If two or more subproject sponsors combine resources, the subproject sponsors shall be treated as one agency for funding purposes.

10.4(4) Title V funds and SIP state funds shall not be carried over.

10.4(5) Federal Title V funds and SIP state appropriations shall be allocated through a contractual agreement between the department and the subproject sponsor.

321—10.5(231) Program requirements.

10.5(1) Participating agencies. Public, private and not-for-profit organizations will be contacted to respond to a request for proposal (RFP). Agencies will be selected to operate SIP through the request for proposal process, and those selected will become subproject sponsors as defined in paragraph 10.6(2)“a.”

10.5(2) Subproject sponsor responsibilities. Sponsor responsibilities for SIP shall include the following:

a. Implementation of recruitment methods that ensure that the maximum number of eligible individuals have access to and participate in employment opportunities and the Title V program; and

b. Subproject sponsors shall designate a member of their staff as a senior internship program coordinator to ensure program performance; and

c. For persons identified eligible for the Title V portion of the program, all procedures and rules shall be in accordance with Title V of the Older Americans Act as amended October 17, 2006, and 20 CFR 641. For Title V participants, subproject sponsors shall:

- (1) Minimize the number of vacant part-time positions;
- (2) List all vacant positions with the local workforce development center;
- (3) Enroll individuals in the Title V program according to the priorities established by the U.S. Department of Labor;
- (4) Ensure that recruitment efforts are targeted toward minority, limited English-speaking eligible individuals and individuals with the greatest economic need;
- (5) Meet the state performance measures established in the request for proposal:

1. The first year a subproject sponsor fails to meet required performance measures, technical assistance will be provided and a corrective action plan will be required;

2. After the second consecutive year of failure to meet required performance measures, the funds and Title V positions will be reallocated;

(6) Develop job opportunities for job-ready participants by the following methods:

1. Coordinate with the local workforce development center in registering and placing older workers;

2. Contact and educate private employers concerning the resources older workers bring to the labor force and assist the employer in developing job sharing, job restructuring and other techniques to increase opportunities for older workers;

3. Encourage host agencies to employ the participant in their regular workforce as originally agreed; and

4. Coordinate with other local employment and training programs in identifying jobs or training opportunities for participants;

(7) Follow up on each participant twice during the first 90 days of unsubsidized employment:

1. Follow-up shall occur at 30 and 90 days with the results documented in participants’ individual employment plans; and

2. Participants found to be unemployed shall be considered for reenrollment;

(8) Assist participants in accessing approved training sessions;

(9) Provide participants and host agencies with orientation to program purposes, goals and requirements;

(10) Provide access to supportive services where needed by a participant for participation in the program;

(11) Provide written job descriptions to participants immediately after entry into the program;

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(12) Provide each participant with a copy of the host agency grievance procedures and the subproject sponsor's grievance procedures;

(13) Complete an individual employment plan (IEP) for each Title V participant based on an assessment conducted by the subproject sponsor and updated semiannually with the participant to use as an ongoing development plan;

(14) Ensure outreach to those in greatest economic need, including minorities and limited English-speaking individuals;

(15) Maintain the authorized enrollment level and provide for temporary positions unless approval has been received from the department to operate at a decreased level;

(16) Perform evaluations of each host agency at least annually;

(17) Coordinate and cooperate with national sponsors in the establishment of authorized positions in each county in accordance with equitable distribution requirements as appropriate;

(18) Maintain records and reports required by the U.S. Department of Labor and the department of elder affairs;

(19) Comply with maintenance of effort (MOE) requirements; and

(20) Provide or arrange through third parties a percentage of the cost of the project as designated in the subproject sponsor contractual agreement:

1. Subproject sponsor contributions may be cash or in-kind or a combination of both.

2. Projects may generate a fee for service or charge a host agency fee in accordance with current U.S. Department of Labor administrative regulations and the terms and conditions of the grant award. Such program income shall be added to the federal funds committed to the project and shall be used to further eligible project or program objectives.

10.5(3) Program coordination with one-stop delivery system.

a. Subproject sponsors shall coordinate the SIP with the one-stop delivery system as established under Section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)) to ensure opportunities for unsubsidized employment.

b. Subproject sponsors shall enter into a memorandum of understanding with the local workforce investment board in accordance with Section 121(c) of the Act.

c. Subproject sponsors shall provide a copy of the current memorandum of understanding to the department.

10.5(4) Department responsibilities. The department shall:

a. Issue a request for proposal for application for senior internship funds;

b. Monitor subproject sponsors at least annually as required in subrule 10.7(2);

c. Provide training and technical assistance to subproject sponsors;

d. Provide training workshops for SIP coordinators and other subproject sponsor employment staff, subject to availability of funding;

e. Coordinate the allocation of authorized positions with national sponsors according to equitable distribution requirements;

f. Report to the U.S. Department of Labor annually on the status of equitable distribution efforts;

g. Submit to the governor a state senior employment services coordination plan consistent with the provisions of Title V;

h. Report to the U.S. Department of Labor as required by Title V of the federal Older Americans Act;

i. Coordinate the SIP with the department of workforce development, the department of education, the department of economic development, and other agencies which provide employment services to elder Iowans; and

j. Maintain records as required by 321—subrule 5.13(1).

10.5(5) Complaint procedures. The department shall resolve complaints of applicants, participants, subproject sponsors and host agencies by following these procedures:

a. Any adverse action taken against a participant shall be issued to the participant in writing, stating the reasons for the determination, the participant's right to appeal, and the procedures to follow in the appeal process.

b. Subproject sponsors shall develop complaint procedures and an appeal process to resolve any issue arising between the sponsor and a participant or applicant. Procedures shall provide the following as a minimum:

(1) An opportunity for an informal conference and immediate resolution at the lowest level possible;

(2) Formal procedures for filing the complaint in writing for review by the subproject sponsor or the designee of the subproject sponsor;

(3) The right of the participant to appeal the subproject sponsor's final decision in writing to the department within 15 days of the date of the decision; and

(4) All lower level appeals provided by the subproject sponsor must be exhausted before appealing to the department.

c. The department shall determine whether the complaint is of a nature to initiate an informal review or a contested case proceeding as set forth in rule 321—2.9(231) and 321—Chapter 13.*

d. Complaints alleging violation of law may be appealed to the U.S. Department of Labor if not resolved by the host agency, subproject sponsor or the department within 60 days of the original filing.

e. Complaints alleging discrimination on the basis of race, color, sex, national origin, handicap or age which are not resolved by the host agency, the subproject sponsor or the department within 60 days may be filed with the Director, Office of Civil Rights, U.S. Department of Labor, Washington, DC 20210. These complaints will be handled in accordance with the procedures in 29 CFR Parts 31 and 32 (July 1, 1990).

f. Complaints not alleging discrimination or violation of statute may be appealed to the department pursuant to paragraph 10.5(5)“c” but are not subject to appeal to the U.S. Department of Labor.

321—10.6(231) Funding criteria.

10.6(1) Application. Application for SIP funds shall be made by proposals submitted to the department.

10.6(2) Award. The department shall select subproject sponsors in accordance with the following criteria:

a. The subproject sponsor shall be a public, private or nonprofit organization with proven management and administrative capabilities to provide employment and training services to older workers;

b. The department may choose among competing subproject sponsors based upon the department's determination of the sponsor's ability to comply with requirements set forth in a request for proposal;

* See **ARC 6231B** herein.

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c. Factors which may be considered include evaluations of the existing management and administrative capabilities of the organization;

d. Upon review and approval of the application by the department, the applicant shall be notified of grant approval through a notification of grant award;

e. Formal procedures for selecting a subproject sponsor will include the rebidding of a contract for services every five years. Contracts will be awarded following the request for proposal competition and may be renewed for a one-year budget period on a noncompetitive basis. Awards will be subject to availability of funds, satisfactory progress of the project, and a determination that continued funding is in the best interest of the department and the project;

f. At the the department's discretion, approved positions and funds may be reallocated from one subproject sponsor to another during the program year to further achieve the required performance levels.

10.6(3) Denial of award. An application for SIP funding by a subproject sponsor may be denied if the subproject sponsor does not perform according to the guidelines of these rules or fails to meet the requirements of the Older Americans Act as amended October 17, 2006.

10.6(4) Appeal. An appeal to a proposed decision made pursuant to these rules may be made according to the procedures contained in Iowa Code chapter 17A and 321—Chapter 13 and must be filed within 30 days of the issuance of the proposed decision.*

10.6(5) Reallocation. Reallocation of Title V funds may be made by the director according to the criteria defined in 321—paragraph 5.8(1)“b.”

321—10.7(231) Monitoring and record keeping.

10.7(1) Subproject sponsor duties. The subproject sponsor shall:

a. Submit performance, fiscal and program reports to the department of elder affairs in accordance with procedures established by the department;

b. Maintain files on each Title V participant containing the following: Immigration and Naturalization Service I-9 (Proof of Citizenship), application, enrollment form, recertifications (if applicable), skills assessments, training record, terms of employment agreement, physical examination report (or properly executed waiver), individual employment plan (IEP), job description, performance evaluations, disciplinary actions, payroll records, and termination forms (if applicable); and

c. Maintain files for each host agency or work site, which shall include:

(1) The host agency or work site agreement containing relevant program requirements;

(2) Evidence that the host agency or work site participant supervisor has received orientation; and

(3) Host agency or work site evaluation reports.

10.7(2) Department duties. The department shall:

a. Conduct desk monitoring of the SIP. The department may conduct on-site monitoring if circumstances require an inspection of subproject sponsor records;

b. Conduct an on-site assessment of each SIP subproject at least annually. The subproject sponsor shall be informed in writing of findings and recommended corrective actions. Assessment reports and responses shall be kept on file at the department and shall be open to inspection by authorized state and federal officials;

c. Maintain files on Title V participants that include applications, recertifications, physical examination records, physical examination waivers, and termination forms (if applicable); and

d. Maintain financial records as required by statute, regulation, administrative rule, or technical bulletin.

321—10.8(231) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code chapter 231.

ARC 6229B**ELDER AFFAIRS
DEPARTMENT[321]****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 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 11, “Waivers or Variances from Administrative Rules,” Iowa Administrative Code.

The purpose of these amendments is to change references to specific waiver language and to add a severability clause to the chapter.

Any interested person may make written suggestions or comments on the proposed amendments before 4:30 p.m. on November 1, 2007. Such written comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319; E-mailed to sherry.james@iowa.gov; or faxed to (515)725-3300.

These amendments are intended to implement Iowa Code chapter 231.

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 321—11.2(17A,231,ExecOrd11) as follows:

321—11.2(17A,231,ExecOrd11) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the department in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule. Specific waiver provisions are provided in 321—24.26(231D); 321—25.24(231C); and 321—subrule 9.2(4) 321—Chapters 4, 6 and 9.

*See ARC 6231B herein.

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ITEM 2. Adopt **new** rule 321—11.17(17A,231, ExecOrd11) as follows:

321—11.17(17A,231,ExecOrd11) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

ARC 6231B

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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 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to adopt new Chapter 13, "Rules and Practices in Contested Cases," Iowa Administrative Code.

The proposed new chapter will establish the procedures for informal settlement of complaints and for contested cases regarding actions of the Department of Elder Affairs or Area Agencies on Aging. This chapter aligns department policies with Iowa Code chapter 17A.

Any interested person may make written suggestions or comments on the proposed rules before 4:30 p.m. on November 1, 2007. Such written comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319; E-mailed to sherry.james@iowa.gov; or faxed to (515)725-3300.

These rules are intended to implement Iowa Code chapters 17A and 231.

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 **new** chapter is proposed.

CHAPTER 13

RULES AND PRACTICES IN CONTESTED CASES

321—13.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the department of elder affairs.

321—13.2(17A) Definitions. Except where otherwise specifically defined by law:

"Commission" means the commission of elder affairs as established in Iowa Code chapter 231.

"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.

"Department" means the department of elder affairs.

"Director" means the director of the department.

"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 each person or department named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the commission, the commission's designee or an administrative law judge.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commission did not preside.

321—13.3(17A) Time requirements.

13.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

13.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

321—13.4(17A) Requests for contested case proceeding.

Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the department action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

321—13.5(17A) Notice of hearing.

13.5(1) Delivery. Delivery of the notice of hearing 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. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

13.5(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the department or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the department or the state and of parties' counsel, where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;

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h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer.

321—13.6(17A) Presiding officer.

13.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer.

13.6(2) The department of elder affairs may deny the request only upon a finding that one or more of the following apply:

a. Neither the department nor any officer of the department under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

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

13.6(3) The department shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

13.6(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the department. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

13.6(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

321—13.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

321—13.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

321—13.9(17A) Disqualification.

13.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

13.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other 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 13.9(3) and 13.23(9).

13.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

13.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 13.9(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.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an inter-

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locutory appeal under rule 13.25(17A) and seek a stay under rule 13.29(17A).

321—13.10(17A) Consolidation—severance.

13.10(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.

13.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

321—13.11(17A) Pleadings.

13.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

13.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

13.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim. An answer 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. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

13.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

321—13.12(17A) Service and filing of pleadings and other papers.

13.12(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor 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(2), the party filing a document is responsible for service on all parties.

13.12(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.

13.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Department of Elder Affairs, Jessie M. Parker Building, 510 E. 12th Street, Suite 2, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the department.

13.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the department, 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.

13.12(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) 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)

321—13.13(17A) Discovery.

13.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

13.13(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 13.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

13.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

321—13.14(17A) Subpoenas.**13.14(1) Issuance.**

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

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13.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

321—13.15(17A) Motions.

13.15(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.

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

13.15(3) The presiding officer may schedule oral argument on any motion.

13.15(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 department or an order of the presiding officer.

13.15(5) Motions for summary judgment. 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 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 13.28(17A) and appeal pursuant to 13.27(17A).

321—13.16(17A) Prehearing conference.

13.16(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 department to all parties.

For good cause the presiding officer may permit variances from this rule.

13.16(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; and

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

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

13.16(3) In addition to the requirements of subrule 13.16(2), the parties at a prehearing conference may:

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

13.16(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.

321—13.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

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

13.17(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.

321—13.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with department rules. Unless otherwise provided, a withdrawal shall be with prejudice.

321—13.19(17A) Intervention.

13.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene

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unless the time period is extended or shortened by the presiding officer.

13.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

13.19(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

13.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

321—13.20(17A) Hearing procedures.

13.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

13.20(2) All objections shall be timely made and stated on the record.

13.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

13.20(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.

13.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

13.20(6) Witnesses may be sequestered during the hearing.

13.20(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. 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 examina-

tion and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

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

321—13.21(17A) Evidence.

13.21(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.

13.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

13.21(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.

13.21(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.

13.21(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.

13.21(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.

321—13.22(17A) Default.

13.22(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.

13.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

13.22(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 rule 13.27(17A). A motion to vacate must state all facts relied upon by the moving party which establishes 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

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sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

13.22(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.

13.22(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.

13.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

13.22(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 13.25(17A).

13.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

13.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

13.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 13.29(17A).

321—13.23(17A) Ex parte communication.

13.23(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. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 13.9(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.

13.23(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.

13.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

13.23(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 13.12(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.

13.23(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.

13.23(6) The director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 13.23(1).

13.23(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 13.17(17A).

13.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). 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.

13.23(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.

13.23(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 department. Violation of ex parte communication prohibitions by department personnel shall be reported to the commission of elder affairs for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

321—13.24(17A) Recording costs. Upon request, the department 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.

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Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

321—13.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

321—13.26(17A) Final decision.

13.26(1) When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

13.26(2) When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the department within the time provided in rule 13.27(17A).

321—13.27(17A) Appeals and review.

13.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

13.27(2) Review. The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

13.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

13.27(4) 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 commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

13.27(5) Scheduling. The department shall issue a schedule for consideration of the appeal.

13.27(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The commission may shorten or extend the briefing period as appropriate.

321—13.28(17A) Applications for rehearing.

13.28(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

13.28(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 department decision on the existing record and whether, on the basis of the grounds enumerated in subrule 13.27(4), the applicant requests an opportunity to submit additional evidence.

13.28(3) Time of filing. The application shall be filed with the department within 20 days after issuance of the final decision.

13.28(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. If the application does not contain a certificate of service, the department shall serve copies on all parties.

13.28(5) Disposition. Any application for a rehearing shall be deemed denied unless the department grants the application within 20 days after its filing.

321—13.29(17A) Stays of department actions.

13.29(1) When available.

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

b. Any party to a contested case proceeding may petition the department for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

13.29(2) When granted. In determining whether to grant a stay, the presiding officer or commission shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

13.29(3) Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

321—13.30(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.

321—13.31(17A) Emergency adjudicative proceedings.

13.31(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the department may issue a

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written order in compliance with Iowa Code section 17A.18 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 department by emergency adjudicative order. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

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

13.31(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the department;

(3) Certified mail to the last address on file with the department;

(4) First-class mail to the last address on file with the department; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

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

13.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

13.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the department 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 department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing.

321—13.32(17A) Informal settlement.

13.32(1) A party to a controversy that may culminate in contested case proceedings may attempt informal settlement of the controversy by complying with the procedures set forth in this subrule. No party to a controversy shall be re-

quired to settle the controversy by submitting to informal settlement procedures.

a. Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

b. When signed by the parties to a controversy, a proposed settlement shall represent final disposition of the matter in place of contested case proceedings.

c. Where there are more than two parties to a controversy before the department, a separate settlement between one party and the department is permissible.

d. A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding.

13.32(2) A party to a contested case proceeding may attempt informal settlement by complying with the procedures set forth in this subrule. No party shall be required to settle the contested case proceeding by submitting to informal settlement procedures.

a. Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

b. When signed by the parties to the contested case proceeding and the presiding officer, a proposed settlement shall represent final disposition of the proceeding.

c. Where there are more than two parties to a contested case proceeding involving the department, a separate settlement between one party and the department is permissible.

d. A proposed settlement which is not accepted or signed by the parties and the presiding officer shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

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

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DEPARTMENT[321]****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 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 18, "Declaratory Orders," Iowa Administrative Code, and to adopt a new Chapter 18 with the same title.

These proposed rules establish a procedure to handle requests for informal review of specific circumstances and clarify procedures for the issuance of declaratory orders.

Any interested person may make written suggestions or comments on these proposed rules before 4:30 p.m. on November 1, 2007. Written comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to sherry.

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james@iowa.gov; or faxed to (515)725-3300.

These rules are intended to implement Iowa Code chapters 17A and 231.

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.

Rescind 321—Chapter 18 and adopt the following **new** chapter in lieu thereof:

CHAPTER 18
DECLARATORY ORDERS

321—18.1(17A) Petition for declaratory order. Any person may file a petition with the department of elder affairs for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department of elder affairs at the Iowa Department of Elder Affairs, Attn: Director, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. A petition is deemed filed when it is received by that office. The department of elder affairs shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF ELDER AFFAIRS

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 18.7(17A).
9. The petitioner's state identification number, if applicable.

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 per-

son to whom communications concerning the petition should be directed.

Application requests for an informal review of department policy, law or rules in relation to specific facts shall be in writing and may be submitted electronically or by mail. The request must recite all pertinent facts and questions. The department response to a request for informal review shall not be considered a declaratory order as specified in Iowa Code chapter 17A. The department may, at its discretion, choose to issue a declaratory order in response to a request for informal review.

321—18.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department of elder affairs shall give notice of the petition to all persons not served by the petitioner pursuant to 18.6(17A) to whom notice is required by any provision of law. The department of elder affairs may also give notice to any other persons.

321—18.3(17A) Intervention.

18.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order (after time for notice under 18.2(17A) and before 30-day time for department action under 18.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

18.3(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 of elder affairs.

18.3(3) A petition for intervention shall be filed at the department of elder affairs. Such a petition is deemed filed when it is received by that office. The department of elder affairs will 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:

BEFORE THE DEPARTMENT OF ELDER AFFAIRS

Petition by (Name of 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.

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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.

321—18.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department of elder affairs may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

321—18.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319-9025.

321—18.6(17A) Service and filing of petitions and other papers.

18.6(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.

18.6(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 Director, Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319-9025. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department of elder affairs.

18.6(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 rule 321—13.12(17A).*

321—18.7(17A) Consideration. Upon request by petitioner, the department of elder affairs must schedule a brief and informal meeting between the original petitioner, all intervenors, and the department of elder affairs, a member of the department of elder affairs, or a member of the staff of the department of elder affairs, to discuss the questions raised. The department of elder affairs may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department of elder affairs by any person.

321—18.8(17A) Action on petition.

18.8(1) Within the time allowed by Iowa Code section 17A.9(3) after receipt of a petition for a declaratory order, the department of elder affairs or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

18.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 321—13.2(17A).*

321—18.9(17A) Refusal to issue order.

18.9(1) The department of elder affairs shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.

2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department of elder affairs to issue an order.

3. The department of elder affairs does not have jurisdiction over the questions presented in the petition.

4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them.

5. 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.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

8. 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 a department decision already made.

9. 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.

10. The petitioner requests the department of elder affairs to determine whether a statute is unconstitutional on its face.

18.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

18.9(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.

321—18.10(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.

321—18.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

321—18.12(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 department of elder affairs, 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 department of elder affairs. The issuance of a declaratory order constitutes final department action on the petition.

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

* See **ARC 6231B** herein.

ARC 6224B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences hereby gives Notice of Intended Action to amend Chapter 59, "Administrative and Regulatory Authority for the Board of Cosmetology Arts and Sciences Examiners," Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors for Cosmetology Arts and Sciences," Chapter 61, "Licensure of Salons and Schools of Cosmetology Arts and Sciences," Chapter 62, "Fees," Chapter 63, "Sanitation for Salons and Schools of Cosmetology Arts and Sciences," Chapter 64, "Continuing Education for Cosmetology Arts and Sciences," and Chapter 65, "Discipline for Cosmetology Arts and Sciences Licensees, Instructors, Salons, and Schools," Iowa Administrative Code.

These proposed amendments remove the temporary license provision for individuals who have not passed the required examination, remove the issuance of initial manicurist licenses, and update the rules to provide consistency with national and professional norms.

Any interested person may make written comments on the proposed amendments no later than October 2, 2007, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail ebaird@idph.state.ia.us.

A public hearing will be held on Tuesday, October 2, 2007, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 157 and 272C.

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 **645—Chapters 59 to 65** by striking the term "board of cosmetology arts and sciences examiners" wherever it appears and inserting the term "board of cosmetology arts and sciences" in lieu thereof.

ITEM 2. Amend **645—Chapters 63 and 64** by striking the term "board of barber examiners" wherever it appears and inserting the term "board of barbering" in lieu thereof.

ITEM 3. Amend rule **645—60.1(157)** as follows:

Amend the definition of "chemical exfoliation" as follows:

"Chemical exfoliation" means the removal of surface epidermal cells of the skin by using only non-medical-strength cosmetic preparations consistent with labeled instructions and as specified by rule. *This procedure is not intended to elicit viable epidermal or dermal wounding, injury, or destruction.*

Adopt the following **new** definitions in alphabetical order:

"Examination" means any of the tests used to determine minimum competency prior to the issuance of a cosmetology arts and sciences license.

"NIC" means the National-Interstate Council of State Boards of Cosmetology, Inc.

"Pedicuring" means the practice of cleaning, shaping or polishing the toenails.

ITEM 4. Adopt **new** subrules 60.3(4) to 60.3(7) as follows:

60.3(4) A cosmetologist licensed after July 1, 2005, is not eligible to be certified in chemical peels, microdermabrasion, laser or intense pulsed light (IPL) and shall not provide those services.

60.3(5) Pedicuring shall only be done by a cosmetologist or nail technologist.

60.3(6) Facial waxing shall only be done by a cosmetologist or esthetician.

60.3(7) An initial license to practice manicuring shall not be issued by the board after December 31, 2007. A manicurist license issued on or before December 31, 2007, may be renewed subject to licensure requirements identified by statute and administrative rule unless the license becomes inactive. A manicurist license that becomes inactive cannot be reactivated or renewed.

ITEM 5. Rescind rule **645—60.4(157)** and adopt the following **new** rule in lieu thereof:

645—60.4(157) Practice-specific training requirements. The board shall approve a licensee to provide the appropriate services once a licensee has complied with training requirements and submitted a completed application, the required supporting evidence, and applicable fees as specified in these rules. The applicant shall receive a certification card following board approval. The certification card and the practice discipline license shall be displayed with the original license.

60.4(1) Microdermabrasion.

a. Microdermabrasion shall only be performed by a licensed, certified esthetician or a cosmetologist who was licensed prior to July 1, 2005, and is certified by the board.

b. To be eligible to perform microdermabrasion services, the licensee shall:

(1) Complete 14 contact hours of education specific to the material or apparatus used for microdermabrasion. If more than one machine is used or if the licensee changes equipment, the licensee is required to obtain an additional 14 hours of training specific to that equipment.

(2) The licensee shall obtain from the program a certification of training that contains the following information:

1. Date, location, course title;
2. Number of contact hours; and
3. Specific identifying description of the microdermabrasion machine covered by the course.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to **645—subrule 62.1(19)**. The fee is nonrefundable.

60.4(2) Chemical exfoliation.

a. Chemical exfoliation shall only be performed by a cosmetologist who was licensed prior to July 1, 2005, and is

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certified by the board to perform those services. Additional certification is not required for licensed estheticians.

b. Chemical exfoliation procedures are limited to the removal of surface epidermal cells of the skin by using only non-medical-strength cosmetic preparations consistent with labeled instructions and as specified by these rules. This procedure is not intended to elicit viable epidermal or dermal wounding, injury, or destruction.

c. To be eligible to perform chemical peels, a cosmetologist who was licensed prior to July 1, 2005, shall:

(1) Complete 21 hours of training specific to the process and products to be used for chemical peels.

(2) The licensee shall obtain from the program a certification of training that contains the following information:

1. Date, location, course title;

2. Number of contact hours; and

3. Specific identifying description of the chemical peel process and products covered by the course.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 62.1(19). The fee is nonrefundable.

60.4(3) Laser services.

a. A cosmetologist licensed after July 1, 2005, shall not use laser products.

b. An electrologist shall only provide hair removal services when using a laser.

c. Estheticians and cosmetologists shall use laser for cosmetic purposes only.

d. Cosmetologists licensed prior to July 1, 2005, electrologists and estheticians must be certified to perform laser services.

e. When a laser product is provided to a minor by a licensed cosmetologist, esthetician or electrologist who has been certified by the board, the licensee shall work under the general supervision of a physician. The parent or guardian shall sign permission papers prior to services being provided. Written permission shall remain in the client's permanent record for a period of five years.

f. To be eligible to perform laser services, a cosmetologist who was licensed on or before July 1, 2005, an electrologist, or an esthetician shall:

(1) Complete 40 hours of training specific to each laser machine, model or device to be used for laser services.

(2) The licensee shall obtain from the program a certification of training that contains the following information:

1. Date, location, course title;

2. Number of contact hours;

3. Specific identifying description of the laser equipment; and

4. Evidence that the training program includes a safety training component which provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 62.1(19). The fee is nonrefundable.

60.4(4) IPL hair removal treatments.

a. A cosmetologist licensed after July 1, 2005, shall not use IPL devices.

b. An IPL device shall only be used for hair removal.

c. Cosmetologists licensed prior to July 1, 2005, electrologists and estheticians must be certified to perform IPL services.

d. When IPL hair removal services are provided to a minor by a licensed cosmetologist, esthetician or electrologist who has been certified by the board, the licensee shall work under the general supervision of a physician. The parent or guardian shall sign permission papers prior to services being provided. Written permission shall remain in the client's permanent record for a period of five years.

e. To be eligible to perform IPL hair removal services, a cosmetologist who was licensed on or before July 1, 2005, an electrologist, or an esthetician shall:

(1) Complete 40 hours of training specific to each IPL machine, model or device to be used for IPL hair removal services.

(2) The licensee shall obtain from the program a certification of training that contains the following information:

1. Date, location, course title;

2. Number of contact hours;

3. Specific identifying description of the IPL hair removal equipment; and

4. Evidence that the training program includes a safety training component which provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 62.1(19). The fee is nonrefundable.

60.4(5) Health history and incident reporting.

a. Prior to providing laser or IPL hair removal, microdermabrasion or chemical peel services, the cosmetologist, esthetician, and electrologist shall complete a client health history of conditions related to the application for services and include it with the client's records. The history shall include but is not limited to items listed in paragraph 60.4(5)“b.”

b. A licensed cosmetologist, esthetician, or electrologist who provides services related to the use of a certified laser product, IPL device, chemical peel, or microdermabrasion shall submit a report to the board within 30 days of any incident in which provision of such services resulted in physical injury requiring medical attention. Failure to comply with this requirement shall result in disciplinary action by the board. The report shall include the following:

(1) A description of procedures;

(2) A description of the physical condition of the client;

(3) A description of any adverse occurrence, including:

1. Symptoms of any complications including, but not limited to, onset and type of symptoms;

2. A description of the services provided that caused the adverse occurrence;

3. A description of the procedure that was followed by the licensee;

(4) A description of the client's condition on termination of any procedures undertaken;

(5) If a client is referred to a physician, a statement providing the physician's name and office location, if known;

(6) A copy of the consent form.

60.4(6) Failure to report. Failure to comply with paragraph 60.4(5)“b” when the adverse occurrence is related to the use of any procedure or device noted in the attestation may result in the licensee's loss of authorization to adminis-

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ter the procedure or device noted in the attestation or may result in other sanctions provided by law.

60.4(7) A licensee shall not provide any services that constitute the practice of medicine.

60.4(8) Failure to comply with this rule is grounds for discipline.

ITEM 6. Amend subrule 60.5(4) and adopt **new** subrule 60.5(5) as follows:

60.5(4) With the exception of hair removal, manicuring, and nail technology services, persons licensed under ~~Iowa Code chapter 157~~ *this chapter* shall not administer any procedure in which human tissue is cut, shaped, vaporized, or otherwise structurally altered. *The cuticle nipper is the only implement allowed for the manicurist, nail technologist and cosmetologist and is limited to clipping the cuticle.*

60.5(5) *Board-certified licensees providing microdermabrasion, chemical peels, laser or IPL hair removal treatments in a salon or barbershop setting shall not include any practice, activity, or treatment that constitutes the practice of medicine, osteopathic medicine, or chiropractic.*

ITEM 7. Amend rule 645—60.6(157), catchwords, as follows:

645—60.6(157) Consent and reporting form requirements.

ITEM 8. Rescind rule 645—60.7(157) and adopt the following **new** rule in lieu thereof:

645—60.7(157) Licensure by endorsement.

1. The board may issue a license by endorsement to any applicant from the District of Columbia or another state, territory, province or foreign country who meets the requirements of rule 645—60.2(157).

2. An applicant for licensure by endorsement shall provide verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Verifications of current licensure in the practice discipline in another state for at least 12 months in the 24-month period preceding the submission of the application must be sent from each state, territory, province or foreign country or the District of Columbia. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- Licensee's name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

ITEM 9. Rescind subrule 60.8(1) and adopt the following **new** subrule 60.8(1) in lieu thereof:

60.8(1) Biennial license renewal period for a license to practice cosmetology arts and sciences.

a. Prior to April 1, 2008:

(1) The renewal period shall begin on April 1 of one year and end on March 31 two years later. All licensees shall renew on a biennial basis.

(2) The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.

(3) The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

b. Beginning April 1, 2008:

(1) A licensee who has a license due for renewal in an even-numbered year shall renew all active licenses with the board by April 1, 2008. If one or more licenses are due for renewal in an odd-numbered year, the renewal fee for those licenses shall be prorated. Such prorated license fees shall apply only during the April 1, 2008, renewal period.

(2) The renewal period shall begin on April 1 of one year and end on March 31 two years later. All licensees shall renew on a biennial basis.

(3) The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.

(4) The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

(5) Licensees who renew their licenses one year early shall be subject to continuing education requirements by April 1, 2010. This extension does not apply to a license(s) originally scheduled for renewal on April 1, 2008.

(6) A new or reactivated license granted by the board to a licensee who holds a current license in another practice discipline in cosmetology shall have the same license expiration date as the licensee's other license(s). If the licensee does not have another active license with the board, the license expiration date shall be in the current renewal period unless the license is issued within six months of the end of the renewal cycle and subrule 60.8(2) applies.

ITEM 10. Amend rule 645—60.9(157) as follows:

645—60.9(157) Temporary permits.

~~**60.9(1)** Temporary permits to practice cosmetology arts and sciences. An applicant who is applying for initial licensure and who has never been licensed in another state and who has met the requirements for licensure except for the written examinations may apply for a temporary permit to practice cosmetology arts and sciences. The temporary permit shall be valid for a maximum of 60 days from the date of issuance. The temporary permit holder shall practice under direct supervision a licensee. After 60 days, the temporary permit shall be invalid and the person may not practice cosmetology arts and sciences. The temporary permit shall be revoked if an applicant fails the written practical and theory examination twice. The applicant shall submit the temporary permit to the testing service before the applicant sits for another examination.~~

~~**60.9(2)** Temporary permit for demonstration or not-for-profit events. The board may issue a temporary permit for the purpose of demonstrating cosmetology arts and sciences services to the consuming public or for providing cosmetology arts and sciences services to the consuming public at not-for-profit events.~~

~~1. The permit shall be valid for (name of a specific event) for a salon, school, or person. The location, purpose and duration of the permit shall be stated on the permit.~~

~~2. The permit shall be valid for no more than 12 days.~~

~~3. A completed application shall be submitted on a form provided by the board at least 30 days in advance of the intended use date(s).~~

~~4. An application fee shall be submitted as set forth in these rules.~~

~~5. No more than four permits shall be issued to any applicant during a calendar year.~~

~~6. For not-for-profit events, individuals providing services must hold a current license provided by the board pursuant to rule 60.2(157).~~

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ITEM 11. Rescind subparagraph **60.17(3)“b”(3)**.

ITEM 12. Rescind 645—Chapter 61 and adopt the following **new** chapter in lieu thereof:

CHAPTER 61

LICENSURE OF SALONS AND SCHOOLS
OF COSMETOLOGY ARTS AND SCIENCES**645—61.1(157) Definitions.**

“Clinic area” means the area of the school where the paying customers will receive services.

“Dispensary” means a separate area to be used for storing and dispensing of supplies and sanitizing of all implements.

“Inactive license” means a salon license or a school license that has not been renewed as required or the license of a salon or school that has failed to meet stated obligations for renewal within a stated time.

“Mentor” means a licensee providing guidance in a mentoring program.

“Mentoring” means a program allowing students to experience cosmetology arts and sciences in a licensed salon under the guidance of a mentor.

“Salon license” means an establishment licensed to provide cosmetology services to paying customers.

“School” means a school of cosmetology arts and sciences.

“School license” means a license issued to an establishment to instruct students in cosmetology arts and sciences.

645—61.2(157) Salon licensing.

61.2(1) The owner shall complete a board-approved application form. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>), or directly from the board office. All applications shall be submitted to the Board of Cosmetology Arts and Sciences, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

a. The application shall be completed according to the instructions contained in the application and submitted 30 days prior to the anticipated opening day. If the application is not completed according to the instructions, the application will not be reviewed by the board.

b. Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Cosmetology Arts and Sciences. The fees are nonrefundable.

61.2(2) Each salon shall meet the requirements for sanitary conditions established in 645—Chapter 63 to be eligible for licensing. The salon shall be inspected for compliance with sanitation rules within 12 months following the issuance of the salon license.

61.2(3) Business may commence at the salon following receipt of the license.

61.2(4) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records will be maintained after two years only if the applicant submits a written request to the board.

61.2(5) A salon license shall be issued for a specific location. A change in location or site of a salon shall require submission of an application for a new license and payment of the fee required by 645—subrule 62.1(16). A change of address without change of actual location shall not be construed as a new site.

61.2(6) A salon license is not transferable.

a. A change in ownership of a salon shall require the issuance of a new license. “Change in ownership” means any change of controlling interest in any corporation or any change of name of sole proprietorship or partnership.

b. A salon cannot be sold if disciplinary actions are pending.

c. If a salon owner sells the salon, that owner must send the license certificate and a report of the sale to the board within 10 days of the date on which the sale is final. The owner of the salon on record shall retain responsibility for the salon until the notice of sale is received in the board office.

d. The board may request legal proof of the ownership transfer.

e. The owner shall notify the board in writing of a change of name or address within 30 days after the occurrence and, in addition, shall return the current certificate and pay the reissued certificate fee as specified in rule 645—62.1(147,157).

645—61.3(157) Salon license renewal.

61.3(1) The biennial license renewal period for a salon license shall begin on January 1 of every odd-numbered year and end on December 31 two years later.

61.3(2) A renewal of license application shall be mailed to the owner of the salon at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the owner of the obligation to pay the biennial renewal fee on or before the renewal date.

61.3(3) A salon that is issued a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

61.3(4) The salon owner shall submit the completed application with the renewal fee to the board office before the license expiration date.

61.3(5) A salon shall be in full compliance with this chapter and 645—Chapter 63 to be eligible for renewal. When all requirements for license renewal are met, the salon shall be sent a license renewal card by regular mail.

61.3(6) If the renewal fee and renewal application are postmarked after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

645—61.4(272C) Inactive salon license.

61.4(1) If the renewal application and fee are not postmarked within 30 days after the license expiration date, the salon license is inactive. To reactivate a salon license, the reactivation application and fee shall be submitted to the board office.

61.4(2) A salon that has not renewed the salon license within the required time frame will have an inactive license and shall not provide cosmetology services until the license is reactivated.

645—61.5(157) Display requirements for salons.

61.5(1) Every salon shall have a sign visible outside the entrance designating the place of business.

61.5(2) A salon license and the current renewal card shall be posted and visible to the public in the reception area at eye level.

61.5(3) The original license certificate, duplicate certificate, reissued certificate or temporary permit shall be visibly displayed in the reception area at eye level for each licensee and temporary permit holder employed by the salon.

61.5(4) Each licensee shall:

a. Display the current license card with the certificate or have the current wallet card in the licensee’s possession; and

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b. Have a valid US photo ID to provide to an agent of the board upon request as proof of identity.

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

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

61.6(2) A duplicate salon wallet card or certificate shall be issued upon receipt of a completed application and receipt of the fee as specified in 645—subrule 62.1(5).

61.6(3) If the board receives a completed application stating that the owner of the salon has not received the wallet card or certificate within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or certificate.

645—61.7(157) Licensure for schools of cosmetology arts and sciences. The board shall grant approval for the issuance of an original school of cosmetology arts and sciences license to be issued by the department when the following conditions have been met:

61.7(1) An application shall be submitted to the Board of Cosmetology Arts and Sciences, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The following information shall be submitted with the application:

a. A complete plan of the physical facilities and an explanation detailing how the facilities will be utilized relative to classroom, clinic space and mentoring program; and

b. A list of the names of licensed instructors for the proposed school. The number of instructors must meet the requirement outlined in Iowa Code section 157.8, with the exception of instructors for the mentoring program.

61.7(2) The application shall be completed according to the instructions contained in the application and submitted 30 days prior to the anticipated opening day. If the application is not completed according to the instructions, the application will not be reviewed by the board.

61.7(3) The school owner may be interviewed by the board before an original license is issued.

61.7(4) The school shall not accept students until the school is licensed.

61.7(5) The original license shall be granted for the location(s) identified in the school's application.

a. A change of location shall require submission of an application for a new school license and payment of the license fee.

b. A change of address without change of actual location shall not be construed as a new site.

61.7(6) A school license is not transferable. A change in ownership of a school shall require the issuance of a new license. "Change in ownership" means any change of controlling interest in any corporation or any change of name of sole proprietorship or partnership.

a. A school cannot be sold if disciplinary actions are pending.

b. The board may request legal proof of the ownership transfer.

c. If a school owner sells the school, that owner must send the license certificate and a report of the sale to the board within 10 days of the date on which the sale is final. The owner of the school on record shall retain responsibility for the school until the notice of sale is received in the board office.

d. The owner shall notify the board in writing of a change of name or address within 30 days after the occurrence and, in addition, shall return the current certificate and pay the reissued certificate fee as specified in rule 645—62.1(147,157).

61.7(7) The school shall be inspected prior to the issuance of the school license and shall meet the requirements of this chapter and 645—Chapter 63.

61.7(8) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records will be maintained after two years only if the applicant submits a written request to the board.

645—61.8(157) School license renewal.

61.8(1) The annual license renewal period for a school license shall begin on July 1 and end on June 30 one year later.

61.8(2) A renewal of license application shall be mailed to the school at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the school of the obligation to pay the annual renewal fee on or before the renewal date.

a. The renewal application and renewal fee shall be submitted to the board office before the license expiration date.

b. Schools shall be in full compliance with this chapter and 645—Chapter 63 to be eligible for renewal. When all requirements for license renewal are met, the school shall be sent a license renewal card by regular mail.

61.8(3) A school that is issued a license within six months of the license renewal date will not be required to renew the license until the next renewal one year later.

61.8(4) If the renewal fee and renewal application are postmarked after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

645—61.9(272C) Inactive school license.

61.9(1) If the renewal application and fee are not postmarked within 30 days after the license expiration date, the school license is inactive. To reactivate the school license, the reactivation application and fee shall be submitted to the board.

61.9(2) A school that has not renewed the school license within the required time frame will have an inactive license and shall not provide schooling or services until the license is reactivated.

645—61.10(157) Display requirements for schools.

61.10(1) Every school shall have a sign visible outside the entrance designating the place of business.

61.10(2) A school license and the current renewal card shall be posted and visible to the public in the reception area at eye level.

61.10(3) The original license certificate, duplicate certificate, or reissued certificate shall be visibly displayed for each instructor employed by the school.

645—61.11(147) Duplicate certificate or wallet card for schools.

61.11(1) A duplicate wallet card or a duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall only be issued under such circumstances.

61.11(2) A duplicate school wallet card or duplicate certificate shall be issued upon receipt of the completed application and receipt of the fee as specified in 645—subrule 62.1(5).

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

61.11(3) If the board receives a completed application stating that the owner of the school has not received the wallet card or certificate within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

645—61.12(157) Physical requirements for schools of cosmetology arts and sciences. The school shall meet the following physical requirements:

61.12(1) The school premises shall have a minimum floor space of 3000 square feet and, when the enrollment in a school exceeds 30 students, additional floor space of 30 square feet shall be required for each additional student enrolled in the school.

61.12(2) Each licensed school shall provide at least one clinic area where the paying public will receive services. The clinic area shall be confined to the premises occupied by the school.

61.12(3) A school shall provide a theory classroom(s) separate from the clinic area.

61.12(4) Each school shall maintain a library for students consisting of textbooks, current trade publications and business management materials.

61.12(5) The school shall have a separate area to be used as a dispensary. The dispensary shall be equipped with lavatory, shelves or drawers for storing chemicals and sanitized articles, a wet sterilizer and any other sanitation items required in 645—Chapter 63.

61.12(6) Two restrooms shall be equipped with toilets, lavatories, soap and towel dispensers.

61.12(7) A laundry room shall be separated from the clinic area by a full wall or partition.

61.12(8) A separate room shall be equipped for the practice of esthetics and electrology.

61.12(9) Each licensed school shall have an administrative office.

645—61.13(157) Minimum equipment requirements. Each school of cosmetology arts and sciences shall have the following minimum equipment:

1. Workstations equipped with chair, dresserette, closed drawer or container for sanitized articles, and mirror (maximum of two students per unit);
2. One set of textbooks for each student and instructor;
3. Shampoo bowls located in the clinic area and readily accessible for students and clients if the school offers a curriculum course in cosmetology;
4. Audiovisual equipment available for each classroom;
5. Chair and table area for each student in the classroom; and
6. Labeled bottles and containers showing intended use of the contents.

645—61.14(157) Course of study requirements. A school of cosmetology arts and sciences shall not be approved by the board of cosmetology arts and sciences unless it complies with the course of study requirements as provided below.

61.14(1) Requirements for hours.

COSMETOLOGY CURRICULUM

Core life sciences	150 hours
Cosmetology theory (Including business and management related to the practice of cosmetology.)	615 hours
Total core life sciences and cosmetology theory is 765 hours.	

Applied practical instruction	1335 hours	
Total course of study		<hr/> 2100 hours (70 semester credit hours)

ELECTROLOGY CURRICULUM

Core life sciences	150 hours	
Electrology theory	50 hours	
Applied practical instruction	225 hours	
Total course of study		<hr/> 425 hours (14 semester credit hours)

ESTHETICS CURRICULUM

Core life sciences	150 hours	
Esthetics theory	115 hours	
Applied practical instruction	335 hours	
Total course of study		<hr/> 600 hours (20 semester credit hours)

NAIL TECHNOLOGY CURRICULUM

Core life sciences	150 hours	
Nail technology theory	50 hours	
Applied practical instruction	125 hours	
Total course of study		<hr/> 325 hours (11 semester credit hours)

Proof of curriculum requirements may be submitted to the board by either the clock hour or semester credit hour standard. Semester credit hours or the equivalent thereof shall be determined pursuant to administrative rules and regulations promulgated by the U.S. Department of Education.

61.14(2) Curriculum requirements.

a. Theory instruction shall be taught from a standard approved textbook, but may be supplemented by other related textbooks.

b. Course subjects taught in the school curriculum, including skills and business management, shall relate to the specific practice discipline.

c. Required hours for theory and applied practical hours do not have to be obtained from one school.

d. Core life sciences curriculum hours shall be transferable in their entirety from one practice discipline to another practice discipline.

e. Only hours from accredited or board-approved school programs will be accepted.

61.14(3) Core life sciences curriculum. The core life sciences curriculum shall contain the following instruction:

- a. Human anatomy and physiology:
 - Cell, metabolism and body systems,
 - Human anatomy;
- b. Bacteriology;
- c. Infection control practices:
 - Universal precautions,
 - Sanitation,
 - Sterilization,
 - Disinfection;
- d. Basic chemistry;
- e. Matter;
- f. Elements:
 - Compounds and mixtures;
- g. Basic electricity;
- h. Electrical measurements:
 - Reproduction of light rays,
 - Infrared rays,
 - Ultraviolet rays,
 - Visible rays/spectrum;

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- i. Safety;
- j. Hygiene and grooming:
Personal and professional health;
- k. Professional ethics;
- l. Public relations; and
- m. State and federal law, administrative rules and standards.

Clock hours may be converted to credit hours using a standard, recognized method of conversion.

61.14(4) The school shall maintain a copy of the curriculum plan for two years after the curriculum plan was taught by the school.

645—61.15(157) Instructors. All instructors in a school of cosmetology arts and sciences shall be licensed by the department.

61.15(1) An instructor teaching a course in electrology, esthetics or nail technology shall also hold a license in that practice or hold a cosmetology license that shows proof of having completed training in those practices equivalent to that of a license holder in that practice.

61.15(2) An instructor teaching a course in microdermabrasion, chemical peels, IPLs and lasers shall be certified by the state of Iowa to provide each of the services.

61.15(3) The number of instructors for each school of cosmetology arts and sciences shall be based upon total enrollment, with a minimum of 2 instructors employed on a full-time basis for up to 30 students and an additional instructor for each additional 15 students. The school shall make every effort to have 2 instructors on duty during school hours. However, a school operated by an area community college prior to September 1, 1982, with only 1 instructor per 15 students is not subject to this subrule and may continue to operate with the ratio of 1 instructor to 15 students.

61.15(4) An instructor shall:

- a. Be responsible for and in direct charge of all theory and practical classrooms and clinics at all times;
- b. Familiarize students with the different standard supplies and equipment used in salons; and
- c. Not perform cosmetology services, with or without compensation, on the school premises except for demonstration purposes.

645—61.16(157) Student instructors. A student instructor shall be a graduate of an approved school of cosmetology arts and sciences. Each student instructor shall be under the direct supervision of a licensed instructor at all times.

645—61.17(157) Students.

61.17(1) A school of cosmetology arts and sciences shall, prior to the time a student is obligated for payment, inform the student of all provisions set forth in Iowa Code section 714.25. The school shall retain a copy of the signed statement for two years following the student's graduating or leaving the program.

61.17(2) Students shall:

- a. Wear clean and neat uniforms at all times during school hours and during the mentoring program;
- b. Be supervised by a licensed instructor at all times except in a mentoring program when the students shall be under the guidance of a mentor;
- c. Be provided regularly scheduled breaks and a minimum of 30 minutes for lunch;
- d. Attend school no more than eight hours a day. Schools may offer additional hours to students who submit a written request for additional hours;
- e. Receive no compensation from the school for services performed on clients;

f. Provide services to the public only after completion of a minimum of 10 percent of the course of study;

g. Not be called from theory class to provide services to the public;

h. Not be required to perform janitorial services or be allowed to volunteer for such services. Sanitation of the bathroom area shall be limited to replacing products and disinfecting the vanity and mirror surfaces. Sanitation of the toilet and bathroom floor areas are not to be performed by the student and are excluded from student sanitation duty; and

i. Receive no credit or hours for decorating for marketing or merchandising events or for participating in demonstrations of cosmetology arts and sciences when the sole purpose of the event is to recruit students and is outside the curriculum course.

645—61.18(157) Attendance requirements. A school of cosmetology arts and sciences shall have a written, published attendance policy.

61.18(1) When determining student hours, a school may define its attendance requirements to include 100 percent attendance for the course length or may allow excused absences for not more than 10 percent of the course length for satisfactory completion.

a. Student attendance policies shall be applied uniformly and fairly.

b. Appropriate credit shall be given for all hours earned.

c. All retake tests, projects to be redone and makeup work shall be completed without benefit of additional hours earned, and it shall be at the school's discretion to schedule the time.

d. Hours or credit shall not be added to the accumulative student record as an award, or deducted from the accumulative student record as a penalty.

61.18(2) The school must maintain each student's attendance records for two years to verify that the minimum attendance standard set by the school is being met.

645—61.19(157) Accelerated learning.

61.19(1) A school may adopt an accelerated learning policy which includes the acceptance of life experience, prior knowledge learned and test-out procedures.

61.19(2) If the school has an accelerated learning policy, the policy shall be a written, published policy that clearly outlines the criteria for acceptance and hours or credit granted or for test-out procedures. The hours or credit granted for accelerated learning shall not exceed 15 percent of the student's entire course of study and shall be documented in the participating student's file.

a. After completion of all entrance requirements, a student may elect to sit for one or more academic written tests to evaluate the knowledge about subject matter gained from life experience or prior learning experience.

b. A student in a cosmetology arts and sciences course of study may be allowed to test out of a subject by sitting for final examinations covering the basic knowledge gained by a student who attends class sessions, or the school may accept and grant hours for prior or concurrent education and life experience.

c. A student who wishes to receive test-out credit or be granted hours for prior or concurrent education or life experience shall have maintained the academic grades and attendance policy standards set by the school.

d. The school may limit the number of times a student is allowed to sit for a test-out examination of a subject.

645—61.20(157) Mentoring program. Each cosmetology school must have a contract between the student, the school

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and the salon mentor that includes scheduling, liability insurance and purpose of the mentoring program.

61.20(1) Students shall not begin the mentoring program until they have completed a minimum of 50 percent of the total contact or credit hours and other requirements of the mentoring program established by the school.

61.20(2) Students may participate in a mentoring program for no more than 5 percent of the total contact or credit hours.

61.20(3) Students shall be under supervision of the mentor at all times. Students may perform the following: drape, shampoo, remove color and perm chemicals, remove perm rods, remove rollers, apply temporary rinses, apply reconditioners and rebuilders with the recommendation of the mentor, remove nail polish, file nails, perform hand and arm massage, remove cosmetic preparations, act as receptionist, handle retail sales, sanitize salon, consult with client (chairside manners), perform inventory, order supplies, prepare payroll and pay monthly bills, and hand equipment to the stylist.

61.20(4) The salon mentor's responsibilities include the following: introduce the student to the salon and the client, record the time of the student's attendance in salon, prepare evaluation, discuss performance, and allow the student to shadow.

61.20(5) A salon or school shall not compensate students when participating in the mentoring program.

645—61.21(157) Graduate of a school of cosmetology arts and sciences.

61.21(1) A student shall be considered a graduate when the student has completed the required course of study and met the minimum attendance standard.

61.21(2) Students shall be given a final examination upon completion of the course of study but before graduation.

61.21(3) After passage of the final examination and completion of the entire course of study including all project sheets, students shall be issued a certificate of completion of hours required for the course of study.

645—61.22(157) Records requirements.

61.22(1) Each school of cosmetology arts and sciences shall maintain a complete set of student records. Individual student hours shall be kept on file at the school for two years following graduation.

61.22(2) Each school shall maintain daily teaching logs for all instructors, which shall be kept on file at the school for two years.

61.22(3) Prior to closure, the controlling school shall establish agreements with another school to maintain student and graduate transcripts and records. Prior to closure, the controlling school shall also notify the board of the location of student records as established by the maintenance agreements. Provisions in the agreement must include maintenance of student transcript records for a period of no less than two years.

645—61.23(157) Classrooms used for other educational purposes.

61.23(1) The licensed school of cosmetology arts and sciences shall not be used during scheduled instruction time or work experience time for any use other than for student instruction.

61.23(2) Persons attending other educational classes may not (en masse) pass through a classroom or clinic area while in use.

61.23(3) Noise level must not be disruptive to other classes.

61.23(4) Use of classrooms shall not usurp the space available for cosmetology instruction.

645—61.24(157) Public notice.

61.24(1) Advertisements shall indicate that all services are performed by students under the supervision of instructors.

61.24(2) A sign shall be clearly displayed in the entrance of the school that indicates in prominent lettering that students perform all services under the supervision of instructors.

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

ITEM 13. Rescind and reserve subrule **62.1(9)** and amend subrules 62.1(19) and 62.1(20) as follows:

62.1(19) ~~Initial~~ *An initial fee or a reactivation* fee for certification to administer microdermabrasion or utilize a certified laser product or an intense pulsed light (IPL) device shall be \$25 for each type of procedure or certified laser product or intense pulsed light IPL device.

62.1(20) ~~Initial~~ *An initial fee or a reactivation* fee for certification of cosmetologists to administer chemical peels shall be \$25.

ITEM 14. Amend rule 645—63.2(157) as follows:

645—63.2(157) Posting of sanitation rules and inspection report. A copy of the most current sanitation rules and the most recent inspection report shall be posted in a conspicuous ~~place~~ *the reception area at eye level* in the salon or school for the information and guidance of all persons employed or studying therein and the general public.

ITEM 15. Rescind and reserve rule **645—63.3(157)**.

ITEM 16. Amend subrule **63.4(1)**, paragraphs "a" and "c," as follows:

a. Individuals employed for cosmetology *arts and sciences* services hold a current and valid *active* license or temporary permit issued by either the board of cosmetology arts and sciences or the board of ~~barber examiners~~ *barbering*; and

c. *Licenses and certificates are properly displayed and visible to the public in the reception area at eye level for all individuals employed for cosmetology arts and sciences services.* No license which has expired or become invalid for any reason shall be displayed in connection with the practices of the salon.

ITEM 17. Amend subrule **63.4(3)**, paragraph "c," as follows:

c. For holding a current and valid *active* license issued by the board of *cosmetology arts and sciences* or the board of ~~barber examiners~~ *barbering*; and

ITEM 18. Amend rule **645—63.10(157)**, numbered paragraph "5," as follows:

5. ~~Properly dispose of all instruments or implements that penetrate or puncture the skin.~~ *Any disposable sharp objects that come in contact with blood or other body fluids shall be disposed of in a red, sealable, rigid container (puncture-proof) that is clearly labeled for disposal of hazardous waste sharps. Disposable sharp objects include electrology needles which shall be immediately disposed of after use.*

ITEM 19. Amend rule 645—63.11(157) as follows:

645—63.11(157) Minimum equipment and supplies. Salons and schools shall provide:

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1. ~~At least one covered waste receptacle for the disposal of all waste including hair;~~

~~2 1. Closed receptacles *Receptacles* to hold all soiled towels, gowns and sheets;~~

~~3 2. Clean storage area to hold all clean towels; and~~

~~4 3. Disinfectant solution that shall be stored in the dispensary area or at each work station for disinfecting instruments and equipment.~~

ITEM 20. Amend subrule 63.12(1) as follows:

63.12(1) Before use upon a client, all nonelectrical instruments shall be disinfected by an EPA-registered, *hospital-grade* disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity and used according to the manufacturer's instructions.

ITEM 21. Amend subrule 63.13(1) as follows:

63.13(1) Disinfection of clippers. Clippers shall be disinfected prior to each use with an EPA-registered, *hospital-grade* disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity and used according to the manufacturer's instructions.

ITEM 22. Amend rule 645—63.14(157) as follows:

645—63.14(157) Instruments and supplies that cannot be disinfected. All instruments and supplies that come into direct contact with a patron and cannot be disinfected, for example, cotton pads, sponges, emery boards, and neck strips, shall be disposed of in a closed waste receptacle immediately after use.

ITEM 23. Amend rule 645—63.15(157), introductory paragraph, as follows:

645—63.15(157) Sterilizing instruments. Before use upon a patron in schools and salons, ~~each electrolysis needle or cuticle nippers, tweezers and comedone extractor extractors shall be first~~ *first* be cleaned with detergent and water and then sterilized by one of the following methods:

ITEM 24. Amend subrules 63.17(2) and 63.17(4) as follows:

63.17(2) Any disposable sharp objects that come in contact with blood or other body fluids shall be disposed of in a red, sealable, rigid container (punctureproof) that is clearly labeled for disposal of hazardous waste sharps. *Disposable sharp objects include electrolysis needles which shall be immediately disposed of after use.*

63.17(4) Emery boards, cosmetic sponges, *cosmetic* applicators, *toe separators* and orangewood sticks must be discarded after use or given to the client.

ITEM 25. Amend subrule 63.18(2) as follows:

63.18(2) No salon or school shall have on the premises any razor-edged or other device or tool which is designed to remove skin ~~unless used by licensed nail technicians and cosmetologists to remove cuticles with the exception of cuticle nippers used for manicure or pedicure services.~~ If such equipment is on site, it shall be prima facie evidence of its use.

ITEM 26. Amend rule 645—63.24(157) as follows:

645—63.24(157) Salons providing electrolysis or esthetics. A salon in which electrolysis or esthetics is practiced shall follow the sanitation rules and requirements pertaining to all salons and shall also meet the following requirements:

1. The electrolysis or esthetics room shall have adequate space, lighting and ventilation.

2. The floors in the immediate area where the electrolysis or esthetics is performed shall have an impervious, smooth, washable surface.

3. All service table surfaces shall be constructed of impervious, easily cleanable material.

4. Needles, *probes and lancets* shall be single-client use and disposable, ~~or the needles shall be sterilized before use on the next client.~~

ITEM 27. Amend rule 645—63.25(157), catchwords, as follows:

645—63.25(157) Cleaning and disinfecting whirlpool foot spas and hydrotherapy baths.

ITEM 28. Amend subrule **63.25(2)**, paragraph "d," as follows:

d. The spa basin and hydrotherapy bath must be wiped dry with a clean towel.

ITEM 29. Amend subrule 63.25(4) as follows:

63.25(4) Every other week (biweekly), after cleaning and disinfecting as provided in subrule 63.25(3), each whirlpool foot spa and hydrotherapy bath shall be cleaned and disinfected in the following manner:

a. The spa basin and hydrotherapy bath shall be ~~filed~~ *filled* completely with water and one teaspoon of 5.25 percent bleach or recommended whirlpool disinfectant for each one gallon of water, or a solution of sodium hypochlorite (bleach) of approximately 50 ppm used according to the manufacturer's instructions.

b. The spa or bath system shall be flushed with the bleach or recommended whirlpool disinfectant and water solution, or sodium hypochlorite (bleach) solution, for five to ten minutes and allowed to sit for six to ten hours.

c. The spa or bath system shall be drained and flushed with water before use for a patron.

ITEM 30. Amend subrules 63.25(5) and 63.25(6) and 63.25(7), introductory paragraph, as follows:

63.25(5) ~~A~~ *For each foot spa and hydrotherapy bath, a record shall be made of the date and time of each cleaning and disinfecting as required by subrules 63.25(3) and 63.25(4), and shall indicate whether the cleaning was a daily or biweekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. Records of cleaning and disinfecting shall be made available upon request by a patron, inspector or investigator. The record must be signed by a licensee and include the licensee's license number beside each recorded cleaning event.*

63.25(6) A violation of this rule may result in an administrative fine or disciplinary action or both. A separate violation may result for each foot spa and hydrotherapy bath that is not in compliance with this rule.

63.25(7) A licensee who provides services related to whirlpool foot spas and hydrotherapy baths shall submit a report to the board within 30 days of any incident in which provision of such services resulted in physical injury requiring medical attention. Failure to comply with this requirement shall result in disciplinary action by the board. The report shall include a description of the following:

ITEM 31. Rescind subrule **64.2(1)**, renumber subrules **64.2(2)** through **64.2(5)** as **64.2(4)** through **64.2(7)**, and adopt new subrules 64.2(1), 64.2(2) and 64.2(3) as follows:

64.2(1) The biennial continuing education compliance period shall begin on April 1 of one year and end on March 31 two years later.

64.2(2) Beginning April 1, 2008, a license that is renewed on April 1, 2008, that was originally scheduled to be renewed

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

one year later as described in 645—paragraph 60.8(1)“b” shall not be required to meet continuing education requirements until April 1, 2010. This extension does not apply to a license(s) originally due for renewal on April 1, 2008.

64.2(3) Each biennium:

a. A licensee in this state shall be required to complete a minimum of 8 hours of board-approved continuing education, of which 4 hours shall be in the prescribed practice discipline. A minimum of 2 hours of the 8 hours shall be in the content areas of Iowa cosmetology law and rules and sanitation. Individuals holding more than one active license shall obtain 4 hours of board-approved continuing education in each prescribed practice discipline and an additional 2 hours in the content areas of Iowa cosmetology law and rules and sanitation.

b. A licensee who is an instructor of cosmetology arts and sciences shall obtain 8 hours in teaching methodology in addition to meeting all continuing education requirements for renewal of the instructor’s practice license. A licensee must comply with all conditions of licensure including obtaining a minimum of 2 hours each biennium specific to Iowa cosmetology law and administrative rules as specified in 64.3(2), paragraph “i.”

c. A licensee currently licensed in Iowa but practicing exclusively in another state may comply with Iowa continuing education requirements for license renewal by meeting the continuing education requirements of the state or states where the licensee practices. The licensee living and practicing in a state which has no continuing education requirement for renewal of a license shall not be required to meet Iowa’s continuing education requirement but shall pay all renewal fees when due.

ITEM 32. Amend subrule **64.3(2)**, paragraphs “a” and “e,” as follows:

a. Continuing education hours of credit may be obtained by attending continuing education activities of an approved sponsor.

e. In addition to fulfilling the requirements in 64.2(1), those persons holding an instructor’s license must complete a minimum of eight hours of continuing education approved by the board in the area of teaching ~~technology~~ *methodology*.

ITEM 33. Rescind subrule **64.3(2)**, paragraph “g,” reletter paragraphs “h” and “i” as “g” and “h,” respectively, and adopt **new** paragraph “i” as follows:

i. A licensee who is a presenter of a continuing education program that meets criteria in 645—64.3(157,272C) may receive credit once per biennium for the initial presentation of the program. The licensee may receive the same number of hours granted the attendees.

ARC 6222B**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 331.657, the Department of Public Safety hereby gives Notice of Intended Action to rescind Chapter 3, “Sheriff’s Uniforms,” and to adopt new Chapter 125, “Sheriff and Deputy Sheriff Uniforms,” Iowa Administrative Code.

Iowa Code section 331.657 provides that the “colors and design of the standard uniform for the sheriffs and deputy sheriffs shall be designated by rule of the commissioner of public safety after consideration of the recommendations of the Iowa state association of sheriffs and deputy sheriffs.” The current rules have been in force since 1988 without change. These rules were identified as outdated and in need of revision during the comprehensive review of all existing administrative rules which the Department undertook in response to Executive Order 8 during 2000.

After receiving information from the Iowa State Sheriffs and Deputies Association regarding the Association’s current preferences for requirements for uniforms and after reviewing guidelines issued by the Association for its members, the Department has concluded that requiring compliance with the Association’s guidelines would be a sensible approach to standardization of sheriff and deputy sheriff uniforms across the state. The proposed rules reference the guidelines by date and will have to be amended in the future to recognize new editions of the guidelines. In addition, the proposed rules will be in new Chapter 125; the current rules in Chapter 3 are being rescinded. This is part of a general effort to renumber the Department’s administrative rules to make the numbering of the rules more understandable and to make the rules more accessible to persons affected by them and to the general public.

A public hearing on these proposed amendments will be held on October 18, 2007, at 8:30 a.m. in the First Floor Public Conference Room (Room 125) at the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons may present their views either 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, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by mail; by telephone at (515)725-6185; or by electronic mail to admrule@dps.state.ia.us, by 4:30 p.m. on October 18, 2007.

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 at least one day prior to the public hearing.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

These amendments are intended to implement Iowa Code section 331.657, subsection 3.

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. Rescind and reserve **661—Chapter 3**.

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

CHAPTER 125

SHERIFF AND DEPUTY SHERIFF UNIFORMS

661—125.1(331) Definitions.

“Standard uniform” means the uniform worn by a sheriff or deputy sheriff while on duty except in the following circumstances identified in Iowa Code section 331.657:

1. Assignments involving special investigations, civil process, court duties, jail duties, and the handling of persons with mental illness.

2. Assignment as a court bailiff.

Standard uniforms include shirts, shoulder patches, badges, nameplates, hats, trousers, neckties, jackets, socks, shoes and boots, and leather goods.

661—125.2(331) Distinctiveness. The standard uniforms worn by sheriffs and deputy sheriffs shall be readily distinguishable from standard uniforms worn by peace officers employed by agencies of the state of Iowa.

661—125.3(331) Requirements. The colors and design of standard uniforms worn by sheriffs and deputy sheriffs shall comply with the provisions of “ISSDA Uniform Manual, 2007 edition,” published by the Iowa State Sheriffs and Deputies Association, as adopted by the board of directors of the Iowa State Sheriffs and Deputies Association, August 16, 2007.

NOTE: Iowa Code section 331.657, subsection 1, provides that each sheriff may designate “other apparel to be worn when the sheriff or a deputy is engaged in assignments involving special investigation, civil process, court duties, jail duties, and the handling of persons with mental illness.” The section further provides that district court judges, district associate court judges, and judicial magistrates may specify the dress of deputies serving as court bailiffs.

These rules are intended to implement Iowa Code section 331.657(3).

ARC 6223B**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 101.1, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 226, “Liquefied Petroleum Gas,” Iowa

Administrative Code.

Iowa Code section 101.1 provides that the Fire Marshal shall adopt administrative rules regarding the safe transportation, storage, handling, and use of liquefied petroleum gas (LP-gas or propane). These requirements were recently updated, primarily based upon Chapter 38 of the International Fire Code. Since that update was completed, it has come to the attention of the Fire Marshal that additional clarification is needed regarding procedures to be followed when a propane piping system is damaged. The amendments proposed herein provide for such procedures, in particular requiring anyone who damages such a system to immediately shut off the supply of propane to the system and to report the damage to the occupant or owner of the property. The amendments also extend requirements for leak testing of propane piping systems that have been repaired.

A public hearing on these proposed amendments will be held on October 17, 2007, at 8:30 a.m. in the First Floor Public Conference Room (Room 125) in the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views concerning these amendments at the public hearing either orally or in writing. Persons who wish to make oral presentations at the hearing are requested to contact the Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by telephone at (515)725-6185; or by electronic mail to admrule@dps.state.ia.us at least one day prior to the hearing, although any person who appears at the hearing will be afforded an opportunity to speak.

Any interested persons may make oral or written comments concerning these proposed amendments to the Agency Rules Administrator by mail, telephone, or in person at the above address by 4:30 p.m. on October 17, 2007. Comments may also be submitted by electronic mail to admrule@dps.state.ia.us by 4:30 p.m. on October 17, 2007.

These amendments are intended to implement Iowa Code chapter 101.

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 226.5(1) as follows:

226.5(1) After assembly, Any LP-gas piping systems system, including hoses, shall be pressure-tested and proven free of leaks as follows, after assembly and after each time repairs are completed on the system or any component of the system:

a. Piping systems having operating pressures greater than 20 psig shall be tested at no less than normal operating pressure in accordance with NFPA 58 Liquefied Petroleum Gas Code, 2004 edition.

b. Piping systems having operating pressures of 20 psig or less and piping within the scope of NFPA 54 National Fuel Gas Code, 2006 edition, shall be tested in accordance with that code.

ITEM 2. Adopt the following **new** rule 661—226.6(101):

661—226.6(101) Damages—reporting.

226.6(1) Notification of owner and occupant.

a. Any person who causes damage to any LP-gas piping system, including hoses, shall immediately turn off the supply of propane to the affected system and shall immediately notify the occupant of the property of the damage and the

PUBLIC SAFETY DEPARTMENT[661](cont'd)

shutoff. If the owner of the property is not the occupant and the occupant of the property cannot be contacted immediately, the owner of the property shall be notified as soon as possible. If the occupant cannot be contacted, written notice of the shutoff with the name and a telephone number for the person who shut off the supply of propane to the system shall be placed on the premises at the likely point of entry or another place likely to come to the attention of the occupant and on or near the shut-off valve in plain sight of the shut-off valve. The notice shall advise the occupant not to turn the system on until the damage has been repaired and required testing has been completed.

b. If the occupant or owner of the property on which an LP-gas piping system is located has received notification that the system has been damaged and the occupant or owner finds that the supply of propane to the system has not been shut off, then the occupant or owner shall shut off the supply of propane to the system immediately.

c. If the occupant or owner of property on which an LP-gas piping system is located finds that the LP-gas piping system has been damaged and the damage has not been reported to the occupant or owner as required by paragraph "a" of this subrule, the occupant or owner shall immediately shut off the supply of propane to the system.

226.6(2) Notification of dealer and fire department.

a. The occupant or owner shall notify the propane dealer and the local fire department of any damage to an LP-gas piping system within 24 hours of receiving notification or otherwise becoming aware of the damage and shall arrange for the dealer or another qualified person to inspect, repair, and test the damaged system prior to restoration of service to the damaged system.

b. Arrangement by the occupant or owner of the property for required repairs and testing shall not relieve the person who damaged the system of any liability for the costs of repair or testing.

226.6(3) Service shall not be restored to an LP-gas piping system which has been damaged until the system has been repaired and tested in accordance with rule 661—226.5(101).

ARC 6214B**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 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend, with the approval of the Building Code Advisory Council, Chapter 300, "State Building Code—Administration," Chapter 301, "State Building Code—General Provisions," and Chapter 303, "State Building Code—Requirements for Energy Conservation in Construction," Iowa Administrative Code.

Iowa Code chapter 103A establishes the State Building Code and assigns authority to the Building Code Commissioner to adopt the State Building Code, with the approval of the Building Code Advisory Council. The amendments pro-

posed herein update and clarify various provisions of the State Building Code. The following changes are proposed:

Item 1 proposes to amend the requirements for plan reviews so that:

- Preliminary meetings will be required for all projects submitted to the Building Code Bureau to evaluate compliance with the State Building Code.
- Approval of any project will not be given prior to compliance of the project with applicable requirements for life cycle cost analyses or energy reviews.
- Electronic submission of plans will be required for projects with projected construction costs of \$1 million or more.
- Electronic submission of plans or submission of two copies of plans will be required for any project with estimated construction costs of less than \$1 million if that project is subject to inspection by the Building Code Bureau.
- Fees for plan reviews of small fire suppression or fire alarm systems will be reduced.
- Provisions will be added for staged approvals of projects and for approval of fast-track projects.

Preliminary meetings between the design professionals working on a project and assigned Building Code staff have proven to be effective in reducing uncertainty and confusion regarding the applicability and interpretation of complex Code requirements. Electronic submission of plans represents a significant cost savings to the state and, consequently, will restrain what otherwise might be significant increases in plan review fees. It is anticipated that the dollar threshold for required electronic submission may be lowered over time until all or nearly all plans are submitted electronically. For projects that are to be inspected by the Building Code Bureau, a set of plans may be made available to the inspector electronically if the plans have been submitted electronically; if a set of plans is submitted in hard copy, a second set is needed for the inspector to take to the construction site. Setting a lower fee for reviews of plans of small fire alarm and fire suppression systems more accurately reflects the cost of these reviews than does the current schedule. Staged approvals of projects and fast-track projects are needed for some construction in the state. Iowa Code section 470.6 bars the expenditure of public funds on construction for which a life cycle cost analysis has not been completed if an analysis is required. Iowa Code section 103A.19, subsection 6, requires that an energy review of any construction over 100,000 cubic feet be completed.

Item 2 proposes to amend the rule regarding inspections by the Building Code Bureau. This new function of the Bureau is anticipated to commence in the near future. The rule was originally written with the expectation that inspections would occur under a third-party contract with the Department. Instead, the Department is in the process of hiring inspectors, as this appears to be a more efficient method of conducting inspections. The fee schedule for inspections would be specified, and dates which were specified in the rule but which have passed would be removed. These changes are proposed for consistency with the administration of the inspection program as it is currently planned.

Item 3 proposes to delete language which allows construction to adhere to the State Building Code as it read prior to its last major revision. This language applied only until April 1, 2007.

Item 4 proposes to correct a reference in the energy conservation rules. It also would remove duplicative language regarding the fee for energy reviews.

Item 5 proposes to clarify the requirement for conducting life cycle cost analyses.

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Item 6 proposes to increase from \$15 to \$25 the fee for filing energy reviews for compliance with energy conservation requirements established in the State Building Code. The increased fee is a more realistic reflection of the costs associated with filing these reviews.

A public hearing on these proposed amendments will be held on October 9, 2007, at 10 a.m. in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views concerning these amendments at the public hearing either orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319; by telephone at (515)725-6185; or by electronic mail to admrule@dps.state.ia.us at least one day prior to the hearing. Any interested persons may make oral or written comments concerning these proposed amendments to the Agency Rules Administrator by mail, telephone, or in person at the above address by 4:30 p.m. on October 9, 2007. Comments may also be submitted by electronic mail to admrule@dps.state.ia.us.

These amendments are intended to implement Iowa Code chapter 103A.

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—300.4(103A) as follows:

Rescind subrule 300.4(1) and insert in lieu thereof the following **new** subrule:

300.4(1) Plans and specifications review—approvals.

a. Submissions to the building code commissioner of architectural technical documents, engineering documents, and plans and specifications are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.

b. "Responsible design professional" means a registered architect or licensed professional engineer who signs the documents submitted.

c. Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code and with sections 106.1 and 106.1.1 of the International Building Code, 2006 edition.

d. In sections 106.1 and 106.1.1 of the International Building Code, 2006 edition, the word "permit" shall be replaced by the words "plan review."

e. Submittals to the commissioner shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.

f. Plans and specifications for projects with a construction cost of \$1 million or more or projects subject to inspection by the building code commissioner shall be submitted in an electronic format.

EXCEPTION: For projects with a construction cost of less than \$1 million that are subject to inspection by the commis-

sioner, two identical sets of plans and specifications may be submitted in lieu of electronic submittal.

NOTE: The electronic submission of plans and specifications for projects that are not subject to inspection by the building code commissioner and with a construction cost of less than \$1 million is strongly encouraged but not required.

g. Any person planning to submit documents electronically shall contact the bureau for written instructions.

h. Architectural technical submissions, engineering documents, and plans and specifications for construction, renovation, or remodeling of all state-owned buildings or facilities, including additions to existing buildings, shall be submitted to the commissioner for review and comment. Subsequently, a written response by the design professional indicating corrective measures taken to address the commissioner's plan review comments shall be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

i. Architectural technical submissions, engineering documents, and plans and specifications for the initial construction of any building or facility that will not, when completed, be wholly owned by the state or an agency of the state shall be submitted to the commissioner for review and comment, if the construction is financed in whole or in part with funds appropriated by the state and there is no local building code in effect in the local jurisdiction in which the construction is planned or, if there is such a local building code in effect, it is not enforced through a system which includes both plan reviews and inspections. Subsequently, a written response by the design professional indicating corrective measures taken to address the commissioner's plan review comments shall be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

j. Architectural technical submissions, engineering documents, and plans and specifications for construction, renovation, or remodeling of all buildings or facilities, including additions to existing buildings, to which the state building code applies, other than those subject to paragraph "h" or "i," shall be submitted to the commissioner for review and comment, unless applicability of the state building code is based upon a local ordinance enacted pursuant to Iowa Code section 103A.12. Subsequently, a written response by the design professional indicating corrective measures taken to address the commissioner's plan review comments shall be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items in the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

k. If the state building code applies to a construction project based upon a local ordinance adopting the state building code, the submission shall be made to the local jurisdiction, provided that the local jurisdiction has established a building department, unless the local jurisdiction requires submission to the building code commissioner. Review and approval of such documents by the building code commissioner shall be at the discretion of the building code commissioner based upon available resources.

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l. No project for which a life cycle cost analysis is required to be completed pursuant to Iowa Code section 470.2 shall be approved for construction prior to receipt by the commissioner of the life cycle cost analysis, final approval of the life cycle cost analysis by the commissioner and the department of natural resources pursuant to Iowa Code section 470.7, and the completion of all applicable requirements established in Iowa Code section 470.7.

m. No project for which an energy review is required pursuant to subrule 303.1(3) shall be approved for construction prior to the receipt by the commissioner of the energy review.

NOTE: Compliance with the requirements of paragraphs "l" and "m" at the earliest practical time is strongly recommended. In no case shall the submission occur later than specified in the applicable statutory provisions and provisions of the state building code.

Amend subrule **300.4(2)**, paragraph "b," as follows:

b. The fees for plan reviews completed by the building code bureau shall be calculated as follows:

Estimated Construction Costs	Calculation of Plan Review Fee
Up to and including \$1 million	\$.58 per thousand dollars or fraction thereof (minimum fee \$200)
Greater More than \$1 million	\$580 for the first \$1 million plus \$.32 for each additional thousand dollars or fraction thereof
The plan review fees for fire suppression systems and fire alarm systems are separate fees and shall be calculated as follows:	
Fire Protection System Costs	Plan Review Fee
Fire suppression systems whose construction cost for <i>materials and</i> installation is calculated to be up to and including \$20,000 \$5,000	\$200 \$100
Fire suppression systems whose construction cost for materials and installation is calculated to be more than \$5,000 and up to and including \$20,000	\$200
Fire suppression systems whose construction cost for <i>materials and</i> installation is estimated to be greater more than \$20,000	\$400
Fire alarm systems whose construction cost for <i>materials and</i> installation is calculated to be up to and including \$20,000 \$5,000	\$200 \$100
Fire alarm systems whose construction cost for materials and installation is calculated to be more than \$5,000 and up to and including \$20,000	\$200
Fire alarm systems whose construction cost for <i>materials and</i> installation is estimated to be greater more than \$20,000	\$400

Payment of the assigned fee shall accompany each plan when submitted for review. Payment ~~may~~ shall be made by money order, check or draft made payable to the Iowa Department of Public Safety Building Code Bureau Treasurer, State of Iowa.

Amend subrule 300.4(3) as follows:

300.4(3) Preliminary meeting. The responsible design professional for a project is ~~strongly encouraged to~~ shall schedule a preliminary meeting with the building code bureau to discuss code compliance issues early in the design de-

velopment phase. The responsible design professional ~~should~~ shall contact the bureau to schedule the preliminary meeting. There is no separate fee for a preliminary meeting. *If the responsible design professional plans to request approval to bid the project as part of the preliminary meeting, the responsible design professional shall request a copy of the document "Preliminary Meeting Checklist" at the time the meeting is scheduled and shall be prepared to address all applicable issues identified in the checklist at the preliminary meeting. Approval to bid the project shall not be given unless all applicable issues identified on the checklist have been addressed to the satisfaction of the commissioner.*

Adopt the following ~~new~~ subrules:

300.4(4) Requests for staged approvals.

a. Requests for approval to begin foundation work shall be submitted to the building code bureau in writing and may be transmitted by mail, E-mail or fax or in person. Foundation approval may be granted by the bureau in writing, following a preliminary meeting, if the construction plans and specifications are found to be in compliance with the requisite code provisions.

b. Requests for approval to continue construction beyond the foundation, up to and including the shell of the building, shall be submitted to the bureau in writing and may be transmitted by mail, E-mail or fax or in person. These requests will be evaluated on a case-by-case basis, and approval or denial of the requests will be transmitted to the submitter in a written form.

300.4(5) Fast-track projects. While fast-track projects are not encouraged, fast-track projects may be considered by the commissioner on a case-by-case basis. If a fast-track project is initially approved, a written plan of submittal, review and approval will be developed for each project. All projects approved for fast-track review must be submitted in an electronic format that is acceptable to the commissioner.

NOTE: Fast-track projects are not encouraged and will be approved only on the basis of good cause shown.

ITEM 2. Amend rule 661—300.5(103A) as follows:

661—300.5(103A) Inspections.

300.5(1) ~~After March 1, 2007, any~~ Any building or facility for which construction is subject to a plan review by the commissioner, except construction involving any building or facility owned by the board of regents or by any institution subject to the authority of the board of regents, shall be subject to inspection by the commissioner or staff of the bureau or division at the direction of the commissioner or by a third party with whom the commissioner contracts to conduct inspections of buildings and facilities subject to the state building code. ~~Fees for inspections completed by a third party under contract with the building code commissioner shall be paid by the owner of the building or facility directly to the third party contractor and shall be in an amount specified in the contract. Inspection fees established in a contract with a third party may vary according to the valuation or complexity of the project, or the amount of time required to complete and report upon any required inspections, or the number of inspections required before compliance with the provisions of the state building code is achieved, but shall not vary according to the geographical location within the state of Iowa of the building or facility or according to the travel time required of an inspector.~~

300.5(2) ~~After July 1, 2007, any~~ Any construction involving any building or facility owned by the board of regents or by an institution subject to the authority of the board of regents shall be subject to inspection by the commissioner or

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staff of the bureau or division at the direction of the commissioner.

EXCEPTION: Construction which is limited to building additions, renovations or repairs shall not be subject to inspection by the commissioner.

300.5(3) ~~The fee schedule established in a contract or contracts for inspections conducted by a third party shall apply to inspections conducted by the commissioner or staff of the bureau or division at the direction of the commissioner, except that fees for inspections of buildings and facilities owned by the board of regents or by institutions under the control of the board of regents shall be established as provided in 2006 Iowa Acts, House File 2797, section 72, subsection 2. However, if inspections are conducted by the commissioner, or by staff of the bureau or division at the direction of the commissioner, the fees shall be paid by the owner directly to the bureau. Buildings subject to inspection by the state building code commissioner, except construction involving any building or facility owned by the board of regents or by any institution subject to the authority of the board of regents, shall pay an inspection fee based upon the construction cost of the project. The inspection fee shall be calculated as follows:~~

Construction Cost	Base Inspection Fee
Up to \$100,000	\$598
\$100,001 to \$1,000,000	\$645
\$1,000,001 to \$10,000,000	\$722
\$10,000,001 and above	\$783
Follow-up inspection	\$214

The base inspection fee shall cover three inspections—a foundation, rough-in and final. The base inspection fee shall be due and payable at the time completed construction documents are submitted for review. The plan review will not be conducted until the proper base inspection fee is paid. Checks should be made payable to the Treasurer, State of Iowa and delivered to the bureau office. This fee is separate and distinct from the plan review fee established in subrule 300.4(2).

Additional inspections may occur for any of the following reasons:

a. During one of the three base inspections, code violations are identified that require a follow-up inspection be conducted to verify that the violations have been corrected.

b. Upon arrival, the inspector finds that the project is not ready for the type of inspection requested.

c. By special request of the project designer, contractor or owner.

d. Upon order of the building code commissioner (no additional charge).

The fee for each additional inspection shall be calculated individually as follows:

One hour on site = \$206

One to two hours on site = \$240

Two to three hours on site = \$273

Three to four hours on site = \$307

Four to five hours on site = \$341

Five to six hours on site = \$374

Additional inspection fees will be billed to the responsible architect or building contractor on a monthly basis. The building may receive only temporary approval for occupancy if unpaid inspection fees remain at the time of final inspection.

Inspection fees and standard operating procedures for construction involving any building or facility owned by the board of regents or by any institution subject to the authority of the board of regents shall be established through a written

agreement between the commissioner and the board of regents.

300.5(4) Any person who performs a building code inspection on behalf of the building code commissioner shall have and maintain one of the following: (1) current certification as a commercial building inspector by the International Code Council, or (2) other equivalent certification approved by the building code commissioner. An employee of the department who performs an inspection on behalf of the building code commissioner shall, in addition, meet any requirements for the job class in which the employee is classified as established by the department of administrative services, pursuant to Iowa Code chapter 8A, subchapter IV, part 2.

EXCEPTION: An employee of the department who performs inspections on behalf of the building code commissioner may perform such inspections for no more than six months prior to obtaining the required certification.

ITEM 3. Amend rule ~~661—301.3(103A)~~ by striking the Exception as follows:

~~*EXCEPTION: Prior to April 1, 2007, buildings or facilities subject to the state building code may be designed and constructed in compliance with the state building code as it read prior to January 1, 2007. "Prior to April 1, 2007" means that required submissions have been made to the building code commissioner or a local building department by the close of business on March 31, 2007.*~~

ITEM 4. Amend rule 661—303.1(103A) as follows:

Amend subrule 303.1(2) as follows:

303.1(2) Applicability. Rules 661—303.1(103A) through 661—303.3(103A) apply to design and construction of buildings which provide facilities or shelter intended primarily for human occupancy or use throughout the state of Iowa. ~~All residential construction is covered, as is all nonresidential~~ All construction of public buildings; any building within a jurisdiction which has adopted the state building code, a local building code, or a compilation of requirements for building construction; or any new construction of a building or facility with more than 100,000 cubic feet of enclosed space *which is heated or cooled is covered.* Rule 661—303.2(103A) establishes standards for design and construction of low-rise residential buildings. Rule 661—303.3(103A) establishes standards for nonresidential and high-rise residential design and construction.

The occupancy of any building covered by this chapter shall be determined based upon the occupancy definitions in chapter 3 of the International Building Code, 2003 2006 edition.

Amend subrule **303.1(3)** by rescinding and reserving paragraph "c."

ITEM 5. Amend rule 661—303.4(103A,473) as follows:

~~**661—303.4(103A,473 470)**~~ **Life cycle cost analysis.** Any public agency as defined by Iowa Code section 470.1 shall prepare a life cycle cost analysis for any new construction having 20,000 square feet of usable floor space which is heated or cooled by a mechanical or electrical system or for any renovation where additions or alterations exceed 50 percent of the value of the facility and affect an energy system. The life cycle cost analysis shall be prepared in compliance with Iowa Code chapter 470 and *shall* be submitted to the state building code commissioner before construction commences.

Any public agency which is a state agency as defined in Iowa Code section 7D.34 shall, within 60 days of final selection of a design architect or engineer, notify the commission-

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er and the department of natural resources of the methodology to be used to perform the life cycle cost analysis. Notice shall be provided given on the forms provided by the department of natural resources for this purpose. A life cycle cost analysis prepared by a state agency shall be submitted in sufficient time ahead of the releasing release of plans for bids to allow for revisions or additions which may be made to the plans. *Public funds shall not be used for the construction or renovation of a facility unless the design for the work is prepared in accordance with Iowa Code chapter 470 and the actual construction or renovation is consistent with the design.*

ITEM 6. Amend rule 661—303.5(103A) as follows:

661—303.5(103A) Submission Energy review fee. *The fee for filing an energy review shall be \$25. Payment of the fee, by money order, check, or warrant made payable to Treasurer, State of Iowa, shall be included included with the submission of documents for an energy review shall be a remittance of \$15, which may be by money order, check, or warrant made payable to Treasurer, State of Iowa.*

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REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax,” and Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” Iowa Administrative Code.

These amendments are proposed as a result of 2007 Iowa Acts, House File 923, and 2007 Iowa Acts, Senate Files 566, 590 and 601.

Items 1, 4 and 5 amend subrules 42.2(7) and 42.13(1) and rule 701—42.12(422) to remove references to Iowa Code section 422.12B for tax years beginning on or after January 1, 2007, regarding the earned income credit since this credit is now a refundable credit. Item 4 also amends the implementation clause for rule 701—42.12(422).

Item 2 amends subrule 42.2(9) to provide that the earned income credit is 7 percent of the federal earned income credit for tax years beginning on or after January 1, 2007, and that the credit is now refundable. In addition, the rule provides for the method for nonresidents and part-year residents of Iowa to calculate the earned income credit for tax years beginning on or after January 1, 2007.

Item 3 amends the implementation clause for rule 701—42.2(422).

Item 6 amends subrule 42.15(2) for individual income tax to set forth the additional amounts of historic preservation and cultural and entertainment district tax credits starting with the fiscal year beginning July 1, 2007.

Items 7, 8 and 9 amend subrules 42.15(4) and 42.15(6) for individual income tax to provide that the historic preservation and cultural and entertainment district tax credit is now fully refundable for tax years ending on or after July 1, 2007.

Item 9 also amends the implementation clause for rule 701—42.15(422).

Item 10 amends rule 701—42.23(422) to update the listing regarding the sequence of tax credits to be deducted for individual income tax.

Item 11 amends rule 701—42.30(422) to provide that the school tuition organization tax credit may be allowed for noncash contributions for tax years beginning on or after January 1, 2007.

Items 12 and 13 amend subrules 42.30(1), 42.30(3), 42.30(4) and 42.30(5) to provide for new reporting dates for school tuition organizations, to allow the increased amount of school tuition organization tax credits starting for tax years beginning on or after January 1, 2008, and to clarify the definition of a “qualified school.”

Item 14 amends the implementation clause for rule 701—42.30(422).

Item 15 amends rule 701—52.12(422) to update the listing regarding the sequence of tax credits to be deducted for corporation income tax.

Item 16 amends subrule 52.18(2) for corporation income tax to set forth the additional amounts of historic preservation and cultural and entertainment district tax credits starting with the fiscal year beginning July 1, 2007. This is similar to the change in Item 6.

Items 17, 18 and 19 amend subrules 52.18(4) and 52.18(6) for corporation income tax to provide that the historic preservation and cultural and entertainment district tax credit is now fully refundable for tax years ending on or after July 1, 2007. This is similar to the change in Items 7, 8 and 9. Item 19 also amends the implementation clause for rule 701—52.18(422).

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 15, 2007, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 2, 2007. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy 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, Taxpayer Services and Policy 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 October 5, 2007.

REVENUE DEPARTMENT[701](cont'd)

These amendments are intended to implement Iowa Code sections 404A.4, 422.11D and 422.33 as amended by 2007 Iowa Acts, Senate File 566; Iowa Code section 422.12B as amended by 2007 Iowa Acts, Senate File 590; and Iowa Code section 422.11S as amended by 2007 Iowa Acts, House File 923 and Senate File 601.

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 **42.2(7)**, paragraph "c," last unnumbered paragraph, as follows:

~~Any~~ For tax years beginning prior to January 1, 2007, any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code sections 422.12 and 422.12B may be carried forward for ten years or until it is used, whichever is the earlier. For tax years beginning on or after January 1, 2007, any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code section 422.12 may be carried forward for ten years or until it is used, whichever is the earlier.

ITEM 2. Amend subrule 42.2(9) as follows:

42.2(9) Earned income credit.

a. Tax years beginning before January 1, 2007. Effective for tax years beginning on or after January 1, 1990, an individual is allowed a state earned income credit equal to a percentage of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The state earned income credit is nonrefundable so the credit may not exceed the remaining income tax liability of the taxpayer after the personal exemption credits and the other nonrefundable credits are deducted. The percentage of the earned income credit for tax years beginning in the 1990 calendar year is 5 percent. The percentage of the earned income credit for tax years beginning on or after January 1, 1991, is 6.5 percent.

For federal income tax purposes, the earned income credit is available for a low-income worker who maintains a household in the United States that is the principal place of abode of the worker and a child or children for more than one-half of the tax year or the worker must have provided a home for the entire tax year for a dependent parent. In addition, the worker must be (1) a married person who files a joint return and is entitled to a dependency exemption for a son or daughter, adopted child or stepchild; (2) a surviving spouse; or (3) an individual who qualifies as a head of household as described in Section 2(b) of the Internal Revenue Code. The federal earned income credit for a taxpayer is determined by computing the taxpayer's earned income on a worksheet provided in the federal income tax return instructions and determining the allowable credit from a table included in the instructions for the 1040 or 1040A. For purposes of the credit, a taxpayer's earned income includes wages, salaries, tips, or other compensation plus net income from self-employment.

In the case of married taxpayers who filed a joint federal return who elect to file separate state returns or separately on the combined return form, the state earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents and part-year residents of Iowa are allowed the same earned income credits as resident taxpayers.

b. Tax years beginning on or after January 1, 2007. Effective for tax years beginning on or after January 1, 2007, an individual is allowed a state earned income credit equal to 7 percent of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The state earned income credit is refundable, so the credit may exceed the remaining income tax liability of the taxpayer after the personal exemption credits and other nonrefundable credits are deducted.

In the case of married taxpayers who filed a joint federal return who elect to file separate state returns or separately on the combined return form, the state earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents or part-year residents of Iowa must determine the state earned income 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 separately on the combined return form, the state earned income 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.

EXAMPLE: A married couple lives in Omaha, Nebraska. One spouse worked in Iowa in 2007 and had wages and other income from Iowa sources of \$12,000. That spouse had a federal adjusted gross income from all sources of \$15,000. The other spouse had no Iowa source net income and had a federal adjusted gross income from all sources of \$10,000. The taxpayers had a federal earned income credit of \$2,800.

The federal earned income credit of \$2,800 multiplied by 7 percent equals \$196. The ratio of Iowa source net income of \$12,000 divided by total source net income of \$25,000 equals 48 percent. The Iowa earned income tax credit equals \$196 multiplied by 48 percent, or \$94.

ITEM 3. Amend the implementation clause for rule **701—42.2(422)** as follows:

This rule is intended to implement Iowa Code ~~Supplement section sections~~ 15.333 and ~~sections~~ 422.10, and sections 422.11A, 422.12, and 422.12B as amended by 2007 Iowa Acts, Senate File 590.

ITEM 4. Amend rule **701—42.12(422)** as follows:

Amend the second unnumbered paragraph as follows:

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.5 by reducing the shareholder's or member's taxable income by the shareholder's or member's pro-rata share of the items of income and expenses of the financial institution and subtracting the credits allowed in Iowa Code sections 422.12 and 422.12B for tax years beginning prior to January 1, 2007. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.5 reduced by the credits allowed in Iowa Code sections 422.12 and 422.12B for tax years beginning prior to January 1, 2007. For tax years beginning on or after January 1, 2007, only the credits allowed in Iowa Code section 422.12 are reduced in computing the franchise tax credit.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 422.11 as amended by 2006 2007 Iowa Acts, ~~chapter 4158~~ Senate File 590.

ITEM 5. Amend subrule **42.13(1)**, third unnumbered paragraph, as follows:

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Any For tax years beginning prior to January 1, 2007, any Iowa eligible housing business tax credit in excess of the individual's tax liability, less the credits authorized in Iowa Code sections 422.12 and 422.12B, may be carried forward for seven years or until it is used, whichever is the earlier. For tax years beginning on or after January 1, 2007, any Iowa eligible housing business tax credit in excess of the individual's tax liability less the credits authorized in Iowa Code section 422.12 may be carried forward for seven years or until it is used, whichever is the earlier.

ITEM 6. Amend subrule 42.15(2), introductory paragraph, as follows:

42.15(2) Application and review process for the historic preservation and cultural and entertainment district tax credit. Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For fiscal years beginning on or after July 1, 2000, \$2.4 million shall be appropriated for historic preservation and cultural and entertainment district tax credits for each year. For the fiscal years beginning July 1, 2005, and ~~ending June 30, 2015~~ July 1, 2006, an additional \$4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than \$4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. ~~Tax credits shall not be reserved by the department of cultural affairs for more than five years except for tax credits issued for contracts entered into prior to July 1, 2005. For the fiscal year beginning July 1, 2007, \$10 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2008, \$15 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2009, and for subsequent fiscal years, \$20 million in historic preservation and cultural and entertainment district tax credits is available. Tax credits shall not be reserved by the department of cultural affairs for more than three years except for tax credits issued for contracts entered into prior to July 1, 2007.~~

ITEM 7. Amend subrule 42.15(4), introductory paragraph, as follows:

42.15(4) Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return. After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office, in consultation with the Iowa department of economic development, is to issue a historic preservation and cultural and entertainment district tax

credit certificate, which is to be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.15(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value *for tax periods ending prior to July 1, 2007*. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

ITEM 8. Amend subrule **42.15(4)** by adding the following **new** paragraph at the end of the subrule:

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

ITEM 9. Amend rule 701—42.15(422) as follows:

Amend subrule **42.15(6)**, third unnumbered paragraph, as follows:

If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 42.15(4) *for tax years ending prior to July 1, 2007*, just as the refund would have been discounted on the Iowa income tax return of the taxpayer. *For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit of the transferee in excess of the transferee's tax liability is fully refundable.*

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code Supplement chapter 404A as amended by 2006 Iowa Acts, chapter 1158, and Iowa Code section 422.11D as amended by 2005 2007 Iowa Acts, House Senate File 882, section 64 566.

ITEM 10. Amend rule 701—42.23(422) as follows:

701—42.23(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C and 422.110 shall be deducted in the following sequence:

1. Personal exemption credits.
2. Tuition and textbook credit.
3. ~~Iowa earned income credit.~~ *Nonresident and part-year resident credit.*
4. ~~Nonresident and part-year resident credit.~~ *Franchise tax credit.*

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5. ~~Franchise tax credit. S corporation apportionment credit.~~
6. ~~S corporation apportionment credit. School tuition organization tax credit.~~
7. ~~Historic preservation and cultural and entertainment district tax credit (nonrefundable portion). Venture capital credits.~~
8. ~~School tuition organization tax credit. Endow Iowa tax credit.~~
9. ~~Venture capital credits. Agricultural assets transfer tax credit.~~
10. ~~Endow Iowa tax credit. Film qualified expenditure tax credit.~~
11. ~~Agricultural assets transfer tax credit. Film investment tax credit.~~
12. Investment tax credit.
13. Wind energy production tax credit.
14. Renewable energy tax credit.
15. New jobs credit.
16. Economic development region revolving fund tax credit.
17. Alternative minimum tax credit.
18. Historic preservation and cultural and entertainment district tax credit (refundable portion).
19. Ethanol blended gasoline tax credit.
20. Research activities credit.
21. Assistive device credit.
22. Out-of-state tax credit.
23. Child and dependent care credit or early childhood development tax credit.
24. Motor fuel credit.
25. Claim of right credit (if elected in accordance with rule 701—38.18(422)).
26. Wage-benefits tax credit.
27. Soy-based cutting tool oil tax credit.
28. Refundable portion of investment tax credit, as provided in subrule 42.2(10), paragraph “b.”
29. E-85 gasoline promotion tax credit.
30. Biodiesel blended fuel tax credit.
31. Soy-based transformer fluid tax credit.
32. ~~Estimated payments, payment with vouchers and withholding tax. Earned income tax credit.~~
33. *Estimated payments, payment with vouchers and withholding tax.*

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11C, 422.11D, 422.11E, 422.11F, 422.11G, 422.11H, 422.11I, 422.11J, 422.11K, 422.11L, 422.11M, 422.11O, 422.11P, 422.11R, 422.11S, 422.12, 422.12B, 422.12C and 422.110 and 2007 Iowa Acts, House File 892, sections 5 and 6.

ITEM 11. Amend rule 701—42.30(422), introductory paragraph, as follows:

701—42.30(422) School tuition organization tax credit. Effective for ~~tax years~~ *the tax year* beginning on or after January 1, 2006, *but beginning before January 1, 2007*, 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. *For tax years beginning on or after January 1, 2007, the school tuition organization tax credit is available that is equal to 65 percent of the amount of voluntary cash or noncash contributions made by a taxpayer to a school tuition organization. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a noncash contribution, and these are equally applicable to the determination of the amount of a school tu-*

tion organization tax credit for tax years beginning on or after January 1, 2007.

ITEM 12. Amend subrule **42.30(1)**, definitions of “certified enrollment,” “contribution,” and “qualified school,” as follows:

“Certified enrollment” means the enrollment at schools served by school tuition organizations as of ~~the third Friday of September~~ *October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday*, of the appropriate year.

“Contribution” means a voluntary cash or noncash 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.

“Qualified school” means a nonpublic elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, *including a prekindergarten program for students who are five years of age by September 15 of the appropriate year*, 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.

ITEM 13. Amend subrules 42.30(3), 42.30(4) and 42.30(5) as follows:

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~~ *November 1*. 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~~ *October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday*.

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 post-marked 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~~ *December 1* 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 calendar year, and \$7.5 million for the 2008 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 2008 calendar year, if the certified enrollment of each qualified school in Iowa, as provided to the department by ~~October 15, 2006~~ *November 1, 2007*, were 25,000 37,500, the per-student tax credit would be \$200 (~~\$5~~ *\$7.5 million divided by 25,000 37,500*). If a school tuition organization lo-

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cated 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 2008 calendar year. The department would notify this school tuition organization by ~~November 15, 2006~~ *December 1, 2007*, of the authorization to issue \$280,000 of tax credit certificates for the 2007 2008 calendar year. This authorization would allow the school tuition organization to solicit contributions totaling \$430,769 (\$280,000 divided by 65 percent) during the 2007 2008 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 *or noncash* 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.

ITEM 14. Amend the implementation clause for rule **701—42.30(422)** as follows:

This rule is intended to implement *Iowa Code section 422.11S as amended by 2006 2007 Iowa Acts, Senate File 2409, section 1 House File 923, section 13, and Senate File 601, section 111.*

ITEM 15. Amend rule 701—52.12(422) as follows:

701—52.12(422) Deduction of credits. The credits against computed tax set forth in Iowa Code section 422.33 shall be deducted in the following sequence.

1. Franchise tax credit.
2. ~~Historic preservation and cultural and entertainment district tax credit (nonrefundable portion).~~ *Venture capital credits.*
3. ~~Venture capital credits.~~ *Endow Iowa tax credit.*
4. ~~Endow Iowa tax credit.~~ *Agricultural assets transfer tax credit.*
5. ~~Agricultural assets transfer tax credit.~~ *Film qualified expenditure tax credit.*
6. ~~Investment tax credit.~~ *Film investment tax credit.*
7. ~~Wind energy production tax credit.~~ *Investment tax credit.*
8. ~~Renewable energy tax credit.~~ *Wind energy production tax credit.*
9. ~~New jobs credit.~~ *Renewable energy tax credit.*
10. ~~Economic development region revolving fund tax credit.~~ *New jobs credit.*
11. ~~Alternative minimum tax credit.~~ *Economic development region revolving fund tax credit.*
12. ~~Historic preservation and cultural and entertainment district tax credit (refundable portion).~~ *Alternative minimum tax credit.*
13. ~~Corporate tax credit for certain sales tax paid by developer.~~ *Historic preservation and cultural and entertainment district tax credit.*
14. ~~Ethanol blended gasoline tax credit.~~ *Corporate tax credit for certain sales tax paid by developer.*
15. ~~Research activities credit.~~ *Ethanol blended gasoline tax credit.*
16. ~~Assistive device credit.~~ *Research activities credit.*
17. ~~Motor fuel credit.~~ *Assistive device credit.*
18. ~~Wage benefits tax credit.~~ *Motor fuel credit.*

19. ~~Soy-based cutting tool oil tax credit.~~ *Wage benefits tax credit.*

20. ~~Refundable portion of investment tax credit, as provided in subrule 52.10(4).~~ *Soy-based cutting tool oil tax credit.*

21. ~~E-85 gasoline promotion tax credit.~~ *Refundable portion of investment tax credit, as provided in subrule 52.10(4).*

22. ~~Biodiesel blended fuel tax credit.~~ *E-85 gasoline promotion tax credit.*

23. ~~Soy-based transformer fluid tax credit.~~ *Biodiesel blended fuel tax credit.*

24. ~~Estimated tax and payments with vouchers.~~ *Soy-based transformer fluid tax credit.*

25. *Estimated tax and payments with vouchers.*

This rule is intended to implement Iowa Code sections 15.333, 15.335, 422.33, 422.91 and 422.110.

ITEM 16. Amend subrule 52.18(2), introductory paragraph, as follows:

52.18(2) Application and review process for the historic preservation and cultural and entertainment district tax credit. Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For fiscal years beginning on or after July 1, 2000, \$2.4 million shall be appropriated for historic preservation and cultural and entertainment district tax credits for each year. For the fiscal years beginning July 1, 2005, and ending ~~June 30, 2015~~ *July 1, 2006*, an additional \$4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than \$4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. ~~Tax credits shall not be reserved by the department of cultural affairs for more than five years except for tax credits issued for contracts entered into prior to July 1, 2005.~~ *For the fiscal year beginning July 1, 2007, \$10 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2008, \$15 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2009, and for subsequent fiscal years, \$20 million in historic preservation and cultural and entertainment district tax credits is available. Tax credits shall not be reserved by the department of cultural affairs for more than three years except for tax credits issued for contracts entered into prior to July 1, 2007.*

ITEM 17. Amend subrule 52.18(4), introductory paragraph, as follows:

52.18(4) Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return. After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a cer-

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tificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office, in consultation with the Iowa department of economic development, is to issue a historic preservation and cultural and entertainment district tax credit certificate, which is to be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.18(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value *for tax periods ending prior to July 1, 2007*. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

ITEM 18. Amend subrule **52.18(4)** by adding the following **new** paragraph at the end of the subrule:

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

ITEM 19. Amend rule 701—52.18(422) as follows:

Amend subrule **52.18(6)**, third unnumbered paragraph, as follows:

If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 52.18(4) *for tax years ending prior to July 1, 2007*, just as the refund would have been discounted on the Iowa income tax return of the taxpayer. *For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit of the transferee in excess of the transferee's tax liability is fully refundable.*

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code Supplement chapter 404A as amended by 2006 Iowa Acts, chapter 1158, and Iowa Code section 422.11D 422.33 as amended by 2005 2007 Iowa Acts, House File 882, section 64 Senate File 566.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, "Adjustments to Computed Tax," and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

These amendments are proposed as a result of 2007 Iowa Acts, Senate File 601.

Items 1 and 2 amend subrules 42.24(3) and 42.24(4) for individual income tax to provide that only \$4 million of wage-benefits tax credits is available for the fiscal year ending June 30, 2008, and for subsequent fiscal years.

Item 3 amends the implementation clause for rule 701—42.24(15,422).

Items 4 and 5 amend subrules 52.25(3) and 52.25(4) for corporation income tax to provide that only \$4 million of wage-benefits tax credits is available for the fiscal year ending June 30, 2008, and for subsequent fiscal years.

Item 6 amends the implementation clause for rule 701—52.25(15,422).

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 15, 2007, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 2, 2007. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy 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, Taxpayer Services and Policy 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 October 5, 2007.

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These amendments are intended to implement Iowa Code section 151.3 as amended by 2007 Iowa Acts, Senate File 601.

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 **42.24(3)**, paragraphs “**d**,” “**e**,” and “**f**,” as follows:

d. The tax credit certificates that are issued in a fiscal year cannot exceed \$10 million for the fiscal year ending June 30, 2007, and shall not exceed \$4 million for the fiscal year ending June 30, 2008, and for subsequent fiscal years. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the \$10 million limit for a particular the fiscal year ending June 30, 2007, any applications for tax credit certificates received after the \$10 million limit has been reached will be denied. Similarly, if tax credit certificates have already been issued for the \$4 million limit for the fiscal year ending June 30, 2008, and for subsequent fiscal years, any applications for tax credit certificates received after the \$4 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the \$10 million or \$4 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

e. A business which qualifies for the tax credit is eligible to receive the tax credit certificate for each of the four subsequent tax years, subject to the \$4 million limit for tax credits for subsequent years, if the business retains the qualified new job during each of these subsequent tax years. The business must reapply each year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 42.24(2) for the first year are is applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs, and preference will be given in the order in which applications were filed for the fiscal year ending June 30, 2007. Therefore, if a business those businesses which received a the first \$4 million of tax credit credits for the first year ending June 30, 2007, in which the qualified job was jobs were created, the business will automatically receive a tax credit for a subsequent year as long as the qualified job is jobs are retained and an application is completed.

f. After the first fiscal year ending June 30, 2007, if the \$10 million limit is reached, but credits become available because the jobs were not retained by other businesses which received the first \$4 million of credits for the year ending June 30, 2007, an application which was originally denied will be considered in the order in which it was originally received the application was received for the fiscal year ending June 30, 2007.

EXAMPLE: Wage-benefits tax credits of \$4 million are issued for the fiscal year ending June 30, 2007, relating to applications filed between July 1, 2006, and March 31, 2007. For the next fiscal year ending June 30, 2008, the same businesses that received the \$4 million in wage-benefits tax credits filed applications totaling \$3 million for the retained jobs for which the application for the prior year was filed on or before March 31, 2007. The first \$3 million of the available \$4 million will be allowed to these same businesses. The remaining \$1 million that is still available for the year ending June 30, 2008, will be allowed for those retained jobs for

which applications for the prior year were filed starting on April 1, 2007, until the remaining \$1 million in tax credits is issued.

ITEM 2. Amend subrule **42.24(4)**, Examples 7 and 8, as follows:

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees, since these employees have now been employed for 12 months. *However, the credit may not be allowed if more than \$4 million of retained job applications are received for the fiscal year ending June 30, 2008.*

EXAMPLE 8: Assume the same facts as Example 6, except that the \$10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if all other applicants for tax credit certificates retained the qualified new jobs because the \$10 million limit has been met prior to this new application more than \$4 million of retained job applications are received for the fiscal year ending June 30, 2008.

ITEM 3. Amend the implementation clause for rule **701—42.24(151,422)** as follows:

This rule is intended to implement Iowa Code Supplement chapter 15I as amended by 2007 Iowa Acts, Senate File 601, section 82, and Iowa Code section 422.11L.

ITEM 4. Amend subrule **52.25(3)**, paragraphs “**d**,” “**e**,” and “**f**,” as follows:

d. The tax credit certificates that are issued in a fiscal year cannot exceed \$10 million for the fiscal year ending June 30, 2007, and shall not exceed \$4 million for the fiscal year ending June 30, 2008, and for subsequent fiscal years. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the \$10 million limit for a particular the fiscal year ending June 30, 2007, any applications for tax credit certificates received after the \$10 million limit has been reached will be denied. Similarly, if tax credit certificates have already been issued for the \$4 million limit for the fiscal year ending June 30, 2008, and for subsequent fiscal years, any applications for tax credit certificates received after the \$4 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the \$10 million or \$4 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

e. A business which qualifies for the tax credit is eligible to receive the tax credit certificate for each of the four subsequent tax years, subject to the \$4 million limit for tax credits for subsequent years, if the business retains the qualified new job during each of these subsequent tax years. The business must reapply each year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 42.24(2) for the first year are is applicable for each subsequent period. Preference will be given in issuing tax

REVENUE DEPARTMENT[701](cont'd)

credit certificates for those businesses that retain qualified new jobs, *and preference will be given in the order in which applications were filed for the fiscal year ending June 30, 2007.* Therefore, ~~if a business those businesses which received a the first \$4 million of tax credit credits for the first year ending June 30, 2007, in which the qualified job was jobs were created, the business will automatically receive a tax credit for a subsequent year as long as the qualified job is jobs are retained and an application is completed.~~

f. After the first fiscal year ending June 30, 2007, if the \$10 million limit is reached, but credits become available because the jobs were not retained by other businesses which received the first \$4 million of credits for the year ending June 30, 2007, an application which was originally denied will be considered in the order in which it was originally received the application was received for the fiscal year ending June 30, 2007.

EXAMPLE: Wage-benefits tax credits of \$4 million were issued for the fiscal year ending June 30, 2007, relating to applications filed between July 1, 2006, and March 31, 2007. For the next fiscal year ending June 30, 2008, the same businesses that received the \$4 million in wage-benefits tax credits filed applications totaling \$3 million for the retained jobs for which the application for the prior year was filed on or before March 31, 2007. The first \$3 million of the available \$4 million will be allowed to these same businesses. The remaining \$1 million that is still available for the year ending June 30, 2008, will be allowed for those retained jobs for which applications for the prior year were filed starting on April 1, 2007, until the remaining \$1 million in tax credits is issued.

ITEM 5. Amend subrule **52.25(4)**, Examples 7 and 8, as follows:

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees, since these employees have now been employed for 12 months. However, the credit may not be allowed if more than \$4 million of retained job applications are received for the fiscal year ending June 30, 2008.

EXAMPLE 8: Assume the same facts as Example 6, except that the \$10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if all other applicants for tax credit certificates retained the qualified new jobs because the \$10 million limit has been met prior to this new application more than \$4 million of retained job applications are received for the fiscal year ending June 30, 2008.

ITEM 6. Amend the implementation clause for rule **701—52.25(15I,422)** as follows:

This rule is intended to implement Iowa Code Supplement chapter 15I as amended by 2007 Iowa Acts, Senate File 601, section 82, and Iowa Code Supplement section 422.33(18).

ARC 6243B

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 46, “Withholding,” and Chapter 48, “Composite Returns,” Iowa Administrative Code.

These amendments are proposed as a result of 2007 Iowa Acts, House Files 904 and 923.

Item 1 amends subrule 46.3(2) to include allowances for adjustments to income when taxpayers complete the Iowa employee’s withholding allowance certificate, form IA W-4, for tax years beginning on or after January 1, 2008.

Item 2 amends the implementation clause for rule 701—46.3(422).

Items 3, 4 and 5 amend rule 701—46.4(422) to provide for an exemption from withholding of partnership distributions made to nonresidents of certain publicly traded partnerships for tax years beginning on or after January 1, 2008.

Items 6 and 7 amend rules 701—48.1(422) and 701—48.2(422) to provide that nonresident trusts or estates which are partners, members, shareholders or beneficiaries in partnerships, limited liability companies, S corporations or estates or trusts may elect or may be required to file a composite return for tax years beginning on or after January 1, 2008.

Items 8 and 9 amend rule 701—48.3(422) and rescind rule 701—48.4(422) to eliminate the requirement that taxpayers have to make applications for permission to file a composite return.

Item 10 amends subrule 48.9(1) to correct the mailing address for composite returns.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 15, 2007, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 2, 2007. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, De-

REVENUE DEPARTMENT[701](cont'd)

partment 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, Taxpayer Services and Policy 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 October 5, 2007.

These amendments are intended to implement Iowa Code section 422.16 as amended by 2007 Iowa Acts, House File 904, section 3, and Iowa Code section 422.13 as amended by 2007 Iowa Acts, House File 923, section 15.

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 **46.3(2)**, paragraph “b,” by adding the following new subparagraph (5):

(5) Allowances for adjustments to income. For tax years beginning on or after January 1, 2008, employees can claim allowances for adjustments to income which are set forth in Treasury Regulation §31.3402(m)-1, paragraph “b.” This includes adjustments to income such as alimony, deductible IRA contributions, student loan interest and moving expenses which are allowed as deductions in computing income subject to Iowa income tax. In instances where an employee is married and the employee's spouse is a wage earner, the withholding allowances claimed by both spouses for adjustments to income for the employee and spouse should not exceed the aggregate number of allowances to which both taxpayers are entitled.

ITEM 2. Amend the implementation clause for rule **701—46.3(422)** as follows:

This rule is intended to implement Iowa Code sections 422.7, and 422.12C, and *section 422.16 as amended by 2007 Iowa Acts, House File 904, section 3.*

ITEM 3. Amend subrule 46.4(1), introductory paragraph, as follows:

46.4(1) General rules. Payers of Iowa income to nonresidents are required to withhold Iowa income tax and to remit the tax to the department on all payments of Iowa income to nonresidents except payments of wages to nonresidents engaged in film production or television production described in subrule 46.4(5), income payments for agricultural commodities or products described in subrule 46.4(6), and deferred compensation payments, pension, and annuity payments attributable to personal services in Iowa by the nonresidents *described in subrule 46.4(7), and partnership distributions from certain publicly traded partnerships described in subrule 46.4(8).* Withholding agents should use the following methods and rates in withholding for nonresidents:

ITEM 4. Amend subrule **46.4(2)**, numbered paragraph “8,” as follows:

8. Income received by a nonresident partner or shareholder of a partnership or S corporation doing business in Iowa. *See subrule 46.4(8) for the exemption from withholding for partnership distributions from certain publicly traded partnerships.*

ITEM 5. Amend rule 701—46.4(422) as follows:
Adopt new subrule 46.4(8) as follows:

46.4(8) Exemption from withholding of partnership distributions made to nonresidents of certain publicly traded partnerships. For tax years beginning on or after January 1, 2008, a nonresident who is a partner in a publicly traded partnership as defined in Section 7704(b) of the Internal Revenue Code is not subject to state withholding tax on the partner's pro rata share, provided that the publicly traded partnership submits the following information to the department for each partner whose Iowa income from the partnership exceeded \$500:

- a. Partner's name.
- b. Partner's address.
- c. Partner's taxpayer identification number.
- d. Partner's pro rata share of Iowa income from the partnership for the tax year.

A partnership is a publicly traded partnership if the interests in the partnership are traded on an established securities market or the interests in the partnership are readily traded on a secondary market or its substantial equivalent.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections ~~section 422.15, Iowa Code section 422.16 as amended by 2007 Iowa Acts, House File 923, section 3, and Iowa Code sections 422.17, and 422.73.~~

ITEM 6. Amend rule 701—48.1(422) as follows:

701—48.1(422) Composite returns. For tax years of nonresident partners, members, shareholders, or beneficiaries which begin on or after January 1, 1987, a partnership, limited liability company, S corporation, or trust may be allowed or be required to file a composite return and pay the tax due on behalf of the nonresident partners, members, shareholders, or beneficiaries. For tax years of nonresident partners, members, shareholders, or beneficiaries which begin on or after January 1, 1999, a partnership, limited liability company, S corporation, or trust may elect or may be required to file a composite return and pay the tax due on behalf of the nonresident partners, members, shareholders, or beneficiaries. For tax years beginning on or after January 1, 1995, professional athletic teams may be allowed or *be* required to file a composite return and pay the tax due on behalf of nonresident team members. *For tax years beginning on or after January 1, 2008, nonresident trusts or estates which are partners, members, shareholders or beneficiaries in partnerships, limited liability companies, S corporations or estates or trusts may elect or may be required to file a composite return and pay the tax due on behalf of the nonresident trusts or estates.*

This rule is intended to implement Iowa Code section 422.13 as amended by 1999 2007 Iowa Acts, ~~chapter 151 House File 923, section 15.~~

ITEM 7. Amend rule **701—48.2(422)**, definitions of “taxpayer” and “tax year,” as follows:

“Taxpayer” means a partnership, limited liability company, S corporation, professional athletic team, or trust which files a return and pays the tax on behalf of the nonresident partners, members, shareholders, employees, or beneficiaries, *estates or trusts.*

“Tax year” means the tax year of the partners, shareholders, employees, or beneficiaries, *estates or trusts* included in the composite return.

ITEM 8. Amend rule **701—48.3(422)**, numbered paragraphs “1” and “4,” as follows:

1. The composite return must include all nonresident partners, shareholders, employees, or beneficiaries unless the taxpayer can demonstrate which nonresident partners,

REVENUE DEPARTMENT[701](cont'd)

shareholders, employees, or beneficiaries are filing separate income tax returns because the partner, shareholder, employee or beneficiary has Iowa source income other than that which may be reported on a separate composite return, or has elected to file an Iowa individual income tax return. Nonresident partners, shareholders, employees, or beneficiaries shall not be included in a composite return if the nonresident has less than the minimum statutory filing amount. For example, for 1993 2006 the minimum income from Iowa sources before a nonresident is required to file an Iowa individual income tax return is \$1,000 of income attributed to Iowa sources as determined by applying the allocation and apportionment provisions of 701—Chapter 54 to the nonresident's prorated share of the entity's income. In addition, nonresident partners, shareholders, employees, or beneficiaries shall not be included in a composite return if the nonresident does not have more income from Iowa sources than the amount of one standard deduction for a single taxpayer plus an amount of income necessary to create a tax liability at the effective tax rate on the composite return sufficient to offset one personal exemption. For example, for 1993 2006 a standard deduction for a single individual is \$1,330 \$1,650 and at the maximum tax rate of 9.98 8.98 percent, \$200 \$445 of taxable income is required to offset the \$20 \$40 personal exemption, while at a 5 percent tax rate \$400 income is required. This equates to \$2,095 (\$445 plus \$1,650) of income attributable to Iowa sources that would be required to be included in a composite return. The taxpayer must include a list of all nonresident partners, shareholders, employees, or beneficiaries who are filing separate income tax returns. The list must also include the address and social security number or federal identification number of the nonresident partners, shareholders, employees, or beneficiaries. ~~Requesting permission to file~~ Filing a composite return is an election which may not be withdrawn after the due date of the return (considering any extension of time to file), but the nonresidents may, as an individual or as a group, withdraw their election at any time prior to the due date (considering any extension of time to file).

4. A taxpayer who has been granted permission elects to file a composite return shall continue to file composite returns unless the taxpayer notifies the department in writing that the taxpayer wishes to discontinue filing composite returns. The notice shall be filed with the Iowa Department of Revenue and Finance, Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306, before the due date of the return for the tax year for which the change in filing is to be made.

A taxpayer who was required to file a composite return for the immediately preceding taxable year is required to file a composite return unless permission is given to discontinue filing a composite return.

ITEM 9. Rescind and reserve rule 701—48.4(422).

ITEM 10. Amend subrule 48.9(1) as follows:

48.9(1) A composite return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the taxpayer's taxable year, or the last day of the period covered by an extension of time granted by the department. When the due date falls on a Saturday, Sunday, or legal holiday, the composite return is due the first business day following the Saturday, Sunday, or legal holiday. If a return is placed in the mails mail, properly addressed, postage paid, and postmarked, on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to ~~Income Tax Composite Return Processing, De-~~

partment of Revenue and Finance, Hoover State Office Building P.O. Box 10469, Des Moines, Iowa 50319 50306.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code chapter 17A and sections 421.17 and 437A.25, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 70, “Replacement Tax and Statewide Property Tax,” Chapter 71, “Assessment Practices and Equalization,” Chapter 75, “Property Tax Administration,” Chapter 78, “Property Tax Exemptions,” and Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

Item 1 amends subrule 70.22(1) by requiring that any entity or person subject to the replacement tax must keep records of all property transferred or disposed of in the preceding calendar year, by local taxing district.

Item 2 amends the implementation clause for 701—Chapter 70.

Item 3 amends subrule 71.5(2) to clarify that assessors in assessing property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code shall use the productive and earning capacity from the actual rents received as a method of appraisal to determine the extent to which that use and limitation reduces the market value. This is not a change in policy but only a clarification of the statute and the method presently being followed by assessors.

Item 4 amends subrule 71.20(4) to permit a board of review to accept taxpayer protests by electronic transmission.

Item 5 adopts new rule 701—75.8(614), which clarifies that a county is immune from the statute of limitations when collecting delinquent property taxes.

Item 6 amends rule 701—78.8(427) to allow certain properties acquired by purchase after the filing deadline for claiming a property tax exemption to receive the exemption if the properties would have been exempt had a timely claim for exemption been filed.

Item 7 adopts new rule 701—80.26(427), which allows a tax exemption on property used by a Web search portal business if the business meets certain criteria.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 15, 2007, to the Policy Section, Compliance Di-

REVENUE DEPARTMENT[701](cont'd)

vision, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 2, 2007. 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 October 5, 2007.

These amendments are intended to implement Iowa Code section 427.1 as amended by 2007 Iowa Acts, House File 912, section 3; Iowa Code section 427.3 as amended by 2007 Iowa Acts, House File 923, section 27; Iowa Code chapter 437A as amended by 2007 Iowa Acts, Senate File 278; Iowa Code sections 441.21 and 441.37; and Iowa Code section 614.1 as amended by 2007 Iowa Acts, Senate File 450, 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 amendments are proposed.

ITEM 1. Amend subrule **70.22(1)** by rescinding paragraphs “e” and “f,” adopting the following **new** paragraph “e,” and relettering paragraphs “g” to “j” as “f” to “i”:

e. Records associated with the transfer or disposal of all operating property in the preceding calendar year, by local taxing district.

ITEM 2. Amend **701—Chapter 70**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 437A as amended by 2007 Iowa Acts, Senate File 278.

ITEM 3. Amend subrule **71.5(2)** by rescinding paragraph “a” and adopting the following **new** paragraph in lieu thereof:

a. Productive and earning capacity. In assessing property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code which limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property.

ITEM 4. Amend subrule **71.20(4)**, paragraph “a,” as follows:

a. A board of review may act only upon written protests which have been filed with the board of review between April 16 and May 5, inclusive. In the event May 5 falls on a Saturday or Sunday, protests filed the following Monday shall be considered to have been timely filed. Protests post-marked by May 5 or the following Monday if May 5 falls on a

Saturday or Sunday shall also be considered to have been timely filed. All protests must be in writing and signed by the taxpayer or the taxpayer's authorized agent. A written request for an oral hearing must be made at the time of filing the protest and may be made by checking the appropriate box on the form prescribed by the department of revenue. Protests may be filed for previous years if the taxpayer discovers that a mathematical or clerical error was made in the assessment, provided the taxes have not been fully paid or otherwise legally discharged. The protester may combine on one form assessment protests on parcels separately assessed if the same grounds are relied upon as the basis for protesting each separate assessment. If an oral hearing is requested on more than one of the protests, the person making the combined protests may request that the oral hearings be held consecutively. *A board of review may allow protests to be filed in electronic format. Protests transmitted electronically are subject to the same deadlines as written protests.*

ITEM 5. Amend 701—Chapter 75 by adopting the following **new** rule:

701—75.8(614) Delinquent property taxes. A county is immune from the statute of limitations when collecting delinquent property taxes levied on or after April 1, 1992 (Fennelly v. A-1 Machine and Tool Co., No. 73/04-1232—10/6/06).

This rule is intended to implement Iowa Code section 614.1 as amended by 2007 Iowa Acts, Senate File 450.

ITEM 6. Amend rule 701—78.8(427) as follows:

701—78.8(427) Abatement of taxes. The board of supervisors may abate the taxes levied against property acquired by gift or purchase if the property was acquired after the deadline for filing a claim for property tax exemption if the property would have been exempt under Iowa Code section 427.1, subsection 8 or 9, if a timely claim had been filed, or was acquired after July 1 if the property would have been exempt under Iowa Code section 427.1, subsection 7.

This rule is intended to implement Iowa Code Supplement section 427.3 as amended by 2007 Iowa Acts, House File 923.

ITEM 7. Amend 701—Chapter 80 by adopting the following **new** rule:

701—80.26(427) Web search portal property. This exemption includes cooling systems, cooling towers, and other temperature control infrastructure; all power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the Web search portal, including but not limited to exterior dedicated business-owned substations; back-up power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the Web search portal. The exemption does not apply to land, buildings, and improvements or power distribution systems subject to assessment under Iowa Code chapter 437A. The Web search portal business must meet the requirements contained in Iowa Code section 423.3, subsection 92, for the exemption to be allowable. The owner of the property must file a claim for exemption with the assessor by February 1 of the first year the exemption is claimed. Claims for exemption in successive years shall be required only for property additions.

This rule is intended to implement Iowa Code section 427.1 as amended by 2007 Iowa Acts, House File 912, section 3.

ARC 6217B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts new Chapter 105, "Demonstration Fund," Iowa Administrative Code.

The rules implement a new program authorized by 2007 Iowa Acts, House File 829, section 1(3). The rules describe the purpose of the fund; the application submittal, review and approval procedures; and the contract administration provisions.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest because there are a number of applicants that have pending projects and want to apply for funding so they can begin their projects as quickly as possible. In addition, the Department is required to provide a report by January 15, 2008, about program activity, and this emergency filing would allow time to collect more information.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules should be waived and the rules should be made effective upon filing with the Administrative Rules Coordinator on August 16, 2007. Having administrative rules in effect on this date will allow an application and review process to be in place for pending projects.

These rules are also published herein under Notice of Intended Action as **ARC 6215B** to allow for public comment.

The Iowa Economic Development Board adopted these rules on August 16, 2007.

These rules became effective on August 16, 2007.

These rules are intended to implement 2007 Iowa Acts, House File 829, section 1(3).

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.

Adopt the following **new** chapter:

CHAPTER 105
DEMONSTRATION FUND

261—105.1(82GA, HF829) Authority. The authority for establishing rules governing the demonstration fund under this chapter is provided in 2007 Iowa Acts, House File 829.

261—105.2(82GA, HF829) Purpose. The demonstration fund is established to provide financial and technical assistance to encourage high technology prototype and concept development activities that have a clear potential to lead to commercially viable products or services within a reasonable period of time. The primary purpose of the fund is to help businesses with a high-growth potential reach a position where they are able to attract later stage private sector funding.

261—105.3(82GA, HF829) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Department" means the Iowa department of economic development.

"Fund" means the demonstration fund.

"IP" means intellectual property.

"NAICS" means the North American Industry Classification System.

261—105.4(82GA, HF829) Project funding.

105.4(1) Awards shall be made on a per-project basis upon board approval.

105.4(2) The maximum award shall not exceed \$150,000 for a single project.

105.4(3) Funds may be used for refining a prototype, acquiring managerial expertise, purchasing equipment, or creating marketing materials.

105.4(4) Funds may not be used for university overhead expenses or any work that was conducted prior to the term of the contract by the applicant or any third-party consultant.

105.4(5) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—105.5(82GA, HF829) Matching funds requirement.

In order to receive financial assistance, an applicant must demonstrate the ability to secure one dollar of nonstate monies for every two dollars received from the department.

261—105.6(82GA, HF829) Eligible applicants. Eligible applicants must be located in Iowa, demonstrate the potential for high growth, and be included in one of the following industries classified by the NAICS:

1. Biosciences.
2. Information technologies.
3. Advanced manufacturing.

261—105.7(82GA, HF829) Ineligible applicants. The following businesses are not eligible for this fund:

105.7(1) A business which is engaged in retail sales or provides health services is ineligible.

105.7(2) A business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

261—105.8(82GA, HF829) Application and review process.

105.8(1) An eligible business must submit an application for financial and technical assistance from the fund to the Iowa Department of Economic Development, Targeted Industries Division, 200 East Grand Avenue, Des Moines, Iowa 50309, on a form provided by the department. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

105.8(2) To apply for financial assistance from the fund, a business shall submit an application to the department, on a form provided by the department. The application will be reviewed by department staff, the committee and the board.

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The committee will make a recommendation to the board about an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

105.8(3) An application for assistance shall include all information required by the department including, but not limited to, the following:

a. Proposed product or service. A description of the proposed product or service, the experience of those involved in the proposed project, and the company resources.

b. Market research. A market research analysis that addresses questions such as:

- (1) What are the competing or alternative technologies?
- (2) What is the advantage of this new approach?
- (3) What are the distribution plans?
- (4) What is the estimated return on investment?

c. Commercialization. A description of the key next steps to making an impact with the innovation and a description of funding requirements necessary to overcome obstacles to success.

d. Work plan. A description of the strategy and key elements to be funded to address goals of the work plan, including project milestones.

e. Resources and budget. A budget that includes a detailed description of the sources, including the required match, and uses of the funds.

261—105.9(82GA, HF829) Application selection criteria.

In reviewing applications for financial assistance, the committee and board shall consider the following criteria:

105.9(1) Intellectual property. How the ownership of the IP is structured. (More points are awarded for greater IP control by the business, with the greatest number of points being awarded for exclusive IP ownership by the business.)

105.9(2) Experience. The business's experience in productization and commercialization, and ongoing product maintenance.

105.9(3) Estimate to completion.

a. What are the work requirements; how quickly will it be completed?

b. How credible is this estimate relative to the business's experience?

c. Does the business have the resources to fulfill these requirements?

105.9(4) Market research.

a. Is there a competitor?

b. How large is the market outside of Iowa?

c. How credible is the marketing plan?

d. Does the business have experience in this industry?

e. Is there an industry in Iowa that would be a natural client/market?

105.9(5) Financial requirement.

a. Have the matching and necessary funds been secured?

b. Is the amount available sufficient to take the product to market?

105.9(6) Distribution. Do the channels already exist to take the product to market?

105.9(7) Expected return. As part of the evaluation process, is the expected return quantified based on time to break-even and long-term economic impact?

261—105.10(82GA, HF829) Contract and reporting.

105.10(1) Notice of award. Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

105.10(2) Contract required. The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; conditions to disbursement; required reports; the repayment requirements imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

105.10(3) Reporting. An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, House File 829, section 1(3).

[Filed Emergency 8/16/07, effective 8/16/07]

[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6233B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 8A.311, the Department of Administrative Services hereby amends Chapter 105, "Procurement of Goods and Services of General Use," Iowa Administrative Code.

These amendments reflect changes to Iowa Code chapter 8A brought about by 2007 Iowa Acts, House File 890.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 18, 2007, as **ARC 6050B**. No written comments were received on these amendments. The amendments are identical to those published under Notice.

These amendments will become effective on October 17, 2007.

These amendments are intended to implement Iowa Code section 8A.311.

The following amendments are adopted.

ITEM 1. Amend rule **11—105.2(8A)**, definitions of "board" and "newspaper of general circulation," as follows:

"Board" means the technology governance board established by ~~2005 Iowa Acts, chapter 90, section 3~~ *Iowa Code section 8A.204*.

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

ITEM 2. Amend subrule 105.3(3) as follows:

105.3(3) Construction procurement. Formal competition shall be used for selection of a vendor for construction, erection, demolition, alteration, or repair of a public improvement when the cost of the work exceeds ~~\$25,000~~ *\$100,000*.

ITEM 3. Amend paragraph **105.4(2)"a"** as follows:

a. Justification for TSB procurement. Agencies may purchase from a TSB without competition for a purchase up to ~~\$5,000~~ *\$10,000*.

ITEM 4. Amend paragraph **105.7(1)"a"** as follows:

a. Bid posting. The department and each state agency shall provide notice of solicitations. The department and each state agency shall post notice of every formal competitive bidding opportunity and proposal to the official Internet site, <http://bidopportunities.iowa.gov>, operated by the department of administrative services in accordance with Iowa Code sections 73.2, and 8A.311, and 362.3 as ~~amended by 2005 Iowa Acts, House File 814~~. Instead of direct posting, the agency may add a link to <http://bidopportunities.iowa.gov> that connects to the Web site maintained by the agency on which requests for bids and proposals for that agency are posted. For the purposes of this subrule, a formal solicitation is as defined by the appropriate procurement authority. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state Internet site operated by the department of administrative services.

ITEM 5. Amend subrule 105.7(3) as follows:

105.7(3) Direct vendor notification. All procurement opportunities ~~over \$5,000~~ shall be directly communicated to vendors registered through the ~~vendor on-line~~ *state's electronic procurement system that, Vendor Self-Serve (VSS), if*

the vendors have indicated an interest in the type of good or service that is the subject of the solicitation. The notice shall be sent to the E-mail or fax or other address entered *on VSS* by the vendor ~~on the vendor on-line system~~.

ITEM 6. Amend subrule 105.7(4) as follows:

105.7(4) Construction procurement exceeding ~~\$25,000~~ *\$100,000*. Construction solicitations shall be advertised twice in a newspaper of general circulation published in the county within which the work is to be done. Additional means of advertisement used shall be consistent with practices in the construction industry. The department may publish an advertisement in an electronic format as an additional method of soliciting bids.

[Filed 8/22/07, effective 10/17/07]

[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6245B**CAPITAL INVESTMENT
BOARD, IOWA[123]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby adopts amendments to Chapter 2, "Tax Credit for Investments in Qualifying Businesses and Community-Based Seed Capital Funds," and Chapter 3, "Tax Credit for Investments in Venture Capital Funds," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXX; No. 2, p. 171, on July 18, 2007, as **ARC 6057B**.

Items 1, 2 and 6 amend rules 123—2.1(15E), 123—2.3(15E) and 123—3.1(15E), respectively, to correct references to the Iowa Code as amended by 2007 Iowa Acts, Senate File 557, pertaining to taxes imposed on credit unions.

Items 3 and 4 amend subrules 2.5(1) and 2.5(2) to provide that taxpayer identification numbers of investors do not have to be submitted with the initial application filed by a qualifying business or a community-based seed capital fund.

Item 5 amends the implementation clause for 123—Chapter 2.

These amendments are being adopted by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective October 17, 2007, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 15E.44 and 15E.45 as amended by 2007 Iowa Acts, House File 923 and Senate File 557.

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 [2.1, 2.3, 2.5(1)"d," 2.5(2)"c," 3.1] is be-

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ing omitted. These amendments are identical to those published under Notice as **ARC 6057B**, IAB 7/18/07.

[Filed 8/22/07, effective 10/17/07]
[Published 9/12/07]

[For replacement pages for IAC, see IAC Supplement 9/12/07.]

ARC 6220B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 9, "Workforce Training and Economic Development Funds," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 6032B**.

The amendments change the due date for community college reports and two-year plans from April 30 to August 15 of each year. Language has been added to describe how community colleges may utilize funds allocated by 2007 Iowa Acts, House File 927. In addition, Iowa Code references have been updated.

The Department held a public hearing on Thursday, July 26, 2007, to receive comments on the amendments. No comments were received. The final rules include additional changes to incorporate language from the Iowa Code regarding the use of funds. Iowa Code section 260C.18A(2) allows funds to be used in the areas of alternative and renewable energy; therefore, Items 4 and 7 have been updated and new Item 5 has been added to incorporate this statutory language.

The Iowa Economic Development Board adopted these amendments on August 16, 2007.

These amendments will become effective on October 17, 2007.

These amendments are intended to implement Iowa Code sections 15G.111(5) and 260C.18A and 2007 Iowa Acts, House File 927.

The following amendments are adopted.

ITEM 1. Amend rules **261—9.1(81GA, HF868)** to **261—9.10(81GA, HF868)**, parenthetical implementation statutes, as follows:

(~~81GA, HF868~~ 15G, 260C)

ITEM 2. Amend rule 261—9.2(15G, 260C) as follows:

261—9.2(15G, 260C) Definitions.

"Community college" or "college." No change.

"Department" or "IDED." No change.

"Fund" or "funds" means the workforce training and economic development funds created by Iowa Code section 260C.18A as amended by 2005 Iowa Acts, House File 868, sections 35 to 37, and allocated to each community college.

"GIVF" or "grow Iowa values fund" means moneys appropriated to the grow Iowa values fund established by 2005 Iowa Acts, House File 868, section 4 Iowa Code section 15G.111.

"Iowa economic development board" or "IDED board" means the Iowa economic development board established in Iowa Code section 15.103 as amended by 2005 Iowa Acts, House File 868, section 4.

"Project." No change.

ITEM 3. Amend rule 261—9.4(15G, 260C) as follows:

261—9.4(15G, 260C) Community college workforce and economic development plan and progress report. For the fiscal year beginning July 1, 2003, each community college, prior to receiving its allocation, shall adopt and submit to the department with a copy filed with the IDED board a two-year workforce training and economic development plan that outlines the community college's proposed use of the grow Iowa values fund moneys allocated to the community college. For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, each community college, to receive its allocation for the forthcoming fiscal year, shall prepare and submit to the department for the IDED board the following items ~~prior to the start of~~ for the forthcoming fiscal year:

9.4(1) Two-year workforce training and economic development fund plan. Each college shall adopt a two-year workforce training and economic development fund plan that outlines the community college's proposed use of the grow Iowa values fund moneys appropriated to its fund. Plans shall be based on fiscal years and must be submitted to the department by ~~April 30~~ August 15 ~~prior to~~ for the forthcoming current fiscal year allocation.

9.4(2) Plan updates. Plans shall be updated annually outlining proposed uses for the next two fiscal years, and must be submitted to the department by ~~April 30~~ August 15 ~~prior to~~ for the forthcoming current fiscal year allocation.

9.4(3) Progress reports.

a. Each college shall prepare an annual progress report on the two-year plan's implementation. This progress report shall address the following goals established by the general assembly for the GIVF:

- (1) Expanding and stimulating the state's economy;
- (2) Increasing the wealth of Iowans; and
- (3) Increasing the population of the state.

b. The report shall be submitted in a manner and form as prescribed by IDED and shall meet the requirements of rule 261—9.8(15G, 260C).

c. Each college shall annually submit the two-year plan and progress report to the department in a manner prescribed by these rules, and annually file a copy of the plan and progress report with the IDED board. Plans and progress reports shall be submitted to IDED by ~~April 30~~ August 15. For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, a community college shall not have moneys deposited in the workforce training and economic development fund of that community college unless the IDED board has approved the annual progress report of the community college.

ITEM 4. Amend rule 261—9.5(15G, 260C) as follows:

Amend the introductory paragraph as follows:

261—9.5(15G, 260C) Use of funds. Moneys deposited into each community college fund shall be used for the following purposes, provided that 70 percent of the moneys be used on projects in the areas of advanced manufacturing; information technology and insurance; *alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42, subsection 1, paragraph "a";* and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology:

Adopt the following **new** subrule:

9.5(6) The portion of annual funds allocated pursuant to 2007 Iowa Acts, House File 927, shall be used for the development and expansion of energy industry areas and for the department's North American Industry Classification System (NAICS) for targeted industry areas established pursuant to Iowa Code section 260C.18A.

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ITEM 5. Amend rule 261—9.6(15G,260C), introductory paragraph, as follows:

261—9.6(15G,260C) Approval of projects. Activity within each fund will be reviewed by the department to aid in ensuring that the college's fund is meeting the requirement that 70 percent of the moneys allocated to the community college fund shall be used for projects in the areas of advanced manufacturing; information technology and insurance; *alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42, subsection 1, paragraph "a"*; and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology. Any individual project using over \$1 million of moneys from a workforce training and economic development fund shall require prior approval from the IDEB board. The following procedures apply for approval of activities to be assisted by the grow Iowa values fund:

ITEM 6. Amend subrule 9.8(1) as follows:

9.8(1) Each community college that receives an allocation of moneys under rule 261—9.4(15G,260C) shall submit to the IDEB board by ~~April 30~~ *August 15* of each year an annual written report regarding the accomplishments of the projects funded through the workforce training and economic development fund for the fiscal year, in a manner and form prescribed by the department. The report shall provide information regarding how projects aided by the community college's workforce training and economic development fund are meeting the goals of the grow Iowa values fund and have resulted in an increase in the number of higher education graduates.

ITEM 7. Amend subrule 9.9(2) as follows:

9.9(2) The board may reject a progress report for the following reasons, including but not limited to:

- a. Information or data is incomplete;
- b. Report does not address how grow Iowa values fund goals have been met;
- c. Fund is determined not to meet the goals established under the grow Iowa values fund;
- d. Use of funds fails to meet the college's two-year plan;
- e. Seventy percent of the fund is not used for projects in the areas of advanced manufacturing; information technology and insurance; *alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42, subsection 1, paragraph "a"*; and life sciences which include the areas of biotechnology, health care technology, and nursing care technology.;

f. Funds allocated pursuant to 2007 Iowa Acts, House File 927, are not used for the development and expansion of energy industry areas and for the department's North American Industry Classification System (NAICS) for targeted industry areas established pursuant to Iowa Code section 260C.18A.

ITEM 8. **Amend 261—Chapter 9**, implementation sentence, as follows:

These rules are intended to implement ~~2005 Iowa Acts, House File 868 and House File 809 Iowa Code sections 15G.111 and 260C.18A and 2007 Iowa Acts, House File 927.~~

[Filed 8/16/07, effective 10/17/07]

[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6221B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 25, "Housing Fund," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 6029B**.

The amendments clarify or expand on the definition of "technical services," add Habitat for Humanity as another allowable principal mortgage loan provider, and require separate procurement transactions for contracted services.

The Department held a public hearing on Thursday, July 26, 2007, to receive comments on the amendments. No comments were received. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on August 16, 2007.

These amendments will become effective on October 17, 2007.

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

The following amendments are adopted.

ITEM 1. Amend rule **261—25.2(15)**, definition of "technical services," as follows:

"Technical services" means all services that are necessary for individual, scattered site activities including: (1) conducting initial inspections, (2) work write-up or project specification development, (3) cost estimate preparation, and (4) construction supervision associated with activities that do not require an architect or engineer; (5) *lead hazard reduction need determination and oversight*, (6) *lead hazard reduction carrying costs*, and (7) *temporary relocation coordination*.

ITEM 2. Amend subrule 25.6(8) as follows:

25.6(8) An application for a home ownership activity must indicate that recipients will require the beneficiaries of their home ownership assistance to use a principal mortgage loan product offered by one of the following: Iowa Finance Authority, USDA-Rural Development, Federal Home Loan Bank, HUD (including FHA and VA), Fannie Mae, *Habitat for Humanity*, or Freddie Mac. One of these entities will be the principal, and only, mortgage lender in terms of repayable loans in all individual home ownership assistance projects. Any of the named mortgage lending entity's principal mortgage loan products may be used, provided they meet the following minimum requirements: loan terms will minimally include a 90 percent loan-to-value ratio and will be no less than a 15-year, fully amortized, fixed-rate mortgage.

ITEM 3. Amend subrule 25.9(3) as follows:

25.9(3) Local administrative and technical services contracts.

a. Recipients awarded funds for general administration that employ the services of a third-party administrator to perform all or part of the general administrative functions for the recipient shall enter into a contractual agreement for the general administrative functions to be performed.

b. Recipients awarded funds for activities requiring technical services (e.g., inspections, work write-ups, cost estimates, construction supervision, lead hazard reduction need

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determination and oversight, lead hazard *reduction* carrying costs, and temporary relocation coordination) that employ a third-party entity to perform all or part of the technical services shall enter into a contractual agreement for the technical services to be performed.

c. Recipients that employ a third party to perform all or part of the general administration for the recipient and that also employ a third party to perform all or part of the technical services for the recipient shall *conduct separate procurement transactions and shall* enter into separate contractual agreements for each: one contract for general administration and one contract for technical services. Separate contracts are required even if both functions are performed by the same third-party entity.

[Filed 8/16/07, effective 10/17/07]

[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6218B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts new Chapter 36, "Film, Television, and Video Project Promotion Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 6031B**. In addition, these rules were simultaneously Adopted and Filed Emergency as **ARC 6030B**.

Chapter 36 implements a new tax credit program authorized by 2007 Iowa Acts, House File 892. The rules describe the application process, the tax credit benefits available if approved, and contract administration processes.

The Department held a public hearing on Thursday, July 26, 2007, to receive comments on the amendments. No comments were received. The final rules are identical to the proposed rules.

The Iowa Economic Development Board adopted these rules on August 16, 2007.

These rules will become effective on October 17, 2007, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement 2007 Iowa Acts, House File 892.

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 36] is being omitted. These rules are identical to those published under Notice as **ARC 6031B** and Adopted and Filed Emergency as **ARC 6030B**, IAB 7/4/07.

[Filed 8/16/07, effective 10/17/07]

[Published 9/12/07]

[For replacement pages for IAC, see IAC Supplement 9/12/07.]

ARC 6219B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 59, "Enterprise Zones," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 6033B**.

The amendments define a "business closure" and a "permanent layoff" and include a permanent layoff as additional criteria for establishing an enterprise zone.

The Department held a public hearing on Thursday, July 26, 2007, to receive comments on the amendments. No comments were received. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on August 16, 2007.

These amendments will become effective on October 17, 2007.

These amendments are intended to implement 2007 Iowa Acts, House File 648.

The following amendments are adopted.

ITEM 1. Amend rule **261—59.2(15E)** by adopting in alphabetical order the following **new** definitions:

"Business closure" means a business that has completed the formal legal process of dissolution, withdrawal or cancellation with the secretary of state.

"Permanent layoff" means the loss of jobs to an out-of-state location, the cessation of one or more production lines, the removal of manufacturing machinery and equipment, or similar actions determined to be equivalent in nature by the department. A permanent layoff does not include a layoff of seasonal employees or a layoff that is seasonal in nature. For purposes of these rules, a permanent layoff must occur on or after February 1, 2007.

ITEM 2. Amend subrule 59.3(6) as follows:

59.3(6) City or county with business closure.

a. Requirements. A city of any size or any county may designate an enterprise zone at any time prior to July 1, 2010, when a business closure *or permanent layoff* occurs involving the loss of full-time employees, not including retail employees, at one place of business totaling at least 1,000 employees or 4 percent of the county's resident labor force based upon the most recent annual resident labor force statistics from the department of workforce development, whichever is lower.

b. Zone parameters. The enterprise zone may be established on the property of the place of business that has closed *or imposed a permanent layoff*, and the enterprise zone may include an area up to an additional three miles adjacent to the property. *The closing business or business imposing a permanent layoff shall not be eligible to receive incentives or assistance under this program.* The area meeting the requirements for enterprise zone eligibility under this subrule shall not be included for the purpose of determining the area limitation pursuant to Iowa Code section 15E.192, subsection 4.

c. Certification procedures. All requests for certification shall be made using the application provided by the department. The board will review requests for enterprise zone

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certification. The board may approve, deny, or defer a request for zone certification.

d. Amendments. A city or county which designated an enterprise zone under this subrule on or after June 1, 2000, may request an amendment to include additional area within the enterprise zone. Requests must be in writing and be approved by the department within three years of the date the enterprise zone was originally certified. Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified, and the number of acres the zone will contain if the amendment is approved. A legal description of the amended enterprise zone and a map which shows both the original enterprise zone boundaries and the proposed changes to those boundaries shall accompany the written request.

e. Restrictions. Enterprise zones established pursuant to this subrule shall not be used to provide incentives for eligible housing businesses to construct new housing units or rehabilitate existing housing units.

[Filed 8/16/07, effective 10/17/07]
[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6234B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and Chapter 19, "Coaching Authorization," Iowa Administrative Code.

The amendments update fee changes made in 2005 to Chapter 14 by including the fee increase for the one-year extension for renewal of the coaching authorization.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 6, 2007, as **ARC 5945B**. A public hearing on the amendments was held on June 27, 2007. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective October 17, 2007.

The following amendments are adopted.

ITEM 1. Amend subrule **14.121(1)**, paragraph "b," by adding the following **new** subparagraph **(10)**:

(10) The fee for a one-year extension for renewal of a coaching authorization shall be \$40.

ITEM 2. Amend subrule 19.5(2) as follows:

19.5(2) Five planned renewal activities/courses related to athletic coaching approved in accordance with guidelines approved by the board of educational examiners. Beginning on or after July 1, 2000, each applicant for the renewal of a coaching authorization shall have completed one renewal

activity/course relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches. A one-year extension of the holder's coaching authorization will be issued if all requirements for the renewal of the coaching authorization have not been met. This extension is not renewable. ~~Effective September 1, 2004, the fee for the one-year extension shall be \$25. The fee for this extension is found in 282—14.121(272).~~

[Filed 8/22/07, effective 10/17/07]
[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6235B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The amendment to subrule 14.140(11), paragraph "b," changes the requirements of a Statement of Professional Recognition (SPR) for school nurses. This amendment will require all applicants for an SPR to verify that they have attained at least a minimum of a baccalaureate degree. Based on Iowa Code section 272.2(10), the Board of Educational Examiners has the authority to establish the standards for SPRs. The Board has previously made the requirements for an SPR for special education nurses to include a baccalaureate degree.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 6, 2007, as **ARC 5917B**. In addition, this amendment was simultaneously Adopted and Filed Emergency as **ARC 5916B**. A public hearing on the amendment was held on June 27, 2007. There were several attendees at the public hearing with one person speaking and one written comment received. This amendment has been changed from that published under Notice. The words "in nursing" have been removed from the added language in numbered paragraph 14.140(11)"b"(1)"1."

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective October 17, 2007, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend subrule **14.140(11)**, paragraph "b," as follows:

b. Requirements for a statement of professional recognition (SPR) for school nurses. If a person has passed the registered nurses examination and is licensed by the Iowa board of nursing, the person may obtain a statement of professional recognition (SPR) from the board of educational examiners.

(1) An applicant will be issued an SPR if the applicant:

1. Has passed the registered nurses examination, and is licensed by the Iowa board of nursing *and has a baccalaureate degree*.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

2. While employed by an accredited K-12 school district, maintains licensure with the Iowa board of nursing.
(2) to (6) No change.

[Filed 8/22/07, effective 10/17/07]
[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6230B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The amendments are intended to allow for the bundling of several business teaching endorsements into a single endorsement.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 6, 2007, as **ARC 5942B**. A public hearing on the amendments was held on June 27, 2007. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective October 17, 2007.

The following amendments are adopted.

ITEM 1. Amend subrule 14.141(3) as follows:

14.141(3) Business—~~general~~ *all*. 5-12. Completion of 24 30 semester hours in business to include 6 semester hours in accounting, 6 3 semester hours in business law *to include contract law, and coursework 3 semester hours in computer and technical applications in business, and coursework in 6 semester hours in marketing to include consumer studies, 3 semester hours in management, 6 semester hours in economics, and 3 semester hours in business communications to include formatting, language usage, and oral presentation. Coursework in entrepreneurship and in financial literacy may be a part of, or in addition to, the coursework listed above.*

ITEM 2. Rescind and reserve subrules **14.141(4)** and **14.141(5)**.

[Filed 8/21/07, effective 10/17/07]
[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6227B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The amendment broadens the type of geometry course required to better enable applicants to access a geometry course to fulfill the requirement.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 6, 2007, as **ARC 5946B**. A public hearing on the amendment was held on June 27, 2007. No one attended the public hearing, and one written comment was 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 October 17, 2007. The following amendment is adopted.

Amend subrule **14.141(13)**, paragraph "**b**," as follows:

b. 5-12. Completion of 24 semester hours in mathematics to include a linear algebra or an abstract (modern) algebra course, a ~~postcalculus~~ geometry course, a two-course sequence in calculus, a computer programming course, a probability and statistics course, and coursework in discrete mathematics.

[Filed 8/21/07, effective 10/17/07]
[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6225B

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 20, "Evaluator Endorsement and License," Iowa Administrative Code.

The amendment is needed to maintain compliance with the statutory language that created the evaluator license. The original evaluator license was based on the legislated evaluator training. The amended language is generic enough to comply with any changes to the evaluator training.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 6, 2007, as **ARC 5943B**. A public hearing on the amendment was held on June 27, 2007. 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 October 17, 2007. The following amendment is adopted.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Amend subrule 20.58(1) as follows:

20.58(1) Coursework for renewal of the evaluator license or the license with the evaluator endorsement must complete the initial requirements. This coursework, *approved by the Iowa department of education*, must be *completed for at least one semester hour of college or university credit or for at least one renewal unit from an approved Iowa staff development program.*

[Filed 8/21/07, effective 10/17/07]

[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6236B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 99B.13 and 2007 Iowa Acts, Senate File 414, the Department of Inspections and Appeals hereby adopts Chapter 106, "Card Game Tournaments by Veterans Organizations," Iowa Administrative Code.

The chapter provides rules to implement 2007 Iowa Acts, Senate File 414, which provides for the licensure, operation and taxation of card game tournaments by veterans organizations. The chapter includes definitions, standards for licensing, rules for holding card game tournaments, and the procedure for revocation, suspension or denial of a license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 18, 2007, as **ARC 6054B**. No public hearing was held. Public comments received after the filing relate to requiring the license holder to maintain records on the number of guests and the number of members playing in each tournament. The pre-filing comments from industry requested that this provision be added. In order to provide oversight and ensure compliance with the prize limitations, the Department has determined the requirement to be necessary. The comments further related to statutory requirements that the Department does not have authority to change or waive. No other comments were received. The public comment period closed on August 7, 2007.

These rules were simultaneously Adopted and Filed Emergency as **ARC 6053B**. The rules are identical to the rules published under Notice of Intended Action and Adopted and Filed Emergency.

These rules will become effective October 17, 2007, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement 2007 Iowa Acts, Senate File 414.

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 106] is being omitted. These rules are identical to those published under Notice as **ARC 6054B** and Adopted and Filed Emergency as **ARC 6053B**, IAB 7/18/07.

[Filed 8/22/07, effective 10/17/07]

[Published 9/12/07]

[For replacement pages for IAC, see IAC Supplement 9/12/07.]

ARC 6239B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences hereby amends Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences," Iowa Administrative Code.

The purpose of this amendment is to change the board-approved examination and licensure requirements as a result of board action following the sale of the previous license examination contractor. In addition, the Board is consolidating multiple license certificates provided to an individual licensee into one certificate, which will assist the Board and consumers in identifying licensure compliance by including all licenses an individual holds from the Board on one certificate that is to be publicly displayed.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because the amendment is in response to board action following the sale of the license examination contractor.

The Board of Cosmetology Arts and Sciences adopted this amendment on August 20, 2007.

This amendment will become effective on January 1, 2008.

This amendment is intended to implement Iowa Code chapter 157.

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 645—60.2(157) and adopt the following **new** rule in lieu thereof:

645—60.2(157) Requirements for licensure.

60.2(1) Requirements for licensure. All persons providing services in one or more cosmetology arts and sciences disciplines shall hold a license issued by the board. The applicant shall:

a. Submit a completed, board-approved application for licensure. Application forms may be obtained from the board's Web site (www.idph.state.ia.us/licensure) or directly from the board office. Completed applications and appropriate fees shall be sent to Board of Cosmetology Arts and Sciences, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

b. Direct the educational program to submit to the board an official transcript of grades in each practice discipline for which the applicant is requesting licensure. The transcript shall denote the date of completion of training at a school approved by the board. Any instances in which a transcript is unavailable due to documented loss or destruction of records or other extenuating circumstance shall be considered by the board on a case-by-case basis. If educated outside the United States, the applicant shall attach an original evaluation of the applicant's education from World Education Services (WES) or any other accredited evaluation service. An applicant may obtain an application for evaluation by contacting WES at

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(212)966-6311, or by writing to WES, P.O. Box 5087, Bowling Green Station, New York, New York 10274-5087.

c. Pass a national examination as prescribed by the board for the particular practice discipline with a score of 75 percent or greater.

(1) If applying for licensure by examination on or after January 1, 2008, submit the test registration and registration fee directly to the test service. NIC examinations are administered according to guidelines set forth by the National-Interstate Council of State Boards of Cosmetology.

(2) If applying for licensure by endorsement, complete the requirements set forth in rule 645—60.7(157).

60.2(2) Requirements for an instructor's license. An applicant for an instructor's license shall:

a. Submit a completed application for licensure and the appropriate fee to the board;

b. Be licensed in the state of Iowa in the specific practice discipline to be taught or be licensed as a cosmetologist who possesses the skill and knowledge required to instruct in that practice discipline;

c. Provide documentation of completion of 1,000 hours of instructor's training with curriculum content to be determined by the board or two years' active practice in the field of cosmetology within six years prior to application;

d. Submit proof of attendance at an advanced instructor's institute prescribed by the board;

e. Submit proof of 60 hours of practical experience, excluding school hours, in the area of electrolysis prior to application for an instructor of electrology license.

f. Pass an instructor's national examination, which, effective January 1, 2008, shall be the NIC instructor examination unless the applicant is applying for an instructor's license by endorsement as outlined in rule 645—60.7(157).

60.2(3) Conditions. The following conditions apply for all cosmetology arts and sciences licenses.

a. Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.

b. The licensure fee is nonrefundable.

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

d. Beginning April 1, 2008, a new license granted by the board of cosmetology arts and sciences to an individual who holds multiple active licenses with the board shall have the same license expiration date as the licensee's existing license(s). If the licensee holds only one active license with the board, the license expiration date shall be in the current renewal period unless licensure is issued within six months of the end of the renewal cycle, in which case subrule 60.8(2) shall apply.

[Filed Without Notice 8/22/07, effective 1/1/08]

[Published 9/12/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/12/07.

ARC 6244B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 17A and sections 452A.59 and 452A.76, the Department of Revenue hereby amends Chapter 68, "Motor Fuel and Undyed Special Fuel," Iowa Administrative Code.

This amendment updates subrule 68.2(1) to reflect changes in the tax rates for gasoline from 21 cents to 20.7 cents per gallon and for E-85 gasoline from 17 cents to 19 cents per gallon for the tax period beginning July 1, 2007, and ending June 30, 2008.

Notice of Intended Action was published in IAB Vol. XXX, No. 2, p. 189, on July 18, 2007, as **ARC 6055B**.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective October 17, 2007, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code section 452A.3.

The following amendment is adopted.

Amend subrule 68.2(1) as follows:

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon
(for July 1, 2003, through June 30, 2004)	20.5¢ per gallon
(for July 1, 2004, through June 30, 2005)	20.7¢ per gallon
(for July 1, 2005, through June 30, 2006)	21¢ per gallon
(for July 1, 2006, through June 30, 2007)	20.7¢ per gallon
(for July 1, 2007, through June 30, 2008)	
LPG	20¢ per gallon
Ethanol blended gasoline	19¢ per gallon
(for July 1, 2003, through June 30, 2006 2008)	
E-85 gasoline	17¢ per gallon
beginning January 1, 2006, through June 30, 2007	19¢ per gallon
(for July 1, 2007, through June 30, 2008)	
Aviation gasoline	8¢ per gallon
Special fuel (diesel)	22.5¢ per gallon
Special fuel (aircraft)	3¢ per gallon
CNG	16¢ per 100 cu. ft.

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