



IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 1493 to 1539 include **ARC 3211B** to **ARC 3230B**

ADMINISTRATIVE SERVICES DEPARTMENT[11]

- Notice, Contested cases, adopt 11—ch 7; rescind
401—ch 6, 471—ch 6, 581—ch 26
ARC 3226B 1493
- Notice, Amend and transfer 701—chs 201, 202,
203, 204, 210 to 11—chs 41, 42, 43, 44, 48
ARC 3213B 1500
- Filed, Amend and transfer 581—chs 13, 20 to
11—chs 62, 68 **ARC 3212B** 1530

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

- Notice, Scrapie disease, 64.200 to 64.211
ARC 3227B 1503

ALL AGENCIES

- Schedule for rule making 1488
- Publication procedures 1489
- Administrative rules on CD-ROM 1489
- Agency identification numbers 1491

CITATION OF ADMINISTRATIVE RULES 1487

CIVIL REPARATIONS TRUST FUND

- Notice 1508

CULTURAL AFFAIRS DEPARTMENT[221]

- Filed, Cultural and entertainment districts,
ch 9 **ARC 3228B** 1532

DEAF SERVICES DIVISION[429]

- HUMAN RIGHTS DEPARTMENT[421]“umbrella”
- Filed, Updating of information and
procedures, 1.2, 1.3, 2.1, 2.3, 2.4,
3.14(2), 4.1 **ARC 3224B** 1534

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

- Filed, Iowa community development block
grant program, 23.2, 23.4(4), 23.7(1)
ARC 3215B 1534
- Filed, Community economic betterment
program, 53.6(1) **ARC 3216B** 1535
- Filed, Enterprise zones, 59.8
ARC 3217B 1535

ENVIRONMENTAL PROTECTION COMMISSION[567]

- NATURAL RESOURCES DEPARTMENT[561]“umbrella”
- Notice, Property tax exemption—expanded
to include property used to process waste
wood products, 11.1, 11.2, 11.6 **ARC 3222B** ... 1509
- Notice, Nonpublic water supply wells; well
contractor certification, amendments to
chs 49, 82 **ARC 3223B** 1510
- Filed, Adoption by reference—requirements
and compliance schedules for control of
emissions from existing commercial and
industrial solid waste incineration (CISWI)
units not covered by an approved state plan,
23.1(5)“c” **ARC 3221B** 1536

PROFESSIONAL LICENSURE DIVISION[645]

- PUBLIC HEALTH DEPARTMENT[641]“umbrella”
- Notice, Podiatrists, 219.4, 219.6, 220.9,
220.11 to 220.13, ch 224, 225.1
ARC 3214B 1519
- Filed, Speech pathologists and audiologists,
300.2 to 300.16, 305.1 **ARC 3230B** 1536

PUBLIC HEARINGS

- Summarized list 1490

RECORDS COMMISSION[671]

- Notice, Organization and responsibilities; state
records manual; records series retention and
disposition schedules process; temporary
records—transfer and storage process; temporary
records—access process; temporary records—
destruction process; permanent records—
transfer process; care of and access to
permanent records collections; development
process for government information policies,
standards and guidelines, rescind chs 1, 2;
adopt chs 1 to 8, 14 **ARC 3229B** 1522

SECRETARY OF STATE[721]

- Filed, Help America Vote Act—election
emergency situations, 21.1(12) **ARC 3220B** ... 1537
- Filed, Accessibility of polling places to
persons with disabilities, 21.50(4)
ARC 3218B 1538

PREFACE

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

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

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

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

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Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

SECRETARY OF STATE[721] (Cont'd)
 Filed, Local sales and services tax elections—
 uniform structure for sources of ballot
 language, 21.803 **ARC 3219B** 1538

TRANSPORTATION DEPARTMENT[761]
 Notice, Motor carrier regulations, 529.1
ARC 3211B 1528

TREASURER OF STATE
 Notice—Public funds interest rates 1528

UTILITIES DIVISION[199]
 COMMERCE DEPARTMENT[181]“umbrella”
 Notice, Repeal of exemption for
 reorganization filing, rescind 32.2(4)
ARC 3225B 1528

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 2004

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
21	Friday, March 26, 2004	April 14, 2004
22	Friday, April 9, 2004	April 28, 2004
23	Friday, April 23, 2004	May 12, 2004

PLEASE NOTE:

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

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

*****Note change of filing deadline*****

PUBLICATION PROCEDURES

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

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

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

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

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

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

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

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PUBLIC HEARINGS

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Recycling property eligible for tax exemption, 11.1, 11.2, 11.6 IAB 3/17/04 ARC 3222B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 8, 2004 10 a.m.
Nonpublic water supply wells; well contractor certification, amendments to chs 49, 82 IAB 3/17/04 ARC 3223B	Conference Rooms, Suite I 401 SW Seventh St. Des Moines, Iowa	April 6, 2004 1 p.m.
	Public Library 507 Poplar Atlantic, Iowa	April 7, 2004 1 p.m.
	Arrowhead AEA 824 Flindt Dr. Storm Lake, Iowa	April 8, 2004 8 a.m.
	Muse-Norris Conference Center 500 College Dr. Mason City, Iowa	April 13, 2004 2 p.m.
	Pizza Ranch 1100 W. Main Manchester, Iowa	April 14, 2004 9 a.m.
	Helen Wilson Gallery Public Library 120 E. Main Washington, Iowa	April 15, 2004 9 a.m.
	City Hall 314 E. Maple Centerville, Iowa	April 16, 2004 9 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Podiatry examiners, 219.4, 219.6, 220.9, 220.11 to 220.13, ch 224, 225.1 IAB 3/17/04 ARC 3214B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 6, 2004 9 to 10 a.m.
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RECORDS COMMISSION[671]

General, chs 1 to 8, 14 IAB 3/17/04 ARC 3229B	Tone Board Room, Third Floor West Historical Bldg. 600 E. Locust St. Des Moines, Iowa	April 7, 2004 10 to 11 a.m.
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TRANSPORTATION DEPARTMENT[761]

For-hire interstate motor carrier authority, 529.1 IAB 3/17/04 ARC 3211B	DOT Conference Room, Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	April 8, 2004 10 a.m. (If requested)
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 Grow Iowa Values Board[264]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HUMAN INVESTMENT COUNCIL[417]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 3226B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services proposes to rescind 401—Chapter 6, “Appeals,” 471—Chapter 6, “Contested Cases,” and 581—Chapter 26, “Contested Cases,” and to adopt 11—Chapter 7, “Contested Cases,” Iowa Administrative Code.

The purpose of this proposed rule making is to consolidate uniform rules on contested cases by rescinding comparable chapters adopted by the former departments of General Services, Personnel, and Information Technology that now comprise the Department of Administrative Services, and by adopting Chapter 7 under the new agency identification number 11 for the Department of Administrative Services.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on April 6, 2004. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement Iowa Code chapter 17A and Iowa Code Supplement chapter 8A.

The following amendments are proposed.

ITEM 1. Rescind **401—Chapter 6**, **471—Chapter 6**, and **581—Chapter 26**.

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

CHAPTER 7
CONTESTED CASES

11—7.1(8A,17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the administrative services department, or by the division of administrative hearings in the department of inspections and appeals on behalf of the department. Excepted from this chapter are matters covered by rules 11—60.2(80GA,HF534), disciplinary actions; 11—61.1(80GA,ch145), grievances; subrule 61.2(6), appeal of disciplinary actions; rule 11—68.6(19B), discrimination complaints, including disability-related and sexual harassment complaints; matters covered by the grievance procedure in any collective bargaining agreement with state employees; matters within the exclusive jurisdiction of the industrial commissioner; and matters related to any of the department’s vendors that administer group benefits if the vendor has an established complaint or appeal procedure. Further, the provisions of 11—Chapter 52, job classification, are exempt from subrules 7.5(4) to 7.5(7) and rules 7.6(8A, 17A) and 7.8(8A,17A).

11—7.2(8A,17A) Definitions. Except where otherwise specifically defined by law:

“Administrative law judge (ALJ)” means an employee of the administrative hearings division of the department of in-

spection and appeals who presides over contested cases and other proceedings.

“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 administrative services (DAS).

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

“Division” means the division of administrative hearings of the department of inspections and appeals (DIA).

“Ex parte” means a communication, oral or written, to the presiding officer or other decision maker in a contested case without notice and an opportunity for all parties to participate.

“Filing” is defined in subrule 7.12(4) except where otherwise specifically defined by law.

“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 a party as defined in Iowa Code subsection 17A.2(8).

“Presiding officer” means the administrative law judge (ALJ) assigned to the contested case or, in the case of an appeal pursuant to rule 11—52.5(80GA,ch145), the classification appeal committee appointed by the director.

“Proposed decision” means the presiding officer’s recommended findings of fact, conclusions of law, and decision and order in contested cases where the department did not preside.

11—7.3(8A,17A) Time requirements.

7.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

7.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as provided otherwise by rule or law. 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.

11—7.4(8A,17A) Requests for a contested case hearing.

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 department 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.

11—7.5(8A,17A) Notice of hearing.

7.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Notices shall be served by first-class mail, unless otherwise required by statute or rule.

7.5(2) Content. Notices of hearing shall contain the information required by Iowa Code subsection 17A.12(2), the following information and any additional information required by statute or rule.

a. Identification of all parties including the name, address and telephone number of the person who will act as ad-

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

vocate for the department or the state and of parties' counsel, where known;

b. Reference to the procedural rules governing conduct of the contested case proceeding;

c. Reference to the procedural rules governing informal settlement; and

d. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., an administrative law judge from the department of inspections and appeals, or the classification appeal committee).

7.5(3) Transmission of contested cases. In every proceeding filed by the department with the division, the department shall complete a transmittal form. The following information is required:

a. The name of the transmitting department;

b. The name, address and telephone number of the contact person in the transmitting department;

c. The name or title of the proceeding, which may include a file number;

d. Any department docket or reference number;

e. A citation to the jurisdictional authority of the department regarding the matter in controversy;

f. Any anticipated special features or requirements that may affect the hearing;

g. Whether the hearing should be held in person or by telephone or video conference call;

h. Any special legal or technical expertise needed to resolve the issues in the case;

i. The names and addresses of all parties and their attorneys or other representatives;

j. The date the request for a contested case hearing was received by the department;

k. A statement of the issues involved and a reference to statutes and rules involved;

l. Any mandatory time limits that apply to the processing of the case;

m. The earliest appropriate hearing date; and

n. Whether a petition or answer is required.

7.5(4) Issuance of the hearing notice. When a case is transmitted by the department to the division for hearing, the division shall issue the notice of hearing.

7.5(5) Attachments. The following documents shall be attached to the completed transmittal form when it is sent to the division:

a. A copy of the document showing the department action in controversy; and

b. A copy of any document requesting a contested case hearing.

7.5(6) Receipt. When a properly transmitted case is received, it is marked with the date of receipt by the division. An identifying number shall be assigned to each contested case upon receipt.

7.5(7) Scheduling. The division shall promptly schedule hearings for the department. The availability of an administrative law judge and any special circumstances shall be considered.

11—7.6(8A,17A) Presiding officer.

7.6(1) An administrative law judge shall have the following technical expertise unless waived by the department.

a. A license to practice law in the state of Iowa;

b. Three years' experience as an administrative law judge; and

c. For a hearing related to procurement, knowledge of contract law.

7.6(2) Except as otherwise provided by 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.

7.6(3) Unless otherwise provided by law, the director, or the director's designee, 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.

11—7.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter pursuant to Iowa Code section 17A.10. However, the department in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

11—7.8(8A,17A) Telephone/video proceedings. A pre-hearing conference or a hearing may be held by telephone or video conference call pursuant to a notice of hearing or an order of the presiding officer. The presiding officer shall determine the location of the parties and witnesses in telephone or video hearings. The convenience of the witnesses or parties, as well as the nature of the case, shall be considered when the location is chosen.

11—7.9(8A,17A) Disqualification.

7.9(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.

7.9(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 department functions, including fact gathering for purposes other than investigation of the matter which cul-

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

minates 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 subsection 17A.17(3) and subrules 7.9(3) and 7.23(3).

7.9(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.

7.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code subsection 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 interlocutory appeal under rule 7.25(8A,17A) and seek a stay under rule 7.29(8A,17A).

11—7.10(8A,17A) Consolidation—severance.

7.10(1) Consolidation. The presiding officer may, upon motion by any party or the presiding officer's own motion, 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; and
- c. Consolidation would not adversely affect the rights of parties to those proceedings.

At any time prior to the hearing, any party may on motion request that the matters not be consolidated, and the motion shall be granted for good cause shown.

7.10(2) Severance. The presiding officer may, upon motion by any party or upon the presiding officer's own motion, for good cause shown, order any proceeding or portion thereof severed.

11—7.11(8A,17A) Pleadings.

7.11(1) Pleadings may be required by rule, by the notice of hearing or by order of the presiding officer.

7.11(2) Petition. When an action of the department is appealed and pleadings are required under subrule 7.11(1), the aggrieved party shall file the petition.

a. Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

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

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

7.11(3) Answer. If pleadings are required, the answer shall be filed within 20 days of service of the petition or notice of hearing, unless otherwise ordered.

a. Any party may move to dismiss or apply for a more definite, detailed statement when appropriate.

b. The 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 may contain as many defenses as the pleader may claim.

c. The answer shall state the name, address and telephone number of the person filing the answer and of the attorney representing that person, if any.

d. 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.

7.11(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.

11—7.12(8A,17A) Service and filing of pleadings and other papers.

7.12(1) When service is required. Except where otherwise specifically authorized by law, every pleading, motion, document or other paper filed in the contested case proceeding and every paper relating to discovery in the proceeding shall be served upon each of the parties to the proceeding, including the originating agency. Except for the notice of the hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

7.12(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 first-class mail is rebuttably presumed to be complete upon mailing, except where otherwise specifically provided by statute, rule or order.

7.12(3) Filing—when required.

a. After a matter has been assigned to the division, and until a proposed decision is issued, documents shall be filed with the division, rather than the originating agency. All papers filed after the notice is issued that are required to be served upon a party shall be filed simultaneously with the division.

b. After the notice of hearing, when a matter has not been assigned to the department of inspections and appeals for hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Administrative Services Department, Grimes State Office Building, First Floor North, 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.

7.12(4) Filing—when made.

a. Except where otherwise provided by law, a document is deemed filed at the time it is:

- (1) Delivered to the division of administrative hearings pursuant to subrule 7.12(3), paragraph "a," or to the department of administrative services pursuant to subrule 7.12(3), paragraph "b," and date-stamped received;

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

(2) Delivered to an established courier service for immediate delivery;

(3) Mailed by first-class mail or by state interoffice mail so long as there is adequate proof of mailing; or

(4) Sent by facsimile transmission (fax) as provided in subrule 7.12(4), paragraph "b."

b. All documents filed with the division or the department pursuant to these rules, except a person's request or demand for a contested case proceeding (see Iowa Code subsection 17A.12(9)), may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax shall be the date the document is received by the division or the department. The receiving office will not provide a mailed file-stamped copy of documents filed by fax.

7.12(5) Proof of mailing. Adequate proof of mailing includes the following:

a. A legible United States Postal Service postmark on the envelope;

b. A certificate of service;

c. A notarized affidavit; or

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed) or (state interoffice mail).

(SIGNATURE)

(DATE)

11—7.13(8A,17A) Discovery.

7.13(1) Pursuant to Iowa Code section 17A.13, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by rules of the department or by a ruling by the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

7.13(2) Any motion relating to discovery shall allege that the moving party has made a good faith attempt to resolve the issues raised by the motion with the opposing party. Motions in regard to discovery shall be ruled on 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 7.13(1). The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

7.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

11—7.14(8A,17A) Subpoenas.

7.14(1) Issuance.

a. Pursuant to Iowa Code subsection 17A.13(1), a department subpoena shall be issued to a party on request unless subrule 7.14(1), paragraph "d," applies. A request may be either oral or in writing. In the absence of good cause for permitting later action, a written 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. Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

c. When authorized by law, a presiding officer may issue a subpoena on the presiding officer's own motion.

d. When there is reasonable ground to believe a subpoena is requested for the purpose of harassment, or that the subpoena is irrelevant, the presiding officer may refuse to issue the subpoena, or may require the requesting party to provide a statement of testimony expected to be elicited from the subpoenaed witness and a showing of relevancy. If the presiding officer refuses to issue a subpoena, the presiding officer shall provide, upon request, a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing regarding the refusal by filing a written request to the presiding officer.

7.14(2) Motion to quash or modify.

a. A subpoena may be quashed or modified upon motion for any lawful ground in accordance with Iowa Rule of Civil Procedure 1.1701.

b. A motion to quash or modify a subpoena shall be served on all parties of record.

c. The motion shall be set for argument promptly.

11—7.15(8A,17A) Motions.

7.15(1) No technical form is required for motions. Prehearing motions, however, must be written, state the grounds for relief and state the relief sought. Any motion for summary judgment shall be filed in compliance with the requirements of Iowa Rule of Civil Procedure 1.981.

7.15(2) Any party may file a written resistance or response to a motion within 15 days after the motion is served, unless the time period is extended or shortened by rules of the department or by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

7.15(3) The presiding officer may schedule oral argument on any motion on the request of any party or on the presiding officer's own motion.

7.15(4) Except for good cause, all motions pertaining to the hearing must be filed and served at least 10 days prior to the hearing date unless the time period is shortened or lengthened by rules of the department or by the presiding officer.

11—7.16(8A,17A) Prehearing conference.

7.16(1) Any party may request a prehearing conference. A request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed in writing and served on all parties of record not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

The presiding officer shall give notice of the prehearing conference to all parties. For good cause, the presiding officer may permit variances from this rule.

7.16(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses who the party reasonably anticipates will testify at the hearing. Witnesses not listed may be excluded from testifying.

b. A final list of exhibits that the party reasonably anticipates will be introduced at the hearing. Exhibits not listed, except rebuttal exhibits, may be excluded from admission into evidence.

7.16(3) In addition to the requirements of subrule 7.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law;

b. Enter into stipulations of fact;

c. Enter into stipulations on the admissibility of exhibits;

d. Identify matters that the parties intend to request be officially noticed;

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

e. Unless precluded by statute, enter into stipulations for waiver of the provisions of Iowa Code chapter 17A allowed by Iowa Code section 17A.10(2) or waiver of department rules; and

f. Consider any additional matters that will expedite the hearing.

7.16(4) A prehearing conference shall be conducted by telephone or video conference call unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists prior to a telephone or video prehearing conference call.

11—7.17(17A) Continuances. Unless otherwise provided, application for continuance shall be made to the presiding officer.

7.17(1) A written application for continuance shall:

- a. Be made before the hearing;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the requesting party's representative.

7.17(2) If the presiding officer waives the requirement for a written motion, an oral application for continuance may be made. A written application shall be submitted no later than five days after the oral request. The presiding officer may waive the requirement for a written application. No application for continuance will be made or granted ex parte without notice except in an emergency where notice is not feasible. The department may waive notice of requests for a case or a class of cases.

7.17(3) Except where otherwise provided, a continuance may be granted at the discretion of the presiding officer. The presiding officer may consider, in addition to the grounds stated in the motion:

- a. Any prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. Existence of emergency;
- e. Objection to the continuance;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel or parties or witnesses;
- h. The timeliness of the request;
- i. Any applicable state or federal statutes or regulations; and
- j. Other relevant factors.

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

11—7.18(8A,17A) Withdrawals. The party that requested an evidentiary hearing regarding department action may withdraw prior to the hearing only in accordance with department rules. Requests for withdrawal may be oral or written. If the request is oral, the presiding officer may require the party to submit a written request after the oral request. Unless otherwise provided, a withdrawal shall be with prejudice.

11—7.19(8A,17A) Intervention.

7.19(1) Motion. A motion for leave to intervene shall be served on all parties and 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 unless the time period is extended or shortened by the presiding officer.

7.19(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 disposition of the proceed-

ing. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if one is held, 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. The intervenor shall be bound by any agreement, arrangement or other matter previously raised in the case. Requests by untimely intervenors for continuances that would delay the hearing will be denied.

7.19(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 will be aggrieved or adversely affected by a final order; and
- c. The interests of the movant are not being adequately represented by existing parties; or that the movant is otherwise entitled to intervene.

7.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues to be raised or otherwise condition the intervenor's participation in the proceeding.

11—7.20(8A,17A) Hearing procedures.

7.20(1) The appointed presiding officer in a contested case proceeding shall preside at the hearing and may:

- a. Rule on motions;
- b. Require the parties to submit briefs;
- c. Issue a proposed decision; and
- d. Issue orders and rulings to ensure the orderly conduct of the proceedings.

7.20(2) All objections to procedures, admission of evidence or any other matter shall be timely made and stated on the record.

7.20(3) Parties in a contested case 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. The cost of representation is the responsibility of the party.

7.20(4) Parties in a contested case have the right to introduce evidence on points at issue, to cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, to present evidence in rebuttal, and to submit briefs and engage in oral argument.

7.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly or disruptive.

7.20(6) Witnesses may be sequestered during the hearing.

7.20(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 proceeding;
- 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 examination and cross-examination. The presiding officer may limit questioning consistent with Iowa Code section 17A.14;

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

e. The presiding officer has the authority to fully and fairly develop the record and may inquire into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material; and

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

11—7.21(8A,17A) Evidence.

7.21(1) The presiding officer shall rule on admissibility of evidence in accordance with Iowa Code section 17A.14 and may take official notice of facts pursuant to Iowa Code subsection 17A.14(4).

7.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

7.21(3) Evidence shall be confined to the issues on which there has been fair notice prior to the hearing. The presiding officer may take testimony on a new issue if the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If there is objection, the presiding officer may refuse to hear the new issue and may make a decision on the original issue in the notice, or may grant a continuance to allow the parties adequate time to amend pleadings and prepare their cases on the additional issue.

7.21(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 be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

7.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. The objecting party shall briefly state the grounds for the objection. 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.

7.21(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. If the evidence excluded consists of a document or exhibits, it shall be marked as part of an offer of proof and inserted in the record.

11—7.22(8A,17A) Default.

7.22(1) If a party fails to appear 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 make a decision in the absence of the party.

7.22(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.

7.22(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 department action unless, within 15 days (unless another period of time is specifically required by statute or rule) 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 7.27(8A,17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested

case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit must be attached to the motion.

7.22(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.

7.22(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.

7.22(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.

7.22(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 7.25(8A,17A).

7.22(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.

7.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

7.22(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 7.29(8A,17A).

11—7.23(8A,17A) Ex parte communication.

7.23(1) Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives and the presiding officer shall not communicate directly or indirectly in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The presiding officer may communicate with persons who are not parties as provided in subrule 7.23(2).

7.23(2) However, the presiding officer may communicate with members of the department and may have the aid and advice of persons other than those with a personal interest in, or those prosecuting or advocating in the case under consideration or a factually related case involving the same parties. 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.

7.23(3) Any party or presiding officer who receives prohibited communication shall submit the written communication or a summary of the oral communication for inclusion in the record. Copies shall be sent to all parties. There shall be opportunity to respond.

7.23(4) Prohibited communications may result in sanctions as provided in department rule. In addition, the department, through the presiding officer, may censure the person or may prohibit further appearance before the department.

11—7.24(8A,17A) Recording costs. The department shall provide a copy of the tape-recorded hearing or a printed transcript of the hearing when a record of the hearing is requested.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

The cost of preparing the tape or transcript shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters shall bear the cost, unless otherwise provided by law.

11—7.25(8A,17A) Interlocutory appeals. Upon written request of a party or on its own motion, the director or the director's designee may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which the granting of the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the department 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.

11—7.26(8A,17A) Decisions.

7.26(1) Final decision of department. When the department presides over the reception of evidence at the hearing, its decision is a final decision.

7.26(2) Proposed decision. When the department does not preside at the reception of evidence, the presiding officer shall make a proposed decision.

A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

7.26(3) Contents of decision. The proposed or final decision or order shall:

- a. Be in writing or stated in the record.
- b. Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.
- c. Include conclusions of law stated separately from findings of fact and supported by cited authority or a reasoned opinion.
- d. Be based on the record of the contested case. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). This record shall include any request for a contested case hearing and other relevant procedural documents regardless of their form.

7.26(4) Proposed decision becomes final. The proposed decision of the presiding officer becomes the final decision of the department without further proceedings unless there is an appeal to, or review on motion of, the department within the time provided in rule 7.27(8A,17A).

7.26(5) Reports. The department shall send to the division a copy of any request for review of a proposed decision issued by a presiding officer from the department of inspections and appeals. The department shall notify the division of the results of the review, the final decision and any judicial decision issued.

11—7.27(8A,17A) Appeals and review.

7.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the director within 14 days after issuance of the proposed decision.

7.27(2) Review. The director may initiate review of a proposed decision on the director's own motion at any time within 21 days following the issuance of such a decision.

7.27(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; and
- e. The grounds for relief.

7.27(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 director may remand a case to the presiding officer for further hearing. The director or director's designee may preside at the taking of additional evidence.

7.27(5) Scheduling. The department shall issue a schedule for consideration of the appeal.

7.27(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 14 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 director or director's designee may resolve the appeal on the briefs or provide an opportunity for oral argument. The director or director's designee may shorten or extend the briefing period as appropriate.

11—7.28(8A,17A) Applications for rehearing.

7.28(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

7.28(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 7.27(4), the applicant requests an opportunity to submit additional evidence.

7.28(3) Time of filing. The application shall be filed with the department within 20 days after issuance of the final decision.

7.28(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.

7.28(5) Disposition. Any application for a rehearing shall be deemed denied unless the department grants the application within 20 days after its filing.

11—7.29(8A,17A) Stays of department actions.

7.29(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 director or director's designee may rule on the stay or authorize the presiding officer to do so.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

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.

7.29(2) When granted. In determining whether to grant a stay, the director, director's designee, or presiding officer shall consider factors listed in Iowa Code section 17A.19(5)"c."

7.29(3) Vacation. A stay may be vacated by the issuing authority upon application of the department's representative or any other party.

11—7.30(8A,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.

11—7.31(8A,17A) Emergency adjudicative proceedings.

7.31(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 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.

7.31(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.

7.31(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.

7.31(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.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code Supplement chapter 8A.

ARC 3213B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services hereby proposes to amend and transfer rules of the former Department of Revenue and Finance[701], Chapter 201, "Auditing Claims"; Chapter 202, "Accounting Procedures of Public Impact"; Chapter 203, "Employee Payroll Deductions 'Charitable Organizations'"; Chapter 204, "Professional/Trade Dues Deductions"; and Chapter 210, "Prepayment of Expenses"; to Administrative Services Department[11], Chapter 41, "Auditing Claims"; Chapter 42, "Accounting Procedures of Public Impact"; Chapter 43, "Employee Payroll Deductions for Charitable Organizations"; Chapter 44, "Professional/Trade Dues Deductions"; and Chapter 48, "Prepayment of Expenses"; and to amend 11—Chapter 103, "State Employee Driving Guidelines," Iowa Administrative Code.

The purpose of this rule making is to transfer accounting rules, which were formerly under the authority of and adopted by the Department of Revenue and Finance, because the responsibility for state accounting has been transferred by the 80th General Assembly to the Department of Administrative Services pursuant to Iowa Code Supplement sections

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

8A.502 to 8A.519. Amendments to the transferred chapters are solely editorial in nature. Chapter 103 is amended to add subrules on the use of personal vehicles for official state business and to change the term "work permit" to "temporary restricted license" to correspond to statutory language for the Department of Transportation.

Any person who believes that the application of the discretionary provisions of these rules would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on April 6, 2004. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Rules Administrator, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

Persons who want to convey their views orally should contact Carol Stratemeyer, Rules Administrator, at the address stated above. Requests for a public hearing must be received by March 30, 2004.

These amendments are intended to implement Iowa Code Supplement sections 8A.502 to 8A.519.

The following amendments are proposed.

ITEM 1. Transfer **701—Chapter 201** to **11—Chapter 41**, **701—Chapter 202** to **11—Chapter 42**, **701—Chapter 203** to **11—Chapter 43**, **701—Chapter 204** to **11—Chapter 44**, and **701—Chapter 210** to **11—Chapter 48**.

ITEM 2. Amend **11—Chapters 41** to **44** and **48** by replacing all parenthetical references to Iowa Code chapter 421 with references to Iowa Code Supplement chapter 8A.

ITEM 3. Amend **11—Chapters 41** to **44** and **48** by replacing all references to the department of revenue and finance with references to the department of administrative services, state accounting enterprise, unless otherwise noted below.

ITEM 4. Amend subrule **41.1(1)**, second unnumbered paragraph, as follows:

Approval of the claim shall be certified thereon by the head of the ~~department~~ *state agency*, or the deputy, or the chair of the board, or commission or its executive officer, or by a person delegated by the ~~department~~ *head of the state agency* to fulfill this responsibility. A list of authorized signatures shall be provided to the department of ~~revenue and finance~~ *administrative services, state accounting enterprise*. If a rubber stamp signature is used, the claim shall be signed or initialed by the employee authorized to use the rubber stamp.

ITEM 5. Amend subrule **41.1(1)**, fifth unnumbered paragraph, as follows:

When an original invoice is submitted by a vendor, rather than the claimant signing the voucher, the vendor shall provide the state agency with an original invoice that the vendor would use in the normal conduct of ~~their~~ *its* business. A state ~~department~~ *agency* shall not impose additional or different requirements on submission of invoices than those contained in these rules unless the department of ~~revenue and finance~~ *administrative services, state accounting enterprise*, exempts the ~~department~~ *agency* from these invoice requirements upon a finding that compliance would result in poor accounting or management practices.

ITEM 6. Amend subrule 41.1(2) as follows:

41.1(2) Interest on claims. ~~Any~~ *For any* claim received for services, supplies, materials or a contract which is payable from the state treasury that remains unpaid after 60 days following the receipt of the claim or the satisfactory delivery, furnishing or performance of the services, supplies, materials or contract, whichever date is later, the state shall pay interest at the rate of 1 percent per month on the unpaid amount of the claim. ~~After July 1, 1998, departments~~ *Agencies* may enter into written contracts for goods and services on payment terms of less than 60 days if the state may obtain a financial benefit or incentive which would not otherwise be available from the vendor. All ~~departments~~ *agencies* entering into written contracts for goods and services on payment terms of less than 60 days shall maintain written documentation demonstrating that the ~~department~~ *agency* obtained a financial benefit or incentive which would not otherwise have been available from the vendor. This ~~paragraph~~ *subrule* does not apply to claims against the state under Iowa Code chapters 25 and 669 or the claims paid by federal funds. The interest shall be charged to the appropriation or fund to which the claim is certified.

ITEM 7. Amend rule **11—41.1(8A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections ~~section 17A.4 and 421.40~~ *Iowa Code Supplement section 8A.514*.

ITEM 8. Amend subrule 41.2(1) as follows:

41.2(1) Personal funds to be supplied. All employees shall provide themselves with sufficient funds for all current expenses. See subrules ~~201.2(3)~~ *41.2(3)* and ~~201.2(4)~~ *41.2(4)* regarding travel advances.

ITEM 9. Amend subrule 41.4(2) as follows:

41.4(2) Out of state. Official travel out of the state must receive prior approval in writing from the executive council of the state except those employees exempt ~~by~~ *from executive council approval pursuant to Iowa Code Supplement section 8A.512 or other specific statutory exemptions*.

ITEM 10. Amend subrule 41.5(4) as follows:

41.5(4) Use of privately owned ~~automobile~~ *vehicle*. Authorized use of a privately owned vehicle *for travel on official state business* will be subject to ~~the rules of the vehicle dispatcher~~ *rule 11—103.4(8A)*.

a. In state. Where use of a privately owned vehicle is authorized by the ~~vehicle dispatcher~~ *rules rule 11—103.4(8A)*, reimbursement shall be on a mileage basis at a rate established by ~~the director~~ *pursuant to Iowa Code Supplement section 8A.363*. Reimbursement for travel at the official domicile will be reimbursed at a rate (established by ~~the director~~ *pursuant to Iowa Code Supplement section 8A.363*) per mile if ~~on~~ *the purpose of the travel is* official business. The per-mile reimbursement includes all ~~cost~~ *costs* incurred in connection with the operation of the ~~automobile~~ *vehicle*.

b. No change.

ITEM 11. Amend subrule 41.5(6) as follows:

41.5(6) Assignment of more than one employee to a vehicle. In authorizing the use of privately owned or state-owned vehicles, the ~~department~~ *agency* head shall, whenever possible, assign more than one employee to the use of one vehicle.

ITEM 12. Amend **11—Chapter 41**, implementation clause, as follows:

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Rules ~~201.2(421) 41.2(8A)~~ to ~~201.8(421) 41.8(8A)~~ are intended to implement Iowa Code *Supplement* sections ~~421.32 8A.506~~ to ~~421.45 8A.519~~.

ITEM 13. Amend rule 11—42.1(8A), introductory paragraph, as follows:

11—42.1(8A) Scope and application. The department of ~~revenue and finance administrative services, state accounting enterprise~~, is responsible for the payment of money due based on contracts with vendors for goods and services entered into by all state agencies and governmental subdivisions. Consequently, the department has implemented rules and policies to ease the administration of the payment of all obligations owed to third parties. The policies and procedures governing the payment of these obligations are set forth in the Department of ~~Revenue and Finance Administrative Services, State Accounting Enterprise~~, Accounting Policies and Procedures Manual. This manual may be accessed on the *state of Iowa Intranet* Web site located at ~~<http://www.intranet.state.ia.us/>~~ ~~http://das.sae.iowa.gov/internal_services/policy_manual.html~~, or copies of the appropriate provisions may be ~~mailed upon request to requested and obtained by mail from Taxpayer Services Section State Accounting Enterprise, Department of Revenue and Finance Administrative Services, P.O. Box 10457, Hoover State Office Building, Third Floor, Des Moines, Iowa 50306 50319.~~ Provisions of the manual that affect persons outside state government are as follows:

ITEM 14. Amend **11—Chapter 42**, implementation clause, as follows:

This rule is intended to implement Iowa Code *Supplement* section ~~421.17 8A.502~~.

ITEM 15. Amend **11—Chapter 43**, title, as follows:

EMPLOYEE PAYROLL DEDUCTIONS “CHARITABLE ORGANIZATIONS” EMPLOYEE PAYROLL DEDUCTIONS FOR CHARITABLE ORGANIZATIONS

ITEM 16. Amend rule 11—43.4(70A) as follows:

11—43.4(70A) Certification. In order to qualify as a “charitable organization” under the terms of this program, each organization must file an annual certification with the administrator of the payroll system. The certification must show:

43.4(1) That the organization is eligible to receive contributions as defined in ~~701—203.1(70A) 11—43.1(70A)~~.

43.4(2) That the organization has met the requirements for tax deduction and number of participants as defined in subrule ~~203.2(2) 43.2(2)~~.

ITEM 17. Amend rule 11—43.5(70A) as follows:

11—43.5(70A) Payroll system. A payroll system for the purpose of this chapter is any one of the following:

1. State of Iowa centralized (~~including the Iowa state fair board~~).
2. Department of transportation.
3. Iowa State University of Science and Technology.
4. State University of Iowa.
5. University of Northern Iowa.
6. Iowa Braille and Sight Saving School.
7. Iowa School for the Deaf.
8. *Iowa state fair board*.
9. *Community-based corrections*:
 - *Waterloo corrections district*.
 - *Ames corrections district*.
 - *Sioux City corrections district*.

- *Council Bluffs corrections district*.
- *Des Moines corrections district*.
- *Cedar Rapids corrections district*.
- *Davenport corrections district*.
- *Fairfield corrections district*.

ITEM 18. Amend rule 11—43.7(70A) as follows:

11—43.7(70A) Payee. When there is more than one unit within an eligible charitable organization, the designated payee is the organization that qualified under the provisions of ~~701—203.2(70A) 11—43.2(70A)~~.

ITEM 19. Amend rule 11—44.11(70A), introductory paragraph, as follows:

11—44.11(70A) Annual review of participating employees. During September of each year, each participating association must supply officials in charge of each affected payroll system with a certified list of all state employees who have a professional/trade association dues deduction. The list must contain the same information required in rule ~~701—204.2(70A) 11—44.2(70A)~~, as it will be used by the state to determine if the association continues to have 100 or more employees participating in the program.

ITEM 20. Amend rule 11—48.1(8A) as follows:

11—48.1(8A) Definitions. For purposes of this chapter, the following definitions apply:

“Department” means the Iowa department of ~~revenue and finance administrative services~~.

“Director” means the director of ~~revenue and finance the department of administrative services~~.

This rule is intended to implement Iowa Code *Supplement* section ~~421.40 8A.514~~.

ITEM 21. Amend rule **11—48.2(8A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code *Supplement* section ~~421.40 8A.514~~.

ITEM 22. Amend subrule 48.3(2) as follows:

48.3(2) When it has been determined by the state agency that the grantee lacks sufficient working capital to provide the service of the grant, the grantee may be given a two-month “working capital advance” (i.e., an advance may be made for up to two months of projected expenses). After the initial two-month “working capital advance” has been made, the grantee should submit claims for the reimbursement on a monthly basis. This should allow the grantee enough start-up funds to commence the project, while also allowing the grantee to maintain a one-month advance after the initial start-up, which parallels subrule ~~210.3(1) 48.3(1)~~ above.

a. Documentation that indicates the grantee lacks sufficient working capital to commence the project must be attached to the initial claim.

b. Documentation supporting the projected costs must be attached to the initial claim.

ITEM 23. Amend rule **11—48.3(8A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code *Supplement* section ~~421.40 8A.514~~.

ITEM 24. Amend rule 11—48.4(8A) as follows:

11—48.4(8A) Prior approval for prepayment of expenses. Any expense not specifically mentioned in rule ~~701—210.2(421) 11—48.2(8A)~~ must have prior approval to be paid in advance of receiving the good or service. Prior ap-

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

proval will be allowed only under the following circumstances.

1. If prepayment is required in order for the state to receive the good or service.

2. If the department can document that the state will benefit through reduced rates equal to or greater than the current general fund earning rate of the state treasurer.

This rule is intended to implement Iowa Code *Supplement* section 421.40 8A.514.

ITEM 25. Amend **11—Chapter 103** by replacing all parenthetical references to 2003 Iowa Acts, House File 534, with references to Iowa Code Supplement chapter 8A.

ITEM 26. Amend subrule 103.3(1), introductory paragraph, as follows:

103.3(1) Agencies subject to vehicle assignment standards. Pursuant to ~~2003 Iowa Acts, House File 534, section 52 Iowa Code Supplement section 8A.362,~~ the agencies listed below shall assign all vehicles within their possession, control, or use in accordance with the standards set forth in rule 103.4(~~80GA, HF534 8A~~). The following agencies are subject to the vehicle assignment standards in rule 103.4(~~80GA, HF534 8A~~):

ITEM 27. Amend rule 11—103.4(8A) by adopting the following **new** subrules:

103.4(4) The director may delegate authority to officials of the state, and agency heads, for the use of private vehicles on state business.

103.4(5) If a state vehicle has been assigned to a state officer or employee, the officer or employee shall not collect mileage for the use of a privately owned motor vehicle unless the state motor vehicle assigned is not usable.

ITEM 28. Amend rule 11—103.15(8A) as follows:

11—103.15(8A) Temporary state-authorized work permit. State drivers may operate a state vehicle or a private vehicle on state business while holding a state-authorized ~~work permit temporary restricted license issued pursuant to Iowa Code section 321.215 or 321J.20 that allows driving for work.~~ In addition, a state driver operating under a state-authorized ~~work permit temporary restricted license~~ shall provide proof of ~~insurance financial responsibility~~ which meets the minimum standards required by the state of Iowa, department of transportation, *pursuant to Iowa Code section 321A.1.*

ITEM 29. Amend **11—Chapter 103**, implementation clause, as follows:

These rules are intended to implement ~~2003 Iowa Acts, House File 534, sections 4, 29 and 52 Iowa Code Supplement sections 8A.104 and 8A.361 to 8A.366.~~

ARC 3227B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1, the Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

These rules are intended to implement a scrapie control and eradication program developed by the United States Department of Agriculture. These rules, which are intended to allow Iowa to qualify for "consistent-state status," include the mandatory identification of all sexually intact sheep and some goats and include restrictions on the movement of sheep and goats that are infected with, suspected of having, or have been exposed to scrapie. The Department intends to file these rules emergency after Notice to allow maintenance of consistent-state status and continued compliance with federal standards.

There are no general waiver provisions in these rules.

Any interested person may make written suggestions or comments on the following proposed rules prior to 4:30 p.m. on April 19, 2004. Such written material should be directed to Dr. John Schiltz, State Veterinarian, Animal Industry Bureau, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515) 281-4282 or by E-mail to John.Schiltz@idals.state.ia.us.

These rules are intended to implement Iowa Code chapter 163.

The following amendment is proposed.

Amend 21—Chapter 64 by adopting the following **new** rules:

SCRAPIE DISEASE

21—64.200(163) Definitions. Definitions used in rules 21—64.200(163) through 21—64.211(163) are as follows:

"Accredited veterinarian" means a veterinarian approved by the administrator of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1 of the Code of Federal Regulations (CFR), to perform functions required by cooperative state-federal animal disease control and eradication programs.

"Administrator" means the administrator of APHIS or any employee of USDA to whom the administrator has delegated authority to act on behalf of the administrator.

"Animal" means any sheep or goat.

"APHIS representative" means an individual employed by the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) in animal health activities who is authorized by the administrator to perform the functions and duties involved.

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

“Approved laboratory” means a diagnostic laboratory approved by APHIS to conduct tests for scrapie or genotypes on one or more tissues.

“Area veterinarian-in-charge” or “AVIC” means the veterinary official of APHIS assigned by APHIS to supervise and perform the official animal health work of APHIS in Iowa.

“Breed associations and registries” means the organizations that maintain the permanent records of ancestry or pedigrees of animals (including each animal’s sire and dam), individual identification of animals, and ownership of animals.

“Certificate of Veterinary Inspection” or “CVI” means an official document approved by the department and issued by a licensed accredited veterinarian at the point of origin of movement of animals.

“Commingle” means to group animals together in a manner that allows them to have physical contact with each other, including contact through a fence, but not limited contact. Commingling includes sharing the same section in a transportation unit where physical contact can occur.

“Designated scrapie epidemiologist” or “DSE” means a state or federal veterinarian designated by the department and APHIS to make decisions about the use and interpretation of diagnostic tests and field investigation data and the management of flocks and animals of epidemiological significance to the scrapie program.

“Exposed animal” means any animal that has had contact with a scrapie-positive animal or had contact with a premises where a scrapie-positive animal has resided and for which a flock plan has not yet been completed. Exposed animals shall be evaluated by a state or federal veterinarian in concurrence with the DSE and state veterinarian and may be redesignated into a risk category according to genetic resistance and exposure and may be restricted or have restrictions removed in accordance with current USDA regulations.

“Exposed flock” means any flock in which:

1. A scrapie-positive animal was born or lambed; or
2. A high-risk or suspect female animal currently resides; or
3. A high-risk or suspect female animal once resided that lambed or aborted in the flock and from which tissues were not submitted for official scrapie testing.

“Flock” means a group of sheep or goats, or a mixture of both species, residing on the same premises or under common ownership or supervision on two or more premises with animal interchange between the premises. Changes in ownership of part or all of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock.

“Flock identification number” or “flock ID number” means the unique alphanumeric premises identification number that appears on the official identification issued to a flock, that conforms with the standards for an epidemiologically distinct premises, as outlined in 9 CFR 79.1, and that is assigned by USDA and approved by the department.

“Flock of origin” means the flock of birth for male animals and, for female animals, means the flock in which the animal most recently resided in which it either was born, gave birth, or resided during lambing.

“Flock plan” means a written flock management agreement signed by the owner of a flock, the accredited veterinarian, if one is employed by the owner, and a department or APHIS representative in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock or source flock or to reduce the risk of the occurrence of scrapie in a flock that contains a high-risk or exposed animal.

As part of a flock plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the flock plan. The flock plan must include the requirements in 9 CFR 54.8.

“Genetic susceptibility” means the animal’s likelihood, based upon the genotype of the animal, of developing scrapie following exposure to scrapie.

“High-risk animal” means:

1. Any exposed female animal designated as genetically susceptible under current USDA guidelines;
2. The female offspring of a scrapie-positive female animal; or
3. Any other exposed female animal determined by the DSE to be a potential risk.

“Infected flock” means any flock in which the DSE has determined that a scrapie-positive female animal has resided, unless an epidemiological investigation conducted by the DSE shows that the animal did not lamb or abort in the flock.

“Interstate commerce” means trade, traffic, transportation, or other commerce between a place in a state and any place outside that state, or between points within a state but through any place outside that state.

“Limited contact” means incidental contact between animals away from the flock’s premises, such as at fairs, shows, exhibitions, markets, and sales; between ewes being inseminated, flushed, or implanted; or between rams at ram test or collection stations. Embryo transfer and artificial insemination equipment and surgical tools must be sterilized after each use in order for the contact to be considered limited contact. Limited contact does not include any contact with a female animal during or up to 30 days after she lambed, kidded, or aborted or when there is any visible vaginal discharge other than that associated with estrus. Limited contact does not include any activity in which uninhibited contact occurs, such as sharing an enclosure, sharing a section of a transport vehicle, or residing in other flocks for breeding or other purposes, except as allowed by scrapie flock certification program standards.

“Live-animal screening test” means any test used for the diagnosis of scrapie in a live animal, approved by APHIS, and conducted in a laboratory approved by APHIS.

“Noncompliant flock” means:

1. Any source or infected flock whose owner declines to enter into a flock plan or postexposure management and monitoring plan agreement within 60 days of the flock’s being designated as a source or infected flock;
2. Any exposed flock whose owner fails to make animals available for testing within 60 days of notification, or as mutually agreed upon by the department and the owner, or whose owner fails to submit required postmortem samples;
3. Any flock whose owner or manager has misrepresented, or who employs a person who has misrepresented, the scrapie status of an animal or misrepresented any other information on a certificate, permit, owner statement, or other official document within the last five years;
4. Any flock whose owner or manager has moved, or who employs a person who has moved, an animal in violation of this chapter within the last five years; or
5. Any flock which does not meet the requirements of a flock plan or PEMMP.

“Official genotype test” means any test used to determine the genotype of a live or dead animal and conducted at an approved laboratory provided that the animal is officially identified and the samples used for the test are collected and shipped to the laboratory by either an accredited veterinarian or a department or APHIS representative.

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

“Official identification” or “official ID” means identification approved by the department and APHIS for use in the scrapie eradication program in the state of Iowa. For sheep, official identification consists of (1) approved ear tags which include the flock ID number combined with an individual animal number; (2) approved unique, alphanumeric serial-numbered ear tags; or (3) ear tags approved for use with the scrapie flock certification program. For goats, official identification consists of any method of identification approved by the USDA, as outlined in 9 CFR 79.2.

“Official test” means any test used for the diagnosis of scrapie in a live or dead animal, approved by APHIS for that use, and conducted at an approved laboratory.

“Owner” means a person, partnership, company, corporation, or any other legal entity which has legal or rightful title to animals.

“Owner/seller statement form” means a written document to be completed by the owner or seller of animals that require official identification and includes the owner’s/seller’s name, address, and telephone number; date of transaction; the flock identification number; the number of animals involved; a statement indicating that the animals that require official identification have been officially identified and that the owner/seller will maintain records as to the origin of the individual animals for five years; and a signed owner statement.

“Owner statement” means a statement signed by the owner certifying that the sexually intact animals are not scrapie-positive, suspect, high-risk, or exposed and that they did not originate from an infected, source, exposed, or noncompliant flock.

“Permit” means an official document that has been issued by an APHIS or department representative or an authorized accredited veterinarian and allows the interstate movement of animals under quarantine. A seal may be required by the state veterinarian or AVIC.

“Postexposure management and monitoring plan” or “PEMMP” means a written agreement signed by the owner of a flock, an accredited veterinarian, if one is employed by the owner, and a department or APHIS representative in which each participant agrees to undertake actions specified in the agreement to reduce the risk of the occurrence of scrapie and to monitor for the occurrence of scrapie in the flock for at least five years after the last high-risk or scrapie-positive animal is removed from the flock or after the last exposure of the flock to a scrapie-positive animal, unless the monitoring time is otherwise specified by a department or APHIS representative. As part of a postexposure management and monitoring plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the plan. The plan must include the requirements in 9 CFR 54.8.

“Premises” means the ground, area, buildings, and equipment occupied by one or more flocks of animals.

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

“Scrapie” means a nonfebrile, transmissible, insidious degenerative disease affecting the central nervous system of sheep and goats.

“Scrapie eradication program” or “program” means the cooperative state-federal-industry program administered by APHIS and states to control and eradicate scrapie.

“Scrapie flock certification program” or “SFCP” means a voluntary state-federal-industry cooperative program established and maintained to reduce the occurrence and spread of

scrapie, to identify flocks that have been free of evidence of scrapie over specified time periods, and to contribute to the eventual eradication of scrapie. This program was formerly known as the voluntary scrapie flock certification program.

“Scrapie-positive animal” or “positive animal” means an animal for which a diagnosis of scrapie has been made by an approved laboratory through one of the following methods:

1. Histopathological examination of central nervous system (CNS) tissues from the animal for characteristic microscopic lesions of scrapie;
2. The use of protease-resistant protein analysis methods including but not limited to immunohistochemistry or western blotting on CNS or peripheral tissue samples from a live or a dead animal for which a given method has been approved by the administrator for use on that tissue;
3. Bioassay;
4. Scrapie-associated fibrils (SAF) detected by electron microscopy; or
5. Any other test method approved by the administrator in accordance with 9 CFR 54.10.

“Source flock” means a flock in which a department or APHIS representative has determined that at least one animal was born that was diagnosed as a scrapie-positive animal at an age of 72 months or less.

“State animal health official” means an individual employed by the department in animal health activities and authorized by the department to perform the functions involved.

“Suspect animal” means:

1. A sheep or goat that exhibits any of the following possible signs of scrapie and that has been examined by an accredited veterinarian or a department or APHIS representative. Possible signs of scrapie include: weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high-stepping gait of forelimbs, bunny hop movement of rear legs, or swaying of back end; increased sensitivity to noise and sudden movement; tremor, star gazing, head pressing, recumbency, or other signs of neurological disease or chronic wasting;
2. A sheep or goat that has tested positive for scrapie on a live-animal screening test, or any other official test, unless the animal is designated as a scrapie-positive animal;
3. A sheep or goat that has tested inconclusive or suggestive of scrapie on an official test for scrapie.

“Trace” means all actions required to identify the flock of origin or flock of destination of an animal.

“Unofficial test” means any test used for the diagnosis of scrapie or for the detection of the protease-resistant protein associated with scrapie in a live or dead animal but that either has not been approved by APHIS or was not conducted at an approved diagnostic laboratory.

“Veterinary signature-stamped bill of sale” means a document allowed in Iowa in lieu of a Certificate of Veterinary Inspection for use when animals are sold through a licensed auction market and will remain in Iowa. The bill of sale shall contain the statement: “I certify, as an accredited veterinarian, that the above animals have been inspected by me and that they are not showing signs of infectious, contagious and/or communicable diseases (except where noted). The vaccinations and results of tests are as indicated on the certificate. To the best of my knowledge the animals listed on this certificate meet the state of destination and federal interstate requirements. No further warranty is made or implied.” The

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

signature of the veterinarian who inspected the animals at the sale must appear on the document.

21—64.201(163) Supervision of the scrapie eradication program. The scrapie eradication program is a cooperative program between the department and APHIS and is supervised by full-time animal health veterinarians employed by the state or federal government.

21—64.202(163) Identification. Animals required to be officially identified shall have official identification applied upon, or before, departure from the current flock of origin by the flock/herd owner or the owner's agent. An animal that already has identification recognized as official for Iowa does not need to have any additional official identification applied. If an animal was not identified prior to departing from its flock of birth or if its identification has been lost, then the animal must be identified upon, or before, departing from the current flock in which the animal resides. No person shall apply a flock ID tag to an animal that has not resided in that flock. If a sexually intact animal that requires official identification is of uncertain origin or if the animal is identified with a blue metal "meat only" tag or a red or yellow tag denoting exposure or test status, then the animal may not be used for breeding and must be restricted until slaughter. Animals that require official identification and enter the state of Iowa from other states must be identified with an identification that complies with 9 CFR 79.2. For sheep originating from out of state, ear tags that comply with 9 CFR 79.2 will be considered identification in Iowa. For goats, either ear tags or tattoos that comply with 9 CFR 79.2 will be considered official identification in Iowa.

64.202(1) Sheep—official identification required. Sheep required to be officially identified include:

- a. All sexually intact sheep, unless specifically excluded in these rules;
- b. All sexually intact sheep for exhibition;
- c. All sheep over 18 months of age;
- d. All sheep residing in noncompliant flocks;
- e. All exposed, suspect, positive and high-risk sheep; and
- f. Sexually intact sheep of any age imported into Iowa, except as noted in 64.202(2).

64.202(2) Sheep—official identification not required. Sheep that do not require official identification include:

- a. Sheep under 18 months of age moving directly to a slaughter facility or to an approved terminal feedlot and originating from within or outside of Iowa, but which are not being moved through an Iowa auction market or an Iowa dealer's place of business;
- b. Wether sheep for exhibition, unless over 18 months of age; and
- c. Sheep moved for grazing or similar management reasons provided that the sheep are moved from a premises owned or leased by the owner of the sheep to another premises owned or leased by the owner of the sheep.

64.202(3) Goats—official identification required. Goats that require official identification include:

- a. Sexually intact goats that are registered, are used for exhibition, or have resided on the same premises with or been commingled with sheep, excluding limited contact;
- b. All goats residing in noncompliant flocks; and
- c. All exposed, suspect, positive and high-risk goats.

64.202(4) Goats—official identification not required. Goats that do not require official identification include:

- a. Goats moving directly to a slaughter facility or to an approved terminal feedlot and originating from within or

outside of Iowa, but which are not being moved through an Iowa auction market or an Iowa dealer's place of business;

- b. Wether goats for exhibition;
- c. Goats raised and maintained apart from sheep and used exclusively for meat and fiber production;
- d. Pet goats raised and maintained apart from sheep and not registered or used for exhibition;
- e. Dairy goats raised and maintained apart from sheep and not registered or used for exhibition; and
- f. Goats moved for grazing or similar management reasons provided that the goats are moved from a premises owned or leased by the owner of the goats to another premises owned or leased by the owner of the goats.

NOTE: Official identification requirements for goats will become identical to those for sheep 90 days following the disclosure of a case of scrapie in Iowa goats that cannot be attributed to exposure to sheep.

21—64.203(163) Restrictions on the removal of official identification. No person may remove or tamper with any approved means of identification required to be on sheep or goats, unless the identification must be removed for medical reasons, in which case new official identification must be applied to the animal as soon as possible and prior to commingling that could result in the loss of identity of the animal. A record documenting the change of official identification must be made.

21—64.204(163) Records.

64.204(1) Record-keeping requirements for owners. Records on every animal that requires official ID must be maintained for five years. For every animal not born in the flock, records must include the flock of origin ID number or the previous owner's name and address, the date of acquisition, and the name of the seller if different from the owner of the flock of origin. The flock of birth should also be recorded, if known. The flock ID number (with or without the individual animal number) or the serial tag number must be recorded at the time an animal departs from the flock, along with the name and address of the market or buyer, and the date the animal departed from the flock. The owner may elect to apply a flock ID tag in addition to existing official ID tags, instead of recording the existing ID. The owner must provide a written record of the official ID (flock ID number(s) or serial tag number(s)) for the market or buyer; however, if all the animals are identified with the owner's flock ID tags, then the owner's flock ID number will suffice. It is recommended that the owner correlate official ID with production records, such as lambing dates, for all breeding animals. Certificates of Veterinary Inspection (CVIs) (or a veterinary signature-stamped bill of sale for animals purchased through Iowa markets) are required for all changes of ownership of animals in Iowa, other than for animals sold to slaughter. A copy of the CVI or veterinary signature-stamped bill of sale must be maintained for every animal purchased, and for every animal sold privately, other than to slaughter. For animals sold to slaughter, records must show the date of sale, number of animals sold, and where or to whom sold.

64.204(2) Record-keeping requirements for auction markets. Markets must collect a completed and signed owner/seller statement form from each seller presenting animals that require official identification or must post where animals are unloaded signs which state that "sexually intact sheep or goats that are known to be scrapie-positive, suspect, high-risk, or exposed, or that originated from a known infected, source, exposed, or noncompliant flock may not be unloaded or sold through this market." For animals identified by the market, the serial tag numbers applied to each seller's ani-

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

imals must be recorded. Animals that require official identification, but that cannot be identified to their flock of origin shall not be sold as breeding animals. Bill-of-sale records must indicate the seller or flock ID number(s) or serial tag numbers of the animals involved and will serve as documentation of the buyers of animals presented by any particular seller. The market must always record, either on the owner/seller statement form or separately, the following information on all sexually intact animals that require official identification: the seller's flock ID number or seller's name and address, the name of the owner of the flock of origin if different from the seller, and the buyer's name and address or buyer's flock ID number. All animals moving interstate must depart from the market with either a Certificate of Veterinary Inspection or slaughter affidavit; all animals remaining in Iowa must depart from the market with a Certificate of Veterinary Inspection, veterinary signature-stamped bill of sale, or slaughter affidavit. Certificates of Veterinary Inspection for animals moving interstate must contain the statement set forth in rule 21—64.208(163). All of these documents must be made available for inspection upon request and maintained as official records for five years.

64.204(3) Record-keeping requirements for licensed sheep dealers. The dealer must either collect a completed and signed owner/seller statement form from the person from whom the dealer takes possession of the animals or must post signs as described in 64.204(2) if there is any possibility that the animals will move interstate, other than through slaughter channels. The dealer must always record, either on the owner/seller statement form or separately, the following information on all sexually intact animals that require official identification: the seller's flock ID number or seller's name and address and the name of the owner of the flock of origin if different from the seller. For animals identified by the dealer, the serial tag number applied to each animal must be recorded. Animals that move interstate, other than to slaughter, must be inspected by a veterinarian and have a Certificate of Veterinary Inspection that includes the required statements as set forth in 21—64.208(163). All animals that do not go to slaughter must be inspected by a veterinarian and have a Certificate of Veterinary Inspection completed prior to sale, unless the animals are being sold at a licensed auction market where a veterinary inspection will occur. For animals that are taken to an auction market, the dealer must provide to the market for its records a list of all flock ID numbers or serial tag numbers in the group. For animals that are resorted and sold, records must identify all potential buyers of any animal acquired. Every effort should be made to maintain the identity of groups from the same flock, through separate penning or use of temporary ID, such as chalk marking, in order to simplify efforts to identify the final destination of individual animals. If animals are under 18 months of age and the dealer picks them up at the owner's premises and delivers them directly to a slaughter facility, then the official identification requirement may be waived; however, a record of the transaction must be maintained. Records must document the buyer's name and address or buyer's flock-of-origin ID number, date of sale, and animals sold for all private sales or sales to slaughter, so that animals can be traced to their final destination. All records must be kept for five years and made available for inspection upon request.

21—64.205(163) Responsibility of persons handling animals in commerce to ensure the official identification of animals. Licensed sheep dealers and auction markets and those that provide transport must ensure that animals are properly identified upon taking possession of the animals.

Animals lacking official ID must either be declined or be identified by the licensed dealer or market with official ID issued to the dealer or market immediately upon the dealer's or market's taking possession, and prior to commingling of the animals.

21—64.206(163) Veterinarian's responsibilities when identifying sheep or goats. Veterinarians may be called upon to officially identify animals and may be issued official identification for the animals in the form of the serial number ear tags for carrying out this duty. The veterinarian may apply the ID only if the flock of origin information is available. Sexually intact animals that require official identification and are of unknown origin shall not be used for breeding and must be restricted until slaughter. When animals are identified, the veterinarian applying ID must record the serial tag number applied to each animal and the following information (this requirement may be accomplished by collecting a completed owner/seller statement form): the flock-of-origin ID number or name and address of the current owner, if different from the owner of the flock of origin, and the name and address of the buyer, if a change of ownership is occurring. The flock of birth should also be recorded, if known. These records must be kept for five years and made available for inspection upon request.

21—64.207(163) Flock plans. Infected and source flocks will be quarantined by the department upon the determination of their status. A written flock cleanup plan shall be signed by the owner of an infected or source flock, and the requirements set out in the plan shall be adhered to until its completion. The plan may consist of:

1. Whole flock depopulation;
2. The removal of genetically susceptible female animals, suspect animals, positive animals, and the female offspring of positive female animals; or
3. The removal of high-risk animals as defined in 9 CFR 79.4.

Indemnity may be paid for animals removed, if funds are available through USDA. All flock plans require cleaning and disinfecting procedures as part of the requirements. Upon completion of the flock plan, the quarantine may be released, with the approval of the DSE, and following an inspection of the premises by a state or federal animal health official. At that time, the owner is required to sign a postexposure management and monitoring plan (PEMMP) and agree to the requirements set out in that plan.

21—64.208(163) Certificates of Veterinary Inspection. Certificates of Veterinary Inspection (CVIs) issued by licensed accredited veterinarians shall be obtained whenever animals change ownership, other than when animals are sold for slaughter, except as provided in this rule. For animals that require official identification, the CVI must include the seller's flock ID number and name and address and the flock ID numbers of the animals represented on the CVI. If flock ID tags were not used, then the individual official serial tag number(s) must be listed on the certificate. CVIs for animals that will move interstate must additionally have the following signed owner statement: "I certify that the sexually intact animals represented on this form are not known to be scrapie-positive, suspect, high-risk, or exposed, and did not originate from a known infected, source, exposed, or noncompliant flock." The veterinarian may sign the statement (which may be applied in stamp form) on behalf of the owner if a properly executed owner/seller statement form has been collected from the owner or if the animals are at a licensed auction market or a licensed dealer's place of business where signs, which

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

have been posted where animals are unloaded, state that “sexually intact sheep or goats that are known to be scrapie-positive, suspect, high-risk, or exposed, or that originated from a known infected, source, exposed, or noncompliant flock may not be unloaded or sold through this market.” The veterinarian should check with the state of destination for additional requirements. Animals sold other than to slaughter through state-licensed livestock markets but that will remain in Iowa may be released on either a Certificate of Veterinary Inspection or a veterinary signature-stamped bill of sale. The veterinary signature-stamped bill of sale must include the flock ID number(s) or serial tag number(s), or all such numbers possibly included in the group of animals, for all animals that require official identification. A Certificate of Veterinary Inspection may be completed for sexually intact animals from an exposed flock in some circumstances, with the approval of the state veterinarian.

21—64.209(163) Requirements for shows and sales. Official identification is required for any sexually intact sheep or goat to be exhibited. Positive, suspect, sexually intact exposed, and high-risk animals may not be exhibited. Exposed animals that have been redesignated and had restrictions removed by the DSE according to USDA guidelines may attend shows and sales. Feeder/market class animals from an exposed flock that are not positive, suspect, exposed, or high-risk may be exhibited with the approval of the state veterinarian provided that they are moved only to slaughter or returned to the premises of origin following the show.

64.209(1) Females over 12 months of age should be penned separately from females from other flocks when practical.

64.209(2) Females within 30 days of parturition, postpartum females, or females that have aborted or are pregnant and have a vaginal discharge must be kept separate from animals from other flocks so as to prohibit any direct contact. Any enclosures used to contain the female animals must be cleaned and disinfected.

21—64.210(163) Movement restrictions for animals and flocks. A sexually intact animal shall not be moved from an infected or source flock, except under permit. Permitted animals may be moved to slaughter, to a research or diagnostic facility, or to another facility as specified in the flock plan. High-risk, suspect, and sexually intact exposed animals from other than infected or source flocks will be placed under movement restrictions in accordance with 9 CFR 79.3. The movement restrictions on the flock and the criteria for release of these restrictions shall be specified as part of either the flock plan or the postexposure management and monitoring plan. Animals from noncompliant flocks shall be placed under movement restrictions and shall be moved only by permit.

21—64.211(163) Approved terminal feedlots. Approved terminal feedlots allow purchasers of young sexually intact feeder animals from out of state to bring those animals into Iowa without official identification provided that the animals are restricted to an inspected and approved premises and all are delivered to slaughter by 18 months of age.

64.211(1) Requirements for approved terminal feedlots. All animals of out-of-state origin that have arrived without official identification must be moved directly to slaughter by 18 months of age. If other sheep or goats that require official identification are maintained on the premises, then the premises must be designated as either: (a) a slaughter-only premises, in which case all animals on the site will be slaughtered by 18 months of age, and production, inventory, purchase, and sales records will be inspected on adult animals that re-

quire official identification; or (b) a separate operation site, in which case animals other than the unidentified out-of-state origin feeder animals may be sold other than to slaughter, but these animals must be separated from other animals by a distance of 30 feet or by a solid wall that prevents contact or the passage of fluids. Records must account for the arrival and dispersal of each individual animal, and there shall be no identification exemptions on these animals. All unidentified approved terminal feedlot animals must be delivered directly to a slaughter facility, unless the owner identifies the sexually intact animals with blue metal “meat only” tags, in which case the animals may move through a licensed market or licensed dealer, but they must remain in slaughter channels.

64.211(2) Identification at approved terminal feedlots. Out-of-state origin sexually intact feeder animals moved to an approved terminal feedlot will be exempted from identification requirements provided that the feedlot maintains compliance with all rules and regulations governing approved terminal feedlots.

64.211(3) Registration of approved terminal feedlots. All approved terminal feedlots must obtain a permit issued by the department. Approved terminal feedlots will be subject to periodic records and premises inspections. The department shall assign an approved terminal feedlot number for each approved terminal feedlot facility.

64.211(4) Records for approved terminal feedlots. All approved terminal feedlots must maintain appropriate records for a period of five years. Records will include Certificates of Veterinary Inspection for all animals originating from out of state received by the facility and slaughter records sufficient to conduct inventory reconciliation. If a breeding flock or any other sheep or goats that require official identification are maintained on the same premises, then records shall also include an inventory of animals, lambing records, bills of sale, slaughter receipts, and any Certificates of Veterinary Inspection sufficient to account for the acquisition and dispersal of all animals. Failure to maintain appropriate records shall be grounds for revocation of the feedlot permit. All animals without official identification must be moved directly to slaughter, and movement to slaughter must be completed before any of the animals reach the age of 18 months. If blue metal “meat only” tags are applied, then records on tags applied must be maintained and shall consist of serial tag numbers, origin of the group(s) (state, market, or individual), date of tagging, and destination (date sold and buyer).

These rules are intended to implement Iowa Code chapter 163.

NOTICE—CIVIL REPARATIONS TRUST FUND

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of February 18, 2004, is approximately \$54,311.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date

NOTICE—CIVIL REPARATIONS TRUST FUND(cont'd)

affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

ARC 3222B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code Supplement section 427.1(19), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 11, “Tax Certification of Pollution Control or Recycling Property,” Iowa Administrative Code.

These amendments reflect the expansion of the property tax exemption to include property used to process waste wood products, pursuant to 2003 Iowa Acts, chapter 136, section 1. The amendments provide examples of recycling property typically considered eligible as well as recycling property typically considered ineligible for the tax exemption.

Any interested person may make written suggestions or comments on these proposed amendments on or before April 8, 2004. Such written materials should be directed to Jeff Geerts, Energy and Waste Management Bureau, Department of Natural Resources, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons wishing to convey their views orally should contact Jeff Geerts at (515)281- 8176 or at the Wallace State Office Building.

The Energy and Waste Management Bureau encourages stakeholders submitting comments to utilize the following guidelines. These guidelines aid the Bureau in accurately understanding and creating a record of input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual, or for a business or organization.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

Also, there will be a public hearing on April 8, 2004, at 10 a.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code Supplement section 427.1(19).

The following amendments are proposed.

ITEM 1. Amend rule 567—11.1(427) as follows:

567—11.1(427) Scope. This chapter applies to persons who request certification by the department pursuant to Iowa Code Supplement section 427.1(32 19) that property is air or water pollution control or recycling property.

ITEM 2. Amend rule 567—11.2(427,17A) as follows:

567—11.2(427,17A) Form. A complete Form PR-01675 54-064, which is available through the local county assessor, the department of revenue and finance, or this department, must be submitted in order to request certification under this chapter. In completing the form, the applicant may adopt by reference any pertinent information contained in an application for a permit submitted to the department.

ITEM 3. Amend subrule 11.6(1) as follows:

11.6(1) General. Property which has been installed and is used primarily to meet an effluent standard, a water quality standard, an emission standard or to control hydrocarbons, fugitive dust, odors or other air contaminants in a reasonably adequate manner shall be considered to be used primarily to control or abate pollution of water or air of the state. Property which has been installed to meet a standard more stringent than an emission or water quality standard shall be considered to be used primarily to enhance the quality of the water or air of this state. Personal property or improvements to real property *as defined by Iowa Code section 427A.1* or any portion of the property, used primarily in the manufacturing process and resulting directly in the conversion of waste plastic, wastepaper products, waste paperboard, or *waste wood products* into new raw materials or products composed primarily of recycled material shall be considered recycling property. Each request will be considered in the context of its particular circumstances.

In the event that such property also serves other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution, to the enhancement of the quality of the air or water of this state, or for recycling shall be exempt from taxation.

ITEM 4. Amend subrule **11.6(3)** by adopting the following **new** paragraphs “e” and “f”:

e. Recycling - normally considered eligible. Property used in the conversion of waste plastic, wastepaper products, waste paperboard or waste wood into a raw material meeting industry specifications for use by a manufacturer of a recycled product including, but not limited to:

- (1) Property used to sort and prepare wastepaper products or waste paperboard to paper mill industry specifications.
- (2) Property used to sort and prepare wastepaper products or waste paperboard to cellulose insulation industry specifications.
- (3) Property used to sort and prepare wastepaper products or waste paperboard to animal bedding industry specifications.
- (4) Property used to sort and prepare wastepaper products or waste paperboard to packaging industry specifications.
- (5) Property used to sort and prepare waste plastic to recycled plastic industry specifications (e.g., extrusion, injection, blow) without additional required changes to the size or

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

shape of the plastic before the plastic enters the manufacturing process.

(6) Property used to sort and prepare waste wood to industry specifications for products such as oriented-strand board, medium-density fiberboard, finger-jointed lumber, furniture, animal bedding, mulch, bulking material for the composting process, or fuel.

f. Recycling - normally considered ineligible. Property used in the processing or conversion of recyclable material into a form that does not meet industry specifications for use by a manufacturer (e.g., raw material sent to another processor for additional refinement or processing such as sorting, baling, shredding, grinding, crushing, densifying, or pelletizing).

ARC 3223B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 49, "Nonpublic Water Supply Wells," and Chapter 82, "Well Contractor Certification," Iowa Administrative Code.

The proposed amendments to Chapter 49 would:

- Set technical requirements for proper installation of well pumps and related plumbing up to the pressure tank.
- Amend the purpose, add technical definitions and expand the rules addressing proper pump and plumbing installation.

The proposed amendments to Chapter 82 would:

- Add the category of certified pump installer contractor to the certified well contractor classifications.
- Add definitions for pump services and define who may perform well services and pump services.
- Exempt public water supply operators from pump installer certification requirements.
- Set testing, fee and continuing education requirements for pump installers.
- Establish a general test and technical tests for well drillers and pump installers.
- Establish a peer advisory committee to help the Department review application experience requirements and recommend future rule modifications.
- Set the sign-up period for registration without testing.

The amendments to these chapters were developed by a stakeholder committee authorized by 2002 Iowa Acts, House File 583, (Iowa Code 455B.190A) and reviewed by Department Water Supply Section engineers.

Any interested person may make written suggestions or comments on these proposed amendments prior to April 23, 2004. Such written materials should be directed to Brent Parker, Water Supply Section, Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309-4611; fax (515)725-0348. Persons who wish to convey their views orally should contact the Water Supply Sec-

tion at (515)725-0337 or at the Water Supply Office, 401 SW 7th Street, Des Moines, Iowa 50309-4611.

Interested persons are also invited to present oral or written comments at public hearings which will be held as follows:

- | | |
|--------------------------|---|
| April 6, 2004
1 p.m. | Department of Natural Resources
Water Supply Section
401 SW 7th Street, Suite I
Conference Rooms
Des Moines, Iowa |
| April 7, 2004
1 p.m. | Atlantic Public Library
507 Poplar
Atlantic, Iowa |
| April 8, 2004
8 a.m. | Arrowhead Education Agency (AEA)
824 Flindt Dr.
Storm Lake, Iowa |
| April 13, 2004
2 p.m. | North Iowa Area Community College
Muse-Norris Conference Center
500 College Dr.
Mason City, Iowa |
| April 14, 2004
9 a.m. | Pizza Ranch
1100 W. Main
Manchester, Iowa |
| April 15, 2004
9 a.m. | Washington Public Library
Helen Wilson Gallery
120 E. Main
Washington, Iowa |
| April 16, 2004
9 a.m. | Centerville City Hall
314 E. Maple
Centerville, Iowa |

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

Copies of relevant rules may be obtained from Cecilia Nelson, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034.

These amendments may have an impact on small business.

These amendments are intended to implement Iowa Code section 455B.190A.

The following amendments are proposed.

ITEM 1. Amend rule 567—49.1(455B) as follows:

567—49.1(455B) Purpose. The purpose of this chapter is to protect the public health by protecting groundwater supplies from contamination by establishing uniform minimum standards and methods for well construction and reconstruction for nonpublic water supply wells. *This chapter also provides minimum standards for installation of water well pumps or equipment employed in withdrawing or obtaining water from a well for any use, except monitoring wells, including such seals and safeguards as may be necessary to protect from contamination the water in the aquifer and water being pumped from the well.*

ITEM 2. Amend rule **567—49.2(455B)** as follows:

Amend the following definition:

"Well services" means ~~new well construction, well reconstruction, installation of pitless equipment, or well plugging both well drilling services and pump services.~~

Rescind the definition of "rehabilitation or reconstruction."

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

“Backflow prevention device” means any device, method or type of construction to prevent backflow of water, liquids, mixtures, or substances into a well or into the distribution pipes of a potable supply of water from any source other than its intended source.

“Class 1 well” means a well 100 feet or less in depth and 18 inches or more in diameter.

“Class 2 well” means a well more than 100 feet in depth or less than 18 inches in diameter or a bedrock well. Bedrock wells include:

1. Wells completed in a single confined aquifer;
2. Wells completed in a single unconfined aquifer; and
3. Wells completed in multiple aquifers.

“Class 3 well” means a sandpoint well 50 feet or less in depth and having a casing inside diameter of 2 inches or less constructed by joining a screened drive point with lengths of pipe and driving the assembly into a shallow sand and gravel aquifer.

“Pump installer” means a person certified by the department to perform pump services.

“Pump services” means the installation, repair, and maintenance of water systems; modification of the upper terminus of a well; well plugging; well rehabilitation; or the construction of Class 3 wells.

“Upper terminus” means the upper ten feet of the well casing as measured from the finished surface grade.

“Water systems” means any part of the mechanical portion of a water well that delivers water from the well to a valve that separates the well from the plumbing system. “Water systems” includes the pump, drop pipe to the well, electrical wire from the pump to the first electrical panel or connection outside the casing, piping from the well to the pressure tank or first valve outside the casing, pitless unit or adapter, and all related miscellaneous fittings necessary to operate the pump. “Water systems” does not include any outside piping to other buildings and does not include the piping that carries the water in the remainder of the distribution system.

“Well construction” means constructing a water well and installing necessary casing, screen, liners, grout, seals, and other appurtenances.

“Well driller” means a person certified by the department to perform well drilling services.

“Well drilling services” means new well construction, well reconstruction, well repair, well rehabilitation, installation of pitless equipment, or well plugging.

“Well plugging” means the closure of an abandoned well with plugging materials by procedures which will permanently seal the well from contamination by surface drainage and permanently seal off the well from contamination into an aquifer. “Well plugging” includes the proper application of filling and sealing materials.

“Well reconstruction” means modification of the original construction of a well. “Well reconstruction” includes, but is not limited to, deepening the well, installing a liner, installing or replacing a screen with one of a different diameter or length, installing a pitless adapter, extending the casing, or hydrofracturing a well. Replacing a screen with one of identical diameter and length or replacing a pitless adapter is considered repair, not reconstruction.

“Well rehabilitation” means the physical or chemical cleaning of a well.

ITEM 3. Amend rule 567—49.3(455B) as follows:

567—49.3(455B) Applicability. The provisions contained herein apply to all nonpublic water supply wells constructed for the purpose of domestic, livestock, irrigation, recreation, and commercial or industrial use, that are completed after the

effective date of these rules (May 13, 1998). They shall also apply to existing water wells undergoing rehabilitation or reconstruction.

Ponds and surface water supplies are not covered by these standards. Information regarding use of these sources of water should be sought from the administrative authority prior to the development of the sources.

49.3(1) Nonconforming well construction installations. Certified well drilling contractors shall ensure that the rehabilitation or reconstruction of nonconforming wells adheres to all applicable provisions of this chapter or to comparable construction or installation requirements approved by the administrative authority.

When any construction or reconstruction is done on a nonconforming feature of a well, that feature shall be upgraded and brought into compliance with the material and installation standards contained in this chapter.

49.3(2) Nonconforming water system installations. Certified pump installers shall ensure that the reconstruction or repair of nonconforming water systems adheres to all applicable provisions of this chapter or to construction or installation requirements approved by the administrative authority. When pump services are to be performed on a well that has a contamination problem, the well shall be upgraded and shall be brought into compliance with installation standards contained in this chapter. When pump services are to be performed on a well that does not have a contamination problem, the well may be put back into service with nonconforming features. However, the certified installer shall notify the owner of the well in writing of the defects with recommendations as to what should be done to correct these deficiencies.

49.3(2 3) Exemptions. This chapter shall not apply to public water supply wells, horizontal heat pump installations, elevator shafts, underground storage tank monitoring wells as covered under 567—Chapter 135, or monitoring wells for solid waste disposal facilities as covered in 567—Chapter 110.

ITEM 4. Amend rule 567—49.4(455B) as follows:

567—49.4(455B) General. The administrative authority shall have the authority to visit well sites during any phase of the work without prior notice. The administrative authority shall by rule require the issuance of permits and the submission of water well logs. No well services construction or reconstruction shall be initiated until a permit has been issued by the proper authority. The administrative authority may also require posting of performance bonds and collection and submission of other data. The issuance of permits is covered in 567—Chapter 38 and shall be coordinated with the water withdrawal permits issued by the Iowa department of natural resources as covered in 567—Chapters 51 and 52. All well services shall be performed by a certified well contractor or the property owner as specified in 567—Chapter 82.

It shall be the responsibility of the certified well contractor to ensure that a well construction permit has been issued prior to initiation of well services construction or reconstruction. It shall also be the responsibility of the certified well contractor to ensure that all well services are performed in accordance with the provisions of this chapter.

ITEM 5. Amend rule 567—49.6(455B) as follows:

Amend Table 49.6(1) by adding the following **new** entry at the end of the table:

Sources of Contamination	Minimum Lateral Distance (feet)	
	All Wells	
Frost pit	10	

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Renumber subrules **49.6(3)** and **49.6(4)** as **49.6(4)** and **49.6(5)** and adopt the following **new** subrule 49.6(3):

49.6(3) Frost pits. Wells are not permitted to be located within frost pits. Frost pits that do not contain wells are permitted for the purpose of housing pressure tanks and valves, for example, provided the frost pits are not located closer than ten feet from any well.

ITEM 6. Rescind subrule **49.9(4)**.

ITEM 7. Amend rule 567—49.10(455B) as follows:

567—49.10(455B) Rehabilitation or Well reconstruction. All well ~~rehabilitation or~~ reconstruction must meet the requirements of this chapter. If the well feature ~~needing rehabilitation/reconstruction in need of reconstruction~~ cannot be brought into compliance with these rules, the well must be properly plugged.

49.10(1) Installing a liner. If the ~~rehabilitation/~~ reconstruction will involve the placement of a liner, the certified well contractor must then determine whether the proposed ~~rehabilitation/reconstruction~~ reconstruction is to be done in order to correct a health-related problem. The work to be performed must then be done in accordance with paragraph "a" or "b" below.

a. Standards for installation of a liner to correct a health-related problem.

(1) The liner shall have a minimum of two sets of centering guides to allow the proper placement of grout. In no case shall the liner be driven into place.

(2) The liner shall extend to the ground surface or top of the pitless adapter.

(3) The annular space between the old casing and the liner shall be pressure-grouted in place throughout its entire length using an approved grout.

b. Standards for installation of a liner to correct a problem that is not health-related.

(1) The liner shall extend at least ten feet above the static water level or, if a caving zone is present, shall extend above this region.

(2) The liner may be pressure-grouted in place if there is a sufficient annular space for proper application of the grout.

c. Liner material standards. Liners must meet well casing standards as defined in 49.9(1). Liners may be composed of either steel or thermoplastic with a minimum inside diameter of 4 inches. Steel liners must be new and have a minimum wall thickness of .188 inches. Plastic liners must have a standard dimension ratio of 26 or less or a schedule rating of SCH 40 or SCH 80. If the installation does not meet the definition of a liner, then casing material shall be used.

49.10(2) Reserved Upper terminus. All well reconstruction performed on the upper terminus of a well must meet the standards of this chapter.

ITEM 8. Rescind rule 567—49.12(455B) and adopt the following **new** rule in lieu thereof:

567—49.12(455B) Pumps and pumping equipment.

49.12(1) General pump installation requirements. The installation of pumps shall be planned and carried out so the pump will be:

a. Installed so that it and its surroundings are not exposed to chemical or biological contamination;

b. Properly sized so as to provide the volume of water necessary, where obtainable, for an adequate water supply;

c. Designed to meet the well characteristics and not exceed the yield of the well except for low yield seepage/storage wells;

d. Installed for operation without repriming or breaking suction;

e. Installed in such a manner as to provide adequate protection against contamination of the water supply from any surface or subsurface sources;

f. Installed in a manner so that it is accessible for maintenance, repair, and removal.

49.12(2) Lubrication. Pump motor lubricant or coolant oil shall be United States Department of Agriculture- or United States Food and Drug Administration-approved food contact grade formulations.

49.12(3) Other power pumps. Other power pumps located over the well shall be mechanically joined to the casing or on a pump foundation or stand in such a manner as to effectively seal the top of the well. A sanitary seal shall be used where the pump is not located over the well and the pump delivery or suction pipe emerges from the top.

49.12(4) Hand pumps or similar devices.

a. A hand pump, hand pump head, hand pump stand or similar device shall be constructed so that there are no openings into the interior of the pump or well casing where rain water, insects or vermin can enter. Hand pumps shall be provided with a casing vent as defined in 567—49.17(455B), and shall have a closed, downward-directed spout and a sealed pump rod packing assembly.

b. A hand pump shall be attached to a well casing by a sealed flange or other method approved by the administrative authority to adequately prevent the entrance of surface water, dirt, animals, insects, or other foreign matter. The flange shall be not less than 12 inches above a concrete slab or the ground surface.

c. Where a well casing functions as a hand pump cylinder wall, the plunger shall be not less than 25 feet below the ground surface. A casing wall weep hole is not permitted.

ITEM 9. Rescind rule 567—49.13(455B) and adopt the following **new** rule in lieu thereof:

567—49.13(455B) Drop pipe.

49.13(1) Discharge pipe. Galvanized, black, or stainless steel drop pipe shall be minimum schedule 40 wall thickness. PVC drop pipe shall be minimum schedule 80 wall thickness. Schedule 80 molded PVC, brass, or stainless steel couplings shall be used with PVC pipe. Polyethylene drop pipe shall be minimum ASTM Standard PE3406 SDR9.

49.13(2) Check valve. For potable water installations, all pumps shall have a check valve within 20 feet of the pump for pump installations without drain-back aeration. For pump installations with drain-back aeration, the check valve shall be below the pitless adapter.

ITEM 10. Rescind rule 567—49.14(455B) and adopt the following **new** rule in lieu thereof:

567—49.14(455B) Pump wiring. Pump wiring within the well shall be double-jacketed copper wire and shall meet the National Electrical Code specifications for wire sizing, unless the pump manufacturer requires a non-jacketed wire. Wire outside of the casing must meet, at a minimum, National Electrical Code specifications. Wire shall be secured to the drop pipe at a minimum of 20-foot intervals.

ITEM 11. Rescind rule 567—49.15(455B) and adopt the following **new** rule in lieu thereof:

567—49.15(455B) Pitless adapters and pitless units.

49.15(1) Pitless adapters and pitless units conforming to Pitless Adapter Standard—1997 (PAS-97) as promulgated by the Water Systems Council are considered as complying

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

with these rules. A copy of the standard is available for inspection at the Des Moines office of the department of natural resources records center or may be obtained for personal use from the Pitless Adapter Division, Water Systems Council, 1101 30th Street, NW, Suite 500, Washington, DC 20007.

49.15(2) No well casing shall be cut off or cut into below ground surface except to install a pitless well adapter below the frost level.

49.15(3) A pitless subsurface pipe connection to a well casing pipe shall be made with a weld-on, clamp-on, or bolt-on pitless adapter or weld-on or threaded pitless unit. Above-ground discharge pitless adapters are prohibited.

49.15(4) If the pitless adapter is gasketed, the opening in the casing shall be sawed to the diameter recommended by the manufacturer with a hole saw and not cut with a torch. The pitless adapter used shall have the correct curvature to fit the diameter of the casing.

49.15(5) After connecting a pitless adapter or unit, the area surrounding the point of contact between the pitless adapter/unit and the well casing must be uniformly filled with dry bentonite to a thickness of six inches. The remainder of the excavation must be backfilled and graded away from the casing.

ITEM 12. Rescind rule 567—49.16(455B) and adopt the following **new** rule in lieu thereof:

567—49.16(455B) Well caps and seals. A well cap shall be used on any well not protected by a well house and must seal tightly against the casing to exclude surface water, dirt, insects or any foreign matter from entering the well. The well casing shall terminate at least one foot above the finished grade surface. A sanitary seal may only be used on a well terminating within a well house. Any openings in the cap or seal, such as for pump wiring, water depth measurement, or chemical feed, shall be properly grommeted or sealed, except properly screened and oriented vent openings. There shall be no openings through the well cap except for a factory installed vent, air line chemical feed, and power supply wiring, unless a proposal is submitted to and approved by the administrative authority. To be approved, the proposal must show that any entrance into the well cap is watertight and meets the following conditions: prevents surface water from entering the water supply, is secured in position, is removable with tools only, and is resistant to weathering and corrosion.

ITEM 13. Amend 567—Chapter 49 by adopting the following **new** rules:

567—49.17(455B) Vents. A well cap used on a well that has a pitless adapter or pitless unit must have a screened vent hole, pointing downward, with not less than 24-mesh noncorrosive screen, and that is at least ½ inch in diameter. Vent openings shall terminate at least 12 inches above finished ground surface. Venting is required on all wells except Class 3 wells or flowing water wells.

567—49.18(455B) Underground piping. Underground piping from the well casing to the pressure tank shall be a minimum 100 psi pressure rating, NSF Standard 61, and meet ASTM standards for potable water.

567—49.19(455B) Underground wiring. Underground wiring from the well shall be enclosed in a watertight electrical conduit extending from the well cap to a minimum of three feet below ground level, threaded into the well cap, or sealed in a watertight manner. The internal passage of the conduit shall be sealed around the wire with a nonhardening, pliable sealing compound.

567—49.20(455B) Sampling faucets. In all pressure water systems, provision shall be made for collection of water samples directly from the well by installation of a sampling faucet before the pressure tank and prior to encountering any water treatment equipment. The sampling faucet shall be installed at least 12 inches above the floor, have a downturned spout and be in an accessible location. All sample faucets shall be metal and have a smooth (nonthreaded) outlet.

567—49.21(455B) Hydropneumatic (pressure) tanks.

49.21(1) Sizing. The pressure tank shall have an effective water volume large enough to require the well pump to operate at least one minute between low-pressure activation and high-pressure shut off while no water is being used by the system. The minimum allowable pressure at the pressure tank shall be 30 psi.

49.21(2) Constant pressure pump. Constant pressure/variable speed pumps shall operate at a minimum pressure of 30 psi. Pressure tank size shall be according to manufacturer's recommendation.

49.21(3) Pressure relief valve. The tank shall have a pressure relief valve of a size based on the pump capacity if the pump is capable of developing pressure greater than the working pressure of any component of the system. The pressure relief valve shall be located prior to any shut-off valve on the distribution system side of the tank.

49.21(4) Pressure gauge. The pressure tank shall have a pressure gauge capable of reading at least 100 psi.

49.21(5) Tank appurtenances. If a non-bladder tank is used, it shall be equipped with a means of adding or venting air from the tank to maintain the proper air-water ratio.

49.21(6) Tank location. Buried pressure tanks shall not be permitted. If pressure tanks are not located in a residence or other heated structure, they shall be housed in the following manner:

a. Buried vault (frost pit). The vault and vault opening shall be sized to allow ease of access for the installation and maintenance of necessary equipment. The vault shall be as watertight as possible. The outside of the vault should be completely tiled at the base and either drain to daylight or to a sump pit that is equipped with a sump pump. The trench should be backfilled with pea gravel to one foot above the tile. All wiring in the vault shall be in watertight conduit. Buried vaults are not recommended because of the hazard associated with confined space entry.

b. Aboveground structure. The structure and access opening shall be sized to allow the installation and maintenance of necessary equipment with a minimum of inconvenience. The structure shall be of an all-seasons design. It shall be insulated and heated to prevent freezing of the tank. If a poured concrete floor is provided, the top of the floor shall be at least four inches above the surrounding ground and be sloped to a drain or to the door to facilitate drainage of the room. It is recommended that the structure be located no closer than ten feet from the well. If the structure is located over the well, it must have a hinged roof or removable hatch over the well or have other provisions for pulling the well pump.

567—49.22(455B) Electrical connections. At a minimum, all electrical installation shall be performed and maintained in accordance with the current National Electrical Code. A certified pump installer may perform wiring from the pump to the electrical panel unless local ordinances require additional licensing.

567—49.23(455B) Interconnections and cross connections. No connection between a well or boring and another

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

well, boring, water supply system, any chemical injection or contamination source is allowed unless the connection is:

1. Protected by an air gap;
2. Protected by a backflow prevention device; or
3. Between wells or borings that meet the construction standards of this chapter, are used for the same purpose, and have equivalent quality water supply.

567—49.24(455B) Backflow prevention for chemical injection systems for nonpotable water wells.

49.24(1) Backflow protection for irrigation. Where a chemical injection system is connected directly to a water well used for irrigation and that is not used as a potable water supply, a single-check spring-loaded backflow preventer shall be installed between the point of chemical injection on the pump discharge piping and the water well in accordance with the manufacturer's instructions. The check valve shall withstand a minimum hydraulic pressure of 150 psi without leaking. The backflow device shall be provided with the following:

- a. Valving so that water can be drained from the system to prevent freezing.
- b. A vacuum relief valve to prevent backsiphoning of chemicals into the well.
- c. An automatic low-pressure drain at least $\frac{3}{4}$ inches in diameter, positioned so that when draining occurs liquid will flow away from the well. The low-pressure drain shall be at least six inches above grade. The automatic low-pressure drain shall quickly drain the check valve body of water when operation of the water well pump is discontinued.
- d. A watertight seal around the check valve.
- e. An inspection port four inches in diameter to allow inspection of the operation of the check valve.

49.24(2) Pump control interconnection. The water well pump and the chemical injection pump shall be electrically connected so that, when the water well pump stops, the chemical pump will shut off automatically.

567—49.25(455B) Filters and water treatment equipment. Filters and water treatment equipment shall be installed and operated in accordance with manufacturer's directions.

567—49.26(455B) Well disinfection. All new, repaired or rehabilitated wells shall be pumped to waste until the water is free of drilling mud, drill cuttings and sand, and the water is clear. Wells and water systems shall be disinfected by the contractor following completion of construction and whenever any well services have been performed. A chlorine solution such as a sodium or calcium hypochlorite shall be used. Chlorine compounds used for well disinfection must meet NSF Standard 61 and have no additives.

49.26(1) The disinfectant shall be dispersed throughout the entire water column in the well. The disinfectant shall also be brought into contact with the inside of the well casing pipe above the static water level.

49.26(2) The disinfectant shall remain in the well for a minimum of 2 hours if a concentration of at least 100 mg/L chlorine is achieved, or a minimum of 24 hours if at least 50 mg/L is achieved.

49.26(3) For emergency situations, a contact time of a minimum of 30 minutes shall be provided at a chlorine concentration of at least 200 mg/L.

49.26(4) The amount of HTH or household bleach required for a chlorine concentration of 200 mg/L is given in the following table:

Table 49.26(4)
Amount of chlorine disinfectant required
for every 25 feet of water in well

Well casing diameter (in inches)	4	6	8	12	18	24	30	36
Amount of pelleted HTH (in ounces containing approx. 70 percent $\text{Ca}(\text{OCl})_2$)	0.7	1.5	2.6	5.6	13	23	36	52
Amount of chlorine bleach (in pints containing 5.25 percent NaOCl)	0.5	1.2	2.1	4.7	10.6	18.8	29.3	42.2

49.26(5) Dry disinfectant shall be dissolved in a separate container of water before introduction into the well. The solution shall contain not more than eight ounces of pelleted HTH disinfectant per five gallons of water.

567—49.27(455B) Water sampling and analysis.

49.27(1) The owner of a new, reconstructed, or rehabilitated well shall be responsible for submitting a water sample to a certified laboratory for coliform bacteria and nitrate analysis. The water sample shall be collected at least 10 days and not more than 30 days after a well is put into service following the construction, reconstruction, or rehabilitation. The analysis results shall be submitted to the administrative authority.

49.27(2) If the water sample analysis detects presence of bacteria, the disinfection procedure described in rule 49.26(455B) shall be repeated.

567—49.28(455B) Abandonment of wells. Abandoned wells are a contamination hazard to the water bearing formation as well as a physical hazard for people.

49.28(1) Plugging rules. Abandoned wells shall be properly plugged as required in 567—Chapter 39.

49.28(2) Waste disposal prohibition. Under no circumstances shall abandoned wells be used for the disposal of debris, solid waste, septic tank sludge or effluents, or for any other type of unauthorized disposal of waste materials, or as a receptacle for field tile drainage.

567—49.29(455B) Closed circuit vertical heat exchangers. These provisions apply to closed circuit vertical heat exchanger construction.

49.29(1) Piping used must be 160 psi pressure-rated high-density polyethylene or polybutylene.

49.29(2) Connection to piping must use socket fusion or butt fusion joining methods.

49.29(3) Piping must be pressure-tested with air or potable water for 15 minutes at a pressure of 1.5 times the system operating pressure after installation in the borehole.

49.29(4) The annular space between the vertical heat exchanger piping and the borehole must be grouted as required in subrule 49.9(3) using an approved grouting method and material. Grout shall be placed at least in the top 40 feet. Any confining layers between aquifers shall be replaced with grout. Grouting must be performed within 24 hours of completion of the borehole.

49.29(5) Only food-grade or USP-grade propylene glycol or calcium chloride may be used as heat transfer fluid. Any other materials or additives must be NSF-approved for drinking water applications. A permanent sign must be attached to

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the heat pump specifying that only approved heat transfer fluids may be used.

49.29(6) A flow measurement device must be installed on each system.

49.29(7) Water make-up lines to the vertical heat exchanger must be protected with a backflow prevention device.

ITEM 14. Amend rule 567—82.1(455B) as follows:

567—82.1(455B) Definitions. In addition to the definitions in Iowa Code sections 455B.171, 455B.190 and 455B.190A, which are hereby adopted by reference, the following definitions shall apply to this chapter:

“Certified well contractor” means a well contractor certified to construct wells, install pitless adapters, and abandon wells who has successfully passed an examination prescribed by the department to determine the applicant’s qualifications to perform well drilling or pump services or both.

“Class 1 well” means a well 100 feet or less in depth and 18 inches or more in diameter.

“Class 2 well” means a well more than 100 feet in depth or less than 18 inches in diameter or a bedrock well. Bedrock wells include:

1. Wells completed in a single confined aquifer;
2. Wells completed in a single unconfined aquifer; and
3. Wells completed in multiple aquifers.

“Class 3 well” means a sandpoint well or a well 50 feet or less in depth and having a casing inside diameter of 2 inches or less constructed by joining a screened drive point with lengths of pipe and driving the assembly into a shallow sand and gravel aquifer.

“Classification” means one of three levels of well contractor certification, designated as certified well contractor, provisionally certified well contractor or well plugging contractor. All three are referred to as “certified well contractor” in the following rules unless specifically identified otherwise.

“Continuing education unit (CEU)” means ten contact hours of participation in an organized education experience under responsible sponsorship, capable direction, and qualified instruction.

“Direct charge” means the certified well contractor at the well site responsible for ensuring that the well services are performed as required in 567—Chapters 38, 39, 43, 49 and 110.

“Director” means the director of the department of natural resources or a designee.

“Issuing agency” means a professional, technical/educational organization authorized by the department to provide continuing education for certification renewal in accordance with the commitments and guidelines detailed in the written issuing agency agreement and procedures.

“Pump installer” means a person certified by the department to perform pump services.

“Pump services” means the installation, repair, and maintenance of water systems; modification of the upper terminus of a well; well plugging; well rehabilitation; or the construction of Class 3 wells.

“Upper terminus” means the upper ten feet of the well casing as measured from the finished surface grade.

“Water systems” means any part of the mechanical portion of a water well that delivers water from the well to a valve that separates the well from the plumbing system. “Water systems” includes the pump, drop pipe to the well, electrical wire from the pump to the first electrical panel or connection outside the casing, piping from the well to the pressure tank or first valve outside the casing, pitless unit or adapter, and all related miscellaneous fittings necessary to operate

the pump. “Water systems” does not include any outside piping to other buildings and does not include the piping that carries the water in the remainder of the distribution system.

“Water well” means any excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. “Water well” does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

“Well construction” means constructing a water well and installing necessary casing, screen, liners, grout, seals, and other appurtenances.

“Well driller” means a person certified by the department to perform well drilling services.

“Well drilling services” means new well construction, well reconstruction, well rehabilitation, well repair, installation of pitless equipment, or well plugging.

“Well plugging” means the closure of an abandoned well with plugging materials by procedures which will permanently seal the well from contamination by surface drainage and permanently seal off the well from contamination into an aquifer. “Well plugging” includes the proper application of filling and sealing materials.

“Well plugging contractor” means a contractor certified to plug only Class 1 or Class 3 wells but not certified to abandon Class 2 wells, construct wells, or install pitless adapters or perform any other well services.

“Well reconstruction” means modifying the original construction of a well. “Well reconstruction” includes, but is not limited to, deepening the well, installing a liner, installing or replacing a screen with one of a different diameter or length, installing a pitless adapter, extending the casing, or hydrofracturing a well. Replacing a screen with one of identical diameter and length or replacing a pitless adapter is considered repair, not reconstruction.

“Well rehabilitation” means the physical or chemical cleaning of a well.

“Well services” means new well construction, well reconstruction, installation of pitless equipment, or well plugging both well drilling services and pump services.

ITEM 15. Amend subrule 82.2(1) as follows:

82.2(1) Certified well contractor requirement. All well services provided on or after July 1, 1993, shall be performed by a certified well contractor who has been certified by the department pursuant to this chapter, except that a person may construct or reconstruct a well, install pitless equipment or plug a well perform well services on the person’s own property without being certified. A certified well contractor shall notify the department or the county prior to performing well drilling or reconstructing services for a well that does not have the required construction permits. A certified well contractor shall notify the department prior to drilling a well if the use of the water requires a water use allocation and the owner has not applied for or been issued a water use allocation.

ITEM 16. Rescind subrule 82.2(3) and adopt the following **new** subrule in lieu thereof:

82.2(3) Applicability exception. These rules shall not apply to a water operator certified pursuant to Iowa Code section 455B.213, when the water operator is performing pump services on any well owned by a public water supply system as defined in Iowa Code section 455B.171. These rules shall not apply to a wastewater operator certified pursuant to Iowa Code section 455B.213, when the wastewater operator is per-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

forming pump services on a groundwater monitoring well, groundwater dewatering well, or other well not used to provide drinking water, owned by a sewer system as defined in Iowa Code section 455B.171.

ITEM 17. Amend rule 567—82.2(455B) by adopting the following **new** subrule:

82.2(4) Change of address. Any certified well contractor who possesses a certificate must report to the department a change in address within 30 days after the change.

ITEM 18. Amend subrules 82.3(1), 82.3(2) and 82.3(3) as follows:

82.3(1) Classifications. There shall be three classifications of certified well contractors:

- a. Certified well contractor.
 - (1) Well driller.
 - (2) Pump installer.
- b. Provisionally certified well contractor.
 - (1) Well driller.
 - (2) Pump installer.
- c. Well plugging contractor.

82.3(2) Certified well contractor. In order to be certified as a certified well contractor, an applicant shall have met the experience requirements, successfully completed the well contractor certification test examination for well drilling services or pump services or both, been issued a certificate by the department, and renewed the certification in accordance with rules 82.10(455B) and 82.11(455B).

82.3(3) Provisionally certified well contractor. A provisionally certified well contractor does not meet all the experience requirements for a certified well contractor. In order to be a provisionally certified well contractor, an applicant shall:

- a. Sign a statement on the application form that there is a shortage of certified well contractors;
- b. Complete and submit an application documenting at least one *half year of the work experience required for full certification* in well services performed under the direct supervision of a certified well contractor;
- c. Include on the application a signature of a certified well contractor who employs the applicant for provisional certification. By signing the application, the certified well contractor certifies to be jointly liable for any violation of the rules regarding well services by the provisionally certified well contractor and that the violation is grounds for suspension or revocation of the certification of the certified well contractor and the provisionally certified well contractor; and
- d. ~~Receive~~ *Successfully complete, with a passing score on the written examination, the well contractor certification examination for well drilling services or pump services or both.*

ITEM 19. Amend rule 567—82.6(455B) as follows:

567—82.6(455B) Experience requirements.

82.6(1) All applicants shall meet the experience requirements as shown below. *Educational programming approved by the department may be substituted for up to one half of any experience requirement at the rate of one CEU for each 100 hours of required experience.*

CLASSIFICATION	EXPERIENCE
Certified Well Contractor (well driller)	Two years employment and 2000 hours of relevant well drilling services work experience

CLASSIFICATION	EXPERIENCE
Certified Well Contractor (pump installer)	Two years employment and 1000 hours of relevant pump services work experience
Provisionally Certified Well Contractor	One year half of the employment and experience required for full certification
Well Plugging Contractor	None

82.6(2) Applicable experience review committee. The department may appoint a peer review committee to help evaluate relevant well services work experience submitted by applicants for certification. The committee should consist of three members recommended by the Iowa Water Well Association, two members recommended by the Iowa Environmental Health Association, one member recommended by the Iowa Groundwater Association and one member recommended by the Iowa Environmental Council. Committee recommendations shall be considered by the department, which shall make the final determination of eligibility.

ITEM 20. Amend subrules 82.7(1), 82.7(3), 82.7(4) and 82.7(6) as follows:

82.7(1) Examination application fee. The examination application fee for each examination shall be \$50.

82.7(3) Certification fees. The initial certification fee for certified well drilling contractors shall be \$75 for each one-half year of a two-year period from the date of issuance to June 30 of the next even-numbered years year. The initial certification fee for pump installation contractors and well plugging contractors shall be \$50 for each one-half year of the first year of certification and \$50 for each additional one-half year period from the date of issuance to June 30 of the next even-numbered years year.

82.7(4) Provisionally certified well contractor fee. The provisional provisionally certified well contractor fee shall be \$150.

82.7(6) Certification renewal fees. The certification renewal fee for certified well drilling contractors shall be \$300 for the two-year period. The certification renewal fee for pump installers and well plugging contractors shall be \$200 for the two-year period.

ITEM 21. Rescind rule 567—82.8(455B) and adopt the following **new** rule in lieu thereof:

567—82.8(455B) Examinations.

82.8(1) Type of examination. There will be four examinations available:

- a. A general fundamentals examination for well drilling and pump installation contractors.
- b. An examination for well drillers.
- c. An examination for pump installers.
- d. An examination for well plugging contractors.

82.8(2) Required examinations. Well drilling contractors and pump installers must take and pass the general fundamentals examination and at least one of the specialty examinations. Examinations may be taken at the same time and place or at different times. Work shall be limited to the specialty in which proficiency has been demonstrated by written examination. Well plugging contractors must take and pass the well plugging examination only.

82.8(3) Examination application. A person wishing to take the examination required to become a certified well contractor shall complete the Well Contractor Certification Examination Application, Form 43970. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate educational background, training and past experi-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ence in providing well services. The completed application and the application fee shall be sent to the director and addressed to the Iowa Department of Natural Resources, Well Contractor Certification, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309. Application for examination must be received by the department at least 60 days prior to the date of the examinations.

The department may allow local county environmental health officials to take the written examinations, even though they do not meet the work experience or training requirements, provided they pay the examination fee. If the officials receive a passing score on the examination, they will receive a letter of acknowledgment; however, they will not be certified and will not be allowed to perform any well services.

82.8(4) Application evaluation. The director may designate department personnel and the experience review committee to evaluate all applications for examination.

82.8(5) Application expiration. A properly completed application for the examinations will be valid for one year from the date the application is approved by the department. All required examinations must be completed within one year of application.

82.8(6) Refund of examination application fee. The department may refund a portion of the examination application or reexamination application fee for an applicant who does not qualify for examination within one year of making the application. If the applicant will qualify for a scheduled examination within one year, the applicant will be notified when the examination may be taken and the fee will not be refunded.

82.8(7) Reexamination. Upon failure of the first examination, the applicant may be reexamined at the next scheduled examination. Upon failure of the second examination, the applicant shall be required to wait a period of 180 days between each subsequent reexamination.

82.8(8) Reexamination fee. Upon each reexamination while a valid application is on file, the applicant shall submit to the department the examination fee at least ten days prior to the date of examination.

82.8(9) Application invalidation. Failure to successfully complete the necessary examinations within one year from the date of approval of the application shall invalidate the application.

82.8(10) Retention of completed examinations. Completed examinations shall be retained by the director for a period of one year, after which they may be destroyed.

82.8(11) Oral examination. Upon written request by an applicant for well contractor certification, the director will consider the administration of an oral examination on an individual basis when: the applicant has failed the written examination at least twice; the applicant has shown difficulty in reading or understanding written questions but may be able to respond to oral questioning; the applicant is capable of communicating in writing with regard to departmental requirements and inquiries; and the director has received a written recommendation for an oral examination from a department staff member attesting to the operational and performance capabilities of the applicant. The director shall designate department personnel to administer the appropriate examinations as defined in 82.8(1).

82.8(12) Reasonable accommodation. Upon request for certification by an applicant, the director will consider on an individual basis reasonable accommodation to allow administration of the examinations without discrimination on the basis of disability. The applicant shall request the accommodation 30 days prior to the date of the examination. The

applicant must provide documentation of eligibility for the accommodation. Documentation shall be submitted with the completed examination application. Accommodations based on documentation may include site accessibility, oral examination, extended time, separate testing area, or other concerns. If a reasonable accommodation is considered to be an oral examination, the oral examination fee shall apply.

ITEM 22. Rescind rule 567—82.9(455B) and adopt the following **new** rule in lieu thereof:

567—82.9(455B) Certification by examination.

82.9(1) Examination requirement. All applicants for certification shall successfully complete and pass the relevant examinations prior to receiving certification.

82.9(2) Certification by registration without testing. A well contractor who is engaged in performing pump services on or prior to June 30, 2004, and who registers as a pump installer with the department by June 30, 2004, shall be deemed to have met the certification requirements of this chapter without examination. The experience requirement will apply. Beginning July 1, 2004, a pump installer seeking an initial well contractor certification shall meet the testing requirements for certification established in this chapter.

82.9(3) Certification application time line. Application for certification must be received by the department within 30 days after the date the applicant receives notification of having passed the examinations. All applications for certification shall be made on a form provided by the department and shall be accompanied by the certification fee.

82.9(4) Late certification application. Applications for certification by examination which are received more than 30 days but less than 60 days after the applicant has received notification of having passed the examination shall be accompanied by the certification fee and the penalty fee. Applicants who do not apply for certification within 60 days' notice of having passed the examination will not be certified on the basis of that examination.

82.9(5) Denial appeal. Applicants may appeal a denial of certification within 30 days of receiving written notification, pursuant to 567—Chapter 7.

ITEM 23. Amend subrule 82.10(4) as follows:

82.10(4) Failure to renew. If a certificate holder fails to renew within 60 days following expiration of the certificate, the right to renew the certificate automatically terminates. Certification may be allowed at any time following such termination provided that the applicant passes ~~an examination~~ *the appropriate examinations*. The applicant must then apply for certification in accordance with subrule 82.7(8) and rule 82.9(455B).

ITEM 24. Amend subrules 82.11(1) and 82.11(3) as follows:

82.11(1) CEU requirements. Continuing education must be earned during two-year periods between April 1 and March 31 of even-numbered years. A certified well contractor *holding well driller certification or both well driller and pump installer certifications* must earn 1.6 units or 16 contact hours during each two-year period. A *certified well contractor holding only pump installer certification* must earn 1.0 units or 10 contact hours during each two-year period. A well plugging contractor may be required to earn 0.2 units or 2 contact hours during each two-year period as determined by the department, provided the well plugging contractor is notified of the requirement at the beginning of the renewal period. Newly certified (previously uncertified) well contractors who are certified after April 1 of even-numbered

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

years will not be required to earn CEUs until the next two-year period.

82.11(3) CEU approval. All activities for which continuing education credit will be granted must be approved by an accredited college or university, an issuing agency, or by the department, and shall be related to well services, relevant aspects of Iowa groundwater law, well construction, well maintenance, and well abandonment practices, *well contractor safety (no more than 0.2 CEU per renewal), water system maintenance, and Iowa hydrogeologic conditions* which protect groundwater and water supplies.

ITEM 25. Amend subrules 82.12(1), 82.12(2) and 82.12(4) as follows:

82.12(1) Submission of records and samples.

a. Each certified well contractor shall submit drilling records and drill cutting samples, ~~when required,~~ to the Iowa Geological Survey Bureau, Department of Natural Resources, Oakdale Campus, University of Iowa, Iowa City, Iowa 52242, telephone (319)338-1575, or as otherwise directed by the department, as follows:

a. ~~Within~~ *within* 30 days of completion of any water well used as part of a public water supply, a well used for withdrawal of water for which a permit is required by rule 567—50.1(455B), or wells used to monitor groundwater quantity or quality required by the department if so directed by the Iowa geological survey bureau (IGS), department of natural resources. The certified well contractor must submit the drilling records and samples required by subrules 82.12(2) and 82.12(3).

b. ~~Within~~ *Each certified well contractor shall submit drilling records to the Iowa geological survey and to the local county environmental health department unless the driller enters the required information into the Internet-based private well tracking system within 30 days of the completion of any water well used as part of a nonpublic water supply or other water wells used to access groundwater. Cutting samples shall be required if requested by IGS or the local environmental health department. The certified well contractor must submit the drilling records and samples required by subrules 82.12(2) and 82.12(3).*

c. No change.

82.12(2) Drilling records. Drilling records must be submitted on the water well driller's log form provided by the Iowa geological survey bureau, department of natural resources. *Alternatively, for private wells, drilling records may be entered on the department's Internet-based private well tracking system in conjunction with the permits issued for the wells.*

82.12(4) Cutting samples. Drilling cutting samples shall be collected at intervals of 5 feet and at each pronounced change in geological formation. The Iowa geological survey bureau, department of natural resources, will provide drill cutting bags.

ITEM 26. Amend subrules 82.13(1) and 82.13(3) as follows:

82.13(1) Reasons for disciplinary action. Disciplinary action may be taken against a certified well contractor *or well plugging contractor* on any of the grounds specified in Iowa Code section 455B.190A and the following more specific grounds: (Iowa Code section 455B.109 authorizes the assessment of administrative penalties for violations of Iowa Code chapter 455B or rules, permits, and orders promulgated or issued pursuant to Iowa Code chapter 455B. The department will follow *the provisions of 567—Chapter 10* for assessing such penalties.)

a. Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

b. Failure to renew certification.

c. Failure to obtain required continuing education units.

d. Failure to submit, *within the time* required, drill cutting samples, records or other reports required under applicable permits or rules of the department, including failure to submit complete records or reports.

e. Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified well contractor *or well plugging contractor*.

f. Violation of well construction, *plugging or pump installation* standards or other requirements contained in 567—Chapters 38, 39, 43, 49 and 110.

g. Failure to advise a person for whom well services are being provided that a hazardous or potentially hazardous condition, as defined in Iowa Code section 455B.381(2), has been encountered.

h. Knowingly causing or allowing a hazardous or potentially hazardous condition due to well construction to exist.

i. *Drilling or reconstructing a well without a construction permit.*

82.13(3) Procedure.

a. The director shall initiate disciplinary action. The director may investigate any alleged factual situation that may be grounds for disciplinary action under subrule 82.13(1) and report the results of the investigation to the commission.

b. The director may issue an administrative order that may assess a penalty or refer a case to the attorney general for prosecution for any disciplinary action.

c. Written notice by certified mail shall be provided to a certified well ~~contractor~~ or well plugging contractor against whom disciplinary action is being considered. The certified well ~~contractor~~ or well plugging contractor will be given 20 days' advance notice that an informal hearing has been scheduled before the commission. The notice will provide the specific date, time, and place, at which time the commission will hold the informal hearing to determine whether a formal hearing is warranted or whether informal resolution can be reached. The certified well ~~contractor~~ or well plugging contractor may present any relevant facts and indicate the certified well ~~contractor's~~ or well plugging contractor's position in the matter.

d. A certified well ~~contractor~~ or well plugging contractor who receives notice of an informal hearing shall communicate orally or in writing with the director, and efforts shall be made to clarify the respective positions of the certified well ~~contractor~~ or well plugging contractor and the director. The staff may present a recommendation *concerning disciplinary sanctions* to the commission at the informal hearing ~~concerning disciplinary sanctions~~.

e. Failure to attend the informal hearing or otherwise *to* communicate facts and position relevant to the matter by the scheduled date will be considered by the commission when determining whether a formal hearing is warranted.

f. If agreement as to appropriate disciplinary sanction, if any, can be reached with the certified well ~~contractor~~ or well plugging contractor and the commission concurs, a written stipulation and settlement between the department and the certified well ~~contractor~~ or well plugging contractor shall be entered. The stipulation and settlement shall recite the basic facts and violations alleged, any facts presented by the certified well ~~contractor~~ or well plugging contractor and the reasons for the particular sanctions imposed.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

g. If the commission determines that no disciplinary action is warranted on the facts asserted, the certified well contractor or well plugging contractor shall be notified of the decision in writing.

h. If the commission determines that an opportunity for formal hearing is required to impose any disciplinary sanction specified in subrule 82.13(2), the director shall proceed in accordance with 567—Chapter 7.

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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 Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 219, “Administrative and Regulatory Authority for the Board of Podiatry Examiners,” and Chapter 220, “Licensure of Podiatrists”; to rescind Chapter 224, “Discipline for Podiatrists,” and adopt a new Chapter 224 with the same title; and to amend Chapter 225, “Fees,” Iowa Administrative Code.

These proposed amendments amend Board contact procedures for address and name changes, adopt subrules regarding conduct of persons who attend public meetings, amend license renewal requirements, set the fees charged for duplicate and reissued wallet cards and license certificates, adopt criteria for obtaining a reissued certificate or wallet card license, and adopt a new discipline chapter. Licensees who regularly examine, attend, counsel or treat adults or children will be required at the time of license renewal to have completed a course approved by the Iowa Department of Public Health abuse education review panel regarding abuse identification and reporting.

Any interested person may make written comments on the proposed amendments no later than April 6, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on April 6, 2004, from 9 to 10 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, 149 and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 219.4(2) and 219.4(3) as follows:

219.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee’s current mailing address within 30 days after the change of address occurs.

219.4(3) Notice of change of name. Each licensee shall notify the board *in writing* of ~~any a~~ change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend the parenthetical implementation for rule 645—219.6(17A) as follows:
645—219.6(17A 21)

ITEM 3. Adopt **new** subrules 219.6(3) and 219.6(4) as follows:

219.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

219.6(4) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 219** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 149, and 272C.

ITEM 5. Rescind rule 645—220.9(147) and adopt the following **new** rule in lieu thereof:

645—220.9(149) License renewal.

220.9(1) The biennial license renewal period for a license to practice podiatry shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license.

220.9(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

220.9(3) A licensee shall:

a. Meet the continuing education requirements of rule 645—222.2(149,272C) and the mandatory reporting requirements of subrule 220.9(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

220.9(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee’s employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

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

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 222.

f. The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

220.9(5) When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

220.9(6) A person licensed to practice podiatry shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

220.9(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 225.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card.

ITEM 6. Renumber rule **645—220.11(272C)** as **645—220.13(272C)** and adopt the following **new** rules:

645—220.11(147) Duplicate certificate or wallet card.

220.11(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 a duplicate certificate shall be issued only under such circumstances.

220.11(2) A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—225.1(147,149).

220.11(3) If the board receives a completed application for duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

645—220.12(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—225.1(147,149).

ITEM 7. Rescind 645—Chapter 224 and adopt the following **new** chapter in lieu thereof:

CHAPTER 224
DISCIPLINE FOR PODIATRISTS

645—224.1(149) Definitions.

"Board" means the board of podiatry examiners.

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

"Licensee" means a person licensed to practice as a podiatrist in Iowa.

645—224.2(149,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—224.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

224.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

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

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

224.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

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

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

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

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

e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

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

224.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

224.2(4) Practice outside the scope of the profession.

224.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

224.2(6) Habitual intoxication or addiction to the use of drugs.

224.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

224.2(8) Indiscriminately prescribing, administering or dispensing any drug for other than a lawful purpose.

a. Self-prescribing or self-dispensing controlled substances.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

b. Prescribing or dispensing controlled substances to members of the licensee's immediate family for an extended period of time.

(1) Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the physician conducts an examination, establishes a medical record, and maintains proper documentation.

(2) Immediate family includes spouse or life partner, natural or adopted children, grandparent, parent, sibling, or grandchild of the physician; and natural or adopted children, grandparent, parent, sibling, or grandchild of the physician's spouse or life partner.

c. Prescribing or dispensing controlled substances outside the scope of the practice of podiatry.

224.2(9) Falsification of client records.

224.2(10) Acceptance of any fee by fraud or misrepresentation.

224.2(11) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

224.2(12) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

224.2(13) Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

224.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

224.2(15) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

224.2(16) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

224.2(17) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

224.2(18) Engaging in any conduct that subverts or attempts to subvert a board investigation.

224.2(19) Failure to comply with a subpoena issued by the board, or otherwise fail to cooperate with an investigation of the board.

224.2(20) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

224.2(21) Failure to pay costs assessed in any disciplinary action.

224.2(22) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

224.2(23) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

224.2(24) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a podiatrist.

224.2(25) Failure to report a change of name or address within 30 days after it occurs.

224.2(26) Representing oneself as a podiatrist when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

224.2(27) Permitting another person to use the licensee's license for any purpose.

224.2(28) Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

224.2(29) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

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

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

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

224.2(30) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—224.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.

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

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

4. Probation.

5. Require additional education or training.

6. Require a reexamination.

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

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

9. Issue a citation and warning.

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

645—224.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;

2. The facts of the particular violation;

3. Any extenuating facts or other countervailing considerations;

4. The number of prior violations or complaints;

5. The seriousness of prior violations or complaints;

6. Whether remedial action has been taken; and

7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 149 and 272C.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 8. Amend subrule 225.1(5) as follows:

225.1(5) Duplicate *or reissued* license *certificate* fee is \$10.

ITEM 9. Renumber subrules **225.1(6)** to **225.1(9)** as **225.1(7)** to **225.1(10)** and adopt the following **new** subrule:

225.1(6) Duplicate or reissued wallet card fee is \$10.

ARC 3229B

RECORDS COMMISSION[671]

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 Supplement section 305.8, the Records Commission hereby gives Notice of Intended Action to rescind Chapter 1, "Organization and Responsibility," and Chapter 2, "State Records Management Manual"; and adopt Chapter 1, "Organization and Responsibilities"; Chapter 2, "State Records Manual"; Chapter 3, "Records Series Retention and Disposition Schedules Process"; Chapter 4, "Temporary Records—Transfer and Storage Process"; Chapter 5, "Temporary Records—Access Process"; Chapter 6, "Temporary Records—Destruction Process"; Chapter 7, "Permanent Records—Transfer Process"; Chapter 8, "Care of and Access to Permanent Records Collections"; and Chapter 14, "Development Process for Government Information Policies, Standards and Guidelines," Iowa Administrative Code.

The proposed rules clarify the duties and responsibilities of the Records Commission, its administrative support agency, the State Archives and Records Bureau of the Department of Cultural Affairs, and state agencies regarding the implementation of Iowa Code Supplement chapter 305. These rules establish the processes by which agencies interact with the Records Commission in all aspects of the state of Iowa's records management and state archives programs.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on April 7, 2004. Interested persons may submit written or oral comments by contacting Kathy Gourley, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)282-0502; E-mail kathy.gourley@iowa.gov. Persons who wish to convey their views orally should contact the Records Commission at (515)281-6913.

Also, there will be a public hearing on April 7, 2004, from 10 to 11 a.m. at the above address in the Tone Board Room, Third Floor West, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Records Commission and advise of specific needs.

These rules are intended to implement Iowa Code Supplement chapter 305.

The following amendment is proposed.

Rescind 671—Chapters 1 and 2 and adopt the following **new** chapters in lieu thereof:

CHAPTER 1

ORGANIZATION AND RESPONSIBILITIES

671—1.1(17A,305) Description of organization.

1.1(1) State records commission. The membership of the state records commission shall be composed of the following officials or their designees: the secretary of state, the director of the department of cultural affairs, the treasurer of state, the director of revenue, the director of the department of management, the state librarian, the auditor of state, and the director of the department of administrative services. The chairperson shall be elected biennially from the membership.

1.1(2) Location. Communication with the state records commission may be established through the State Archives and Records Bureau, Department of Cultural Affairs, State Historical Building, 600 East Locust Street, Des Moines, Iowa 50319.

1.1(3) Meetings. Commission meetings shall be held quarterly and at the call of the chairperson. In accordance with state open meeting laws, agendas for meetings will be posted at the state historical building and on the commission's Web site www.iowasrc.org. Two-thirds of the commission membership shall be a quorum for the purpose of conducting business. Actions of the commission shall be by simple majority of members present.

671—1.2(305) Definitions. The definitions that apply to 671—Chapters 1 to 8 and 14 shall be as set forth in Iowa Code Supplement section 305.2, unless otherwise specified.

671—1.3(17A,305) Responsibilities.

1.3(1) State records commission. The state records commission shall be responsible for development and adoption of government information policies, standards and guidelines, and records series retention and disposition schedules that provide for economy and efficiency in the creation, organization, maintenance, administrative use, security, public accountability, storage, retention and final disposition by destruction or permanent preservation of records.

1.3(2) Department of cultural affairs. The department of cultural affairs, through its state archives and records bureau, shall be responsible for providing administrative support to the state records commission.

a. The bureau chief of the state archives and records bureau shall serve as secretary to the commission and shall maintain all records of the commission.

b. The department of cultural affairs shall administer the state archives of Iowa, in accordance with 223—Chapter 3, to preserve, protect and provide public access to state government records that have been identified by the commission as having enduring value and that have been transferred to the state archives of Iowa.

c. The department of cultural affairs shall administer the state records center, which the state records commission has established, to provide efficient, low-cost, secure storage for noncurrent, nonpermanent records.

d. The department of cultural affairs shall provide training opportunities for agencies on records management issues.

1.3(3) Agency head. An agency head shall implement the state of Iowa government records program by:

a. Cooperating with the state records commission and the state archives and records bureau in the development and implementation of the state of Iowa government records program.

RECORDS COMMISSION[671](cont'd)

b. Appointing one or more records officers to coordinate the records program or programs within the agency and to serve as liaisons to the state archives and records bureau by completing a Records Officer(s) and Authorized Users: Department Information Sheet form as described in rule 671—5.3(305);

c. Maintaining or causing to be maintained complete and accurate records documenting the agency's implementation of the state of Iowa records program;

d. Providing secure, environmentally appropriate storage areas for all records in the physical custody of the agency head and providing public access to those records in accordance with the agency's fair information practices rules;

e. Maintaining legal custody of all agency records stored in the state records center and providing public access to those records in accordance with the agency's fair information practices rules;

f. Appointing the agency's authorized users who shall have access to agency records stored in the state records center and who shall have authority to borrow, with the prior consent of the state archivist, agency records in the custody of the state archives of Iowa. An agency head appoints the agency's authorized users by completing a Records Officer(s) and Authorized Users: Department Information Sheet form as described in rule 671—5.3(305); and

g. Transferring legal custody of records that are transferred to the state archives of Iowa in accordance with Iowa Code Supplement section 305.9, subsection 1.

671—1.4(17A,305) Responsibilities of exempt agencies.

1.4(1) The Iowa department of transportation and the institutions under the Iowa board of regents are exempt from Iowa Code Supplement chapter 305.

1.4(2) Exempt agencies shall adopt rules in accordance with Iowa Code chapter 17A that are consistent with the objectives of Iowa Code Supplement chapter 305. These rules shall be submitted to the state records commission for approval prior to filing with the administrative rules coordinator.

These rules are intended to implement Iowa Code Supplement chapter 305.

CHAPTER 2 STATE RECORDS MANUAL

671—2.1(305) Authority of the manual. The state records manual is an interagency manual set forth in accordance with Iowa Code section 17A.2(11)“c.”

671—2.2(305) Content of the manual. The state records commission shall, through the state archives and records bureau, create and maintain a state records manual that contains:

1. Records series retention and disposition schedules adopted by the state records commission;

2. Detailed procedures for agency interaction with the state records commission and the state archives and records bureau for such activities as the development and revision of records series retention and disposition schedules, transfer and storage of records, access and retrieval of records from storage, and destruction of records;

3. Guidelines adopted by the state records commission to assist an agency head in implementing an efficient government records program within the agency; and

4. Reference copies of Iowa Code Supplement chapter 305 and 671—Chapters 1 to 8 and 14, Iowa Administrative Code.

671—2.3(305) Applicability of the manual. The provisions of the state records manual are applicable to all executive, legislative and judicial branch agencies subject to Iowa Code Supplement chapter 305.

671—2.4(305) Availability of the manual. The state records commission shall, through the state archives and records bureau, maintain a current state records manual and shall make that manual available to all agencies. Copies of the state records manual, either on paper or in electronic format, will be available to the public on demand for the cost of publication and distribution. Price information will be available from the state archives and records bureau.

These rules are intended to implement Iowa Code Supplement chapter 305.

CHAPTER 3 RECORDS SERIES RETENTION AND DISPOSITION SCHEDULES PROCESS

671—3.1(305) Purpose. Records series retention and disposition schedules establish a timetable for the retention and eventual disposition of state government records. The process employed to develop or revise records series retention and disposition schedules is designed to ensure the evaluation of administrative, legal, fiscal and historical values for records series in order to establish appropriate periods of time for holding records in office and storage areas prior to final disposition by destruction or permanent preservation.

671—3.2(305) Form to use. A Records Series Inventory and Retention and Disposition Schedule Form is used for the inventorying of agency records and for the development or revision of records series retention and disposition schedules. The form is available from the state archives and records bureau of the department of cultural affairs.

671—3.3(305) Agency responsibility.

3.3(1) An agency head shall maintain or cause to be maintained an inventory of records that are made, produced, executed, or received by the agency pursuant to statute in connection with the transaction of official business of state government, whether those records are created or maintained in an electronic system or in a paper system.

3.3(2) An agency head shall initiate or cause to be initiated a new Records Series Inventory and Retention and Disposition Schedule Form for previously unscheduled records series and, when needed, a Records Series Inventory and Retention and Disposition Schedule Form for revision of an existing records series retention and disposition schedule, whether a records series is created or maintained in an electronic system or in a paper system.

3.3(3) An agency head shall provide or cause to be provided complete and thorough responses to the questions on the Records Series Inventory and Retention and Disposition Schedule Form and shall work in a collaborative manner with the state archives and records bureau so that the state archives and records bureau can finalize the records series retention and disposition schedule recommendations for presentation to the state records commission.

671—3.4(305) State archives and records bureau responsibility. The state archives and records bureau shall expeditiously review a Records Series Inventory and Retention and Disposition Schedule Form as drafted by an agency, analyze the data reported thereon, and work in a collaborative manner with an agency to finalize the records series retention and dis-

RECORDS COMMISSION[671](cont'd)

position schedule recommendations for presentation to the state records commission.

671—3.5(305) State records commission responsibility.

The state records commission shall evaluate a records series retention and disposition schedule recommendation presented by the state archives and records bureau to ensure that the state archives and records bureau has considered the administrative, legal, fiscal and historical values when preparing the recommendation and to ensure that the records series retention and disposition schedule recommendation is consistent with other adopted records series retention and disposition schedules. The commission may:

1. Adopt the proposed records series retention and disposition schedule as presented;
2. Amend the proposed records series retention and disposition schedule as the commission deems appropriate; or
3. Return the proposed records series retention and disposition schedule to the state archives and records bureau for additional research before the commission takes final action.

671—3.6(305) Effective date. Records series retention and disposition schedules shall become effective 20 calendar days after commission approval.

671—3.7(305) Procedures. Detailed procedures, including a sample copy of the Records Series Inventory and Retention and Disposition Schedule Form, are available in the state records manual.

These rules are intended to implement Iowa Code Supplement chapter 305.

CHAPTER 4

TEMPORARY RECORDS—
TRANSFER AND STORAGE PROCESS

671—4.1(305) Purpose. In order to assist in the maximum efficiency of state government operations, the state records commission operates the state records center, a secure, low-cost storage facility for the temporary storage of records. Central offices of state agencies shall, and field offices may, use the state records center for storage of temporary records in accordance with approved records series retention and disposition schedules.

671—4.2(305) Forms to use. The following forms shall be used in the process for transferring and storing temporary records:

4.2(1) A Records Transfer Authorization form obtained from the state archives and records bureau documents the transfer of a record from an agency to the state records center.

4.2(2) A Record Interfile Request form shall be attached to an agency record to be filed into a box of records already stored in the state records center.

4.2(3) A Records Officer(s) and Authorized Users: Department Information Sheet form obtained from the state archives and records bureau documents the appointment of an agency records officer and an agency's authorized user in accordance with 671—subrule 5.4(1).

4.2(4) A One-Time Records User Authorization form obtained from the state archives and records bureau documents the identification of a nonauthorized agency staff person who requires emergency permanent removal of a file or box of records in the state records center in accordance with 671—subrule 5.4(3).

671—4.3(305) Agency records officer's responsibility.

4.3(1) An agency records officer shall:

a. Transfer records to the state records center in accordance with established records series retention and disposition schedules;

b. Review, verify, sign and submit a completed Records Transfer Authorization form to the state archives and records bureau for approval prior to the physical transfer of records from the agency;

c. Cooperate with the state archives and records bureau in correcting an incomplete or inaccurate Records Transfer Authorization form; and

d. Maintain the agency copy of a Records Transfer Authorization form documenting the transfer of records to the state records center for storage.

4.3(2) Requests for interfiling. An agency records officer may transfer a limited number of records to the state records center by attaching a Record Interfile Request form to each record to be filed with or into a box of records that is in the state records center.

4.3(3) Requests for permanent removal of records. An agency's authorized user may request the permanent removal of an individual record or an entire box of records from the state records center by using a Record Retrieval Request form.

4.3(4) Return of permanently removed records to storage. In the event an agency records officer wishes to return to the state records center an entire box of records that has been permanently removed from the state records center, a new Records Transfer Authorization form must be completed, reviewed, signed and submitted to the state archives and records bureau for approval prior to the physical transfer of the records to the state records center.

671—4.4(305) State archives and records bureau responsibility.

4.4(1) The state archives and records bureau shall review and approve a completed Records Transfer Authorization form in a timely manner and shall assist an agency in correcting an incomplete or inaccurate Records Transfer Authorization form.

4.4(2) After approving a Records Transfer Authorization form, the state archives and records bureau shall arrange with the agency for the physical transfer of records to the state records center.

4.4(3) The state archives and records bureau shall establish and maintain inventory control of boxes of records transferred to the state records center and shall make box locating information available to the agencies.

4.4(4) The state archives and records bureau shall provide a secure and environmentally appropriate storage area for all records that have been transferred to the state records center for storage.

4.4(5) Requests for interfiling. The state archives and records bureau may at its discretion:

a. File a record using the locating information provided on the Record Interfile Request form attached to the record;

b. Return the record to the agency records officer for clarification or additional locating information; or

c. Request that the agency do the interfiling if the volume of material is excessive.

4.4(6) Requests for permanent removal of records. State archives and records bureau staff shall permanently remove agency records only to an authorized user on the agency's Records Officer(s) and Authorized Users: Department Information Sheet form or to an agency staff person for whom the state archives and records bureau has received a One-Time Records User Authorization form.

RECORDS COMMISSION[671](cont'd)

4.4(7) In the event a box of records that has been permanently removed to an agency is returned to the state records center to be refiled in its original location, that box of records will be returned to the agency pending submission of a completed Records Transfer Authorization form in accordance with subrule 4.3(4).

671—4.5(305) Procedures. Detailed procedures, including sample copies of the Records Transfer Authorization, the Record Interfile Request, the Record Retrieval Request, the Records Officer(s) and Authorized Users: Department Information Sheet, and the One-Time Records User Authorization forms, are available in the state records manual.

These rules are intended to implement Iowa Code Supplement chapter 305

CHAPTER 5

TEMPORARY RECORDS—ACCESS PROCESS

671—5.1(305) Purpose. The state archives and records bureau provides access to a record stored in the state records center only to a state agency. The state archives and records bureau does not provide access to a record stored in the state records center to a member of the public.

671—5.2(305) Definitions. In addition to the definitions set forth in Iowa Code Supplement section 305.2, the following definitions shall apply to 671—Chapters 1 to 8 and 14:

“Authorized user” means an agency staff person appointed by an agency head to have the authority to review or remove an agency record from the state records center and the authority to borrow, with prior approval of the state archivist, an agency record from the state archives of Iowa for administrative use in the agency. The auditor of state’s office is an ex officio authorized user for purposes of auditing records of state agencies.

“Original warrant user” means an agency staff person appointed by the treasurer of state to have the authority to retrieve or remove an original redeemed warrant from storage in the state records center.

671—5.3(305) Forms to use. The following forms, which are available from the state archives and records bureau, shall be used in the process of accessing temporary records:

5.3(1) A Records Officer(s) and Authorized Users: Department Information Sheet form is used to appoint an agency records officer and to appoint an agency’s authorized users.

5.3(2) A Record Retrieval Request form is used to request access to a file or box of records stored in the state records center.

5.3(3) A One-Time Records User Authorization form is used to provide a nonauthorized agency staff member emergency access to a file or box of records stored in the state records center.

5.3(4) A Request for Copies of State Warrants form is used to request a copy of a redeemed state warrant stored in the state records center.

5.3(5) An Original Warrant Release form is used to request access to an original redeemed state warrant stored in the state records center.

671—5.4(305) Access to a file or box of records.

5.4(1) An agency head shall complete and file a Records Officer(s) and Authorized Users: Department Information Sheet form with the state archives and records bureau to appoint the department records officer(s) and to identify those agency staff members appointed as authorized users for the

purpose of access to agency records in the state records center.

5.4(2) An authorized user who requires access to or the return of a file or box of records from the state records center shall properly complete, or provide information to the state archives and records bureau to complete, a Record Retrieval Request form prior to use or release of the record.

5.4(3) In the event a nonauthorized agency staff member requires emergency access to a file or box of records in the state records center, an agency records officer shall complete a One-Time Records User Authorization form prior to the use or release of the record.

5.4(4) Upon completion of temporary use by an agency’s authorized user, the authorized user shall return the file or box with its attached copy of the Record Retrieval Request form to the state records center.

671—5.5(305) Access to a redeemed state warrant.

5.5(1) An original warrant user may request access to an original redeemed state warrant stored at the state records center by providing to the state archives and records bureau a properly completed Original Warrant Release form prior to use or release of the original redeemed warrant.

5.5(2) Upon completion of use, the original redeemed state warrant shall be returned to the state records center with its attached copy of the Original Warrant Release form.

5.5(3) An agency’s authorized user shall provide to the state archives and records bureau a properly completed Request for Copies of State Warrants form to request a copy of a redeemed state warrant stored at the state records center prior to release of the copy of the redeemed state warrant.

671—5.6(305) State archives and records bureau responsibility.

5.6(1) The state archives and records bureau shall make an agency record in the state records center available only to an authorized user on the agency’s Records Officer(s) and Authorized Users: Department Information Sheet form or to an agency staff person for whom the state archives and records bureau has received a One-Time Records User Authorization form.

5.6(2) The state archives and records bureau shall make all agency records in the state records center available to the auditor of state for purposes of audit.

5.6(3) The state archives and records bureau shall attach a copy of the completed Record Retrieval Request form to each file or box returned to an agency.

5.6(4) The state archives and records bureau shall refile a file or a box of records using the locating information on the Record Retrieval Request form attached to the file or box of records.

671—5.7(305) Procedures. Detailed procedures, including sample copies of the Record Retrieval Request, the Records Officer(s) and Authorized Users: Department Information Sheet, and the One-Time Records User Authorization forms, are available in the state records manual.

These rules are intended to implement Iowa Code Supplement chapter 305.

CHAPTER 6

TEMPORARY RECORDS—DESTRUCTION PROCESS

671—6.1(305) Purpose. Temporary state government records that have fulfilled administrative, legal, and fiscal requirements shall be destroyed in accordance with records se-

RECORDS COMMISSION[671](cont'd)

ries retention and disposition schedules established by the state records commission.

671—6.2(305) Form to use. The Disposal Authorization portion of a Notice of Intent to Destroy and Disposal Certificate form shall be used by an agency to authorize the destruction of a box of records when it has reached its destruction eligibility date, the extension of the destruction eligibility date of a box of records, or the permanent removal of a file or box of records from the state records center in lieu of destruction. The Disposal Certificate portion of a Notice of Intent to Destroy and Disposal Certificate form shall be used by the state archives and records bureau to certify the actual destruction of a box of records, the extension of the destruction eligibility date of a box of records, or the permanent removal of a file or box of records from the state records center in lieu of destruction.

671—6.3(305) State archives and records bureau responsibility.

6.3(1) The state archives and records bureau shall maintain an accurate inventory of each box of records in the state records center. For each box of records, the inventory includes the destruction eligibility date as established by the records series retention and disposition schedules approved by the state records commission.

6.3(2) The state archives and records bureau shall generate a Notice of Intent to Destroy and Disposal Certificate form for each box of records eligible for destruction as of January 1 and July 1 of each year.

6.3(3) The state archives and records bureau shall distribute Notice of Intent to Destroy and Disposal Certificate forms to the appropriate agency records officer no later than May 1 prior to each July destruction cycle and no later than November 1 prior to each January destruction cycle.

6.3(4) Following completion of the destruction process, the state archives and records bureau shall sign the “disposal certificate” portion of the Notice of Intent to Destroy and Disposal Certificate form to confirm that all records authorized to be destroyed were destroyed and to confirm that records not authorized to be destroyed have not been destroyed.

6.3(5) In the event an agency head or an agency records officer fails to sign and return a Notice of Intent to Destroy and Disposal Certificate form to the state archives and records bureau by the established deadline, the state archives and records bureau may, at its discretion:

a. Permanently remove to the agency those boxes of records recorded on the Notice of Intent to Destroy and Disposal Certificate form that was not returned;

b. Decline new Records Transfer Authorization forms from that agency until the Notice of Intent to Destroy and Disposal Certificate form is returned; or

c. Bill the agency for the continued storage of the boxes of records recorded on a Notice of Intent to Destroy and Disposal Certificate form, which was not returned, at a rate to be posted in the state records center and on the state records commission’s Web site.

6.3(6) The state archives and records bureau shall destroy records in a secure manner and shall utilize recycling technologies for destruction of records whenever possible.

671—6.4(305) State agency responsibilities.

6.4(1) An agency head or an agency records officer shall review or cause to be reviewed a Notice of Intent to Destroy and Disposal Certificate form to authorize destruction of records or to identify records that need to be held in the state rec-

ords center for additional time or that need to be permanently removed to the agency in lieu of destruction due to pending legal action, fiscal or audit requirements that remain unfulfilled or due to the agency’s renewed administrative need for the record.

6.4(2) After making any necessary annotations in red, an agency head or an agency records officer shall sign the Disposal Authorization portion of the Notice of Intent to Destroy and Disposal Certificate form and return the Notice of Intent to Destroy and Disposal Certificate form to the state archives and records bureau no later than June 30 prior to each July destruction cycle and no later than December 31 prior to each January destruction cycle.

6.4(3) Records for which the state records commission has authorized destruction directly from the agencies shall be destroyed in accordance with records series retention and disposition schedules. The records shall be destroyed in a secure manner using recycling technologies whenever possible, and the destruction shall be documented in a manner designated by each agency head.

671—6.5(305) Procedures. Detailed procedures, including a sample copy of the Notice of Intent to Destroy and Disposal Certificate form, are available in the state records manual.

These rules are intended to implement Iowa Code Supplement chapter 305.

CHAPTER 7

PERMANENT RECORDS—TRANSFER PROCESS

671—7.1(305) Purpose. The department of cultural affairs administers the state archives of Iowa in order to preserve, protect and make accessible those records of state government that have enduring value.

671—7.2(305) Identification of permanent records. The state records commission shall adopt records series retention and disposition schedules in accordance with 671—Chapter 3 to identify state government records that have enduring value.

671—7.3(305) Form to use. A Transfer of Custody of State Government Records to the State Archives of Iowa form obtained from the state archives and records bureau shall be used to transfer legal and physical custody of a record from an agency to the state archives of Iowa.

671—7.4(305) Agency responsibility.

7.4(1) A record that is scheduled for permanent preservation in the state archives of Iowa shall be transferred to the state archives of Iowa in accordance with established records series retention and disposition schedules. An agency records officer shall review, sign and submit a properly completed Transfer of Custody of State Government Records to the State Archives of Iowa form to the state archives and records bureau for approval prior to the physical transfer of records from the agency.

7.4(2) A record scheduled for permanent preservation in an agency shall be retained in the agency in perpetuity.

a. An agency shall maintain a record scheduled for permanent preservation in the agency in a manner that will ensure the continued availability of an accurate, authentic, reliable record in perpetuity.

b. An agency shall make a record scheduled for permanent preservation in the agency available in perpetuity for public inspection and copying in accordance with agency fair information practices rules.

RECORDS COMMISSION[671](cont'd)

671—7.5(305) State archives and records bureau responsibility.

7.5(1) The department of cultural affairs shall maintain legal and physical custody of all records transferred to the state archives of Iowa in accordance with Iowa Code Supplement section 305.9(1).

7.5(2) The state archives and records bureau shall review and approve a properly completed Transfer of Custody of State Government Records to the State Archives of Iowa form in a timely manner and shall assist an agency in correcting an incomplete or inaccurate Transfer of Custody of State Government Records to the State Archives of Iowa form.

7.5(3) After approving a Transfer of Custody of State Government Records to the State Archives of Iowa form, the state archives and records bureau shall arrange with the agency for the physical transfer of records to the state archives of Iowa.

7.5(4) The state archives and records bureau shall establish and maintain inventory control of records transferred to the state archives of Iowa.

7.5(5) The department of cultural affairs shall provide a secure, environmentally appropriate storage area for all records transferred to its custody.

These rules are intended to implement Iowa Code Supplement chapter 305.

CHAPTER 8
CARE OF AND ACCESS TO
PERMANENT RECORDS COLLECTIONS

671—8.1(305) Purpose. A record with enduring value shall be transferred to the state archives of Iowa in accordance with a state records commission adopted records series retention and disposition schedule. The state archives of Iowa shall provide a secure environment for the storage and use of these records so that they may be preserved and made available to future generations of researchers in accordance with Iowa Code Supplement section 305.9(1).

671—8.2(305) State archives and records bureau responsibilities.

8.2(1) Records transferred to the state archives of Iowa shall be cared for and administered in accordance with 223—Chapter 13.

8.2(2) Records transferred to the state archives of Iowa shall be made accessible to researchers in accordance with 223—Chapter 22.

8.2(3) The state archives and records bureau, with prior approval of the state archivist, may loan an agency record from the state archives of Iowa to an authorized user appointed in accordance with 671—subrule 5.4(1) for the agency from which that record originated.

These rules are intended to implement Iowa Code Supplement chapter 305.

CHAPTERS 9 to 13
Reserved

CHAPTER 14
DEVELOPMENT PROCESS FOR
GOVERNMENT INFORMATION POLICIES,
STANDARDS AND GUIDELINES

671—14.1(305) Purpose. The state records commission develops and adopts statewide government information policies, standards and guidelines that provide for economy and

efficiency in the creation, organization, maintenance, administrative use, security, public accountability, storage, retention and final disposition by destruction or permanent preservation of records.

671—14.2(305) Proposal of government information policies, standards and guidelines. An agency staff member or a member of the public may propose a topic to be developed into a government information policy, standard or guideline by contacting the state records commission through the state archives and records bureau. A proposal may include a draft government information policy, standard or guideline.

671—14.3(305) Commission responsibilities.

14.3(1) The state records commission shall:

a. Develop such government information policies, standards and guidelines as it deems appropriate;

b. Prior to final adoption, solicit agency participation in the review of government information policies, standards and guidelines;

c. Draft and file administrative rules in accordance with Iowa Code chapter 17A for all government information policies and standards; and

d. Include all government information guidelines in the state records manual.

14.3(2) The state records commission may:

a. Appoint advisory committees to research and analyze issues related to government information policies, standards and guidelines; and

b. Prior to final adoption, solicit public participation in the review of government information policies, standards and guidelines.

671—14.4(305) State archives and records bureau responsibilities. The state archives and records bureau shall provide administrative support to advisory committees appointed by the state records commission.

671—14.5(305) Agency responsibilities.

14.5(1) An agency shall be in substantial compliance with government information policies and standards adopted by the state records commission.

14.5(2) An agency may utilize government information guidelines adopted by the state records commission as the agency implements the government records program within the agency.

671—14.6(305) Advisory committees.

14.6(1) Advisory committees of the state records commission shall make recommendations to the state records commission.

14.6(2) Advisory committees of the state records commission may consist of public members and agency staff members. No more than three members of the state records commission may be members of any advisory committee.

14.6(3) Individuals may volunteer to serve on advisory committees of the state records commission by submitting a letter of application to the state archives and records bureau along with a résumé stating areas of interest and expertise.

14.6(4) The state archives and records bureau shall maintain the applications of individuals who volunteer to serve as members of advisory committees of the state records commission for a two-year period following receipt of the letter of application.

These rules are intended to implement Iowa Code Supplement chapter 305.

ARC 3211B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

The Code of Federal Regulations was updated in October 2003, and the Department needs to cite the current version in these rules. No changes to the federal regulations have occurred.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than April 6, 2004.

A meeting to hear requested oral presentations is scheduled for Thursday, April 8, 2004, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code chapter 327B.

Proposed rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, 2002 2003, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vautt have estab-

lished today the following rates of interest for public obligations and special assessments. The usury rate for March is 6.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

- 74A.2 Unpaid Warrants Maximum 6.0%
- 74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective March 9, 2004, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 0.70%
- 32-89 days Minimum 0.70%
- 90-179 days Minimum 0.80%
- 180-364 days Minimum 0.90%
- One year to 397 days Minimum 1.00%
- More than 397 days Minimum 1.50%

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

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

ARC 3225B

UTILITIES DIVISION[199]

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 17A.4, 476.1, 476.76, and 476.77 (2003), the Utilities Board (Board) gives notice that on February 18, 2004, the Board issued an order in Docket No. RMU-04-1, **In re: Repeal of Exemption for Reorganization Filing [199 IAC 32.2(4)]**, "Order Commencing Rule Making." In this rule making, the Board proposes to rescind subrule 199 IAC 32.2(4), which exempts

UTILITIES DIVISION[199](cont'd)

certain reorganizations by public utilities from the filing requirements of Iowa Code section 476.77. The support for the proposed repeal is discussed in the Board's "Order Commencing Rule Making," which can be found on the Board's Web site, www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed repeal. The statement must be filed on or before April 9, 2004, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation is not scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board on its own motion may determine that an oral presentation should be scheduled.

This amendment is intended to implement Iowa Code sections 17A.4, 476.1, 476.76 and 476.77.

The following amendment is proposed.

Rescind subrule 32.2(4) as follows:

~~32.2(4) Notwithstanding the provisions of subrules 32.2(1) and 32.2(2), board review of acquisitions outside the~~

~~United States by a public utility is not necessary in the public interest as long as the public utility does not receive more than 10 percent of its gross utility revenues from Iowa operations. The public utility is to notify the board and consumer advocate of any acquisitions which take place pursuant to this exemption within 30 days of the closing of the transaction. The notification shall include the dollar amount of the acquisition, a description of the acquisition, and a description of the financing. The public utility shall file on or before March 1 of each year an annual summary of its foreign acquisitions and recent credit rating reports from all major credit rating services.~~

~~However, this exemption does not apply if the public utility does not hold an investment grade credit rating from two major credit rating services or if its proposed direct expenditure on the acquisition, including guarantees and financing with recourse to the public utility, exceeds 15 percent of the net book value of the public utility's assets. If the exemption does not apply, the acquisition may not take place without the filing of a proposal for reorganization or request for waiver. In a rate case proceeding, the board may, upon proper showing, adjust the return on equity to reflect any risk associated with the foreign acquisitions.~~

ARC 3212B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement sections 8A.104 and 8A.413, the Department of Administrative Services hereby amends and transfers rules of the former Department of Personnel[581], Chapter 13, "Performance Review," and Chapter 20, "Equal Employment Opportunity and Affirmative Action," to the Department of Administrative Services[11], Chapter 62, "Performance Review," and Chapter 68, "Equal Employment Opportunity and Affirmative Action," Iowa Administrative Code.

The purpose of this rule making is to comply with statutory changes enacted by the 80th General Assembly, Iowa Code Supplement chapter 8A and the Accountable Government Act. Differences between the original chapters and the transferred chapters include:

1. Adding language in Chapter 62, "Performance Review," to comply with the focus on strategies and goals in the individual employee performance plan as required by the Accountable Government Act;

2. Revising language in Chapter 68, "Equal Employment Opportunity and Affirmative Action," to replace the terminology "EEO-4 occupational categories" with "state and local government job categories" to match changes made by the Equal Employment Opportunity Commission in the Specifications for the Census 2000 Special EEO File;

3. Removing the reference in Chapter 68 to the July 31 due date for agency affirmative action reports and plans, which will in effect give agencies more time to complete their reports while still allowing DAS to meet the September 30 deadline for reporting to the Governor and Legislature;

4. Revising the reference in Chapter 68 to the date of the current executive branch Equal Opportunity, Affirmative Action and Anti-Discrimination Policy; and

5. The introductory paragraph of rule 68.6(19B) has been amended to state that the director shall investigate a complaint against an agency, as necessary, and to delete reference to the director's ordering an appropriate disposition of a complaint, which is the responsibility of the agency employing the individual alleged to have committed a discriminatory act.

Notice of Intended Action was published in the January 7, 2004, Iowa Administrative Bulletin as **ARC 3082B**. No public comments were received. A comment was received from the Administrative Rules Review Committee, which has been taken into consideration in the adopted rules. Minor changes for the purpose of clarification were made to subrules 68.2(2), 68.3(2), and 68.3(3). The introductory paragraph of rule 11—68.6(19B) was amended as noted in paragraph "5" above, and Item 17 was added to amend subrule 68.6(2). In addition, statutory references to the 2003 Iowa Acts have been replaced by references to the Iowa Code Supplement.

The Department adopted these rules on February 18, 2004.

These amendments will become effective on April 21, 2004.

These amendments are intended to implement Iowa Code Supplement section 8A.413 and Iowa Code chapters 8E and 19B.

The following amendments are adopted.

ITEM 1. Transfer **581—Chapter 13** to **11—Chapter 62** and **581—Chapter 20** to **11—Chapter 68**.

ITEM 2. Amend **11—Chapters 62** and **68** by replacing all references to Iowa Code chapter 19A with references to Iowa Code Supplement chapter 8A, and by replacing all references to Chapter 13 and Chapter 20 with references to Chapter 62 and Chapter 68, respectively.

ITEM 3. Amend rule 11—62.1(8A) as follows:

11—62.1(8A) System established. The director shall establish, administer and maintain a uniform system of performance planning and ~~review~~ *evaluation* to be applied to all employees in the executive branch of state government, excluding board of regents employees, and shall prescribe forms and procedures for its use. *Such forms and procedures shall be in accordance with the accountable government Act pursuant to Iowa Code section 8E.207, subsection 2.* Appointing authorities shall determine and assign the job duties to be performed by employees.

ITEM 4. Amend subrule 62.2(1) and subrule 62.2(2), introductory paragraph, as follows:

62.2(1) Performance plan. The *individual employee* performance plan shall be based on the responsibilities, *strategies or goals* assigned during the rating period and shall include the standards or expectations, *including action steps, performance criteria, and timetables*, required for performance to be considered ~~competent~~ or as meeting job expectations. The *individual employee* performance plan shall be given to and discussed with the employee *at the start of the rating period*. Significant changes in responsibilities, standards or expectations that occur during the rating period shall be included in the *individual employee* performance plan, and a revised copy *shall be given to and discussed with the employee*.

62.2(2) Performance evaluation. A performance evaluation shall be prepared for each employee at least every 12 months. Additional evaluations may be prepared at the discretion of the supervisor. Ratings on the evaluation form ~~may~~ *are to be accompanied by descriptive comments supporting the ratings.* The evaluation may also include job-related comments concerning *achievements or areas of strength, areas for improvement, and training/development plans.* The supervisor or team shall discuss the evaluation with the employee, and the employee shall be given the opportunity to attach written comments. Periods of service during educational leave required by the appointing authority, or military leave, shall be considered ~~competent (3.00)~~ or as meeting job expectations.

ITEM 5. Amend rule 11—62.3(8A) as follows:

11—62.3(8A) Copies of records. The employee shall receive a copy of each *individual employee* performance plan and ~~review~~ *evaluation*. The originals shall be retained by the employee's agency in accordance with the policies of the department. The performance ~~review~~ *evaluation* and attachments are confidential records within the meaning of Iowa Code section 22.7, subsection 11.

ITEM 6. Amend **11—Chapter 62**, implementation clause, as follows:

These rules are intended to implement ~~Iowa Code section 19A.9~~ *Iowa Code Supplement section 8A.413 and Iowa Code section 8E.207.*

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 7. Amend rule **11—68.1(19B)**, definition of “availability,” as follows:

“Availability” means the extent to which protected class members are qualified or qualifiable to be employed in classes within ~~EEO-4 occupational category~~ *state and local government job categories*.

ITEM 8. Amend rule **11—68.1(19B)**, definition of “EEO-4 occupational categories,” as follows:

“~~EEO-4 occupational~~ *State and local government job categories*” means officials and administrators, professionals, technicians, protective service workers, paraprofessionals, administrative support workers, skilled craft workers and service maintenance workers, as defined by the federal Equal Employment Opportunity Commission guidelines.

ITEM 9. Amend subrule 68.2(2) as follows:

68.2(2) Each agency shall adhere to the provisions of the “State of Iowa Equal Opportunity, Affirmative Action and Anti-Discrimination Policy for Executive Branch Employees,” signed ~~made effective~~ by the Governor on ~~March 6, 1992~~ *November 1, 2001*.

ITEM 10. Amend subrule 68.3(2), introductory paragraph, as follows:

68.3(2) Work force analysis. A work force analysis shall show the numerical and percentile breakdown of the agency’s full-time employees, and other than full-time employees, separately by racial or ethnic minorities, sex, and disability. Full-time and other than full-time employees shall be arrayed according to the ~~EEO-4 occupational~~ *state and local government job categories* with further census occupational subcategory breakdowns as required by the director. For the purposes of confidentiality, disability *figures* shall be totaled only by an organizational unit covered by an individual affirmative action plan or the department as a whole.

ITEM 11. Amend subrule 68.3(3) as follows:

68.3(3) Availability analysis. An availability analysis shall show the percentile breakdown by racial or ethnic minorities and sex of the relevant labor force arrayed according to their ~~EEO-4 occupational~~ *state and local government job categories* and relevant subcategories. The analysis shall include an assessment of the relevant available labor force by using the geographic area from which work force recruitment can reasonably occur for each ~~EEO-4 occupational~~ *state and local government job category*. The geographic area will usually be larger for high-paid or high-ranked classifications for recruitment purposes. The labor force availability of disabled persons shall be based on census reports of persons with a work disability residing in the ~~western section of the north central region of the United States as most relevant geographic area~~ defined by the census bureau.

a. ~~Analysis method. The percentile breakdown by racial or ethnic minorities and sex shall be determined by:~~

(1) ~~The analysis method promulgated by OFCCP, 41 Code of Federal Regulations, Chapter 60, Revised Order No. 4, or~~

(2) ~~The report entitled Race, Sex, and Occupational Make-up of Iowa’s 1980 Labor Force, or other data sources approved by the department.~~

(3) ~~The department may grant exceptions only if an agency can document that its availability analysis is comparable to those provided by subparagraphs (1) and (2) above. Exceptions may include the use of relevant national labor force data for the officials’ and administrators’ category.~~

b. *a.* Organizational unit. An availability analysis shall be conducted for each organizational unit by an agency which

conducted a separate work force analysis pursuant to subrule ~~20~~ **68.3(2)**, paragraph “b.”

e. *b.* Analysis report. The availability analysis shall be reported in a format prescribed by the department. In lieu of completing all parts of the availability analysis form, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, as part of its availability analysis, if approved by the department.

d. ~~Rescinded, IAB 9/21/88, effective 10/26/88.~~

ITEM 12. Amend subrule 68.3(4) as follows:

68.3(4) Quantitative utilization analysis. A quantitative utilization analysis shall compare work force analysis with availability analysis to show the numerical and percentile underrepresentation in the agency’s work force, if any, by racial or ethnic minorities, ~~and sex, and disability~~.

a. Rounding. All partial numerical figures for ~~EEO-4 occupational~~ *state and local government job categories* that contain .5 or more shall be rounded upward and .49 or less shall be rounded downward to the nearest whole number.

b. Organizational unit. A quantitative utilization analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule ~~20~~ **68.3(2)**, paragraph “b.”

c. Analysis report. The quantitative utilization analysis shall be reported in the format prescribed by the department. In lieu of completing all parts of the quantitative utilization analysis format, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, if approved by the department.

d. ~~Rescinded, IAB 9/21/88, effective 10/26/88.~~

ITEM 13. Amend subrule **68.3(6)**, paragraph “d,” subparagraph (4), as follows:

(4) Goals established for each occupational subcategory shall be totaled to establish goals for each ~~EEO-4~~ *state and local government job category*.

ITEM 14. Amend subrule 68.3(7), introductory paragraph, as follows:

68.3(7) Consolidation. An agency may consolidate the racial or ethnic minorities and ~~EEO-4 occupational~~ *state and local government job categories* into broader groupings in conducting its analysis under subrules ~~20.3(2), 20.3(3), 20.3(4), 20.3(5), and 20.3(6)~~ **68.3(2) to 68.3(6)** with department prior approval.

ITEM 15. Amend rule 11—68.5(19B) as follows:

11—68.5(19B) Reports.

68.5(1) Each agency shall annually submit an affirmative action report and plan for approval to the department ~~by July 31 at the time specified by the department~~ that shall conform to the standards specified in these rules.

68.5(2) Each agency ~~shall~~ *may be required to* submit a quarterly progress report *reports* in accordance with the due dates and procedures established by the director.

ITEM 16. Amend rule 11—68.6(19B), introductory paragraph, as follows:

11—68.6(19B) Discrimination complaints, including disability-related and sexual harassment complaints. Each agency shall take proper and immediate action to investigate complaints of alleged discrimination. The director ~~may~~ *shall* investigate any discrimination complaint against an agency *as the director deems necessary, and attempt to negotiate a settlement to resolve a complaint, and order an appropriate disposition of a complaint that may include, but is not limited to, discharge, suspension, or reduction in rank or*

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

grade as defined in Iowa Code section 19A.9(16) and these rules. All information gathered in the course of an investigation, including, but not limited to, investigative reports prepared by the department, is confidential and shall not be released to persons outside the department unless the director deems such disclosure to be in the best interest of the state or unless ordered by a court. This ~~section~~ rule does not supersede the remedies provided under Iowa Code chapter 216.

ITEM 17. Amend subrule 68.6(2), introductory paragraph, as follows:

68.6(2) Sexual harassment complaint procedures. All employees shall have access to agency internal grievance procedures as authorized by 1992 Iowa Acts, ~~Senate File 316, section 3~~ Iowa Code section 19B.12. Each agency shall investigate all allegations of sexual harassment and utilize, at a minimum, procedural guidelines established by the department. Agencies shall additionally:

[Filed 2/18/04, effective 4/21/04]

[Published 3/17/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/17/04.

ARC 3228B

CULTURAL AFFAIRS DEPARTMENT[221]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 303.1 and 303.1A, the Department of Cultural Affairs hereby adopts new Chapter 9, "Cultural and Entertainment Districts," Iowa Administrative Code.

These rules establish the application procedures, evaluation criteria, district certification, compliance requirements, and incentive components of the cultural and entertainment district certification program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 21, 2004, as **ARC 3110B**. The Department Director adopted these rules on February 25, 2004.

The Department sought input about the rules by holding a public hearing and by distributing the proposed rules at meetings. Members of the public and Department staff provided written and oral comments. Comments:

1. Expressed concern that the Department may not have sufficient staff and monetary resources to provide adequate technical assistance for the program.

2. Asked for clarification as to whether a community can have more than one certified cultural and entertainment district.

3. Asked for clarification regarding proposed subrule 9.3(1), which stated that two or more cities or counties having a common boundary may join together to serve as the public component of the partnership. In reviewing 2003 Iowa Acts, First Extraordinary Session, House File 692, the Department staff found that the legislation specifically refers to "a district that extends across a common boundary." The adopted subrule was revised to reflect the language in the statute.

4. Asked for clarification regarding which entities may serve as applicant organizations and requested that the De-

partment consider allowing for-profit organizations to be included.

5. Suggested using the term "advisory committee" instead of "advisory council," since the term "advisory council" already has a specific meaning to many of the Department's constituents.

6. Asked for clarification regarding the selection and duties of members of the advisory committee.

7. Encouraged the Department to allow several months between the effective date of the administrative rules and the first application submittal date so that potential applicants would have adequate time to prepare materials.

8. Updated the Department mailing address and telephone number.

9. Suggested that two additional factors be included in the criteria for the selection of certified cultural and entertainment districts. These factors were (a) previous collaborative success, and (b) potential effect on economic enrichment in the community.

10. Expressed concern about the Department Director's having the responsibility to both determine the number of districts to be certified and to make the final selection as to which districts are certified.

11. Pointed out that the rules should direct property owners desiring tax benefits to 223—Chapter 48 in addition to 223—Chapter 47.

12. Pointed out that the reference to Iowa Code section 404A.4 in subrule 9.7(1) should be changed to Iowa Code chapter 404A.

Following a review of the public comments and Department staff recommendations, the Director made the following revisions to the proposed rules:

The phrase "and enrich local economies" was added to the purpose statement in rule 221—9.1(80GA, HF683, HF692), to emphasize that local economic growth is one of the benefits to be derived from cultural and entertainment districts.

Subrule 9.3(1) was revised to reflect the wording in the statute. The final sentence in the subrule now reads as follows: "Two or more cities or counties may apply jointly for certification of a district that extends across a common boundary."

Subrule 9.3(2) was rewritten to emphasize that a local community organization (nonprofit or for-profit) is eligible to serve as the private component of the partnership.

In subrule 9.4(2) and rule 221—9.5(80GA, HF692), the term "advisory council" was changed to "advisory committee."

The Department's address and telephone number were updated in subrule 9.4(4).

Subrule 9.6(2) was revised to allow the Department to amend, suspend, or terminate certification of a district.

Cross references to chapters in the Iowa Administrative Code and to the Iowa Code were corrected in subrule 9.7(1).

These rules shall become effective on April 21, 2004.

These rules are intended to implement 2003 Iowa Acts, First Extraordinary Session, chapters 1 and 2.

The following **new** chapter is adopted.

CHAPTER 9

CULTURAL AND ENTERTAINMENT DISTRICTS

221—9.1(80GA, HF683, HF692) Purpose. The purpose of cultural and entertainment districts is to encourage city and county governments, organizations, businesses, and individuals to enhance the quality of life for citizens of this state and enrich local economies through developing and sustaining cultural facilities in a synergistic fashion. Certified cultural

CULTURAL AFFAIRS DEPARTMENT[221](cont'd)

and entertainment districts will receive technical assistance from the department's staff, will be eligible for certain incentives, and may have professional services of other state agencies to draw upon in order to facilitate the local program.

221—9.2(80GA, HF692) Definitions.

"Certified cultural and entertainment district" means a cultural and entertainment district that has been certified by the Iowa department of cultural affairs pursuant to these rules. A certified cultural and entertainment district must be a contiguous geographic area of no more than one square mile. Only certified cultural and entertainment districts are eligible for the incentives set forth in these rules.

"Cultural and entertainment district" means a well-recognized, labeled, compact mixed-use area in which a high concentration of cultural facilities serves as the anchor.

"Cultural facilities" are physical and cultural assets that play a vital role in the life and development of the community and contribute to the public through interpretive, educational, and recreational uses, including but not limited to museums, libraries, performance halls, studios, galleries, arts-related retail shops, music or media production houses, arboreta, and artist live/work spaces.

"Department" means the Iowa department of cultural affairs.

"Director" means the director of the Iowa department of cultural affairs.

221—9.3(80GA, HF692) Eligible applicants. All applicants shall represent a public-private partnership.

9.3(1) Public element of partnership. All cities and counties are eligible to serve as the public component of the partnership. Two or more cities or counties may apply jointly for certification of a district that extends across a common boundary.

9.3(2) Private element of partnership. A local community organization (nonprofit or for-profit) is eligible to serve as the private component of the partnership.

221—9.4(80GA, HF692) Program administration.

9.4(1) Administering agency. The cultural and entertainment district certification program will be administered by the Iowa department of cultural affairs.

9.4(2) Advisory committee. The director shall appoint a cultural and entertainment district advisory committee composed of individuals knowledgeable in subjects including but not limited to historic preservation, arts, tourism, and economic development to advise the director on the various elements of the program. The advisory committee shall have nine members who serve three-year staggered terms. At least one member will be a representative from the Iowa department of economic development.

9.4(3) Request for proposals (RFP). The department will distribute a request for proposals that describes the cultural and entertainment district certification program, outlines eligibility requirements, and includes an application and a description of the application procedures.

9.4(4) Applications. The department shall develop and make available a standardized application pertaining to the certification of cultural and entertainment districts. Applications may be obtained by contacting the Historic Preservation Bureau, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; telephone (515)242-6152; www.culturalaffairs.org.

9.4(5) Deadline. A completed application shall be returned to the department, postmarked no later than the date specified by the department in the RFP, and shall contain the information requested in the application.

221—9.5(80GA, HF692) Selection.

9.5(1) The department shall establish criteria for the selection of cultural and entertainment districts for certification. The following factors shall be considered:

- a. Management structure.
- b. Presence of cultural assets.
- c. Level of community support.
- d. Local incentives.
- e. Plan for developing and sustaining the district.

9.5(2) The director will determine the number of cultural and entertainment districts to be selected for certification.

9.5(3) Cultural and entertainment districts will be selected for certification on a competitive basis from the applications received.

9.5(4) Staff review. Applications shall be reviewed by department staff to ensure compliance with the program's administrative rules and guidelines. Applications meeting the requirements shall be forwarded to the advisory committee.

9.5(5) Advisory committee review. The advisory committee will review applications and make recommendations to the director.

9.5(6) Final selection. The director shall make final certification decisions. The director reserves the right to withhold certification if applications submitted do not adequately achieve the purposes of the cultural and entertainment district certification program.

221—9.6(80GA, HF692) Certification.

9.6(1) Timing. At least annually, the director will announce the certification of cultural and entertainment districts. If no new certifications have been issued, the director will so state.

9.6(2) Compliance. Certified cultural and entertainment districts must submit an annual report to the department. Continued certification is contingent upon acceptable performance. The department may amend, suspend, or terminate certification for reasons that may include, but are not limited to, a consistent failure to report, a dissolution of the management structure, or a significant deviation from the plan for cultural development.

221—9.7(80GA, HF683, HF692) Incentives. The department shall encourage development projects and activities located in certified cultural and entertainment districts through incentives.

9.7(1) Owners of property located in certified cultural and entertainment districts may request tax benefits for substantial rehabilitation work on historic buildings. Property owners desiring these tax benefits shall make application under 223—Chapters 47 and 48 and shall comply with all requirements therein. Tax credits approved pursuant to Iowa Code chapter 404A for projects located in certified cultural and entertainment districts are available for the fiscal years beginning July 1, 2005, and July 1, 2006. Tax credits allocated for certified cultural and entertainment district projects that are not approved during a fiscal year may be carried over to the succeeding fiscal year.

9.7(2) The department shall provide incentives under cultural grant programs administered by the department. Specific incentives may be reflected in the application instructions for each grant program.

9.7(3) Additional incentives may from time to time be offered by the department, other state agencies, and other organizations.

221—9.8(80GA, HF692) Appeals. Eligible applicants may informally appeal a decision of the director not to certify a

CULTURAL AFFAIRS DEPARTMENT[221](cont'd)

cultural and entertainment district on any of the following bases:

1. Action was outside statutory authority;
2. Decision was influenced by a conflict of interest;
3. Action violated state law, administrative rule, or written policy;
4. Insufficient public notice was given; and
5. Alteration of the review process was detrimental to the applicant.

Informal appeals shall be submitted in writing within 15 days of the notice of denial. All informal appeals shall be directed to the Director, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290. All informal appeals shall contain the facts of the case, argument in favor of the appeal, and remedy sought.

The director shall consider and rule on the informal appeal after receiving all documentation from the appellant and shall notify the appellant in writing of the decision within 30 days. Decisions by the director may be appealed through the contested case process as set out in Iowa Code sections 17A.10 to 17A.19.

These rules are intended to implement 2003 Iowa Acts, First Extraordinary Session, chapters 1 and 2, and Iowa Code sections 303.1 and 303.1A.

[Filed 2/26/04, effective 4/21/04]

[Published 3/17/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/17/04.

ARC 3224B**DEAF SERVICES DIVISION[429]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 216A.115, the Division of Deaf Services of the Department of Human Rights amends Chapter 1, "Organization," Chapter 2, "Services and Procedures," Chapter 3, "Public Records and Fair Information Practices," and Chapter 4, "Forms," Iowa Administrative Code.

These amendments are intended to eliminate outdated information and procedures, add the words "hard-of-hearing" after the word "deaf" to align the rules with the Division's mission, and amend the Division's fees for interpreting services to prevent the state from competing with the private sector.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 29, 2003, as **ARC 2890B**. No public comment was received on the proposed amendments. However, based on comments received from the Administrative Rules Review Committee, the Commission has chosen not to adopt the proposed amendment to paragraph 1.3(2)"a," which would have changed the number of affirmative votes required to carry a position by the Commission.

These amendments were adopted by the Commission on February 13, 2004.

These amendments shall become effective April 21, 2004.

These amendments are intended to implement Iowa Code chapter 216A.

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 [1.2, 1.3(4), 1.3(5)"c," 2.1, 2.3(1) to

2.3(8), 2.4(2)"c," 2.4(3), 3.14(2)"e," 4.1(9) to 4.1(13)] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2890B**, IAB 10/29/03.

[Filed 2/26/04, effective 4/21/04]

[Published 3/17/04]

[For replacement pages for IAC, see IAC Supplement 3/17/04.]

ARC 3215B**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 adopts amendments to Chapter 23, "Iowa Community Development Block Grant Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3033B** on December 24, 2003. These amendments were also Adopted and Filed Emergency and published as **ARC 3031B** on December 24, 2003.

The IDED Board adopted the amendments on February 19, 2004.

These amendments:

1. Raise the threshold wage from 80 percent to 100 percent of the average county wage.
2. Raise the maximum grant award from \$500,000 to \$1,000,000.
3. Add definitions for "average county wage" and "average regional wage."
4. Raise the set-aside amount to 25 percent of the annual allocation of funds from the U.S. Department of Housing and Urban Development.

A public hearing was held on January 13, 2004. No comments concerning the proposed amendments were received from the public. These amendments are identical to those published under Notice of Intended Action.

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

These amendments will become effective on April 21, 2004, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

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

"Average county wage" means the average the department calculates annually using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Average regional wage" means the wage calculated annually by the department using a methodology in which each particular county is considered to be a geographic center of a larger economic region. The wage threshold for the central county is calculated using the average wage of that county, plus each adjoining county, so that the resulting figure reflects a regional average that is representative of the

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

true labor market area. In performing the calculation, the greatest importance is given to the central county by weighting it by a factor of four, compared to weighting of one for each of the other adjoining counties. The central county is given the greatest importance in the calculation because most of the employees in that central county will come from that same county, as compared to commuters from other adjoining counties.

ITEM 2. Amend subrule 23.4(4) as follows:

23.4(4) Job creation, retention and enhancement fund. ~~Twenty~~ *Twenty-five* percent of the funds shall be reserved for a job creation, retention and enhancement fund to be for workforce development and to expand economic opportunities and job training for LMI persons. Job creation, retention and enhancement funds are awarded through three programs: the economic development set-aside (EDSA), the public facilities set-aside (PFSA), and career link.

ITEM 3. Amend subrule 23.7(1) as follows:

23.7(1) Restrictions on applicants.

- a. No change.
- b. The maximum grant award for individual business assistance applications from any city or county is ~~\$500,000~~ *\$1,000,000*.
- c. The average starting wage of jobs to be created or retained by a proposed project shall meet or exceed the ~~lowest~~ *lower* of ~~80~~ *100* percent of the average county wage, ~~80~~ *or* ~~100~~ percent of the average regional wage, ~~or the annual wage cap.~~
- d. to j. No change.
- k. *Transition provision. Applicants that have fully completed preapplications pending before the department prior to January 1, 2004, or fully completed preapplications that are postmarked or E-mailed to the department by the close of business on December 31, 2003, will be evaluated using the amendments regarding wage thresholds in effect at the time of submittal.*

[Filed 2/23/04, effective 4/21/04]
[Published 3/17/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/17/04.

ARC 3216B**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 adopts amendments to Chapter 53, "Community Economic Betterment Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3032B** on December 24, 2003. These amendments were also Adopted and Filed Emergency and published as **ARC 3030B**.

The IDED Board adopted the amendments on February 19, 2004.

The amendments increase the wage threshold requirements for eligibility assistance. To be eligible, project jobs must have a starting wage equal to or exceeding 100 percent of the average county wage or 100 percent of the average re-

gional wage, whichever is lower, and over 50 percent of the pledged jobs must be at or above the 100 percent level. These changes are intended to assist the Department in meeting the legislative mandate to the Department to raise the average wage of Iowans. These amendments are intended to complement the wage thresholds established by the Iowa Values Board for its financial assistance programs.

A public hearing was held on January 13, 2004. Written comments were submitted by the Iowa Federation of Labor, AFL-CIO. The AFL-CIO expressed general support of the proposed amendments even though, in their opinion, the amendments do not go far enough for two reasons. First, the proposed threshold eligibility requirement only applies to the jobs that will be created. Second, the average wage calculation for a county understates the actual average wage in many counties, leaving out agricultural and government workers' wages. Also, the regional wage calculation understates, in the opinion of the AFL-CIO, the wage rate in high-wage counties.

The Department considered the public comments that were received and decided not to make any changes to the noticed amendments at this time. The final amendments are identical to the proposed amendments.

These amendments are intended to implement Iowa Code chapter 15 and 2003 Iowa Acts, First Extraordinary Session, chapters 1 and 2.

These amendments will become effective on April 21, 2004, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [53.6(1)] is being omitted. These amendments are identical to those published under Notice as **ARC 3032B** and Adopted and Filed Emergency as **ARC 3030B**, IAB 12/24/03.

[Filed 2/23/04, effective 4/21/04]
[Published 3/17/04]

[For replacement pages for IAC, see IAC Supplement 3/17/04.]

ARC 3217B**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 adopts amendments to Chapter 59, "Enterprise Zones," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3035B** on December 24, 2003.

The IDED Board adopted the amendments on February 19, 2004.

The amendments implement statutory changes made by the legislature during the past session relating to the tax credits associated with the designated housing enterprise zones. The revisions include the method to transfer state tax credits in conjunction with the sale of federal low-income housing tax credits.

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

A public hearing was held on January 13, 2004. No comments concerning the proposed amendments were received from the public. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement 2003 Iowa Acts, chapter 133.

These amendments will become effective on April 21, 2004.

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 [59.8, 59.8(1), 59.8(2)] is being omitted. These amendments are identical to those published under Notice as **ARC 3035B**, IAB 12/24/03.

[Filed 2/23/04, effective 4/21/04]
[Published 3/17/04]

[For replacement pages for IAC, see IAC Supplement 3/17/04.]

ARC 3221B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

The purpose of this rule making is to adopt by reference Subpart III of 40 CFR Part 62. Subpart III establishes emission requirements and compliance schedules for the control of emissions from existing commercial and industrial solid waste incineration (CISWI) units not covered under an approved state plan. Existing CISWI units are units that commenced construction on or before November 30, 1999.

Section 129 of the Clean Air Act (CAA) requires the EPA to develop performance standards pursuant to Sections 111 and 129 of the CAA for each category of solid waste incineration units. The performance standards are to include emission guidelines and compliance schedules applicable to existing CISWI units. A CISWI unit means any combustion device that combusts commercial and industrial waste as defined in Subpart III. The Monsanto Company facility in Muscatine, Iowa, is an affected facility that operates a CISWI unit that is subject to the emission guidelines.

The EPA proposed emission guidelines and compliance schedules for CISWI units on November 30, 1999, and promulgated them on December 1, 2000 (40 CFR Part 60, Subpart DDDD). Subpart DDDD provides model emission guidelines and compliance schedules for states to use in the development of state plans to implement and enforce the emission guidelines. On November 25, 2002, EPA proposed a federal plan for use in states with no approved state plan. Iowa does not have an approved state plan. The federal plan was promulgated on October 3, 2003, as Subpart III of 40 CFR Part 62.

Subpart III contains 11 major components that address the regulatory requirements applicable to existing CISWI units. When adopted by reference, these components will constitute a state plan. These components include increments of progress toward compliance, waste management plans, oper-

ator training and qualification, emission limitations and operating limits, performance testing, initial compliance requirements, continuous compliance requirements, monitoring, record keeping and reporting, definitions, and associated tables.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 10, 2003, as **ARC 3005B**. A public hearing was held on January 16, 2004. No comments were received at the public hearing or during the public comment period. This amendment has not been modified from that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 455B.133.

This amendment shall become effective April 21, 2004. The following amendment is adopted.

Amend subrule **23.1(5)** by adopting the following **new** paragraph "**c**":

c. Emission guidelines and compliance schedules for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999. Emission guidelines and compliance schedules for the control of designated pollutants from affected commercial and industrial solid waste incinerators that commenced construction on or before November 30, 1999, shall be in accordance with federal plan requirements established in Subpart III of 40 CFR Part 62.

[Filed 2/26/04, effective 4/21/04]
[Published 3/17/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/17/04.

ARC 3230B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby amends Chapter 300, "Licensure of Speech Pathologists and Audiologists," and Chapter 305, "Fees," Iowa Administrative Code.

These amendments adopt criteria for obtaining a duplicate or reissued license, adopt requirements for renewal of a license to practice speech pathology and audiology, and define services subject to regulation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 10, 2003, as **ARC 2990B**. A public hearing was held on January 6, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. Paragraphs 300.11(4)"a" to "c" were revised to conform to statutory language.

These amendments were adopted by the Board of Speech Pathology and Audiology Examiners on February 27, 2004.

These amendments will become effective April 21, 2004. These amendments are intended to implement Iowa Code chapters 21, 147, and 272C.

The following amendments are adopted.

ITEM 1. Renumber existing rules **645—300.2(147)** through **645—300.13(147)** as **645—300.3(147)** through

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—300.14(147), renumber existing rule **645—300.14(17A,147,272C)** as **645—300.16(17A,147,272C)** and adopt the following **new** rule:

645—300.2(147) Speech pathology and audiology services subject to regulation. The provision of speech pathology or audiology services in Iowa through telephonic, electronic, or other means, regardless of the location of the speech/language pathologist or audiologist, shall constitute the practice of speech pathology or audiology and shall require Iowa licensure.

ITEM 2. Rescind renumbered rule 645—300.11(147) and adopt the following **new** rule in lieu thereof:

645—300.11(147) License renewal.

300.11(1) The biennial license renewal period for a license to practice speech pathology or audiology shall begin on January 1 of an even-numbered year and end on December 31 of the next even-numbered year. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license.

300.11(2) An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

300.11(3) A licensee shall:

a. Meet the continuing education requirements of rule 645—303.2(147) and the mandatory reporting requirements of subrule 300.11(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

300.11(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

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

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 303.

f. The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

300.11(5) When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

300.11(6) A person licensed to practice as a speech pathologist or audiologist shall keep the person's license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

300.11(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 305.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within one month following the expiration date on the wallet card.

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

645—300.15(147) Reissued certificate or wallet card. The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—305.1(147).

ITEM 4. Amend subrule 305.1(5) as follows:

305.1(5) Duplicate or reissued license certificate fee is \$10.

ITEM 5. Renumber subrules **305.1(6)** to **305.1(10)** as **305.1(7)** to **305.1(11)** and adopt the following **new** subrule:

305.1(6) Duplicate or reissued wallet card fee is \$10.

[Filed 2/27/04, effective 4/21/04]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/17/04.

ARC 3220B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code section 47.1 and Section 302 of the Help America Vote Act of 2002 (Pub. L. 107-252) (HAVA), the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 7, 2004, as **ARC 3067B**. The adopted amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code section 47.1 and Section 302 of the Help America Vote Act of 2002 (Pub. L. 107-252) (HAVA). Iowa Code section 47.1 requires the State Commissioner of Elections (Secretary of State) to promulgate rules regarding election emergency situations. Iowa's HAVA state plan provides that the State Commissioner of Elections will promulgate administrative rules

SECRETARY OF STATE[721](cont'd)

to implement Section 302(c), which requires that any person who votes after the statutory hour for closing the polls shall vote only by casting a provisional ballot if the voting hours have been extended by a court order.

The Secretary of State adopted this amendment on February 11, 2004.

This amendment shall become effective on April 21, 2004.

This amendment is intended to implement Iowa Code section 47.1 and Section 302 of the Help America Vote Act of 2002 (Pub. L. 107-252).

The following amendment is adopted.

Amend subrule 21.1(12) to read as follows:

21.1(12) Federal elections.

a. If an emergency occurs that will adversely affect the conduct of an election at which candidates for federal office will appear on the ballot, the election shall not be postponed or delayed. Emergency measures shall be limited to relocation of polling places, modification of the method of voting, reduction of the number of precinct election officials at a precinct and other modifications of prescribed election procedures which will enable the election to be conducted on the date and during the hours required by law.

The primary election held in June of even-numbered years and the general election held in November of even-numbered years shall not be postponed. Special elections called by the governor pursuant to Iowa Code section 69.14 shall not be postponed unless no federal office appears on the ballot.

b. If a federal or state court order or any other order extends the time established for closing the polls pursuant to Iowa Code section 49.73, any person who votes after the statutory hour for closing the polls shall vote only by casting a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballots cast after the statutory hour for closing the polls shall be sealed in a separate envelope from provisional ballots cast during the statutory polling hours. The absentee and special voters precinct board shall tabulate and report the results of the two sets of provisional ballots separately.

[Filed 2/26/04, effective 4/21/04]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/17/04.

ARC 3218B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

The amendment is intended to implement Iowa Code section 49.21, the U.S. Voting Accessibility for the Elderly and Handicapped Act and the Americans with Disabilities Act, which require polling places to be accessible to persons with disabilities. This amendment provides a definition for the term "off-street parking" as used in the survey form used for determining the accessibility of polling places. The parking space specifications are taken from "ADA Accessibility Guidelines for Buildings and Facilities" (ADAAG) and from rule 661—18.3(321L), which sets forth the dimensions of parking spaces for persons with disabilities.

Notice of Intended Action was published in the January 21, 2004, Iowa Administrative Bulletin as **ARC 3101B**. The adopted amendment is identical to that published under Notice.

The Secretary of State adopted the amendment on February 25, 2004.

This amendment will become effective April 21, 2004.

This amendment is intended to implement Iowa Code section 49.21, the U.S. Voting Accessibility for the Elderly and Handicapped Act and the Americans with Disabilities Act.

The following amendment is adopted.

Amend subrule **21.50(4)** by adding the following new unnumbered paragraphs:

The term "off-street parking" used in the polling place accessibility survey means parking places in lots separated from the street and includes angle parking along the street if the accessible route from the parking place to the polling place is entirely out of the path of traffic. Parking arrangements that require either the driver or passengers of the vehicle to go into the traveled part of the street are not accessible.

An access aisle at street level that is at least 60 inches wide and the same length as each accessible parking space shall be provided. An accessible public sidewalk curb ramp shall connect the access aisle to the continuous passage to the polling place. At least one parking place shall be van-accessible with a 96-inch access aisle connected to the continuous passage to the polling place by an accessible public sidewalk curb ramp. Two accessible parking spaces may share a common access aisle.

[Filed 2/26/04, effective 4/21/04]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/17/04.

ARC 3219B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 47.1 and 422E.2(3), the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

These amendments implement Iowa Code section 422E.2 as amended by 2003 Iowa Acts, chapter 157. Changes made to Iowa Code section 422E.2 in 2003 Iowa Acts, chapter 157, now require the ballot language used in local option sales and services tax elections to be taken from the motions or petition requesting the election. These amendments prescribe forms for petitions and motions requesting elections regarding local option sales and services taxes for school infrastructure. The purpose of the amendments is to provide a uniform structure for the sources of ballot language for these elections.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 7, 2004, as **ARC 3068B**. One item has been added to the adopted amendments based upon comments received about the published Notice. Item 6, which adds new subrule 21.803(5), clarifies that the Commissioner shall post at each polling place in the county and shall provide to all absentee voters copies of all revenue purpose statements that have been received by the Commission-

SECRETARY OF STATE[721](cont'd)

er not less than 60 days before the election. New subrule 21.803(5) reads as follows:

“21.803(5) Revenue purpose statements. The commissioner shall post at each polling place in the county and shall provide to all absentee voters copies of all revenue purpose statements that have been received by the commissioner not less than 60 days before the election.”

The Secretary of State adopted these amendments on February 25, 2004.

These amendments are intended to implement Iowa Code section 422E.2 as amended by 2003 Iowa Acts, chapter 157.

These amendments shall become effective on April 21, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [21.803(1)“a” and “b,” 21.803(3), 21.803(3)“d,” 21.803(5)] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3068B**, IAB 1/7/04.

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