



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

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(515)281-8157

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## Schedule for Rule Making 2007

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
<b>*Dec. 27 '06*</b>	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	<b>***May 16***</b>	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	<b>***June 27***</b>	July 18	Aug. 22	Nov. 19
<b>***May 16***</b>	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
<b>***June 27***</b>	July 18	Aug. 7	Aug. 22	<b>***Aug. 22***</b>	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
<b>***Aug. 22***</b>	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	<b>***Nov. 14***</b>	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	<b>***Dec. 12***</b>	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	<b>***Dec. 26***</b>	Jan. 16 '08	Feb. 20 '08	May 19 '08
<b>***Nov. 14***</b>	Dec. 5	Dec. 25	Jan. 9 '08	Jan. 11 '08	Jan. 30 '08	Mar. 5 '08	June 2 '08
Nov. 30	Dec. 19	Jan. 8 '08	Jan. 23 '08	Jan. 25 '08	Feb. 13 '08	Mar. 19 '08	June 16 '08
<b>***Dec. 12***</b>	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
<b>***Dec. 26***</b>	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
13	Friday, November 30, 2007	December 19, 2007
14	Wednesday, December 12, 2007	January 2, 2008
15	Wednesday, December 26, 2007	January 16, 2008

PLEASE NOTE:

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

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

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

### SUBSCRIPTION INFORMATION

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

#### Iowa Administrative Bulletin

July 2007 through December 2007 ..... \$169

#### Iowa Administrative Code Supplement

\*July 2007 through December 2007 ..... \$263

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

#### Iowa Administrative Code

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

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Complete 8 ½" x 11" Iowa Administrative Code with binders ..... \$1250

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#### IAC Binders

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, December 11, 2007, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Temporary grain storage facilities, 90.26, Filed Emergency ARC 6385B ..... 11/7/07

**DENTAL BOARD[650]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Dental assistants, 20.2, 20.4(2), 20.16"1," 22.1, Notice ARC 6408B ..... 11/7/07

Grounds for discipline—failure to preserve confidentiality of patient information, 30.4"14," Filed ARC 6389B ..... 11/7/07

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Regional tourism marketing grant program, ch 35, Filed Emergency After Notice ARC 6393B ..... 11/7/07

Demonstration fund, ch 105, Filed ARC 6392B ..... 11/7/07

**EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]"umbrella"

Board membership, 1.2, Filed ARC 6381B ..... 11/7/07

Time lines for appeals and board review of proposed decisions, 11.28(1), 11.28(2), Notice ARC 6398B ..... 11/7/07

Middle school endorsement, 14.140(15), Filed ARC 6383B ..... 11/7/07

Language arts endorsement, 14.141(20), Filed ARC 6384B ..... 11/7/07

Removal or reinstatement of endorsement, 14.144, Filed ARC 6382B ..... 11/7/07

Renewal of standard license—credit for mentoring,  
17.5(1), Notice ARC 6397B ..... 11/7/07

Renewal of master educator license—credit for mentoring, 17.6(1), Notice ARC 6396B ..... 11/7/07

Professional conduct and ethics violations and reporting, 25.3(6)"o" to "r," Notice ARC 6395B ..... 11/7/07

**ENERGY INDEPENDENCE, OFFICE OF[350]**

Definitions; organization; Iowa power fund; public records; rule making;  
declaratory orders; waivers, chs 1 to 4, 51 to 55, Notice ARC 6411B ..... 11/21/07

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21.3(3)"c"(1) and (3) to (5), 21.3(3)"d," 21.3(4)"a" and "c" to "e," 21.3(5),  
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Historic preservation and cultural and entertainment district tax credits, ch 48, Notice ARC 6401B ..... 11/7/07

**HUMAN SERVICES DEPARTMENT[441]**

Documentation requirements for medicaid providers, 7.1, 79.2(2)"u," 79.3(2), 79.3(2)"c"(1) to (3),  
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Mini-simplified food stamp program, 65.28(19), Notice ARC 6390B ..... 11/7/07

Medicaid coverage for working persons with disabilities, 75.1(39)"b,"  
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86.3(4), 86.3(8), 86.3(10)"c," 86.4(3)"a," "b" and "d," 86.4(4), 86.4(4)"a" to "d,"  
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IowaCare—hardship exemption, eligibility of newborns, 92.7(3), 92.7(3)"c," 92.8(3)"b,"  
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- Elevator maintenance, repairs and alterations, 73.8, Filed ARC 6386B ..... 11/7/07

**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

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**PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE[591]**

- Claims for reimbursement for removal of eligible underground storage tanks; installers and inspectors, 11.3(11); rescind ch 15, Filed ARC 6423B ..... 11/21/07

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

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**PUBLIC HEALTH DEPARTMENT[641]**

- Swimming pool registration, 15.6(2)“d,” Notice ARC 6427B ..... 11/21/07
- WIC program—sharing of contact information with other department programs, 73.2, 73.3, 73.7(7), 73.8(2)“c,” 73.13(7)“g,” Notice ARC 6428B ..... 11/21/07
- Healthy families Iowa (HFI), ch 87, Notice ARC 6426B ..... 11/21/07
- Interagency coordinating council for the state medical examiner, ch 124, Notice ARC 6421B ..... 11/21/07
- Advisory council for the state medical examiner, ch 125, Notice ARC 6422B ..... 11/21/07
- Awards and grants, 176.1, 176.2, 176.4 to 176.7, 176.8(1), 176.8(10), Notice ARC 6425B ..... 11/21/07

**PUBLIC SAFETY DEPARTMENT[661]**

- Flammable and combustible liquids, 51.200 to 51.203, 51.205, 51.206, 51.250, 51.300, 51.350, ch 221, Filed ARC 6416B ..... 11/21/07
- Aboveground petroleum storage tanks, 51.204, ch 224, Filed ARC 6417B ..... 11/21/07
- Liquefied petroleum gas, 226.5(1), 226.5(2), 226.5(4), 226.6, Filed ARC 6414B ..... 11/21/07
- State building code, 300.4(1), 300.4(2)“b,” 300.4(3) to 300.4(5), 300.5, 301.3, 303.1(2), 303.1(3)“c,” 303.4, 303.5, Filed ARC 6413B ..... 11/21/07

**RACING AND GAMING COMMISSION[491]**

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

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**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Professional Licensing and Regulation Bureau[193]  
COMMERCE DEPARTMENT[181]“umbrella”

- Associate real property appraisers; compensation of peer reviewers, 2.1, ch 4, 8.10(3), Filed ARC 6419B ..... 11/21/07

**REGENTS BOARD[681]**

- Board meeting schedule; vacancy in office of president pro tem, 11.1(1), Filed ARC 6415B ..... 11/21/07

**REVENUE DEPARTMENT[701]**

- Individual and corporate tax credits—earned income tax credit, historic preservation and cultural and entertainment district tax credit, school tuition organization tax credit, sequencing of tax credits, 42.2(7)“c,” 42.2(9), 42.12, 42.13(1), 42.15(2), 42.15(4), 42.15(6), 42.23, 42.30, 42.30(1), 42.30(3) to 42.30(5), 52.12, 52.18(2), 52.18(4), 52.18(6), Filed ARC 6403B ..... 11/7/07
- Wage-benefits tax credits, 42.24(3)“d” to “f,” 42.24(4), 52.25(3)“d” to “f,” 52.25(4), Filed ARC 6402B ..... 11/7/07

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Property tax, 70.22(1)"e" to "j," 71.5(2)"a," 71.20(4)"a," 75.8, 78.8, 80.26, Filed ARC 6406B ..... 11/7/07

**SECRETARY OF STATE[721]**

Voter registration on election day, 21.3(1) to 21.3(6), 21.4(1)"c," 21.9, Notice ARC 6405B ..... 11/7/07  
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Gambling elections, 21.820, Notice ARC 6424B ..... 11/21/07

**TRANSPORTATION DEPARTMENT[761]**

Logo signing, ch 118, Filed ARC 6376B ..... 11/7/07  
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manufactured or mobile home retailers, manufacturers, and distributors, amend chs 400, 401, 405, 411, 424, 425,  
430, 431, 451, 480; rescind ch 421, Filed ARC 6377B ..... 11/7/07  
Update of motor vehicle division address, 410.1(3), 500.2(1), 505.2(1), 505.4(6)"b,"  
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**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

Certificates of franchise authority for cable and video service, ch 44, Filed ARC 6418B ..... 11/21/07

**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**

County grant program for veterans, ch 12, Filed Emergency ARC 6379B ..... 11/7/07

**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

**EDITOR'S NOTE: Terms ending April 30, 2011.**

Senator Jeff Angelo  
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Creston, Iowa 50801

Senator Michael Connolly  
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Dubuque, Iowa 52001

Senator Thomas Courtney  
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Burlington, Iowa 52601

Senator John P. Kibbie  
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James Larew  
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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>DENTAL BOARD[650]</b>		
Dental assistants, 20.2, 20.4(2), 20.16“1,” 22.1 IAB 11/7/07 <b>ARC 6408B</b>	Board Conference Rm., Suite D 400 SW 8th St. Des Moines, Iowa	November 27, 2007 10 a.m.
<b>EDUCATIONAL EXAMINERS BOARD[282]</b>		
Appeals and review, 11.28(1) IAB 11/7/07 <b>ARC 6398B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 28, 2007 1 p.m.
Credit for mentoring of student teachers and practicum students, 17.5(1) IAB 11/7/07 <b>ARC 6397B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 28, 2007 1 p.m.
Credit for mentoring of student teachers and practicum students, 17.6(1) IAB 11/7/07 <b>ARC 6396B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 28, 2007 1 p.m.
Professional conduct and ethics— reporting requirements, 25.3(6) IAB 11/7/07 <b>ARC 6395B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 28, 2007 1 p.m.
<b>ENERGY INDEPENDENCE, OFFICE OF[350]</b>		
Organization of energy independence office; Iowa power fund, chs 1 to 4, 51 to 55 IAB 11/21/07 <b>ARC 6411B</b> (ICN Network)	Room 8, Building 6 DMACC 2006 S. Ankeny Blvd. Ankeny, Iowa	December 18, 2007 1 p.m.
	Room 115, Industrial Tech. Bldg. Northeast Iowa Comm. College 1625 Hwy 150 S. Calmar, Iowa	December 18, 2007 1 p.m.
	Room 402, Building D Northwest Iowa Comm. College 603 W. Park St. Sheldon, Iowa	December 18, 2007 1 p.m.
	Room 306, Clarinda Center Iowa Western Comm. College 923 E. Washington Clarinda, Iowa	December 18, 2007 1 p.m.
	Room 528, Trustee Hall, N. Campus Southeastern Comm. College 1500 West Agency, West Burlington, Iowa	December 18, 2007 1 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Surface water classification, 61.3(5) IAB 10/24/07 <b>ARC 6351B</b>	Wallace Bldg. Auditorium 502 E. 9th St. Des Moines, Iowa	November 27, 2007 9 a.m.
	Iowa City Public Library 123 Linn St. Iowa City, Iowa	November 29, 2007 4 p.m.
	Elkader Opera House 207 N. Main St. Elkader, Iowa	November 30, 2007 11 a.m.

**HISTORICAL DIVISION[223]**

Historical society award programs, 21.2, 21.3 IAB 11/7/07 <b>ARC 6400B</b>	Tone Board Rm., 3rd Floor West Historical Bldg., 600 E. Locust Des Moines, Iowa	November 27, 2007 10 a.m.
Historic preservation and cultural and entertainment district tax credits, ch 48 IAB 11/7/07 <b>ARC 6401B</b>	Tone Board Rm., 3rd Floor West Historical Bldg., 600 E. Locust Des Moines, Iowa	November 27, 2007 10 a.m.

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

Qualified domestic relations orders, 16.2 IAB 11/7/07 <b>ARC 6407B</b>	7401 Register Dr. Des Moines, Iowa	November 27, 2007 9 a.m.
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**LABOR SERVICES DIVISION[875]**

Elevator safety board—waivers, safety tests, 66.10(10), 66.15, 71.2(2) IAB 11/7/07 <b>ARC 6394B</b>	Stanley Rm. 1000 E. Grand Ave. Des Moines, Iowa	November 30, 2007 1 p.m. (If requested)
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**PROFESSIONAL LICENSURE DIVISION[645]**

Board administrative processes; fees, chs 4, 5 IAB 11/21/07 <b>ARC 6409B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	December 11, 2007 9 to 9:30 a.m.
Chiropractic physicians, amendments to chs 40 to 45 IAB 11/7/07 <b>ARC 6380B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	November 27, 2007 9 to 9:30 a.m.

**PUBLIC HEALTH DEPARTMENT[641]**

Swimming pool registration, 15.6(2) IAB 11/21/07 <b>ARC 6427B</b>	Room 518 Lucas State Office Bldg. Des Moines, Iowa	December 11, 2007 1 p.m.
WIC program, 73.2, 73.3, 73.7(7), 73.8(2), 73.13(7) IAB 11/21/07 <b>ARC 6428B</b>	6th Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 19, 2007 2 p.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Fire fighter candidate physical ability test IAB 11/21/07 (ICN Network)	First Floor Conference Room 122 State Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa (See <a href="http://www.dps.state.ia.us/admrule/index.shtml">http://www.dps.state.ia.us/admrule/ index.shtml</a> for listing of ICN sites.)	December 3, 2007 4 to 6 p.m.
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**RACING AND GAMING COMMISSION[491]**

Organization; contested cases; licensure; horse racing; gambling games, amendments to chs 1, 4 to 6, 9 to 11 IAB 11/7/07 <b>ARC 6367B</b>	Suite B 717 E. Court Des Moines, Iowa	November 27, 2007 9 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Address changes to reflect relocation of division offices, amendments to chs 410, 500, 505, 511, 513, 524, 529, 600, 607, 620, 634 to 636, 640 IAB 11/7/07 <b>ARC 6388B</b>	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	November 29, 2007 10 a.m. (If requested)
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**CITATION of Administrative Rules**

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

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

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

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 Bureau[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]  
     Interior Design Examining Board[193G]  
   Savings and Loan Division[197]  
   Utilities Division[199]  
 CORRECTIONS DEPARTMENT[201]  
   Parole Board[205]  
 CULTURAL AFFAIRS DEPARTMENT[221]  
   Arts Division[222]  
   Historical Division[223]  
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
   City Development Board[263]  
   Grow Iowa Values Board[264]  
 IOWA FINANCE AUTHORITY[265]  
 EDUCATION DEPARTMENT[281]  
   Educational Examiners Board[282]  
   College Student Aid Commission[283]  
   Higher Education Loan Authority[284]  
   Iowa Advance Funding Authority[285]  
   Libraries and Information Services Division[286]  
   Public Broadcasting Division[288]  
   School Budget Review Committee[289]  
 EGG COUNCIL, IOWA[301]  
 ELDER AFFAIRS DEPARTMENT[321]  
 EMPOWERMENT BOARD, IOWA[349]  
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
 EXECUTIVE COUNCIL[361]  
 FAIR BOARD[371]  
 HUMAN RIGHTS DEPARTMENT[421]  
   Community Action Agencies Division[427]  
   Criminal and Juvenile Justice Planning Division[428]  
   Deaf Services Division[429]  
   Persons With Disabilities Division[431]  
   Latino Affairs Division[433]  
   Status of African-Americans, Division on the[434]  
   Status of Women Division[435]  
 HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Foster Care Review Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
    BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
    Homeland Security and Emergency Management Division[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
    Professional Licensure Division[645]  
    Dental Board[650]  
    Medicine Board[653]  
    Nursing Board[655]  
    Pharmacy Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
    Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
    Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]  
VETERINARY MEDICINE BOARD[811]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
    Labor Services Division[875]  
    Workers' Compensation Division[876]  
    Workforce Development Board and  
    Workforce Development Center Administration Division[877]

**ARC 6411B****ENERGY INDEPENDENCE,  
OFFICE OF [350]****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 2007 Iowa Acts, House File 918, sections 3(2)“k” and 9(4)“b,” the Director of the Office of Energy Independence proposes to adopt Chapter 1, “Rules Applicable to All Chapters,” Chapter 2, “Organization of Office of Energy Independence,” Chapter 3, “Iowa Power Fund Board and Due Diligence Committee,” Chapter 4, “Iowa Power Fund Financial Assistance,” Chapter 51, “Public Records and Fair Information Practices,” Chapter 52, “Office Procedure for Rule Making,” Chapter 53, “Petitions for Rule Making,” Chapter 54, “Declaratory Orders,” and Chapter 55, “Uniform Waiver and Variance Rules,” Iowa Administrative Code.

These rules establish the organizational structure and procedures for the Office of Energy Independence, the Iowa Power Fund Board, and the Due Diligence Committee and the eligibility requirements, evaluation criteria, and application procedures for financial assistance from the Iowa power fund. Included are procedures concerning public records and fair information practices, office procedures for rule making, procedures for filing petitions for rule making and declaratory orders, and a process for requesting a rule waiver or variance. The rules enable the Office, the Board, and the Committee to begin fulfilling their statutory duties as soon as possible.

The Board seeks comments on all aspects of the rules, especially the degree to which these rules successfully strike a fair balance between the need to provide sufficient guidance to applicants on eligibility criteria, selection criteria, and the manner in which the financial resources of the Board will be allocated and the need for sufficient flexibility to allow the Board to make sound decisions in a new government endeavor where the nature and number of applicants for limited financial resources are unknown. The Board wishes to avoid promulgating rules that are too specific in order to avoid disqualifying or discouraging applicants with creative ideas that may be unanticipated by the Board at the time the rules are adopted. Flexibility in the rules is essential to promoting innovative ways to achieve the goals of the enabling Act (i.e., to increase the research, development, production, and use of biofuels and other sources of renewable energy, improve energy efficiency, and reduce greenhouse gas emissions).

The Board seeks comments on all aspects of the application process, which has been divided into two stages: a pre-application and a full application. Under the proposed rules, there is no deadline for applications, which shall be accepted at any time. Because there may be a need for technical or scientific review of projects proposed by applicants and because the budget for administrative costs is very limited, the proposed rules authorize the Board to require an applicant to obtain a technical or scientific review at the applicant’s expense. An application form is being developed to solicit the information described in the proposed rules.

Consideration will be given to all written suggestions or comments on the proposed rules submitted on or before December 18, 2007. Such written materials should be sent to Brian Crowe, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; fax (515)281-4225; or by electronic mail to [brian.crowe2@iowa.gov](mailto:brian.crowe2@iowa.gov).

Also, persons may present their views through oral comment at a public hearing to be held via video conferencing through the Iowa Communications Network (ICN) on Wednesday, December 18, 2007, at 1 p.m. ICN locations accessible for participation in the public hearing are as follows:

DMACC - Ankeny Campus  
Building 6/Room 8 (origination site)  
2006 S. Ankeny Blvd.  
Ankeny, Iowa

Northeast Iowa Community College  
Industrial Technologies Building/Room 115  
1625 Hwy. 150 South  
Calmar, Iowa

Northwest Iowa Community College  
Building D/Room 402  
603 W. Park St.  
Sheldon, Iowa

Iowa Western Community College  
Clarinda Center/Room 306  
923 E. Washington  
Clarinda, Iowa

Southeastern Community College  
North Campus/Trustee Hall/Room 528  
1500 West Agency  
West Burlington, Iowa

All comments must be received no later than December 18, 2007.

Any person who intends to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact Brian Crowe at (515) 275-2066 or by electronic mail sent to [brian.crowe2@iowa.gov](mailto:brian.crowe2@iowa.gov) to advise of any specific needs.

Those proposed rules which do not impose statutory requirements are subject to a petition for waiver or variance under Iowa Code section 17A.9A and Chapter 55 of these rules.

These rules are intended to implement 2007 Iowa Acts, House Files 918 and 927.

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

The following **new** chapters are proposed.

CHAPTER 1  
RULES APPLICABLE TO ALL CHAPTERS

**350—1.1(82GA, HF918, HF927) Definitions.** Unless otherwise stated, the following definitions apply:

“Board” means the Iowa power fund board created in 2007 Iowa Acts, House File 918, section 6.

“Committee” means the due diligence committee created in 2007 Iowa Acts, House File 918, section 7.

“Director” means the director of the office of energy independence.

## ENERGY INDEPENDENCE, OFFICE OF[350](cont'd)

“Entity” or “entities” includes but is not limited to businesses, nonprofit organizations, educational institutions, units of state and local government, and individuals conducting business, research, or programs in Iowa.

“Foreign” means a locality outside of, or nation other than, the United States, Canada, or Mexico.

“Fund” means the Iowa power fund created in 2007 Iowa Acts, House File 918, section 9.

“Office” means the office of energy independence.

This rule is intended to implement 2007 Iowa Acts, House Files 918 and 927.

CHAPTER 2  
ORGANIZATION OF OFFICE OF  
ENERGY INDEPENDENCE

**350—2.1(82GA, HF918, HF927) Purpose.** The office of energy independence was established to coordinate state activities concerning energy independence.

**350—2.2(82GA, HF918, HF927) Office structure.**

**2.2(1) General.** The office’s organizational structure includes the director and staff as appointed by the director.

**2.2(2) Director.** The office is administered by a director appointed by the governor, who serves at the pleasure of the governor, and whose appointment is subject to confirmation by the senate. The director is the chief administrative officer of the office and in that capacity administers the programs and services of the office in compliance with applicable federal and state laws and regulations. The duties of the director are as authorized in 2007 Iowa Acts, House File 918, section 3.

**2.2(3) Administrative assistance.** The director may contract for and utilize assistance from the department of economic development regarding the administration of grants, loans, and other financial incentives related to 2007 Iowa Acts, House File 918, section 8(4)“a”(1); the department of natural resources and the utilities board regarding assistance in the administration of grants, loans, and other financial incentives related to 2007 Iowa Acts, House File 918, section 8(4)“a”(2); and other state agencies as appropriate.

**2.2(4) Advisory committees.** The director may appoint committees to serve in an advisory capacity to the office as deemed necessary to accomplish the work of the office. The makeup of a committee and the terms of committee members will be established by the director. Advisory committees may be dissolved as deemed appropriate by the director; and other advisory committees may, from time to time, be established for specific purposes.

**350—2.3(82GA, HF918, HF927) Contact information.** The public may obtain information about or from the office by contacting the Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; telephone (515)281-0187; or through the office’s Web site at [www.energy.iowa.gov](http://www.energy.iowa.gov).

These rules are intended to implement 2007 Iowa Acts, House Files 918 and 927.

CHAPTER 3  
IOWA POWER FUND BOARD AND  
DUE DILIGENCE COMMITTEE

**350—3.1(82GA, HF918, HF927) Location and administration.**

**3.1(1)** The board and the committee are located within the office for administrative purposes.

**3.1(2)** The director shall budget moneys to pay the expenses of the board and the committee and shall provide office space, staff assistance, and necessary supplies to the board and the committee.

**3.1(3)** Requests for information about the board or committee may be made by contacting the office as provided in rule 350—2.3(82GA, HF918, HF927).

**350—3.2(82GA, HF918, HF927) Organizational structure.** The Iowa power fund legislation, 2007 Iowa Acts, House File 918, establishes the board and the committee.

**3.2(1) Iowa power fund board.**

a. The board is comprised of 11 voting members and 7 nonvoting, ex officio members appointed as provided in 2007 Iowa Acts, House File 918, section 6.

b. Of the voting members of the board, the chairperson of the utilities board, the secretary of agriculture, and the directors of the department of economic development and the department of natural resources may, by written statement to the board, designate a representative and an alternate to participate in board deliberations and vote.

c. A majority of the voting members of the board shall constitute a quorum.

d. A majority of the total voting membership of the board shall be necessary to act in any matter within the jurisdiction of the board.

e. Board members may participate in discussions and cast votes via telephone or the Iowa communications network (ICN) or other video-conferencing technology.

f. The board shall annually elect from the voting membership a chairperson and vice chairperson during the first meeting in May.

g. The members appointed by the governor are appointed for three-year staggered terms. There is no statutory limitation to the number of terms a voting member may serve.

h. The duties of the board are as listed in 2007 Iowa Acts, House File 918, section 6(5).

i. The board receives recommendations from the committee regarding applications for proposed projects using moneys from the fund.

j. In performing its functions, the board may seek the expertise of other boards, committees, and agencies and other individuals and organizations as deemed appropriate by the board.

**3.2(2) Due diligence committee.**

a. The committee is comprised of seven members appointed as provided in 2007 Iowa Acts, House File 918, section 7.

b. A majority of the members of the committee shall constitute a quorum. A quorum shall be necessary to act on any matter within the jurisdiction of the committee.

c. The director shall chair and facilitate the committee.

d. Committee members may participate in discussions and cast votes via telephone or the ICN or other video-conferencing technology.

e. The committee reviews applications that come before the board for financial assistance from moneys in the fund.

f. The committee, after a thorough review, shall determine whether a proposed project using moneys from the fund is practical, economically feasible, and furthers the goals of the fund set forth in 2007 Iowa Acts, House File 918, section 9. The committee may recommend a proposal as written or on a conditional basis or may recommend that a proposal be rejected.

ENERGY INDEPENDENCE, OFFICE OF[350](cont'd)

**350—3.3(82GA, HF918, HF927) Board and committee procedures.**

**3.3(1)** Meetings and agendas. Meetings of the board and committee are generally held monthly. By notice of the regularly published meeting agenda, the board and committee may hold regular or special meetings at locations within the state. Meeting agendas are available from the office.

**3.3(2)** Meeting procedures.

a. Any interested party may attend and observe board and committee meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

b. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude any person who fails to comply with that order.

c. Open session and closed session proceedings shall be electronically recorded. Minutes of open meetings shall be available for viewing at the office or through the office's Web site.

**3.3(3)** Board committees. The board chairperson may appoint or dissolve board committees as deemed necessary to accomplish the work of the board.

**350—3.4(82GA, HF918, HF927) Conflicts of interest.**

**3.4(1)** Definition. A conflict of interest is defined as the member's having a significant employment relationship with an applicant, or being a member of the board of directors or stockholder of a corporate applicant, or having a financial relationship with an applicant, including but not limited to an investor, a contractor, a consultant, or a competitor, or an immediate family member of such a person. For purposes of this rule, "immediate family" means a member's spouse, children, grandchildren, and parents.

**3.4(2)** Procedures. As soon as a member of the board or committee becomes aware of a conflict of interest in a project for which applications are filed with the board or for which potential applications are discussed by the board or committee, the member shall follow these procedures:

a. If the conflict is known before a meeting, the member shall fully disclose the interest to the chairperson of the board in writing at least 24 hours before the meeting.

b. If the conflict is discovered during a meeting, the member shall orally inform the board, and the nature of the conflict shall be reported in writing to the chairperson of the board within 24 hours after the meeting.

c. The member who has the conflict shall not participate in discussion or vote on any issues concerned with the project.

These rules are intended to implement 2007 Iowa Acts, House Files 918 and 927.

CHAPTER 4

IOWA POWER FUND FINANCIAL ASSISTANCE

**350—4.1(82GA, HF918, HF927) Purpose.** The purposes of the Iowa power fund include:

1. Increasing the research, development, production, and use of biofuels and other sources of renewable energy;
2. Improving energy efficiency;
3. Reducing greenhouse gas emissions; and
4. Furthering the research, development, commercialization and distribution of technologies and practices to sustain the environment and develop business in this state.

Each individual proposal awarded a grant or loan need not meet all of these purposes, but the grants and loans awarded

by the board and taken as a whole shall be consistent with these purposes.

**350—4.2(82GA, HF918, HF927) Iowa power fund.** The fund includes appropriations made to the fund by the general assembly, other moneys available to or obtained or accepted from federal or private sources, interest earned, and repayments and recaptures of loans and grants.

**350—4.3(82GA, HF918, HF927) Office and board authority.** The fund is under the control of the office. The director shall coordinate the administration of the fund. The board shall approve, defer, or deny applications for financial assistance from moneys appropriated to the fund pursuant to 2007 Iowa Acts, House File 918, section 9.

**350—4.4(82GA, HF918, HF927) Allocation of power fund moneys.**

**4.4(1)** Moneys available in the fund are to be used to provide financial assistance to entities conducting business, research, or programs in Iowa:

a. To accelerate research and development, knowledge transfer, and technology innovation, and improve the economic competitiveness of efforts furthering the goals of the fund stated in rule 350—4.1(82GA, HF918, HF927).

b. To increase the demand for and educate the public about technologies and approaches furthering the goals of the fund stated in rule 350—4.1(82GA, HF918, HF927).

**4.4(2)** Appropriations are subject to actual receipt of moneys by the fund.

**4.4(3)** The office shall utilize up to 1 5/10 percent of the amount appropriated from the fund for a fiscal year for administrative costs.

**4.4(4)** Of the moneys appropriated to the office and deposited in the fund, \$2.5 million shall be allocated on an annual basis to the department of economic development for deposit into the workforce training and economic development funds of the community colleges. Of the funds so deposited into the workforce training and economic development funds of the community colleges, \$2.5 million shall be used each year in the development and expansion of energy industry areas and for the department's North American Industry Classification System for targeted industry areas. The department of economic development shall report annually to the board on use of these funds.

**350—4.5(82GA, HF918, HF927) Eligible applicants.** Entities conducting, proposing, or partnering to conduct business, research, or programs in Iowa are eligible to apply to the office for financial assistance from the Iowa power fund. Proposals must demonstrate potential for significant impact in Iowa. A single entity or group of entities may submit an application for assistance from the fund.

**350—4.6(82GA, HF918, HF927) Eligibility criteria for financial assistance.**

**4.6(1)** General criteria. Applicants must include documentation relating to the actual or potential development of the following:

a. Utilization of crops and products grown or produced in this state that maximize the value of crops used as feedstock in biomanufacturing products and as coproducts.

b. Reduction of greenhouse gas emissions and carbon sequestration.

c. Commercialization of technology and product development for sale in the national and international market.

d. Alternative and renewable energy and increased energy efficiency.

## ENERGY INDEPENDENCE, OFFICE OF[350](cont'd)

e. Private or federal matching funds.

**4.6(2) Research criteria.** In addition to including documentation related to the general criteria in subrule 4.6(1), applicants seeking funding for research must include information related to the following:

- a. The technical feasibility of the proposal.
- b. The extent to which the proposed research builds on already existing research.
- c. The extent to which the proposed research meets a market need and demonstrates viability for commercialization.

**4.6(3) Commercialization criteria.** In addition to including documentation related to the general criteria in subrule 4.6(1), applicants seeking funding for commercialization projects must include information related to the following:

- a. The extent to which the technology has been proven.
- b. The technology sought to be commercialized.
- c. The current scale-up status of the project.

**4.6(4) Education criteria.** In addition to including documentation related to the general criteria in subrule 4.6(1), applicants seeking funding for educational projects must include information related to the following:

- a. The target audience, including the estimated number of people targeted.
- b. An estimate of the energy savings possible or fossil fuel reductions achievable if the target audience implements the methods presented.

**4.6(5) Undesignated projects criteria.** In addition to including documentation related to the general criteria in subrule 4.6(1), applicants seeking funding for undesignated projects must include information that explains how the project meets the statutory goals of the fund.

**350—4.7(82GA, HF918, HF927) Forms of assistance.**

**4.7(1) Types of assistance.** Financial assistance from the fund may consist of, but is not limited to, loans, forgivable loans, grants, investments, loan guarantees, and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

**4.7(2) Eligible uses of funds.** The eligible uses of the funds awarded by the board may be limited at the board's discretion. Generally, funds awarded by the board may not be used to fund the purchase of land or buildings, and no more than 10 percent of the funds awarded per application may be used for administrative costs.

**350—4.8(82GA, HF918, HF927) Application process.**

**4.8(1) Preapplication.** To apply for moneys from the fund, an applicant shall submit a preapplication to the office in a form provided by the office on behalf of the board. The preapplication serves as an executive summary of the applicant's proposal. The director and committee shall review preapplications and request full applications for those projects that appear to meet the eligibility criteria and statutory goals of the fund.

**4.8(2) Full application.** An applicant requested to submit a full application shall submit such application to the office in a form provided by the office on behalf of the board. The committee reviews the full applications and any technical, scientific or financial review completed and makes recommendations to the board. The board reviews the applications and makes the final decision. The board shall have final authority to approve, defer, or deny such applications. The board, committee, or office may request additional information at any time and proceed with consideration of the application when that information is received.

**4.8(3) Technical, scientific or financial review.** The board or committee may require an applicant to obtain a technical,

scientific or financial review of a proposal at the applicant's expense. The review may be obtained from a reviewer recommended by the board or committee or may be obtained from a reviewer selected by the applicant and approved in advance by the board or committee. Only reviews from reviewers recommended by or approved by the board or committee will be accepted.

**4.8(4) Agency review.** The office may refer proposals to other state agencies for review as appropriate.

**4.8(5) Ongoing acceptance of applications.** Applications shall be accepted by the office on behalf of the board on an ongoing basis. Review times will vary due to the complexity and diversity of applications.

**4.8(6) Forms and directions.** Application forms and directions for completing the forms are available on line and from the office as provided in rule 360—2.3(82GA, HF918, HF927).

**350—4.9(82GA, HF918, HF927) Contents of full application.** A full application to request assistance from the fund shall include, but not be limited to, the following:

1. Documentation that the applicant meets the eligibility criteria stated in rules 350—4.5(82GA, HF918, HF927) and 350—4.6(82GA, HF918, HF927).

2. A description that explains how the applicant's project will promote one or more of the goals of the fund as set forth in rule 350—4.1(82GA, HF918, HF927).

3. A description of the proposed project, including all sources and uses of funding, the amount and type of funding requested, and an identification of the community or location for the project.

4. Information regarding benefits to the state of Iowa from the proposed project in terms of the state's return on investment in the project. A recipient of power fund moneys shall provide to the board on a periodic basis as determined by the board a report on the use and effectiveness of the moneys granted or loaned.

5. A business plan, schedule of work, or equivalent that describes the applicant's current operations and future plans.

6. If applicable, a description of the applicant's violations of law in the preceding five years including, but not limited to, worker safety statutes, rules, and regulations. The description must include violations of any federal or state environmental protection statute, regulation, or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the applicant shall provide an explanation of any mitigating circumstances and corrective action taken to achieve compliance. If requested by the office, the applicant shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings, and other information that would assist the office, the committee, and the board in understanding the nature of the violation.

7. A certification by the applicant that the information provided in the application is true and accurate to the best of the applicant's knowledge.

8. A release of information to permit the office, the committee, the board, and their respective attorneys and agents to reasonably evaluate the application.

9. Financial information to the extent requested by the board, including, if applicable, information about the applicant's owners, investors, and business structure.

**350—4.10(82GA, HF918, HF927) Selection criteria.** The board shall seek to maintain flexibility when making decisions to allocate moneys from the fund to specific proposals. In reviewing applications for financial assistance, the board

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and committee shall consider the extent to which the proposal is consistent with the energy independence plan as developed by the director in accordance with 2007 Iowa Acts, House File 918, section 4, and consistent with the statutory purposes of the fund as described in rule 350—4.1(82GA, HF918, HF927). In addition, the board and committee shall consider the following:

**4.10(1) Proposal categories.**

a. The board may allocate moneys from the fund annually to projects in any or all of the following categories:

- (1) Commercialization.
- (2) Research.
- (3) Education.
- (4) Undesignated.

b. The allocation of moneys by the board to proposals in these categories is discretionary and depends on factors including, but not limited to, the quality and quantity of the applications submitted.

**4.10(2) Financial assistance.**

a. The board will consider whether the applicant has available financial resources in addition to the fund to support the proposal financially. In assessing available financial resources, the board may:

- (1) Consider both private and public funds as available financial resources.
- (2) Recognize the contribution of in-kind resources.
- (3) Require a match of available financial resources for commercialization proposals.
- (4) Give weight to available financial resources for research, education, or other undesignated proposals.

b. The significance of the availability of financial resources may be weighed by the board in its discretion when allocating moneys from the fund for specific proposals.

**350—4.11(82GA, HF918, HF927) Contract administration.**

**4.11(1) Notice of award.** Applicants will be notified in writing of the board's decision, including any conditions and terms of approval.

**4.11(2) Contract required.** The board shall direct the office to prepare an agreement which includes, but is not limited to, a description of the project to be completed by the recipient; length of the project period; conditions to disbursement as approved by the board; a requirement for a report, to be made to the board on a periodic basis determined by the board, on the use and effectiveness of financial assistance from the fund; and the reimbursement requirements of the recipient or other penalties imposed on the recipient in the event the recipient does not meet the commitments set forth in the contract, in the documentation provided to establish eligibility, or in other specific repayment provisions ("claw-back" provisions) to be established on a project-by-project basis. Successful applicants shall execute an agreement within 120 days of the approval. Failure to do so may result in action by the board to revoke the award. The 120-day time limit may be extended by the board for good cause shown. No award is final until an agreement is signed by all parties.

**4.11(3) Contract amendments.** Any substantive change to a funded project will require a contract amendment approved by the office and, if required by subrule 4.11(4), approved by the committee or board. Substantive changes include, but are not limited to, contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries.

**4.11(4) Situations requiring committee approval.** The committee shall have the authority to act on behalf of the board and take final action on budget revision amendments

that would not substantially change the terms or conditions of the award or contract; on the discontinuance or suspension of collection efforts; and on negotiated settlements for projects that do not meet contract requirements. The committee may decide to take final action or to refer the matter to the full board for action.

**4.11(5) Intellectual property.** The director shall promote statewide utilization of the results of research, development, and commercialization activities funded in whole or in part by the fund. The director is authorized to negotiate provisions with applicants that address issues relating to income generated from patents, trademarks, licenses, or royalties expected to be produced as a result of moneys proposed to be expended from the fund. The director may seek assistance from appropriate state agencies and may seek outside expertise. An applicant shall not be prevented from protecting any previously developed intellectual property.

These rules are intended to implement 2007 Iowa Acts, House Files 918 and 927.

CHAPTER 51  
PUBLIC RECORDS AND  
FAIR INFORMATION PRACTICES

**350—51.1(17A,22) Definitions.** As used in this chapter:

"Agency" means the office of energy independence.

"Confidential record" in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" in these rules means the director of the office of energy independence or the director's designee.

"Open record" in these rules means a record other than a confidential record.

"Personally identifiable information" in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or a part of a "public record," as defined in Iowa Code section 22.1, which is owned by or in the physical possession of the agency.

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

**350—51.2(17A,22) Statement of policy.** The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

**350—51.3(17A,22) Requests for access to records.**

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**51.3(1)** Location of record. A request for access to a record should be directed to the Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

**51.3(2)** Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays.

**51.3(3)** Request for access to open records.

a. Requests for access to open records may be made in writing, in person, electronically, or by telephone.

b. Requests shall include the name, address, and telephone number and, if available, the E-mail address of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

c. For all requested records, the person making the request shall set forth all available information that would assist in locating the records.

**51.3(4)** Response to requests.

a. Timing. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. Advance requests to have records available on a certain date may be made by telephone or correspondence. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as is feasible. Records will be produced for inspection at the earliest date possible following the request. Records should be inspected within ten business days after notice is given that the records have been located and are available for inspection. After ten business days, the records will be returned to storage and additional costs may be imposed for having to produce them again.

b. Reasonable delay. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4).

c. Notice to requester. The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

d. Denial of access to records. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 350—51.4(17A,22) and other applicable provisions of law.

**51.3(5)** Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization. Individuals will not be given access to the area where the records are kept and will not be permitted to search the files.

**51.3(6)** Copying. A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

**51.3(7)** Fees.

a. When charged. The agency may charge fees in connection with the examination, search, retrieval, restoration, or copying of records. To the extent permitted by applicable provisions of law, the payment of fees may be waived in the case of small requests of ten or fewer copies when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying, faxing, and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester. Actual costs to fax a document may also be charged to the requester.

c. Search and supervisory fee. An hourly fee may be charged for actual office expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall prominently post in agency offices the hourly fee to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Computer-stored information. All costs (including staff time) for retrieval, restoration, and copying of information stored in electronic storage systems will be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

**350—51.4(17A,22) Access to confidential records.** Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 350—51.3(17A,22).

**51.4(1)** Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

**51.4(2)** Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**51.4(3)** Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or tele-

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phone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**51.4(4) Request denied.** When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

**51.4(5) Request granted.** When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

**350—51.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.** The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

**51.5(1) Persons who may request.** Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

**51.5(2) Request.** A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

**51.5(3) Failure to request.** Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public

inspection under Iowa Code section 22.7(3) (trade secrets), 22.7(6) (advantage to competitors), or 22.7(18) (communications not required by law, rule, procedure, or contract), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

**51.5(4) Timing of decision.** A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

**51.5(5) Request granted or deferred.** If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

**51.5(6) Request denied and opportunity to seek injunction.** If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

**350—51.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.**

Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

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**350—51.7(17A,22) Consent to disclosure by the subject of a confidential record.** To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

**350—51.8(17A,22) Notice to suppliers of information.** When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided the information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

These rules are intended to implement Iowa Code chapters 17A and 22.

#### CHAPTER 52

##### OFFICE PROCEDURE FOR RULE MAKING

**350—52.1(17A) Adoption by reference.** The office of energy independence hereby adopts the agency procedure for rule making segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "director".

2. In lieu of the words "(specify time period)", insert "one year".

3. In lieu of the words "(identify office and address)", insert "Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319".

4. In lieu of the words "(designate office and telephone number)", insert "the director at (515)281-0187".

5. In lieu of the words "(designate office)", insert "Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319".

6. In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert "rules mandated by federal law, including federal statutes or regulations establishing conditions for federal funding of federal programs where the board is not exercising any option under federal law".

7. In lieu of the words "(specify the office and address)", insert "Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319".

8. In lieu of the words "(agency head)", insert "director".

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

#### CHAPTER 53

##### PETITIONS FOR RULE MAKING

**350—53.1(17A) Adoption by reference.** The office of energy independence hereby adopts the petitions for rule making segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "office of energy independence".

2. In lieu of the words "(AGENCY NAME)", insert "OFFICE OF ENERGY INDEPENDENCE".

3. In lieu of the words "(designate official by full title and address)", insert "Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319".

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

#### CHAPTER 54

##### DECLARATORY ORDERS

**350—54.1(17A) Adoption by reference.** The office of energy independence hereby adopts the declaratory orders segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "office of energy independence".

2. In lieu of the words "(designate office)", insert "Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319".

3. In lieu of the words "(AGENCY NAME)", insert "OFFICE OF ENERGY INDEPENDENCE".

4. In lieu of the words "\_\_\_\_ days (15 or less)", insert "5 working days".

5. In lieu of the words "\_\_\_\_ days" in subrule 54.3(1), insert "15 days".

6. In lieu of the words "(designate official by full title and address)", insert "Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319".

7. In lieu of the words "(specify office and address)", insert "Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319".

8. In lieu of the words "(agency name)", insert "office of energy independence".

9. In lieu of the words "(designate agency head)", insert "director".

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

#### CHAPTER 55

##### UNIFORM WAIVER AND VARIANCE RULES

**350—55.1(17A,ExecOrd11) Applicability.** This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the office. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the office.

**55.1(1) Definition.** "Waiver" or "variance" means an office action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

**55.1(2) Authority.**

a. A waiver or variance from rules adopted by the office may be granted in accordance with this chapter if (1) the of-

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office has authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which waiver or variance is requested.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

**350—55.2(17A,ExecOrd11) Office discretion.** The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the office upon consideration of all relevant factors.

**55.2(1) Criteria for waiver or variance.** The office may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the office finds each of the following:

- a. Application of the rule to the person at issue would result in hardship or injustice to that person; and
- b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and
- c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and
- d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether waiver or variance should be granted, the office shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the office shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees, and constituents.

**55.2(2) Special waiver or variance rules not precluded.** These uniform waiver and variance rules shall not preclude the office from granting waivers or variances in other contexts or on the basis of other standards if a statute or other office rule authorizes the office to do so, and the office deems it appropriate to do so.

**350—55.3(17A,ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.**

**55.3(1) Application.** All petitions for waiver or variance must be submitted in writing to the Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

**55.3(2) Content of petition.** A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver or variance is requested;
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend;
- c. The relevant facts that the petitioner believes would justify a waiver or variance;
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement

of reasons that the petitioner believes will justify a waiver or variance;

e. A history of any prior contacts between the office and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years;

f. Any information known to the requester regarding the office's treatment of similar cases;

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver or variance;

h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition;

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

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

**55.3(3) Burden of persuasion.** When a petition is filed for a waiver or variance from an office rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the office should exercise its discretion to grant the petitioner a waiver or variance.

**350—55.4(17A,ExecOrd11) Notice.** The office shall acknowledge a petition upon receipt. The office shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the office may give notice to other persons. To accomplish this notice provision, the office may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the office attesting that notice has been provided.

**350—55.5(17A,ExecOrd11) Office responsibilities regarding petition for waiver or variance.**

**55.5(1) Additional information.** Prior to issuing an order granting or denying a waiver or variance, the office may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the office may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director/board, the director's/board's designee, a committee of the board, or a quorum of the board.

**55.5(2) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of a rule filed within a contested case; (b) when the office so provides by rule or order; or (c) when a statute so requires.

**55.5(3) Ruling.** An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**55.5(4) Conditions.** The office may condition the granting of the waiver or variance on such reasonable conditions



ENERGY INDEPENDENCE, OFFICE OF[350](cont'd)

3. All petitions for waiver or variance must be submitted in writing to the Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and Iowa Code chapter 17A.

## ARC 6412B

### HUMAN SERVICES DEPARTMENT[441]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 514I.5(8), the Department of Human Services proposes to amend Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Iowa Administrative Code.

The proposed amendments change the rules to reflect current practice and are intended to make the rules more clear. The amendments:

- Clarify the definition of “enrollee” which is routinely used in program policies.
- Clarify how losses from a self-employment enterprise are handled in the eligibility determination.
- Clarify the family composition policy. When counting the children in the family, only siblings under the age of 19 are counted in determining family size. When a child who is emancipated due to marriage lives with parents or siblings, the emancipated child and any spouse or children of the emancipated child will be considered a separate family.
- Clarify when families may choose to voluntarily exclude some of their children from the HAWK-I family size.
- Clarify that temporary absence policies apply to parents as well as children when determining family size.
- Clarify the circumstances under which a child voluntarily excluded from the Medicaid family size may be determined eligible for HAWK-I.
- Incorporate a clarification received from the Centers for Medicare and Medicaid Services that if a state contributes \$10 or less toward the cost of health insurance coverage for the dependents of a state employee, the employee’s children are not barred from participating in the state’s child health insurance program if otherwise eligible.
- Clarify that an application is considered filed if it is received by either the third-party administrator or at a Department office.
- Clarify the time limit for making a HAWK-I eligibility determination on a HAWK-I application that was referred to and denied by Medicaid. The HAWK-I eligibility determination must be made within ten working days from the date of the Medicaid denial unless additional verification is needed.
- Clarify the order in which children would be placed on a waiting list, should waiting lists be necessary, and remove a reference to an obsolete form.

- Clarify and update the process that Medicaid income maintenance workers follow when making referrals to HAWK-I on denied Medicaid applications and canceled Medicaid cases by limiting the amount of information that must be transferred and eliminating the deadlines.

- Clarify that a request for an extension of the initial premium due date must be made no later than the original due date, and that an untimely initial premium payment will be the basis for denial of the application in the same way that untimely ongoing premium payments are the basis of cancellation of the HAWK-I case.

- Give participating health plans the option of providing the specified material in an electronic format, instead of in a hard-copy format.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before December 12, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code chapter 514I.

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

The following amendments are proposed.

ITEM 1. Amend rule **441—86.1(514I)**, definition of “enrollee,” as follows:

“Enrollee” shall mean a ~~HAWK-I recipient~~ *child who has been determined eligible for the program and who has been enrolled with a participating health plan.*

ITEM 2. Amend subrule **86.2(2)**, paragraph “a,” subparagraph (1), numbered paragraph “2,” introductory paragraph, as follows:

2. Earned income from self-employment. Earned income from self-employment means the net profit determined by comparing gross income with the allowable costs of producing the income. The allowable costs of producing self-employment income shall be determined by the costs allowed for income tax purposes. Additionally, the cost of depreciation of capital assets identified for income tax purposes shall be allowed as a cost of doing business for self-employed persons. *Losses from a self-employment enterprise may not be used to offset income from any other source.* A person is considered self-employed when any of the following conditions exist. The person:

ITEM 3. Amend subrule **86.2(3)**, paragraph “a,” as follows:

a. Children. A child under the age of 19 and any siblings *under the age of 19* of whole or half blood or adoptive shall be considered together unless the child is emancipated due to marriage, in which case, the emancipated child is not included in the family size unless the marriage has been annulled. Emancipated children, their spouses, and children who live ~~together~~ *with parents or siblings of the emancipated*

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*child* shall be considered as a separate family when establishing eligibility for the HAWK-I program.

ITEM 4. Amend subrule **86.2(3)**, paragraph “c,” as follows:

c. Persons who may be excluded when determining family size. ~~If including a child is ineligible for coverage under the HAWK-I program because the child has insurance or is on Medicaid in the family size causes siblings to be ineligible, the family may choose not to count the child in the family size if the child also has income. A child for whom the family chooses not to apply will not be counted in the family size.~~ However, this rule shall not apply when the child is receiving Supplemental Security Income (SSI) benefits *because SSI recipients are not counted in determining family size for the purposes of HAWK-I eligibility.*

ITEM 5. Amend subrule **86.2(3)**, paragraph “d,” as follows:

d. Temporary absence from the home. The following policies shall be applied to ~~an otherwise eligible child under the age of 19~~ *any person who would be counted in the family size in accordance with paragraphs “a” and “b”* who is temporarily absent from the home.

(1) When a ~~child person~~ *person* is absent from the home to secure education or training (e.g., the ~~child person~~ *person* is attending college), the ~~child person~~ *person* shall be included when establishing the size of the family at home *and, if otherwise eligible, shall be covered under the program.*

(2) When a ~~child person~~ *person* is absent from the home to secure medical care, the ~~child person~~ *person* shall be included when establishing the size of the family at home *and, if otherwise eligible, shall be covered under the program* when the reason for the absence is expected to last less than 12 months.

(3) When ~~the child a person~~ *a person* is absent from the home because the ~~child person~~ *person* is an inmate in a nonmedical public institution (e.g., a penal institution) in accordance with the provisions of subrule 86.2(9), the ~~child person~~ *person* shall be included when establishing the size of the family at home if the absence is expected to be less than three months. *However, when the person is a child under the age of 19, coverage under the program shall not be provided pursuant to subrule 86.2(10) until the child returns to the home.*

(4) No change.

(5) When a child is absent from the home for a vacation or ~~visitation of visit to~~ *visit to* an absent parent, for example, the child shall be included in establishing the size of the family at home *and, if otherwise eligible, shall be covered under the program* if the absence ~~does not exceed~~ *is expected to be less than* three months.

ITEM 6. Amend subrule **86.2(5)**, paragraph “b,” as follows:

b. Children who are excluded from the *Medicaid* household due to ~~financial reasons~~ *the income or resources of the child can* may participate in the HAWK-I program if otherwise eligible.

ITEM 7. Amend subrule 86.2(8) as follows:

**86.2(8)** Dependents of state of Iowa employees. The child shall not be eligible for the HAWK-I program if the child is eligible for health insurance coverage as a dependent of a state of Iowa employee *unless the state contributes only a nominal amount toward the cost of dependent coverage. “Nominal amount” shall mean \$10 or less per month.*

ITEM 8. Amend subrule 86.3(4), introductory paragraph, as follows:

**86.3(4)** Date and method of filing. The application is considered filed on the date an identifiable application is received by the third-party administrator *or the department*. An identifiable application is an application containing a legible name, address, and signature.

ITEM 9. Amend subrule 86.3(8) as follows:

**86.3(8)** Time limit for decision. The third-party administrator shall make a decision regarding the applicant’s eligibility to participate in the HAWK-I program within ten working days from the date of receiving the completed application and all necessary information and verification unless the application cannot be processed within the period for a reason that is beyond the control of the third-party administrator. EXCEPTION: When the application is referred for a Medicaid eligibility determination and ~~the application~~ *Medicaid eligibility* is denied, the third-party administrator shall determine HAWK-I eligibility no later than ten working days from the date of the notice of Medicaid denial *unless additional verification is needed.*

ITEM 10. Amend subrule **86.3(10)**, paragraph “c,” as follows:

c. The third-party administrator shall enter applicants on the waiting list on the basis of the date ~~a completed Form 470-3564~~ *an identifiable application form specified in subrule 86.3(2)* is date-stamped by the third-party administrator. *An identifiable application is an application containing a legible name, address, and signature.*

(1) In the event that more than one application is received on the same day, the third-party administrator shall enter applicants on the waiting list on the basis of the day of the month of the oldest child’s birthday, the lowest number being first on the list.

(2) The third-party administrator shall decide any subsequent ties by the month of birth of the oldest child, January being month one and the lowest number.

ITEM 11. Amend subrule **86.4(3)** as follows:

Rescind paragraphs “a” and “b” and adopt the following new paragraphs in lieu thereof:

a. The department worker shall submit an electronic referral to the HAWK-I program or complete Form 470-3563, Referral to HAWK-I, and send the form and a copy of the Medicaid notice of decision to the third-party administrator.

b. The third-party administrator shall date-stamp Form 470-3563 with the date the completed form is received.

Amend paragraph “d” as follows:

d. The period for processing the ~~application~~ *referral* begins with the day on which:

(1) Form 470-3563, Referral to HAWK-I, is date-stamped as ~~having been~~ received by the third-party administrator; or

(2) ~~with the day on which the~~ *The* third-party administrator receives the electronic referral file.

ITEM 12. Amend subrule **86.4(4)** as follows:

Amend the introductory paragraph as follows:

**86.4(4)** Medicaid recipient *member* becomes ineligible. If a child becomes ineligible for Medicaid under the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), or is voluntarily excluded from the Medicaid eligible group under the provisions of rule 441—75.59(249A) and meets the criteria specified at subrule 86.2(5), *the department shall make a referral shall be made to the third-party administrator for an eligibility determination under the HAWK-I program as follows:*

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Rescind paragraphs “a” through “d” and adopt the following **new** paragraphs in lieu thereof:

a. The department worker shall submit an electronic referral to the HAWK-I program or complete Form 470-3563, Referral to HAWK-I, and send the form and a copy of the Medicaid notice of decision to the third-party administrator.

b. The third-party administrator shall:

(1) Date-stamp Form 470-3563 with the date the completed form is received;

(2) Notify the family of the referral; and

(3) Proceed with an eligibility determination under the HAWK-I program.

c. The period for processing the referral begins with the day on which:

(1) Form 470-3563, Referral to HAWK-I, is date-stamped as received by the third-party administrator; or

(2) The third-party administrator receives the electronic referral file.

ITEM 13. Amend subrule **86.8(3)**, paragraph “a,” as follows:

Amend subparagraph (2) as follows:

(2) At the request of the family, the initial premium due date may be extended once for no more than ten calendar days. *The request must be made on or before the due date.*

Adopt **new** subparagraph (4) as follows:

(4) An application shall be denied when the third-party administrator receives a premium postmarked after the due date.

ITEM 14. Amend subrule **86.15(6)**, paragraph “c,” introductory paragraph, as follows:

c. At a minimum, participating health plans must provide the following ~~written~~ material *in writing or electronically*:

## ARC 6409B

### 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 147.53, the Professional Licensure Division hereby gives Notice of Intended Action to adopt new Chapter 4, “Board Administrative Processes,” and Chapter 5, “Fees,” Iowa Administrative Code.

The proposed amendment adopts two new chapters incorporating existing language from administrative rules common to the 19 professional boards in the Professional Licensure Division. The reasons for consolidating these rules into common chapters are to reduce the duplication of administrative rules in the Division, to streamline the process when changes are made to rules that affect all 19 professional boards, and to incorporate provisions of 2007 Iowa Acts, Senate File 74, that rename and redesignate the professional boards.

Any interested person may make written comments on the proposed amendment no later than December 11, 2007, 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](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on December 11, 2007, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. It is requested that, if possible, oral presentations also be shared in writing; however, this is not required. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 17A, 147 and 272C and section 147.13 as amended by 2007 Iowa Acts, Senate File 74, section 32, and 2007 Iowa Acts, Senate File 74.

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

The following amendment is proposed.

Adopt **new** 645—Chapters 4 and 5 as follows:

#### CHAPTER 4

#### BOARD ADMINISTRATIVE PROCESSES

#### 645—4.1(17A) Definitions.

“Board” means the professional licensing board of any of the following: athletic training, barbering, behavioral science, chiropractic, cosmetology arts and sciences, dietetics, hearing aid dispensers, massage therapy, mortuary science, nursing home administrators, optometry, physical and occupational therapy, physician assistants, podiatry, psychology, respiratory care, sign language interpreters and transliterators, social work, and speech pathology and audiology.

“Board office” means the office of the administrative staff of each professional licensing board.

“Department” means the department of public health.

“Disciplinary proceeding” means any proceeding under the authority of each board pursuant to which licensee discipline may be imposed.

“License” means a license to practice the specific practice governed by one of the boards defined in this chapter.

“Licensee” means a person licensed to practice the specific practice governed by one of the boards defined in this chapter.

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

**645—4.2(17A) Purpose of board.** The purpose of each professional licensing board is to administer and enforce the provisions of Iowa Code chapters 17A, 21, 147, 272C and the practice-specific provisions in Iowa Code chapters 148A, 148B, 148C, 149, 151, 152A, 152B, 152C, 152D, 154, 154A, 154B, 154C, 154D, 154E, 155, 156, 157 and 158 applicable to each board. The mission of each professional licensing board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and rules of each board. Responsibilities of each professional licensing board include, but are not limited to:

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**4.2(1)** Licensing qualified applicants by examination, renewal, endorsement, and reciprocity.

**4.2(2)** Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

**4.2(3)** Imposing discipline on licensees as provided by statute or rule.

**645—4.3(17A,147,272C) Organization of board and proceedings.**

**4.3(1)** Each professional licensing board is composed of members appointed by the governor and confirmed by the senate as defined in Iowa Code chapter 147.

**4.3(2)** Each board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after April 30 of each year.

**4.3(3)** Each board shall hold at least one meeting annually.

**4.3(4)** A majority of the members of each board shall constitute a quorum.

**4.3(5)** Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings shall be conducted in accordance with Robert's Rules of Order, Revised.

**4.3(6)** The professional licensure division shall furnish each board with the necessary facilities and employees to perform the duties required by this chapter and shall be reimbursed for all costs incurred from funds collected from licensure-related fees.

**4.3(7)** Each professional licensing board has the authority to:

a. Develop and implement continuing education rules to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.

d. Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all discussion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

e. Investigate alleged violations of statutes or rules that relate to the practice of licensees upon receipt of a complaint or upon the board's own initiation. The investigation will be based on information or evidence received by the board.

f. Initiate and impose licensee discipline.

g. Monitor licenses that are restricted by a board order.

h. Establish and register peer reviewers.

i. Refer complaints to one or more registered peer reviewers for investigation and review. The peer reviewers will review cases and recommend appropriate action. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction.

j. Perform any other functions authorized by a provision of law.

**645—4.4(17A) Official communications.**

**4.4(1)** All official communications, including submissions and requests, may be addressed to the specific professional licensing board, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**4.4(2)** Notice of change of address. Each licensee shall notify the board of a change of the licensee's current mailing address within 30 days after the change of address occurs.

**4.4(3)** Notice of change of name. Each licensee shall notify the board in writing of a change of name within 30 days after changing the name.

**645—4.5(17A) Office hours.** The board office is open for public business from 8 a.m. to 4:30 p.m., Monday through Friday of each week, except holidays.

**645—4.6(21) Public meetings.** Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office.

**4.6(1)** At every regularly scheduled board meeting, time will be designated for public comment. No more than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise.

**4.6(2)** Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

**4.6(3)** The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

**4.6(4)** Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

**645—4.7(147) Licensure by reciprocal agreement.** The board may enter into a reciprocal agreement with the District of Columbia or any state, territory, province or foreign country with equal or similar requirements for licensure of the specific professional board. The applicant shall take the examination required by the board.

**645—4.8(147) Duplicate certificate or wallet card.**

**4.8(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.

**4.8(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 645—Chapter 5.

**4.8(3)** If the board receives a completed application for a 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—4.9(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 645—Chapter 5.

**645—4.10(17A,147,272C) License denial.**

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**4.10(1)** When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

**4.10(2)** An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

**4.10(3)** If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

**645—4.11(152D,272C) Audit of continuing education report.** After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

**4.11(1)** The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

**4.11(2)** The licensee shall provide the following information to the board for auditing purposes:

a. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor. These documents must contain the course date, title, contact hours, sponsor and licensee's name.

b. As requested, the licensee must provide to the board additional information to ensure compliance with continuing education requirements within 30 days of the date of the letter requesting the additional information. Extension of time may be granted on an individual basis.

**4.11(3)** For auditing purposes, all licensees must retain the information identified in paragraph 4.11(2)"a" for two years after the biennium has ended.

**4.11(4)** Information identified in paragraph 4.11(2)"a" must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

**4.11(5)** If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

**4.11(6)** Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

**645—4.12(152D,272C) Automatic exemption.** A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or

2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or

3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

**645—4.13(272C) Grounds for disciplinary action.** The board may take formal disciplinary action on the following grounds:

1. Failure to cooperate with a board audit.

2. Failure to meet the continuing education requirement for licensure.

3. Falsification of information on the license renewal form.

4. Falsification of continuing education information.

**645—4.14(272C) Continuing education exemption for disability or illness.** A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

**4.14(1)** The board may grant an extension of time to fulfill the continuing education requirement.

**4.14(2)** The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

**4.14(3)** The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

**645—4.15(152D) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening or evaluation, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

**4.15(1) Content of order.** A board order for a mental, physical, or clinical competency examination shall include the following items:

a. A description of the type of examination to which the licensee must submit.

b. The name and address of the examiner or of the examination or treatment facility that the board has identified to perform the examination on the licensee.

c. The time period in which the licensee must schedule the required examination.

d. The amount of time within which the licensee must complete the examination.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the examination or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the examination.

**4.15(2) Alternatives.** Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

**4.15(3) Objection to order.** A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

**4.15(4) Closed hearing.** Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

**4.15(5) Order and reports confidential.** An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

**4.15(6) Admissibility.** In the event the licensee submits to examination and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

**4.15(7) Failure to submit.** Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 152D and 272C.

#### CHAPTER 5 FEES

**645—5.1(147,152D) Athletic training license fees.** All fees are nonrefundable.

**5.1(1)** License fee for license to practice athletic training is \$120.

**5.1(2)** Temporary licensure fee for license to practice athletic training is \$120.

**5.1(3)** Biennial license renewal fee for each biennium is \$120.

**5.1(4)** Late fee for failure to renew before expiration is \$60.

**5.1(5)** Reactivation fee is \$180.

**5.1(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.1(7)** Verification of license fee is \$20.

**5.1(8)** Returned check fee is \$25.

**5.1(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapters 17A, 147, 152D and 272C.

**645—5.2(147,158) Barbering license fees.** All fees are nonrefundable.

**5.2(1)** License fee for an initial license to practice barbering, license by endorsement, license by reciprocity or an instructor's license is \$120.

**5.2(2)** Biennial renewal fee for a barber license or barber instructor license is \$60.

**5.2(3)** Temporary permit fee is \$12.

**5.2(4)** Examination fee is \$60.

**5.2(5)** Demonstrator permit fee is \$45 for the first day and \$12 for each day thereafter for which the permit is valid.

**5.2(6)** Barber school license fee is \$600.

**5.2(7)** Barber school annual renewal fee is \$300.

**5.2(8)** Barbershop license fee is \$72.

**5.2(9)** Biennial renewal fee for a barbershop license is \$72.

**5.2(10)** Late fee for failure to renew before expiration is \$60.

**5.2(11)** Reactivation fee for a barber license is \$120.

**5.2(12)** Reactivation fee for a barbershop license is \$132.

**5.2(13)** Reactivation fee for a barber school license is \$360.

**5.2(14)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.2(15)** Verification of license fee is \$20.

**5.2(16)** Returned check fee is \$25.

**5.2(17)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.80 and Iowa Code chapter 158.

**645—5.3(147,154D) Behavioral science license fees.** All fees are nonrefundable.

**5.3(1)** License fee for license to practice marital and family therapy or mental health counseling is \$120.

**5.3(2)** Biennial license renewal fee for each biennium is \$120.

**5.3(3)** Late fee for failure to renew before expiration is \$60.

**5.3(4)** Reactivation fee is \$180.

**5.3(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.3(6)** Verification of license fee is \$20.

**5.3(7)** Returned check fee is \$25.

**5.3(8)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 154D and 272C.

**645—5.4(151) Chiropractic license fees.** All fees are nonrefundable.

**5.4(1)** License fee for license to practice chiropractic is \$270.

**5.4(2)** Fee for issuance of annual temporary certificate is \$120.

**5.4(3)** Biennial license renewal fee is \$120.

**5.4(4)** Late fee for failure to renew before the expiration date is \$60.

**5.4(5)** Reactivation fee is \$180.

**5.4(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.4(7)** Fee for verification of license is \$20.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**5.4(8)** Returned check fee is \$25.

**5.4(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapters 17A, 151 and 272C.

**645—5.5(147,157) Cosmetology arts and sciences license fees.** All fees are nonrefundable.

**5.5(1)** License fee for license to practice cosmetology arts and sciences, license by endorsement, license by reciprocity, or an instructor's license is \$60.

**5.5(2)** Biennial license renewal fee for each license for each biennium is \$60.

**5.5(3)** Late fee for failure to renew before expiration is \$60.

**5.5(4)** Reactivation fee for applicants licensed to practice cosmetology is \$120; for salons, \$144; and for schools, \$330.

**5.5(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.5(6)** Fee for verification of license is \$20.

**5.5(7)** Returned check fee is \$25.

**5.5(8)** Disciplinary hearing fee is a maximum of \$75.

**5.5(9)** Temporary permit fee is \$35.

**5.5(10)** Written practical and theory examination fee is \$84.

**5.5(11)** Fee for retaking the written practical and theory examination is \$84.

**5.5(12)** Iowa law (jurisprudence) examination fee is \$36.

**5.5(13)** Fee for retaking the Iowa law (jurisprudence) examination is \$36.

**5.5(14)** Fee for license to conduct a school teaching cosmetology arts and sciences is \$600.

**5.5(15)** Fee for renewal of a school license is \$270 annually.

**5.5(16)** Salon license fee is \$84.

**5.5(17)** Biennial license renewal fee for each salon license for each biennium is \$84.

**5.5(18)** Demonstrator and not-for-profit temporary permit fee is \$42 for the first day and \$12 for each day thereafter that the permit is valid.

**5.5(19)** An initial fee or a reactivation fee for certification to administer microdermabrasion or utilize a certified laser product or an intense pulsed light (IPL) device is \$25 for each type of procedure or certified laser product or IPL device.

**5.5(20)** An initial fee or a reactivation fee for certification of cosmetologists to administer chemical peels is \$25.

This rule is intended to implement Iowa Code section 147.80 and chapter 157.

**645—5.6(147,152A) Dietetics license fees.** All fees are nonrefundable.

**5.6(1)** License fee for license to practice dietetics, license by endorsement, or license by reciprocity is \$120.

**5.6(2)** Biennial license renewal fee for each biennium is \$120.

**5.6(3)** Late fee for failure to renew before expiration is \$60.

**5.6(4)** Reactivation fee is \$180.

**5.6(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.6(6)** Verification of license fee is \$20.

**5.6(7)** Returned check fee is \$25.

**5.6(8)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 152A and 272C.

**645—5.7(147,154A) Hearing aid dispensers license fees.** All fees are nonrefundable.

**5.7(1)** Application fee for a license to practice by examination, endorsement, or reciprocity is \$156.

**5.7(2)** Examination fee (check or money order made payable to the International Hearing Society) is \$95.

**5.7(3)** Renewal of license fee is \$60.

**5.7(4)** Temporary permit fee is \$42.

**5.7(5)** Late fee is \$60.

**5.7(6)** Reactivation fee is \$120.

**5.7(7)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.7(8)** Verification of license fee is \$20.

**5.7(9)** Returned check fee is \$25.

**5.7(10)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapter 154A.

**645—5.8(147) Massage therapy license fees.** All fees are nonrefundable.

**5.8(1)** License fee for license to practice massage therapy is \$120.

**5.8(2)** Biennial license renewal fee for each biennium is \$60.

**5.8(3)** Temporary license fee for up to one year is \$120.

**5.8(4)** Late fee for failure to renew before expiration is \$60.

**5.8(5)** Reactivation fee is \$120.

**5.8(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.8(7)** Verification of license fee is \$20.

**5.8(8)** Returned check fee is \$25.

**5.8(9)** Disciplinary hearing fee is a maximum of \$75.

**5.8(10)** Initial application fee for approval of massage therapy education curriculum is \$120.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

**645—5.9(147,156) Mortuary science license fees.** All fees are nonrefundable.

**5.9(1)** License fee for license to practice funeral directing is \$120.

**5.9(2)** Biennial funeral director's license renewal fee for each biennium is \$120.

**5.9(3)** Late fee for failure to renew before expiration is \$60.

**5.9(4)** Reactivation fee for a funeral director is \$180 and for a funeral establishment or cremation establishment is \$150.

**5.9(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.9(6)** Verification of license fee is \$20.

**5.9(7)** Returned check fee is \$25.

**5.9(8)** Disciplinary hearing fee is a maximum of \$75.

**5.9(9)** Funeral establishment or cremation establishment fee is \$90.

**5.9(10)** Three-year renewal fee of funeral establishment or cremation establishment is \$90.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 156 and 272C.

**645—5.10(147,155) Nursing home administrators license fees.** All fees are nonrefundable.

**5.10(1)** License fee for license to practice nursing home administration is \$120.

**5.10(2)** Biennial license renewal fee for each license for each biennium is \$60.

**5.10(3)** Late fee for failure to renew before expiration is \$60.

**5.10(4)** Reactivation fee is \$120.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**5.10(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.10(6)** Verification of license fee is \$20.

**5.10(7)** Returned check fee is \$25.

**5.10(8)** Disciplinary hearing fee is a maximum of \$75.

**5.10(9)** Provisional license fee is \$120.

This rule is intended to implement Iowa Code section 147.80 and Iowa Code chapter 155.

**645—5.11(147,148B) Occupational therapy license fees.** All fees are nonrefundable.

**5.11(1)** License fee for an OT or OTA license to practice occupational therapy is \$120.

**5.11(2)** Biennial license renewal fee to practice occupational therapy is \$60.

**5.11(3)** Biennial license renewal fee for an occupational therapy assistant is \$60.

**5.11(4)** Late fee for failure to renew before expiration is \$60.

**5.11(5)** Reactivation fee is \$120.

**5.11(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.11(7)** Verification of license fee is \$20.

**5.11(8)** Returned check fee is \$25.

**5.11(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148B and 272C.

**645—5.12(147,154) Optometry license fees.** All fees are nonrefundable.

**5.12(1)** License fee for license to practice optometry, license by endorsement, or license by reciprocity is \$300.

**5.12(2)** Biennial license renewal fee for each biennium is \$144.

**5.12(3)** Late fee for failure to renew before expiration date is \$60.

**5.12(4)** Reactivation fee is \$204.

**5.12(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.12(6)** Verification of license fee is \$20.

**5.12(7)** Returned check fee is \$25.

**5.12(8)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapters 17A, 147, 154 and 272C.

**645—5.13(147,148A) Physical therapy license fees.** All fees are nonrefundable.

**5.13(1)** License fee for license to practice physical therapy or as a physical therapist assistant is \$120.

**5.13(2)** Biennial license renewal fee for a physical therapist is \$60.

**5.13(3)** Biennial license renewal fee for a physical therapist assistant is \$60.

**5.13(4)** Late fee for failure to renew before expiration is \$60.

**5.13(5)** Reactivation fee is \$120.

**5.13(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.13(7)** Verification of license fee is \$20.

**5.13(8)** Returned check fee is \$25.

**5.13(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148A and 272C.

**645—5.14(148C) Physician assistants license fees.** All fees are nonrefundable.

**5.14(1)** Application fee for a license is \$120.

**5.14(2)** Fee for a temporary license is \$120.

**5.14(3)** Renewal of license fee is \$120.

**5.14(4)** Late fee for failure to renew before expiration is \$60.

**5.14(5)** Reactivation fee is \$180.

**5.14(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.14(7)** Fee for verification of license is \$20.

**5.14(8)** Returned check fee is \$25.

**5.14(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148C and 272C.

**645—5.15(147,149) Podiatry license fees.** All fees are non-refundable.

**5.15(1)** License fee for license to practice podiatry, license by endorsement, license by reciprocity or temporary license is \$120.

**5.15(2)** Biennial license renewal fee is \$168 for each biennium.

**5.15(3)** Late fee for failure to renew before expiration is \$60.

**5.15(4)** Reactivation fee is \$228.

**5.15(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.15(6)** Verification of license fee is \$20.

**5.15(7)** Returned check fee is \$25.

**5.15(8)** Disciplinary hearing fee is a maximum of \$75.

**5.15(9)** Temporary license renewal fee is \$84 per year.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 149 and 272C.

**645—5.16(147,154B) Psychology license fees.** All fees are nonrefundable.

**5.16(1)** License fee for license to practice psychology is \$120.

**5.16(2)** Biennial license renewal fee is \$170.

**5.16(3)** Late fee for failure to renew before expiration is \$60.

**5.16(4)** Reactivation fee is \$230.

**5.16(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.16(6)** Verification of license fee is \$20.

**5.16(7)** Returned check fee is \$25.

**5.16(8)** Disciplinary hearing fee is a maximum of \$75.

**5.16(9)** Processing fee for exemption to licensure is \$60.

**5.16(10)** Certification fee for a health service provider is \$60.

**5.16(11)** Biennial renewal fee for certification as a certified health service provider in psychology is \$60.

This rule is intended to implement Iowa Code section 147.80 and chapters 17A, 154B and 272C.

**645—5.17(147,152B) Respiratory care license fees.** All fees are nonrefundable.

**5.17(1)** Initial or endorsement license fee to practice respiratory care is \$120.

**5.17(2)** Biennial license renewal fee for each biennium is \$60.

**5.17(3)** Late fee for failure to renew before expiration is \$60.

**5.17(4)** Reactivation fee is \$120.

**5.17(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.17(6)** Verification of license fee is \$20.

**5.17(7)** Returned check fee is \$25.

**5.17(8)** Disciplinary hearing fee is a maximum of \$75.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 152B and 272C.

**645—5.18(147,154E) Sign language interpreters and transliterators license fees.** All fees are nonrefundable.

**5.18(1)** License fee for license to practice interpreting or transliterating is \$120.

**5.18(2)** License fee for temporary license to practice interpreting or transliterating is \$120.

**5.18(3)** Biennial license renewal fee for each biennium is \$120.

**5.18(4)** Late fee for failure to renew before expiration is \$60.

**5.18(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.18(6)** Verification of license fee is \$20.

**5.18(7)** Returned check fee is \$25.

**5.18(8)** Disciplinary hearing fee is a maximum of \$75.

**5.18(9)** Reactivation fee is \$180.

This rule is intended to implement Iowa Code chapters 17A, 147, 154E and 272C.

**645—5.19(147,154C) Social work license fees.** All fees are nonrefundable.

**5.19(1)** License fee for license to practice social work is \$120.

**5.19(2)** Biennial license renewal fee for a license at the bachelor's level is \$72; at the master's level, \$120; and independent level, \$144.

**5.19(3)** Late fee for failure to renew before expiration is \$60.

**5.19(4)** Reactivation fee for the bachelor's level is \$132; for the master's level, \$180; and independent level, \$204.

**5.19(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.19(6)** Verification of license fee is \$20.

**5.19(7)** Returned check fee is \$25.

**5.19(8)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.80 and chapters 17A, 154C and 272C.

**645—5.20(147) Speech pathology and audiology license fees.** All fees are nonrefundable.

**5.20(1)** License fee for license to practice speech pathology or audiology, temporary clinical license, license by endorsement, or license by reciprocity is \$120.

**5.20(2)** Biennial license renewal fee for each biennium is \$96.

**5.20(3)** Late fee for failure to renew before expiration is \$60.

**5.20(4)** Reactivation fee is \$156.

**5.20(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.20(6)** Verification of license fee is \$20.

**5.20(7)** Returned check fee is \$25.

**5.20(8)** Disciplinary hearing fee is a maximum of \$75.

**5.20(9)** Temporary clinical license renewal fee is \$60.

**5.20(10)** Temporary permit fee is \$30.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

**ARC 6427B****PUBLIC HEALTH  
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135I.6, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 15, "Swimming Pools and Spas," Iowa Administrative Code.

This amendment adds the authority for the department to withhold or revoke the registration of a swimming pool.

The proposed amendment was distributed among interested parties, including public health agencies, municipal swimming pool operators, motel/hotel owner organizations, pool builders, engineers, and architects in October 2007.

Any interested person may make written suggestions or comments on this amendment on or before December 11, 2007. Written materials should be directed to Michael Magnant, Iowa Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-4529; E-mail [mmagnant@idph.state.ia.us](mailto:mmagnant@idph.state.ia.us).

There will be a public hearing on December 11, 2007, at 1 p.m. in Room 518, Lucas State Office Building, 321 East 12th Street, Des Moines, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Public Health and advise of specific needs.

This amendment is intended to implement Iowa Code chapter 135I.

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

The following amendment is proposed.

Amend subrule **15.6(2)**, paragraph "**d**," as follows:

d. Adverse actions and the appeal process. If the department determines that the provisions of Iowa Code chapter 135I and these rules have been or are being violated, the department *may withhold or revoke the registration of a swimming pool or spa, or the department or the local board of health may order that a swimming pool or spa be closed until corrective action has been taken.* If the swimming pool or spa is operated *without being registered, or in violation of the order of the department, the department or local inspection agency may request that the county attorney or the attorney general make an application in the name of the state to the district court of the county in which the violations have occurred for an order to enjoin the violations.* This remedy is in addition to any other legal remedy available to the department.

(1) A local inspection agency may request that the department *withhold or revoke the registration of a swimming pool or spa, or issue an order to close a swimming pool or spa.* The request shall be in writing and shall list the violations of

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Iowa Code chapter 135I and these rules that have occurred or are occurring when the request is made. The local inspection agency shall provide a full accounting of the actions taken by the local inspection agency to enforce Iowa Code chapter 135I and these rules.

(2) ~~An~~ *Notice of the decision to withhold or revoke the registration for a swimming pool or spa, or an order to close a swimming pool or spa shall be delivered by restricted certified mail, return receipt requested, or by personal service. The notice shall inform the owner of the right to appeal the decision and the appeal procedures. The local inspection agency and the county attorney in the county where the swimming pool or spa is located shall be notified in writing of the decision or order.*

(3) *An appeal of a decision to withhold or revoke a registration or of an order to close shall be submitted by certified mail, return receipt requested, within 30 days of receipt of the department's notice. The appeal shall be sent to the Iowa Department of Public Health, Division of Health Statistics and Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the decision or order shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the decision or order upon satisfaction that the reason for the decision or order has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the decision or order. If no appeal is submitted within 30 days, the decision or order shall become the department's final agency action.*

(4) to (10) No change.

(11) *Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent by certified mail, return receipt requested, or by personal service to the Iowa Department of Public Health, Division of Health Statistics and Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075.*

(12) No change.

**ARC 6428B****PUBLIC HEALTH  
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135.11, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 73, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

These amendments describe how the WIC program will be able to share WIC participant contact information with other Department of Public Health programs.

Any interested person may make written suggestions or comments on these amendments on or before December 19, 2007. Written materials should be directed to Jewell

Chapman, Iowa Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-4529; E-mail [jchapman@idph.state.ia.us](mailto:jchapman@idph.state.ia.us).

There will be a public hearing on December 19, 2007, at 2 p.m. in the Sixth Floor ICN Room, Lucas State Office Building, 321 East 12th Street, Des Moines, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Public Health and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 135.

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

The following amendments are proposed.

ITEM 1. Amend rule 641—73.2(135) as follows:

**641—73.2(135) Adoption by reference.** Federal regulations found at 7 CFR Part 246 (effective as of February 13, 1985, as amended through ~~January 1, 2002~~ *September 27, 2007*, and any additional amendments) shall be the authority for rules governing the Iowa WIC program and are incorporated by reference herein. The WIC state plan provides policy and procedural guidance in the implementation of these regulations to contract agencies administering WIC programs. The WIC state plan as approved by the United States Department of Agriculture is incorporated ~~here~~ *herein* by reference.

ITEM 2. Amend rule 641—73.3(135) as follows:

**641—73.3(135) Availability of rules.** Copies of the federal rules and the WIC state plan adopted by reference in 73.2(135) are available from: Chief, Bureau of Nutrition and Health Promotion, Iowa Department of Public Health, Lucas State Office Building, *321 East 12th Street*, Des Moines, Iowa 50319-0075, ~~(515)281-6650~~ *(515)281-4919*.

ITEM 3. Rescind subrule 73.7(7) and adopt the following **new** subrule in lieu thereof:

**73.7(7) Transfer of participant information.** Requirements for use and disclosure of confidential applicant and participant information for non-WIC purposes were revised in the Federal Register September 27, 2006, Department of Agriculture, Food and Nutrition Service, 7 CFR Part 246, Miscellaneous Provisions; Final Rule 246.25(a)(4).

a. Designation by chief state health officer. The chief state health officer must designate in writing the permitted non-WIC uses of the information and the names of the organizations to which such information may be disclosed.

b. Notice to applicants and participants. The applicant or participant will be notified at the time of application (in accordance with 7 CFR 246.7(i)(11)) or through a subsequent notice that the chief state health officer may authorize the use and disclosure of information about an applicant's or participant's participation in the WIC program for non-WIC purposes. This statement will also indicate that such information will be used by state and local WIC agencies and public organizations only in the administration of programs that serve persons eligible for the WIC program.

c. Written agreement and WIC state plan. The state or local agency disclosing the information will enter into a written agreement with the other public organization or, in the case of a non-WIC use by a state or local WIC agency, the unit of the state or local agency that will be using the informa-

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

tion. The state agency will also include in its state plan, as specified in 7 CFR 246.4(a)(24), a list of all organizations (including units of the state agency or local agencies) with which the state agency or its local agencies have executed or intend to execute a written agreement. The written agreement must:

(1) Specify that the receiving organization may use the confidential applicant and participant information only for:

1. Establishing the eligibility of WIC applicants or participants for the programs that the organization administers;
2. Conducting outreach to WIC applicants and participants for such programs;
3. Enhancing the health, education, or well-being of WIC applicants or participants who are currently enrolled in such programs, including the reporting of known or suspected child abuse or neglect that is not otherwise required by state law;

4. Streamlining administrative procedures in order to minimize burdens on staff, applicants, or participants in either the receiving program or the WIC program; or

5. Assessing and evaluating the responsiveness of a state's health system to participants' health care needs and health care outcomes; and

(2) Contain the receiving organization's assurance that it will not use the information for any other purpose or disclose the information to a third party.

ITEM 4. Rescind and reserve subrule **73.8(2)**, paragraph "c."

ITEM 5. Amend subrule **73.13(7)** by adding **new** paragraph "g" as follows:

g. If a participant fails to attend the hearing, the agency will reschedule the hearing and give the participant 20 days' notice. The participant may have another person as the participant's designee. If neither the participant nor the designee attends the second hearing, the appeal will be closed.

**ARC 6426B****PUBLIC HEALTH  
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135.11, the Iowa Department of Public Health gives Notice of Intended Action to rescind Chapter 87, "Healthy Families Iowa (HFI)," Iowa Administrative Code, and to adopt a new Chapter 87 with the same title.

The rules in new Chapter 87 describe the requirements for contractors providing Healthy Families Iowa services. Healthy Families America (HFA) standards are incorporated into the rules. All contractors, according to the proposed rules in new Chapter 87, will be required to be HFA-accredited and to maintain accreditation status.

Any interested person may make written comments or suggestions on the proposed rules on or before December 11, 2007. Such written comments should be directed to Jane Stockton, Department of Public Health, Bureau of Local

Public Health Services, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 135.106.

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

The following amendment is proposed.

Rescind **641—Chapter 87** and adopt the following **new** chapter in lieu thereof:

## CHAPTER 87

## HEALTHY FAMILIES IOWA (HFI)

**641—87.1(135) Purpose.** These rules are intended to establish standards for the healthy families Iowa (HFI) program, a family support program that provides services to families and children during the prenatal to preschool years through home visitation. This program shall be identified as healthy opportunities for parents to experience success—healthy families Iowa (HOPES-HFI). The HOPES-HFI program is intended to promote optimal child health and development; improve family coping skills and functioning; promote positive parenting skills and intrafamilial interaction; and prevent child abuse and neglect and infant mortality and morbidity. These rules outline the process by which the department assists the Iowa empowerment board in managing contracting for HOPES-HFI funds.

**641—87.2(135) Definitions.** For the purpose of these rules, the following terms shall have the meaning indicated in this rule:

"Accreditation" means national recognition of compliance with Healthy Families America standards through a peer review process.

"Applicant" means a governmental or nonprofit agency that received grant funds in the previous fiscal year, is fully accredited by Healthy Families America, and applies to the department during a competitive year. In any year in which expansion funds are available for the HOPES-HFI program, the department shall award new grants, subject to annual renewal, to selected applicants in a competitive process.

"Competitive grant" means the competitive grant application process to determine the grant awards for a project period.

"Contractor" means a governmental or nonprofit agency that holds a contract with the department to provide HOPES-HFI services.

"Department" means the Iowa department of public health.

"Family support" means community-based services to promote the well-being of children and families.

1. Family support programs have the following characteristics:

- Family-driven, meaning there is a true partnership with families.
- Comprehensive, flexible, and individualized for each family based on the family's culture, needs, values and preferences.
- Build on strengths to increase the stability of family members and the family unit.
- Utilize informal and formal support networks.

2. Family support programs produce the following results:

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

- Increased parent confidence and competence in parenting abilities.
- Safe, stable, and supportive families who are connected to their communities.
- Enhanced health, growth, and development of children and adults in the family unit.

“Healthy Families America” or “HFA” means a research-based national program model designed to help overburdened families. HFA is a family support program that provides services to families and children during the prenatal to preschool years through home visitation.

“Healthy families Iowa” or “HFI” means the state family support program that provides services to families and children during the prenatal to preschool years through home visitation.

“Home visitation” means a face-to-face interaction that occurs between the participant(s) and home visitor. The goals of the home visit are to promote positive parent-child interaction and healthy childhood growth and development and to enhance family functioning. Typically, home visits occur in the home, lasting a minimum of an hour and the child is present.

“HOPES-HFI” means the healthy opportunities for parents to experience success—healthy families Iowa program. The HOPES-HFI program is intended to promote optimal child health and development; improve family coping skills and functioning; promote positive parenting skills and intra-familial interaction; and prevent child abuse and neglect and infant mortality and morbidity.

“Nonprofit” means an entity that meets the requirement for tax-exempt status under Internal Revenue Code Section 501(c)(3) or 501(c)(4).

“Participant” means a family voluntarily enrolled in and receiving services from the program.

“Project period” means the period of time the department intends to support the project without requiring competition for funds.

**641—87.3(135) Applicant eligibility.** Governmental or nonprofit agencies that received grant funds in the previous fiscal year, are fully accredited by HFA, and apply to the department during a competitive year are eligible applicants for funding. The purpose of the applications is to administer HOPES-HFI services for a specified project period, as defined in the request for proposals, with an annual continuation application.

**641—87.4(135) Participant eligibility.** Families must meet the following requirements to be eligible to participate in the HOPES-HFI program: (1) A family member is pregnant or the family has a child aged birth to five years; and (2) The family is determined to be eligible for enrollment according to a universal risk assessment as defined by HFA standards.

**641—87.5(135) Program requirements.** Contractors shall meet the following minimum program requirements:

**87.5(1) Accreditation.** Contractors shall comply with Healthy Families America (HFA) standards and maintain HFA or Council on Accreditation (COA) accreditation status. HOPES-HFI contractors will be required to submit evidence of reaccreditation reports to the department within 30 days of receipt.

**87.5(2) Participant identification.** Contractors shall collaborate with health care, human services, education, and other partners serving pregnant women and women of child-bearing age to identify families who are at risk in order to promote positive birth and parenting outcomes.

**87.5(3) Standardized tools.** Contractors shall utilize standardized tools approved by the department to assess and reassess a participant’s risk status and achievements and the appropriate level of service.

**87.5(4) Quality assessment and improvement.** Contractors shall develop a process for annual program evaluation. The process shall include the following:

a. The outcome of the program evaluation shall be reviewed by the program’s governing or advisory board with recommendations made for program improvement.

b. The evaluation shall demonstrate the effectiveness of the program through program outcomes, including acceptance and retention rates.

**641—87.6(135) Contractor assurance.** In order to receive funding, the contractor shall provide to the department assurance that all applicable federal, state, and local requirements are met. The contractor shall ensure compliance with Title IV of the Civil Rights Act, the Americans with Disabilities Act of 1990 (ADA), Section 504 of the 1973 Rehabilitation Act, and all affirmative action requirements. In addition, the contractor shall ensure the following:

**87.6(1) Program policies and procedures.** Policies and procedures shall be in accordance with HFA standards.

**87.6(2) Personnel policies and procedures.** The personnel policies and procedures shall, at a minimum, include:

a. Conditions of employment, including recruitment, selection, termination, promotion, and compensation.

b. A leave of absence policy.

c. A grievance procedure.

d. Annual employee performance evaluations.

e. A nondiscrimination policy.

f. Fringe benefits.

g. Employment application forms that comply with civil rights regulations.

h. Current job descriptions that delineate qualifications, responsibilities, and essential functions, that reflect current responsibilities, and that are dated.

i. A current salary schedule.

**87.6(3) Fiscal management.** Fiscal management shall, at a minimum, include the following:

a. An annual budget.

b. Fiscal policies and procedures that follow generally accepted accounting practices.

c. Utilization of other funds such as private and third-party funds when available.

**641—87.7(135) Applicant appeal process.**

**87.7(1) Right of appeal.** The right to appeal shall be granted when an applicant’s application to participate is denied. The right to appeal shall also be granted when, during the course of the contract or agreement period, a contractor is disqualified or any other action that affects participation is taken. For participating contractors, a minimum of 60 days’ advance notice shall be given before the effective date of the action.

**87.7(2) Request for hearing.** An appeal is brought by filing a written request for a hearing with the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within ten days of receipt of notification of the adverse action. The written request for hearing shall state the adverse action being appealed.

**87.7(3) Contested cases.** Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

**87.7(4)** Notice of hearing. The administrative law judge (ALJ) shall schedule the time, place and date of the hearing as expeditiously as possible. Hearings shall be conducted by telephone or in person in Des Moines at the Lucas State Office Building or another suitable location. If necessary, parties will be provided at least two opportunities to have the hearing rescheduled.

**87.7(5)** Conduct of hearing. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

**87.7(6)** Decision. A written decision of the ALJ shall be issued, when possible, within 60 days from the date of the request for a hearing unless the parties agree to a longer period of time. The decision of the ALJ shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action, without further proceedings, ten days after it is received by the aggrieved party unless an appeal to the director is filed as provided in subrule 87.7(8).

**87.7(7)** Appeal to director. Any appeal to the director for review of the proposed decision of the ALJ shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the ALJ's proposed decision by the aggrieved party. A copy of the appeal shall also be mailed to the ALJ. Any request for an appeal shall state the reason for appeal.

**87.7(8)** Record of hearing. Upon receipt of an appeal request, the ALJ shall prepare the record of the hearing for submission to the director of the department. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the hearing officer.

**87.7(9)** Decision of director. The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

**87.7(10)** Exhausting administrative remedies. It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review pursuant to Iowa Code chapter 17A.

**87.7(11)** Petition for judicial review. Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or

by personal service. The address is: Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**641—87.8(135) Participant right to appeal.**

**87.8(1)** Denial, reduction or termination of services.

a. When a contractor denies, reduces or terminates services funded by the HOPES-HFI grant against the wishes of a participant, the contractor shall notify the participant of the following:

- (1) The action taken;
- (2) The reason for the action; and
- (3) The participant's right to appeal.

b. If a participant files an appeal, the contractor shall provide services to the participant throughout the appeals process, unless the contractor receives a waiver from the department pending the outcome of the appeal.

**87.8(2)** Local appeals process.

a. All contractors shall have a written local procedure to hear appeals. The local procedure shall, at a minimum, include:

- (1) The method of notification of the right to appeal;
- (2) The procedure for conducting the appeal;
- (3) Time limits for each step; and
- (4) The method of notification of the outcome of the local

appeal and notification of the participant's right to appeal to the state. Notifications of the outcome of the local appeal shall include the facts used to reach the decision and the conclusions drawn from the facts to support the contractor's decision.

b. The written appeals procedure and the record of appeals filed (including the record and disposition of each) shall be available for inspection by authorized representatives of the Iowa department of public health.

**87.8(3)** Appeal to department.

a. Procedure for appeal. If a participant is dissatisfied with the decision of the local appeal, the participant may appeal to the state. The appeal shall be made in writing by certified mail, return receipt requested, to the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 15 days of receipt of the local contractor's appeal decision.

b. Department review. The department shall evaluate the appeal based upon the merits of the local appeal documentation. A department decision affirming, reserving, or modifying the local appeal decision shall be issued within 30 days of the receipt of all local appeal documentation. The department decision shall be in writing and shall be sent by certified mail, return receipt requested, to the participant and the contractor.

**87.8(4)** Further appeal. The participant may appeal the department's decision by submitting an appeal, within 10 days of receipt of the department's decision, to the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Upon receipt of an appeal that meets contested case status, the department shall forward the appeal within 5 working days to the department of inspections and appeals pursuant to the rules adopted by the department of inspections and appeals regarding the transmission of contested cases. The continued process for appeals shall be governed by 641—Chapter 173, Iowa Administrative Code.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These rules are intended to implement Iowa Code section 135.106.

## ARC 6421B

### PUBLIC HEALTH DEPARTMENT[641]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 135.11 and 691.6B, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 124, “Interagency Coordinating Council for the State Medical Examiner,” Iowa Administrative Code.

The proposed rules in Chapter 124 describe the purpose, membership, duties, and meeting procedures for the Interagency Coordinating Council for the State Medical Examiner.

Any interested person may make written comments or suggestions on the proposed rules on or before December 11, 2007. Such written comments should be directed to Jerri McLemore, M.D., Office of the State Medical Examiner, 2250 S. Ankeny Blvd., Ankeny, Iowa 50023. E-mail may be sent to [jmclemor@idph.state.ia.us](mailto:jmclemor@idph.state.ia.us).

These rules are intended to implement Iowa Code section 691.6B.

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

The following **new** chapter is proposed.

#### CHAPTER 124 INTERAGENCY COORDINATING COUNCIL FOR THE STATE MEDICAL EXAMINER

**641—124.1(691) Purpose.** The purpose of the interagency coordinating council for the state medical examiner is to provide a venue for the effective coordination of the functions and operations of the office of the state medical examiner with the needs and interests of the department of public safety and the department of public health, with input and guidance from the governor’s office.

**641—124.2(691) Membership.** Members shall include the chief state medical examiner or, when the state medical examiner is not available, the deputy state medical examiner, the commissioner of public safety or the commissioner’s designee, the director of public health or the director’s designee, and the governor or the governor’s designee.

**641—124.3(691) Meetings.**

**124.3(1)** The interagency coordinating council shall schedule quarterly meetings to be held at the office of the director of public health.

**124.3(2)** Meetings may be scheduled more frequently or less frequently depending upon the circumstances and the need for consultation.

**124.3(3)** Meetings may be canceled by any member with the agreement of the other members.

**641—124.4(691) Duties.** The interagency coordinating council shall perform the following duties:

**124.4(1)** Provide a venue to coordinate the functions and operations of the office of the state medical examiner, the department of public safety, and the department of public health in order to better serve the needs of the citizens of Iowa.

**124.4(2)** Provide to and receive from the governor’s office updated information relevant to the mission of the interagency coordinating council.

**124.4(3)** Discuss legislative and budgetary decisions that may impact the functions and operations of one, two, or all three agencies represented by the interagency coordinating council.

**641—124.5(691) Minutes.** The office of the state medical examiner shall keep minutes of all meetings showing the date, time, place, members present, and the general topics presented. The minutes shall be provided to the members of the interagency coordinating council prior to the next scheduled meeting.

These rules are intended to implement Iowa Code section 691.6B.

## ARC 6422B

### PUBLIC HEALTH DEPARTMENT[641]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 135.11 and 691.6C, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 125, “Advisory Council for the State Medical Examiner,” Iowa Administrative Code.

The proposed rules in Chapter 125 describe the purpose, membership, duties, and meeting procedures for the Advisory Council for the State Medical Examiner.

Any interested person may make written comments or suggestions on the proposed rules on or before December 11, 2007. Such written comments should be directed to Jerri McLemore, M.D., Office of the State Medical Examiner, 2250 S. Ankeny Blvd., Ankeny, Iowa 50023. E-mail may be sent to [jmclemor@idph.state.ia.us](mailto:jmclemor@idph.state.ia.us).

These rules are intended to implement Iowa Code section 691.6C.

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

The following **new** chapter is proposed.

#### CHAPTER 125 ADVISORY COUNCIL FOR THE STATE MEDICAL EXAMINER

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**641—125.1(691) Purpose.** The purpose of the advisory council for the state medical examiner is to provide guidance concerning medicolegal death investigation for the state of Iowa, facilitate optimal relationships between the state and county medical examiners and other agencies involved in death investigation, and provide a venue for the exchange of information vital to the continued operations of the Iowa office of the state medical examiner.

**641—125.2(691) Membership.** Members shall include representatives from agencies and organizations that are directly involved with the office of the state medical examiner and medicolegal death investigation in the state of Iowa.

**125.2(1)** The advisory council shall include but not be limited to a representative from the following agencies:

- a. The office of the attorney general;
- b. The Iowa County Attorneys Association;
- c. The Iowa Medical Society;
- d. The Iowa Association of Pathologists;
- e. The Iowa Association of County Medical Examiners;
- f. The department of public safety;
- g. The department of public health;
- h. The Iowa Emergency Medical Services Association;
- i. The Iowa Funeral Directors Association;
- j. The University of Iowa department of pathology;
- k. The state public defender's office; and
- l. The office of the state medical examiner.

**125.2(2)** Each specific organization shall designate a representative to serve on the advisory council. Representatives shall be approved by the chief state medical examiner in consultation with the director of public health. Members may be selected from other organizations not specified above at the discretion of the chief state medical examiner.

**125.2(3)** The chair and presiding member of the council shall be the chief state medical examiner or a designee from the office of the state medical examiner.

**641—125.3(691) Meetings.** The advisory council will hold a meeting at the Iowa laboratory facilities in Ankeny at least quarterly or on a more frequent basis as deemed necessary by the chief state medical examiner with approval of a majority of members of the council. Meetings may be conducted via the Iowa Communications Network (ICN) for members who cannot physically be present at the laboratory facilities. Meetings may be conducted by telephone at the discretion of the chief state medical examiner depending upon the complexity of the agenda. Notice of routine meetings and agenda will be made available to the members a minimum of five working days prior to the meeting. The chief state medical examiner or any member of the council may ask for a special meeting to discuss emergent issues within a 24-hour time period. The operation of council meetings will be governed by the following rules of procedure:

**125.3(1)** A simple majority will be defined as a quorum, but the chair may choose to continue with the meeting even if a quorum is not present.

**125.3(2)** A course of action for topics under debate will be agreed upon by a simple majority vote of the members present at the meeting.

**125.3(3)** Any council member or a designated replacement who is unable to attend a meeting will notify the office of the state medical examiner at least 24 hours prior to the start of a regularly scheduled meeting; a meeting may be canceled if attendance is expected to be low.

**641—125.4(691) Duties.** The advisory council shall perform the following duties:

**125.4(1)** Provide information to council members regarding the current operations and functions of the office of the state medical examiner.

**125.4(2)** Provide information to council members regarding any legislative or budgetary decisions that impact the office of the state medical examiner.

**125.4(3)** Elicit council members' suggestions and recommendations to improve the overall operations of the office of the state medical examiner.

**641—125.5(691) Minutes.** The advisory council shall keep minutes of all its meetings showing the date, time, place, members present, members absent, and the general topics discussed. The minutes shall reflect the actions agreed upon by the members for topics requiring the members' input or consensus. Approved minutes shall be available at the office of the state medical examiner for inspection Monday through Friday from 8:30 a.m. to 4:30 p.m.

These rules are intended to implement Iowa Code section 691.6C.

**ARC 6425B****PUBLIC HEALTH  
DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 176, "Criteria for Awards or Grants," Iowa Administrative Code.

These amendments modify language to conform to standards of 11—Chapter 105 and clarify the appeal process.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 11, 2007. Such written comments should be directed to Stacey Hewitt, Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [shewitt@idph.state.ia.us](mailto:shewitt@idph.state.ia.us).

These amendments are intended to implement Iowa Code chapters 135 and 17A.

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

The following amendments are proposed.

ITEM 1. Amend rule 641—176.1(135,17A) as follows:

**641—176.1(135,17A) Purpose.** The department provides funds to a variety of entities throughout the state for the support of public health programs. The department considers that all funds, ~~unless proscribed by appropriation language, the Iowa Code, Iowa Administrative Code or federal regulations,~~ are subject to competition pursuant to Iowa Code statutes and Iowa Administrative Code rules governing service contracts. ~~To ensure equal access and objective evaluation of applicants for these funds, grant application materials shall~~

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

contain, at a minimum, specific content. Competitive grant application packets shall contain the review criteria to be used, including the number of points allocated per required component.

ITEM 2. Amend rule **641—176.2(135,17A)**, definitions of “competitive grant,” “continuous grant,” and “project period,” as follows:

“Competitive grant selection process” means the competitive grant selection application process to determine the grant award for a project period engaged in by the department to compare applicant qualifications, terms, conditions and pricing for services to purchase services based on quality, performance, prices of equal or similar services in order to meet the objective of purchasing services based on quality, performance, or price or any combination thereof.

“Continuous grant Continuation application” means the application process for subsequent grant years within a project period following a competitive grant selection process.

“Project period” means the period of time which the department intends to support the project without requiring the recompetition for funds. The project period is specified within the grant competitive selection application period and may extend to five six years.

ITEM 3. Amend rule 641—176.4(135,17A) as follows:

**641—176.4(135,17A) Requirements.** The following shall be included in all grant application materials competitive selection applications made available by the department:

1. to 9. No change.
10. Performance criteria (experience of applicant in administering grants similar contracts).
11. to 16. No change.
17. Appeal process in the event an application is denied Evaluation process and criteria.
18. Appeal process.
19. Contractual terms.
20. Business organization.

ITEM 4. Amend rule 641—176.5(135,17A) as follows:

**641—176.5(135,17A) Review process (competitive applications only).** The review process to be followed in determining amount of funds to be approved for award of contract shall be described in the competitive selection application. The review criteria and point allocation for each shall also be described in the grant competitive selection application material.

The competitive grant application review committee membership shall be determined by the bureau chief, with oversight from the respective division director. The review committee members shall allocate points per review criteria in conducting the review.

In the event competitive applications for a the service delivery area receive an equal number of points, a second review shall be conducted by two division directors and the respective bureau chief administering the program.

ITEM 5. Rescind and reserve rule **641—176.6(135,17A)**.

ITEM 6. Amend rule 641—176.7(135,17A) as follows:

**641—176.7(135,17A) Public notice of available grants funds.** The program making funds available through a competitive grant selection application process shall, at least 60 days prior to the application due date, issue a public notice post all competitive selection documents on the department of public health’s Web site at <http://www.idph.state.ia.us> for the duration of the application period. that identifies the avail-

ability of funds and how to request the application packet. A written request for the packet shall serve as the letter of intent. Services, delivery areas and eligible applicants shall also be described in the public notice.

Exceptions to following the 60-day public notice prior to the application due date are:

1. The receipt of the official notice of award by the department precludes a full 60-day notice on the department of public health’s Web site. The program shall nonetheless issue the public notice on the department of public health’s Web site at the earliest date.

2. In the event that posting the notice on the Web site would not allow at least 30 days for interested parties to request an application packet and apply for funds, the program shall then (at the earliest opportunity) directly notify current contractors and other interested parties of the availability of funds through press releases and other announcements.

ITEM 7. Amend subrule 176.8(1) as follows:

**176.8(1) Appeal.** Applications received by the department after the due date and time stated in the competitive selection application will be rejected, returned to the applicant, and not reviewed by the department. An applicant may appeal the denial of a properly timely submitted competitive grant application. The appeal shall be submitted in writing within ten business days of receipt of notification of the adverse decision. The appeal shall be addressed to the division director of the appropriate division contract administrator cited in the competitive selection application guidance, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. In the event of an appeal, the department will continue working with the selected bidder applicant awarded funding pending the outcome of the appeal.

ITEM 8. Amend subrule 176.8(10) as follows:

**176.8(10) Applicability of rule.** This rule governs the appeal process for a competitive grant selection process if the specific administrative rules of the relevant program do not contain a process for appeal.

## PUBLIC SAFETY DEPARTMENT

### Public Notice

The Department of Public Safety hereby announces that a public hearing will be held on December 3, 2007, from 4 to 6 p.m. to accept public comment on administrative rule making which the Department may undertake to implement 2007 Iowa Acts, House File 864.

The public hearing will originate in Des Moines and will be available from several locations around the state over the Iowa Communications Network. The originating location will be the 1st Floor ICN Conference Room, Room 122, in the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Other locations at which interested persons may attend and participate in the hearing will be published on the Web site of the Department of Public Safety at the following location:

<http://www.dps.state.ia.us/admrule/index.shtml>

2007 Iowa Acts, House File 864, provides that, as of July 1, 2008, applicants for positions as fire fighters in fire departments covered by the Municipal Retirement System for Police Officers and Fire Fighters, also known as the “411 Sys-

PUBLIC SAFETY DEPARTMENT(cont'd)

tem,” shall “prior to appointment, pay for and successfully complete the candidate physical ability test...” The bill also authorizes the Department of Public Safety to adopt administrative rules concerning the test and its administration. The public hearing is for the purpose of accepting comment about whether the Department ought to adopt such rules and what should or should not be included in these rules, if adopted.

Persons may present their views orally or in writing at each public hearing. Persons who wish to make oral presentations at a public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319, by mail; by telephone at (515)725-6185; or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing. Any written comments or information regarding these proposed rules may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on December 5, 2007, or submitted at the public hearing.

**REVENUE DEPARTMENT**

**Notice of Electric and Natural Gas Delivery Tax Rates and Municipal Electric and Natural Gas Transfer Replacement Tax Rates for Each Competitive Service Area**

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the electric delivery tax rate, the municipal electric transfer replacement tax rate, the natural gas delivery tax rate, and the municipal natural gas transfer replacement tax rate for each competitive service area in the state. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2007 by each taxpayer to determine the tax due for each taxpayer in the 2008-2009 fiscal year.

**2007 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA**

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00006461
3201	Algona Municipal Utilities	0.00026059
3205	Alta Municipal Power Plant	0.00008375
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00000000
3207	Ames Municipal Electric System	0.00000090
3071	Anita Municipal Utilities	0.00000000
3227	Anthon Municipal Electric Utility	0.00014399
3209	Atlantic Municipal Utilities	0.00024840
3073	Auburn Municipal Utility	0.00000000
3074	Aurelia Mun. Electric Utility	0.00009400
3211	Bancroft Municipal Utilities	0.00089101
3213	Bellevue Municipal Utilities	0.00009854
3228	Bigelow Municipal Electric Utility	0.00193316
3229	Bloomfield Municipal Electric Utility	0.00003163
3075	Breda Mun. Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00165903
3216	Buffalo Municipal Electric System	0.00000306

3217	Burt Municipal Electric Utility	0.00000190
3077	Callender Electric	0.00000000
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	0.00130675
3221	Cedar Falls Municipal Elec. Utility	0.00031851
3068	City of Afton	0.00000000
3072	City of Aplington	0.00000000
3082	City of Dike	0.00000000
3088	City of Estherville	0.00000000
3089	City of Fairbank	0.00000000
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	0.00000594
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00000000
3108	City of Lehigh	0.00000000
3113	City of Marathon	0.00000000
3311	City of Pella	0.00006969
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00000000
3139	City of Westfield	0.00000000
3143	City of Woolstock	0.00000000
3236	Coggon Municipal Light Plant	0.00004776
3237	Coon Rapids Municipal Utilities	0.00042603
3242	Corning Municipal Utilities	0.00033130
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00000384
3081	Dayton Light & Power	0.00000000
3244	Denison Municipal Utilities	0.00001036
3245	Denver Municipal Electric Utility	0.00005657
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00000000
3085	Earlville Municipal Utilities	0.00123246
3087	Ellsworth Municipal Utilities	0.00000000
3091	Fonda Municipal Electric	0.00000000
3252	Fontanelle Municipal Utilities	0.00033242
3092	Forest City Municipal Utilities	0.00000000
3231	Glidden Municipal Electric Utility	0.00000195
3093	Gowrie Municipal Utilities	0.00148389
3256	Graettinger Municipal Light Plant	0.00028571
3094	Grafton Municipal Utilities	0.00000000
3258	Grand Junction Municipal Utilities	0.00000456
3095	Greenfield Municipal Utilities	0.00107872
3096	Grundy Center Light & Power	0.00022173
3232	Guttenberg Municipal Electric	0.00002873
3263	Harlan Municipal Utilities	0.00137185
3097	Hartley Municipal Utilities	0.00000000
3098	Hawarden Municipal Utility	0.00000000
3099	Hinton Municipal Electric/Water	0.00009823
3267	Hopkinton Municipal Utilities	0.00000927
3100	Hudson Municipal Utilities	0.00000000
3101	Independence Light & Power	0.00000000
3271	Indianola Municipal Utilities	0.00000736
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	0.00000000
3104	Lake Mills Municipal Utilities	0.00000000
3105	Lake Park Municipal Utilities	0.00000000
3233	Lake View Municipal Utilities	0.00015764
3274	Lamoni Municipal Utilities	0.00143044

## REVENUE DEPARTMENT(cont'd)

3276	LaPorte City Utilities	0.00000913	3141	Wilton Municipal Light & Power	0.00000000
3277	Laurens Municipal Utilities	0.00027407	3351	Winterset Municipal Utilities	0.00136998
3109	Lenox Mun. Light & Power	0.00044973	3142	Woodbine Municipal Utilities	0.00000000
3110	Livermore Municipal Utilities	0.00000000			
3111	Long Grove Mun. Elec./Water	0.00000000	<b>CO. #</b>	<b>IOU's – ELECTRIC</b>	<b>DELIVERY TAX RATE</b>
3282	Manilla Municipal Elec. Utilities	0.00009934	7206	Amana Society Service Co.	0.00049316
3112	Manning Municipal Electric	0.00026539	7248	Eldridge Electric & Water Utilities	0.00062143
3284	Mapleton Municipal Utilities	0.00009055	7354	Geneseo Municipal Utilities	0.00000000
3285	Maquoketa Municipal Electric	0.00004891	7270	IES Utilities	0.00237888
3288	McGregor Municipal Utilities	0.00000695	7272	Interstate Power	0.00103630
3291	Milford Municipal Utilities	0.00016326	7289	MidAmerican Energy	0.00264702
3114	Montezuma Municipal Light & Power	0.00000000	7296	Nebraska Public Power District	0.00000000
3115	Mount Pleasant Municipal Utilities	0.00000000	7302	Northwestern Corporation	0.00000000
3293	Muscatine Municipal Utilities	0.00009555	7305	Omaha Public Power District	0.00115990
3116	Neola Light & Water System	0.00000000	7334	Union Electric	0.00000000
3297	New Hampton Municipal Light Plant	0.00009962			
3298	New London Municipal Utility	0.00052973	<b>CO. #</b>	<b>REC's</b>	<b>DELIVERY TAX RATE</b>
3304	Ogden Municipal Utilities	0.00006342	4319	Access Energy Coop	0.00075412
3234	Onawa Municipal Utilities	0.00010932	4203	Allamakee Clayton Electric Coop	0.00093586
3117	Orange City Municipal Utilities	0.00000000	4208	Atchison–Holt Electric Coop	0.00089319
3118	Orient Municipal Utilities	0.00000000	4214	Boone Valley Electric Coop	0.00090381
3307	Osage Municipal Utilities	0.00004924	4218	Butler County REC	0.00107402
3309	Panora Municipal Electric Utility	0.00007342	4219	Calhoun County Electric Coop	0.00141547
3119	Paton Municipal Utilities	0.00000000	4220	Cass Electric Coop	0.00004943
3120	Paullina Municipal Utilities	0.00000000	4224	Central Iowa Power Coop	0.00000000
3121	Pocahontas Municipal Utilities	0.00000000	4225	Chariton Valley Electric Coop	0.00111235
3122	Preston Municipal Utilities	0.00000000	4235	Clarke Electric Coop	0.00285792
3315	Primghar Municipal Light Plant	0.00001803	4287	Consumers Energy	0.00218836
3123	Readlyn Municipal Utilities	0.00000000	4240	Corn Belt Power Coop	0.00000000
3124	Remsen Municipal Utilities	0.00000000	4246	East–Central Iowa REC	0.00206118
3318	Rock Rapids Municipal Utilities	0.00000479	4247	Eastern Iowa Light & Power	0.00069515
3126	Rockford Municipal Light Plant	0.00000000	4250	Farmers Electric Coop – Greenfield	0.00237767
3127	Sabula Municipal Utilities	0.00000000	4249	Farmers Electric Coop – Kalona	0.00042375
3128	Sanborn Municipal Light & Plant	0.00000000	4251	Federated Rural Electric Association	0.00046380
3130	Shelby Municipal Utilities	0.00000000	4253	Franklin Rural Electric Coop	0.00079341
3131	Sibley Municipal Utilities	0.00000000	4254	Freeborn–Mower Cooperative	0.00099628
3321	Sioux Center Municipal Utilities	0.00000096	4255	Glidden Rural Electric Coop	0.00053632
3323	Southern Minnesota Mun. Power	0.00000000	4259	Grundy County REC	0.00061523
3324	Spencer Municipal Utilities	0.00010190	4260	Grundy Electric Cooperative	0.00055899
3132	Stanhope Municipal Utilities	0.00000000	4261	Guthrie County REC	0.00210418
3360	Stanton Municipal Utilities	0.00000000	4262	Hancock Co. REC	0.00127158
3326	State Center Municipal Light Plant	0.00031087	4265	Harrison County REC	0.00084587
3327	Story City Municipal Electric Utility	0.00010589	4266	Hawkeye Tri–County Electric Coop	0.00076862
3134	Stratford Municipal Utilities	0.00000000	4223	Heartland Power Coop	0.00046660
3135	Strawberry Point Electric Utility	0.00000000	4268	Humboldt County REC	0.00099957
3136	Stuart Municipal Utilities	0.00128625	4273	Iowa Lakes Electric Coop	0.00079044
3328	Sumner Municipal Light Plant	0.00021044	4279	Linn County REC	0.00157193
3330	Tipton Municipal Utilities	0.00149179	4280	Lyon Rural Electric Coop	0.00069748
3332	Traer Municipal Utilities	0.00053159	4286	Maquoketa Valley Electric Coop	0.00221262
3337	Villisca Municipal Power Plant	0.00023515	4290	Midland Power Cooperative	0.00126102
3137	Vinton Municipal Utilities	0.00000000	4299	Nishnabotna Valley REC	0.00076261
3138	Wall Lake Municipal Utilities	0.00000000	4300	North West Rural Electric Coop	0.00051117
3338	Waverly Light & Power	0.00074707	4301	Northwest Iowa Power Coop	0.00000000
3342	Webster City Municipal Utilities	0.00029382	4308	Osceola Electric Coop	0.00037590
3345	West Bend Municipal Power Plant	0.00088027	4310	Pella Cooperative Electric	0.00194961
3346	West Liberty Municipal Electric Util.	0.00000671	4313	Pleasant Hill Community Line	0.00028048
3347	West Point Municipal Utility System	0.00009639			
3140	Whittemore Municipal Utilities	0.00000000			

## REVENUE DEPARTMENT(cont'd)

4316	Rideta Electric Coop	0.00292371	5340	Wayland Municipal Gas	0.00338422
4320	Sac County Rural Electric Coop	0.00096354	5064	Wellman Municipal Gas	0.00000000
4322	Southern Iowa Electric Coop	0.00134566	5344	West Bend Municipal Gas	0.00002658
4379	Southwest Iowa Service Coop	0.00289110	5065	Whitemore Municipal Gas	0.00000000
4329	T.I.P. Rural Electric Coop	0.00214277	5349	Winfield Municipal Gas	0.00056186
4333	Tri County Electric Coop	0.00126163	5066	Woodbine Gas	0.00000000
4336	United Electric Coop	0.00112324			
4348	Western Iowa Power Coop	0.00098068			
4352	Woodbury County REC	0.00120142			
4353	Wright Co. REC	0.00049740			

**2007 NATURAL GAS DELIVERY TAX RATES  
BY SERVICE AREA**

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5021	Bedford Municipal Gas	0.00000000
5215	Brighton Gas	0.00862792
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00000000
5022	City of Bloomfield	0.00000000
5026	City of Clearfield	0.00000000
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00003474
5241	Corning Municipal Gas	0.00000135
5027	Emmetsburg Municipal Gas	0.00000000
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.00000000
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.00000000
5034	Hartley Municipal Gas	0.00000000
5035	Hawarden Municipal Gas	0.00000000
5036	Lake Park Municipal Gas	0.00000000
5275	Lamoni Municipal Gas	0.00108154
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5281	Manilla Municipal Gas	0.00040883
5283	Manning Municipal Gas	0.00021722
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.00000000
5306	Osage Municipal Gas	0.00003376
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.00000000
5055	Remsen Municipal Gas	0.00000000
5317	Rock Rapids Municipal Gas	0.00007851
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00000000
5058	Sac City Municipal Gas	0.00000000
5059	Sanborn Municipal Gas	0.00000000
5060	Sioux Center Municipal Gas	0.00000000
5061	Tipton Municipal Gas	0.00000000
5063	Waukee Municipal Gas	0.00000000

CO. #	IOU's - GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.01964191
5270	IES Utilities	0.00852390
5272	Interstate Power	0.00331943
5289	MidAmerican Energy	0.01103529
5312	Peoples Natural Gas	0.00927983
5335	United Cities Gas	0.00647805

**2007 MUNICIPAL ELECTRIC TRANSFER  
REPLACEMENT TAX RATES**

CO. #	COMPANY	REPLACEMENT TAX RATE
3226	Akron Municipal Utilities	*
3201	Algona Municipal Utilities	0.00204905
3205	Alta Municipal Power Plant	0.00286877
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00195019
3207	Ames Municipal Electric System	*
3071	Anita Municipal Utilities	0.00340885
3227	Anthon Municipal Electric Utility	0.01292871
3209	Atlantic Municipal Utilities	0.00255406
3073	Auburn Municipal Utility	0.01908726
3074	Aurelia Municipal Electric Utility	*
3211	Bancroft Municipal Utilities	0.01594591
3213	Bellevue Municipal Utilities	0.00967721
3229	Bloomfield Municipal Electric Utility	0.01231113
3075	Breda Municipal Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00000000
3216	Buffalo Municipal Electric System	0.00000000
3217	Burt Municipal Electric Utility	0.00217585
3077	Callender Electric	*
3078	Carlisle Municipal Utilities	0.00030816
3079	Cascade Municipal Utilities	0.00000000
3221	Cedar Falls Mun. Electric Utility	0.00284695
3068	City of Afton	0.00587423
3072	City of Aplington	*
3082	City of Dike	*
3088	City of Estherville	0.01401149
3089	City of Fairbank	0.00730207
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	*
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00443556
3108	City of Lehigh	*
3113	City of Marathon	*
3311	City of Pella	0.00301718
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00000000

REVENUE DEPARTMENT(cont'd)

3139	City of Westfield	*	3234	Onawa Municipal Utilities	0.00288032
3143	City of Woolstock	0.00000000	3117	Orange City Municipal Utilities	0.00204305
3236	Coggon Municipal Light Plant	0.00000000	3118	Orient Municipal Utilities	*
3237	Coon Rapids Municipal Utilities	0.00311542	3307	Osage Municipal Utilities	0.00037440
3242	Corning Municipal Utilities	*	3309	Panora Municipal Electric Utility	0.00333477
3080	Corwith Municipal Utilities	0.00000000	3119	Paton Municipal Utilities	*
3243	Danville Municipal Electric Utility	0.00222195	3120	Paullina Municipal Utilities	0.01419520
3081	Dayton Light & Power	0.00221826	3121	Pocahontas Municipal Utilities	0.00714624
3244	Denison Municipal Utilities	0.00216994	3122	Preston Municipal Utilities	0.01922685
3245	Denver Municipal Electric Utility	*	3315	Primghar Municipal Light Plant	0.00073033
3083	Durant Municipal Electric Plant	0.00000000	3123	Readlyn Municipal Utilities	0.00000000
3084	Dysart Municipal Utilities	0.00073517	3124	Remsen Municipal Utilities	0.00188473
3085	Earlville Municipal Utilities	*	3318	Rock Rapids Municipal Utilities	0.00381818
3086	Eldridge Electric & Water Utility	*	3126	Rockford Municipal Light Plant	0.00000000
3087	Ellsworth Municipal Utilities	*	3127	Sabula Municipal Utilities	0.00286649
3091	Fonda Municipal Electric	0.00679435	3128	Sanborn Municipal Light & Plant	*
3252	Fontanelle Municipal Utilities	0.00234864	3130	Shelby Municipal Utilities	0.00000000
3092	Forest City Municipal Utilities	0.00294808	3131	Sibley Municipal Utilities	0.00333333
3231	Glidden Municipal Electric Utility	0.01038408	3321	Sioux Center Municipal Utilities	0.00221916
3093	Gowrie Municipal Utilities	0.00168922	3324	Spencer Municipal Utilities	0.00247880
3256	Graettinger Municipal Light Plant	0.00274850	3132	Stanhope Municipal Utilities	0.01396392
3094	Grafton Municipal Utilities	0.01212422	3360	Stanton Municipal Utilities	0.00159356
3258	Grand Junction Municipal Utilities	*	3326	State Center Municipal Light Plant	0.00078817
3095	Greenfield Municipal Utilities	0.00261773	3327	Story City Municipal Electric Utility	*
3096	Grundy Center Light & Power	0.00130030	3134	Stratford Municipal Utilities	0.00714189
3232	Guttenberg Municipal Electric	0.00803541	3135	Strawberry Point Electric Utility	*
3263	Harlan Municipal Utilities	0.00259303	3136	Stuart Municipal Utilities	0.00209287
3097	Hartley Municipal Utilities	0.00059271	3328	Sumner Municipal Light Plant	0.00061916
3098	Hawarden Municipal Utility	0.01596121	3330	Tipton Municipal Utilities	*
3099	Hinton Municipal Electric/Water	0.00138374	3332	Traer Municipal Utilities	0.00471155
3267	Hopkinton Municipal Utilities	0.00000000	3337	Villisca Municipal Power Plant	0.00000000
3100	Hudson Municipal Utilities	0.00908905	3137	Vinton Municipal Utilities	0.00434872
3101	Independence Light & Power	0.00248146	3138	Wall Lake Municipal Utilities	0.00823473
3271	Indianola Municipal Utilities	0.00295361	3338	Waverly Light & Power	0.00568452
3102	Keosauqua Light & Power	*	3342	Webster City Municipal Utilities	0.00273065
3103	Kimballton Municipal Utilities	0.00000000	3345	West Bend Municipal Power Plant	*
3104	Lake Mills Municipal Utilities	*	3346	West Liberty Municipal Electric Util.	0.00335445
3105	Lake Park Municipal Utilities	0.00220363	3347	West Point Municipal Utility System	0.00084209
3233	Lake View Municipal Utilities	*	3140	Whittemore Municipal Utilities	*
3274	Lamoni Municipal Utilities	0.00176473	3141	Wilton Municipal Light & Power	0.00000000
3276	LaPorte City Utilities	0.00176892	3351	Winterset Municipal Utilities	0.00300764
3277	Laurens Municipal Utilities	0.00466385	3142	Woodbine Municipal Utilities	0.00106664
3109	Lenox Municipal Light & Power	0.00028412			
3110	Livermore Municipal Utilities	0.00904021			
3111	Long Grove Mun. Elec./Water	*			
3282	Manilla Municipal Elec. Utilities	0.00343236			
3112	Manning Municipal Electric	0.00187113			
3284	Mapleton Municipal Utilities	0.00353963			
3285	Maquoketa Municipal Electric	0.00142527			
3288	McGregor Municipal Utilities	0.00136331			
3291	Milford Municipal Utilities	0.00000000			
3114	Montezuma Municipal Light & Power	0.00129129			
3115	Mount Pleasant Municipal Utilities	0.00098889			
3293	Muscatine Municipal Utilities	*			
3116	Neola Light & Water System	*			
3297	New Hampton Municipal Light Plant	0.00267692			
3298	New London Municipal Utility	0.00411974			
3304	Ogden Municipal Utilities	0.00217841			

\* No rate provided to the Department by the Municipal

**2007 MUNICIPAL NATURAL GAS TRANSFER  
REPLACEMENT TAX RATES**

CO. #	COMPANY	REPLACE- MENT TAX RATE
5021	Bedford Municipal Gas	0.06661450
5215	Brighton Gas	0.00000000
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00542912
5022	City of Bloomfield	0.05758493

## REVENUE DEPARTMENT(cont'd)

5026	City of Clearfield	*
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00379235
5241	Corning Municipal Gas	*
5027	Emmetsburg Municipal Gas	0.05481593
5030	Gilmore City Municipal Gas	0.16783676
5031	Graettinger Municipal Gas	*
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.94974797
5034	Hartley Municipal Gas	0.01220427
5035	Hawarden Municipal Gas	0.18926344
5036	Lake Park Municipal Gas	0.00990879
5275	Lamoni Municipal Gas	0.00751565
5037	Lenox Municipal Gas	0.30349189
5038	Lineville City Natural Gas	*
5039	Lorimor Municipal Gas	*
5281	Manilla Municipal Gas	0.00851477
5283	Manning Municipal Gas	0.02639894
5040	Montezuma Natural Gas	*
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	*
5306	Osage Municipal Gas	0.02564406
5043	Prescott Municipal Gas	*
5044	Preston Municipal Gas	0.60254641
5055	Remsen Municipal Gas	0.36219224
5317	Rock Rapids Municipal Gas	0.01430276
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00115384
5058	Sac City Municipal Gas	0.05425746
5059	Sanborn Municipal Gas	*
5060	Sioux Center Municipal Gas	*
5061	Tipton Municipal Gas	*
5067	Wall Lake Municipal Gas	0.00000000
5063	Waukee Municipal Gas	*
5340	Wayland Municipal Gas	0.50987608
5064	Wellman Municipal Gas	0.03548975
5344	West Bend Municipal Gas	*
5065	Whittemore Municipal Gas	*
5349	Winfield Municipal Gas	0.00000000
5066	Woodbine Gas	0.64214558

\* No rate provided to the Department by the Municipal

**ARC 6420B****SECRETARY OF STATE[721]****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 47.1 and 423E.2(3), the Secretary of State hereby gives Notice of In-

tended Action to amend Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

The proposed amendments to rule 721—21.803(77GA, HF2282) correct the rule to comply with the current provisions of Iowa Code section 423E.2. The changes include references to elections to extend the period of time for which the tax will be collected; corrections of citations to obsolete Iowa Code sections; and the addition of specific instructions that petitions, motions and the ballot language for local option sales and services tax elections for school infrastructure projects must be limited to a single subject, such as imposition, rate change, use change, repeal or extension. However, more than one ballot question may be submitted at the same election.

The amendment to paragraph 21.803(1)"c" includes new instructions for collecting the necessary information for a local option sales and services tax for school infrastructure projects when the board of supervisors initiates the election. Iowa Code section 423E.2(3) specifies that the Commissioner develop the ballot language using the language from a petition filed with the board of supervisors or from motions from the boards of directors of school districts. The Code of Iowa is silent about the source of ballot language if the board of supervisors initiates the election. The proposed amendment to paragraph 21.803(1)"c" requires the commissioner to consult with the boards of directors of school districts to determine the ballot language if the board of supervisors initiates the election.

The proposed amendments to paragraphs 21.803(3)"a" to "c" also include changes in the form of ballots for school infrastructure elections. The substantive change clarifies that, although all voters in the county must be presented with the same ballot, if the motions or petitions calling the election specify different uses for the tax in different school districts, those uses must appear on the ballot.

This Notice also includes editorial changes to the ballot formats. The font has been changed from all uppercase letters to include both uppercase and lowercase letters. Readability experts report that information that is presented in all upper-case letters is difficult to read. The voting targets have been changed to show the current format used on all ballots in the state—an oval printed on the left-hand side of the choice. Explanatory information in the sample ballots that has proved to be more confusing than helpful has been deleted.

Any interested person may make written suggestions or comments on these proposed amendments through December 11, 2007. Written suggestions or comments should be directed to Sandy Steinbach, Director of Elections, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office at (515)281-5823 or at the Secretary of State's offices on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by December 11, 2007.

These amendments are intended to implement Iowa Code section 423E.2.

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

The following amendments are proposed.

ITEM 1. Amend rule 721—21.803(77GA, HF2282), introductory paragraph, as follows:

**721—21.803(77GA, HF2282 423E) Local sales and services tax elections for school infrastructure projects. *Peti-***

SECRETARY OF STATE[721](cont'd)

*tions and motions to initiate elections and ballot questions used to impose the tax, change the rate of the tax, repeal the tax, change the use of the tax, or extend the period for which the tax is imposed shall be prepared as described in this rule. Only one subject may be included on each petition, motion or ballot question. However, more than one ballot question may be presented at the same election. Imposition, rate change, extension and repeal questions may be included with the general election, or at a special election.*

*Use change elections are held by school district, not by county, and therefore conflict (as defined in Iowa Code section 47.6) with all elections except the school election. Use change questions may be included with the regular school election, or at a special election.*

ITEM 2. Amend subparagraph **21.803(1)“a”(1)** as follows:

Amend numbered paragraph **“1”** as follows:

1. Each petition for imposition of local sales and services taxes for school infrastructure shall include the following heading:

We, the undersigned eligible electors of \_\_\_\_\_ County, hereby request imposition of a local option sales and services tax for school infrastructure.

Rate of tax: \_\_\_\_\_ % (must be 1% or less).

The tax will be collected beginning on (January 1 or July 1), (year).

The tax will end on (December 31 or June 30), (year).

[NOTE: The tax may be collected for a maximum of ten years. All school infrastructure taxes are repealed by statute on December 31, 2022.]

The revenue collected from this tax will be used for:

(List the intended uses of the tax revenue. The use or uses must be among the approved uses of the tax that are authorized by Iowa Code Supplement section ~~422E.1~~ 423E.1.)

Amend numbered paragraph **“4”** as follows:

4. Use change elections shall only be held in the school district in which the use change is proposed. The question shall be presented to the registered voters of the entire school district *at the regular school election or at a special election*, even if the school district includes territory in more than one county. Each petition for change in the use of a local sales and services tax for school infrastructure shall specify one school district for which the use change is proposed, and shall include the following heading:

We, the undersigned eligible electors of \_\_\_\_\_ County, hereby request a change in the use of the local option sales and services tax for school infrastructure in \_\_\_\_\_ School District.

We propose that the revenue from the tax be used for the following purposes:

(List the intended uses of the tax revenue. The use or uses must be among the approved uses of the tax that are authorized by Iowa Code Supplement section ~~422E.1~~ 423E.1.)

Adopt **new** numbered paragraph **“5”** as follows:

5. An election may be held to extend an existing local sales and services tax for school infrastructure projects. Each petition for extension of the tax shall read as follows:

We, the undersigned eligible electors of \_\_\_\_\_ County, hereby request extension of the local sales and services tax for school infrastructure from [the day after the tax expires] until [expiration date].

The period for which the tax is extended may be a maximum of ten years following the current repeal date, but not past December 31, 2022. The expiration date may be either June 30 or December 31 of any year through 2022.

ITEM 3. Amend subparagraphs **21.803(1)“a”(2)** and **(3)** as follows:

(2) Within 30 days after receipt of the petition *for imposition (or rate increase or decrease, extension or repeal)*, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the registered voters of the entire county the question of imposition (or *rate increase, or decrease, extension or repeal*) of a local sales and services tax for school infrastructure projects. In the notice, the supervisors shall propose a specific date for the election.

(3) The proposed election date *for an election for imposition (or rate increase or decrease, extension or repeal) of a local sales and services tax for school infrastructure projects* shall be at least 75 days, but not more than 90 days, after the date upon which notice is given to the commissioner. The local sales and services tax for school infrastructure projects election may be held in conjunction with a general election, or at a special election. It may not be held with the regular city election. However, if the date proposed by the supervisors conflicts with another scheduled election as defined in Iowa Code section 47.6 or ~~on~~ *with* a date upon which special elections are forbidden to be held by Iowa Code section 39.2(1), the election may be held on a date as close as possible to the required time period.

ITEM 4. Adopt **new** subparagraph **21.803(1)“a”(4)** as follows:

(4) Within 30 days after receipt of the petition for an election to change the use of the tax, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the registered voters of the designated school district the question of changing the use of the local sales and services tax for school infrastructure projects. In the notice, the supervisors shall propose a specific date for the election. The proposed election date shall be at least 75 days, but not more than 90 days, after the date upon which notice is given to the commissioner. The local sales and services tax for school infrastructure projects election may be held in conjunction with the regular school election, or at a special election. However, if the date proposed by the supervisors conflicts with another scheduled election as defined in Iowa Code section 47.6 or with a date upon which special elections are forbidden to be held by Iowa Code section 39.2(1), the election may be held on a date as close as possible to the required time period.

ITEM 5. Amend paragraph **21.803(1)“b”** as follows:

Amend the introductory paragraphs as follows:

b. Motions by school boards requesting imposition (or *rate increase, or decrease, or repeal, use change or extension*) of a local sales and services tax for school infrastructure projects. The board of directors of a school district with a population inside the county equal to at least 50 percent of the population of the whole county may by motion request an election to decide imposition (or *rate increase, or decrease, or repeal, use change or extension*) of a local sales and services tax for school infrastructure projects. The boards of directors of school districts whose population inside the county separately equals less than 50 percent of the population of the whole county may file with the board of supervisors motions requesting an election to decide imposition (or *rate increase, or decrease, or repeal, use change or extension*) of a local sales and services tax for school infrastructure projects. The supervisors shall keep a file of these motions until the supervisors have received motions from the boards of directors of school districts whose combined population inside the

SECRETARY OF STATE[721](cont'd)

county equals at least 50 percent of the population of the whole county. Immediately upon receiving a sufficient number of motions, the board shall submit the motions to the commissioner. The commissioner shall, in consultation with the governing bodies of the school districts and the board of supervisors, set a date for the election. The local sales and services tax for school infrastructure projects election, *except a use-change election*, may be held in conjunction with a general election, or at a special election. It may not be held with the regular city election. The election shall be held not sooner than 75 days nor later than 90 days after the board files the motion with the commissioner. If this would result in a special election being held at the time of a conflicting election as defined by Iowa Code section 47.6 or on a date upon which special elections are forbidden to be held by Iowa Code section 39.2(1), the election may be held on a date as close as possible to the required time period.

Motions by the board of directors of a school district cease to be valid on the date of the regular school election unless a number of motions sufficient to trigger an election were filed with the board of supervisors before the regular school election.

The content of the ballot shall be substantially similar to the language of the motion. Motions shall be in substantially the following form:

Amend subparagraph (1) as follows:

(1) Motion for imposition of local sales and services taxes tax for school infrastructure:

The Board of Directors of \_\_\_\_\_ School District hereby requests imposition of a local option sales and services tax for school infrastructure.

Rate of tax: \_\_\_\_\_ % (must be 1% or less).

The tax will be collected beginning on (January 1 or July 1), (year).

The tax will end on (December 31 or June 30), (year).  
[NOTE: The tax may be collected for a maximum of ten years. All school infrastructure taxes are repealed by statute on December 31, 2022.]

The revenue collected from this tax will be used for:

(List the intended uses of the tax revenue. The use or uses must be among the approved uses of the tax authorized by Iowa Code Supplement section ~~422E.1~~ 423E.1.)

Amend subparagraph (4) as follows:

(4) Motion for change in the use of a local sales and services tax for school infrastructure:

The Board of Directors of \_\_\_\_\_ School District hereby requests a change in the use of the local option sales and services tax for school infrastructure for \_\_\_\_\_ School District.

If a change is approved at this election, the tax will be used for the following purposes:

(List the intended uses of the tax revenue. The use or uses must be among the approved uses of the tax that are authorized by Iowa Code Supplement section ~~422E.1~~ 423E.1.)

Adopt **new** subparagraph (5) as follows:

(5) Motion requesting an election to extend the imposition of an existing local sales and services tax for school infrastructure. The period for which the tax is extended may be a maximum of ten years, but not past December 31, 2022. The expiration date may be either June 30 or December 31 of any year through 2022. Each motion for extension of the tax shall read as follows:

The Board of Directors of \_\_\_\_\_ School District hereby requests that an election be held to extend the period of imposition of the local sales and services tax for school in-

frastructure from [the day after the tax expires] until [expiration date].

ITEM 6. Amend paragraph **21.803(1)“c”** as follows:

c. Motions by boards of supervisors requesting imposition (or *rate increase, or decrease, or repeal, use change or extension*) of a local sales and services tax for school infrastructure projects.

(1) The board of supervisors may by motion request an election to decide imposition (or *rate increase, or decrease, or repeal, use change or extension*) of a local sales and services tax for school infrastructure projects. *The motion shall be in substantially the following form:*

*The Board of Supervisors of \_\_\_\_\_ County hereby requests that an election be held to impose (or increase or decrease the rate of, repeal, change the use of, or extend) the local sales and services tax of school infrastructure projects in \_\_\_\_\_ County.*

(2) Immediately upon adoption of a motion requesting an election for local sales and services tax for school infrastructure projects, the board of supervisors shall submit the motion to the commissioner. The commissioner shall, in consultation with the governing bodies of the school districts and the board of supervisors, set a date for the election. *The commissioner shall also consult with the governing bodies of the school districts in the county to determine the content for the ballot language.*

(3) The local sales and services tax for school infrastructure projects election (*except a use-change election*) may be held in conjunction with a general election, or at a special election. It may not be held with the regular city election. The election shall be held not sooner than 75 days nor later than 90 days after the board files the motion with the commissioner. If this would result in a special election being held at the time of a conflicting election as defined by Iowa Code section 47.6 or on a date upon which special elections are forbidden to be held by Iowa Code section 39.2(1), the election may be held on a date as close as possible to the required time period. *Use-change elections may be held with the regular school election or at a special election.*

ITEM 7. Amend subrule 21.803(2) as follows:

**21.803(2)** Notice of a local sales and services tax election for school infrastructure projects. The board of supervisors shall set the rate of the tax which shall be not more than 1 percent. All information required by Iowa Code section ~~422E.2(3)~~ 423E.2(3) shall be filed with the commissioner no later than 70 days before the date of the election. The commissioner shall publish a notice of the ballot language at least 60 days before the date of the election. ~~The ballot language for a public measure to impose, change the rate or to repeal a local sales and services tax for school infrastructure projects shall be the same in each precinct in the county.~~

ITEM 8. Amend subrule 21.803(3) as follows:

Amend the introductory paragraph as follows:

**21.803(3)** Form of ballot for local sales and services tax for school infrastructure. The ballot language for a public measure to impose, change the rate of, ~~to change the use of or to repeal, or extend~~ a local sales and services tax for school infrastructure shall be the same in each precinct in the county. The content of the ballot shall be substantially similar to the petition of the board of supervisors or motions of the school district or school districts requesting the election, including the rate of the tax, imposition and repeal date, and the specific purpose or purposes for which the revenues will be expended.

SECRETARY OF STATE[721](cont'd)

Amend paragraphs "a" to "d" as follows:

a. The ballot for elections to decide the question of imposition of the local sales and services tax for school infrastructure projects shall be as follows:

⊖ (Insert letter to be assigned by the commissioner.)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? \_\_\_\_\_ YES   
NO

Shall the following public measure be adopted?

YES  
 NO

Summary: To authorize imposition of a \_\_\_\_\_% local sales and services tax in the county of \_\_\_\_\_ for school infrastructure projects for \_\_\_\_\_ years, from \_\_\_\_\_ (month and day, year) to \_\_\_\_\_ (month and day, year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

A local sales and services tax for school infrastructure projects shall be imposed in the county of \_\_\_\_\_ at the rate of \_\_\_\_\_ percent (\_\_\_\_%). The tax will begin on \_\_\_\_\_ (month, day and January 1 or July 1, year at the beginning of a calendar quarter). The tax will be in effect for a period of \_\_\_\_\_ years (state time period) until \_\_\_\_\_ (month, day and year at the end of a calendar quarter June 30 or December 31, year).

The money received from the tax is will be spent as follows:

(List the specific purpose or purposes for which the revenue will be expended in each school district, if the information is available. For example:

In the X Community School District, the revenue will be spent for [list uses].

In the Y Community School District, the revenue will be spent for [list uses].)

b. The ballot for elections to decide the question of increasing (or decreasing) the rate of the local sales and services tax for school infrastructure projects shall be as follows:

⊖ (Insert letter to be assigned by the commissioner.)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? \_\_\_\_\_ YES   
NO

Shall the following public measure be adopted?

YES  
 NO

Summary: To authorize a rate increase (or decrease) in the local sales and services tax for school infrastructure projects in \_\_\_\_\_ County from \_\_\_\_\_% (insert current rate) to \_\_\_\_\_% (insert proposed rate).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

In the county of \_\_\_\_\_ the rate of the local sales and services tax for school infrastructure projects shall be increased (or decreased) from \_\_\_\_\_ percent (\_\_\_\_%) (insert current rate) to \_\_\_\_\_ percent (\_\_\_\_%) (insert proposed rate). The change will be effective on \_\_\_\_\_ (month, day and January 1 or July 1, year at the beginning of a calendar quarter). The tax will be in effect until \_\_\_\_\_ (month, day and year at the end of a calendar quarter June 30 or July 1, year).

The money received from the tax shall be is spent as follows:

(List the specific purpose or purposes for which the revenue will be is expended in each school district, if the information is available.)

c. The ballot for elections to decide the question of repeal of the local sales and services tax for school infrastructure projects shall be as follows:

⊖ (Insert letter to be assigned by the commissioner.)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? \_\_\_\_\_ YES   
NO

Shall the following public measure be adopted?

YES  
 NO

Summary: To authorize repeal of a \_\_\_\_\_% local sales and services tax in the county of \_\_\_\_\_ for school infrastructure projects on \_\_\_\_\_ (month and day, year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

SECRETARY OF STATE[721](cont'd)

A \_\_\_\_\_ percent (\_\_\_\_%) local sales and services tax for school infrastructure projects shall be repealed in the county of \_\_\_\_\_ effective \_\_\_\_\_ (month, day and year at the end of a calendar quarter *June 30 or December 31, year*). If not repealed, the tax will be in effect until \_\_\_\_\_ (month, day and year at the end of a calendar quarter).

The money received from the tax was is spent as follows:

(List the specific purpose or purposes for which the revenue has been expended *in each school district, if different uses were approved at a previous election.*)

d. The ballot for elections to decide a change in the use of the local sales and services tax for school infrastructure shall be as follows:

⊖ (Insert letter to be assigned by the commissioner.)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? \_\_\_\_\_ YES   
NO

*Shall the following public measure be adopted?*

YES  
 NO

Summary: To authorize a change in the use of the local option sales and services tax for school infrastructure for \_\_\_\_\_ School District.

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

In the \_\_\_\_\_ School District, the use of the local option sales and services tax for school infrastructure shall be changed.

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax shall be allocated as follows:

(List the intended uses of the tax revenue *in the the school district*. The use or uses must be among the approved uses of the tax that are authorized by Iowa Code Supplement section 422E.1 423E.1.)

CURRENT USES OF THE TAX:

Revenues from the tax are currently allocated as follows:

(List the current uses of the tax *in the school district* as shown on the ballot at the election at which the tax was imposed.)

Adopt **new** paragraph "e" as follows:

e. The ballot for elections to decide the question of extension of the period of imposition of the local sales and services tax for school infrastructure projects shall be as follows:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

YES  
 NO

Summary: To authorize extension of the \_\_\_\_ % local sales and services tax in the county of \_\_\_\_\_ for school infrastructure projects from \_\_\_\_\_ (January 1 or July 1, year) until \_\_\_\_\_ (June 30 or December 31, year).

The \_\_\_\_\_ percent (\_\_\_\_%) local sales and services tax for school infrastructure projects shall be extended in the county of \_\_\_\_\_ effective \_\_\_\_\_ (January 1 or July 1, year). If not extended, the tax will be in effect until \_\_\_\_\_ (month, day and year).

The money received from the tax is spent as follows:

(List the specific purpose or purposes approved for each school district at the imposition election, or use change election, if one has been held. Changes in the use of the tax may not be included with the question of extending the imposition period. If all school districts within the county have not approved the same use of the tax, list each school district with the approved use.)

ITEM 9. Amend subrule 21.803(4) as follows:

**21.803(4)** Notice to the department of revenue and ~~finance~~. Within ten days after an election where a local sales and services tax for school infrastructure projects has been adopted, repealed, or extended or where the rate of the tax has been changed, the county auditor shall provide written notice by sending a copy of the abstract of votes to the director of the department of revenue and ~~finance~~.

*school infrastructure amount revenue will be expended. The revenue purpose statement is distinct from and may be more detailed than the ballot language. At all elections where the voters will be deciding the question of imposition, rate change, use change or extension of the local sales and services tax for school infrastructure projects, 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. If a school district does not timely file a revenue purpose statement, the commissioner shall include the name of the school district and an indication that the district did not file a revenue purpose statement.*

ITEM 10. Amend subrule 21.803(5) as follows:

**21.803(5)** Revenue purpose statements. ~~The~~ *Each school district located within the county may submit a revenue purpose statement to the county commissioner of elections no later than 60 days prior to the election indicating the specific purpose or purposes for which the local sales and services tax for school infrastructure revenue and supplemental*

SECRETARY OF STATE[721](cont'd)

ITEM 11. Amend rule 721—21.803(423E) by striking the implementation sentence and inserting in lieu thereof the following **new** sentence:  
This rule is intended to implement Iowa Code section 423E.2.

**ARC 6424B**

**SECRETARY OF STATE[721]**

**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 47.1, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

2007 Iowa Acts, Senate File 263, adds "gambling structures" to the authorized places for conducting gambling games. 2007 Iowa Acts, Senate File 263, section 9 [Iowa Code section 99F.4D, subsection 1] provides, "Unless otherwise provided by this chapter, the provisions of this chapter applicable to an excursion gambling boat shall also apply to a gambling structure." The amendments to 721—21.820(99F) incorporate the new provisions for gambling structures into the existing rules on excursion gambling boats. The amendments also make editorial corrections in the rule to make all references to an excursion gambling boat uniform. The amendments also change the voting targets in the sample ballots from squares to the ovals that are currently used on all optical scan ballots in Iowa.

Any interested person may make written suggestions or comments on the proposed amendments through December 11, 2007. Written suggestions or comments should be directed to Sandy Steinbach, Director of Elections, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office at (515)281-5823 or at the Secretary of State's offices on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by 4:30 p.m. on December 11, 2007.

These amendments are intended to implement 2007 Iowa Acts, Senate File 263, section 9 [Iowa Code section 99F.4D, subsection 1].

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

The following amendments are proposed.

Amend rule 721—21.820(99F) to read as follows:

**721—21.820(99F) Excursion boat gambling Gambling elections.**

**21.820(1)** Petitions requesting elections to approve or disapprove the conduct of gambling games on an excursion gambling boat *or at a gambling structure* shall be filed with the county board of supervisors. ~~Petitions may be circulated but shall not be filed before July 1, 1989.~~

a. The petition shall be signed by eligible electors of the county equal in number to at least 10 percent of the votes cast in the county for the office of President of the United States or governor at the preceding general election.

b. Each petition shall be in substantially the following form:

STATE OF IOWA  
PETITION REQUESTING ELECTION

\_\_\_\_\_ County  
We, the undersigned eligible electors of \_\_\_\_\_ County, hereby request that an election be held on the proposition to approve or disapprove gambling games on an excursion gambling boat *or at a gambling structure* in the county.

Signature	Address, including street and number, if any	Date signed
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
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14.		
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16.		
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18.		
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20.		
21.		
22.		
23.		
24.		
25.		

page \_\_\_\_ of \_\_\_\_

c. Within 10 days after receipt of a valid petition, the supervisors shall provide written notice to the county commissioner of elections directing the commissioner to submit to the qualified electors of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat *or at a gambling structure* in the county. The election shall be held within 70 days of the receipt of the petition.

d. If a regularly scheduled or special election is to be held in the county on the date selected by the supervisors, notice shall be given to the commissioner no later than the last day upon which nomination papers may be filed for that election. If the excursion gambling boat *or the gambling structure* election is to be held with a local option tax election, the supervisors shall provide the commissioner at least 60 days' written notice. Otherwise, the supervisors shall give at least 32 days' written notice. If the commissioner finds that the date selected by the supervisors conflicts with another election to be held that day, the commissioner shall immediately notify the supervisors in writing. Within 7 days, the supervisors shall select another date and notify the commissioner in writing.

SECRETARY OF STATE[721](cont'd)

**21.820(2)** Form of ballot for election called by petition. Ballots shall be in substantially the following form:

(Insert letter to be assigned by the commissioner)

~~SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?~~ ~~YES~~   
~~NO~~

*Shall the following public measure be adopted?*

YES  
 NO

Gambling games on an excursion gambling boat *or at a gambling structure* in \_\_\_\_\_ County are approved.

**21.820(3)** Form of ballot for elections to continue gambling games on *an excursion boats gambling boat or at a gambling structure*:

(Insert letter to be assigned by the commissioner)

~~SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?~~ ~~YES~~   
~~NO~~

*Shall the following public measure be adopted?*

YES  
 NO

Summary: Gambling games on an excursion gambling boat *or at a gambling structure* in \_\_\_\_\_ County are approved. Gambling games, with no wager or loss limits, on *an excursion gambling boats boat or at a gambling structure* in \_\_\_\_\_ County are approved. If approved by a majority of the voters, operation of gambling games with no wager or loss limits may continue until the question is voted upon again at the general election held in 2002 2010. If disapproved by a majority of the voters, the operation of gambling games on *an excursion boats gambling boat or at a gambling structure* will end within 60 days of this election. (Iowa Code section 99F.7(10)“c” as amended by 1994 Iowa Acts, House File 2179)

**21.820(4)** Ballot form to permit gambling games at existing pari-mutuel racetracks:

(Insert letter to be assigned by the commissioner)

~~SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?~~ ~~YES~~   
~~NO~~

*Shall the following public measure be adopted?*

YES  
 NO

The operation of gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County is approved.

**21.820(5)** No change.

**21.820(6)** Ballot form for general election for continuing operation of gambling games at pari-mutuel racetracks:

(Insert letter to be assigned by the commissioner)

~~SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?~~ ~~YES~~   
~~NO~~

*Shall the following public measure be adopted?*

YES  
 NO

Summary: The continued operation of gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County is approved.

The continued operation of gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County is approved. If approved by a majority of the voters, operation of gambling games may continue at (name of pari-mutuel racetrack) in \_\_\_\_\_ County until the question is voted on again at the general election in eight years. If disapproved by a majority of the voters, gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County will end.

**21.820(7)** Ballot form for general election for continuing gambling games on *an excursion boats gambling boat or at a gambling structure*:

(Insert letter to be assigned by the commissioner)

~~SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?~~ ~~YES~~   
~~NO~~

*Shall the following public measure be adopted?*

YES  
 NO

Summary: The continued operation of gambling games on *an excursion boats gambling boat or at a gambling structure* in \_\_\_\_\_ County is approved.

The continued operation of gambling games on *an excursion boats gambling boat or at a gambling structure* in \_\_\_\_\_ County is approved. If approved by a majority of the voters, operation of gambling games may continue on *an excursion boats gambling boat or at a gambling structure* in \_\_\_\_\_ County until the question is voted on again at the general election in eight years. If disapproved by a majority of voters, gambling games on *an excursion boats gambling boat or at a gambling structure* in \_\_\_\_\_ County will end nine years from the date of the original issue of the license to the current licensee.

This rule is intended to implement Iowa Code section 99F.7 as amended by 1994 Iowa Acts, House File 2179, section 17 2007 Iowa Acts, Senate File 263, section 9.

### NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for November is 6.50%.

#### 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 November 9, 2007, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

#### TIME DEPOSITS

7-31 days . . . . .	Minimum 1.90%
32-89 days . . . . .	Minimum 2.75%
90-179 days . . . . .	Minimum 3.10%
180-364 days . . . . .	Minimum 3.45%
One year to 397 days . . . . .	Minimum 3.65%
More than 397 days . . . . .	Minimum 3.65%

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 6423B****PETROLEUM UNDERGROUND  
STORAGE TANK FUND BOARD,  
IOWA COMPREHENSIVE[591]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455G.4(3)"a," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby amends Chapter 11, "Claims," and rescinds Chapter 15, "Installers and Inspectors," Iowa Administrative Code.

The amendment to Chapter 11 in Item 1 provides rules and procedures for the reimbursement of claims for the removal of eligible upgraded underground storage tanks pursuant to Iowa Code section 455G.9 as amended by 2007 Iowa Acts, Senate File 499, section 8. 2007 Iowa Acts, Senate File 499, section 11, repeals Iowa Code section 455G.17. The Board's licensing authority for installers and inspectors has been transferred to the Environmental Protection Commission of the Department of Natural Resources, and the Commission has adopted new rules that were formerly found in 591—Chapter 15. Thus, in the amendment in Item 2, Chapter 15 is rescinded.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on August 15, 2007, as **ARC 6164B**. These amendments were also simultaneously Adopted and Filed Emergency as **ARC 6165B**. No public comment has been received since publication. These amendments are identical to those published under Notice and Adopted and Filed Emergency.

These amendments were approved by the Board October 25, 2007.

These amendments shall become effective December 26, 2007, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code sections 455G.9 and 455G.17 as amended by 2007 Iowa Acts, Senate File 499.

The following amendments are adopted.

ITEM 1. Rescind subrule 11.3(11) and adopt the following **new** subrule in lieu thereof:

**11.3(11)** Permanent closure of an underground storage tank system. Costs for the permanent closure of underground storage tank systems are eligible for reimbursement from the board if all of the following requirements are met:

a. The underground storage tank system to be permanently closed was already in place on the date an eligible claim was submitted to the board.

b. The claim must have been eligible for benefits pursuant to Iowa Code section 455G.9(1)"a" at the time submitted and must have remained eligible for benefits without disqualification, including eligible innocent landowner claims, claims for sites receiving a no further action certificate from the department, and claims for sites the department has designated as no action required.

c. The claimant seeking reimbursement under this subrule must certify by affidavit that the claimant is the owner or operator of the underground storage tank system, that the legal owner of the tank system has abandoned the tanks, or that there is no known owner of the tank system.

d. The permanent closure activities occurred on or after July 1, 2007. All costs must have been preapproved prior to the commencement of work.

e. For projects that include the removal of tank systems that are also associated with a larger scope of work, for example, the installation of a remediation system or expanded excavation or upgrading of a fuel delivery system, the budget for the entire scope of work must be submitted for any costs to be considered eligible for reimbursement.

f. The board may elect to provide for the direct removal of any tanks eligible through a board-contracted vendor. Any copayment shall be paid by the claimant upon removal of the tank system.

g. Claimants shall be responsible for ensuring that any persons performing work meet all applicable licensing or certification requirements or both that may exist at the time of completion of the work to be reimbursed.

h. Claims made under this subrule are subject to Iowa Code chapter 455G copayment requirements and cost recovery enforcement.

ITEM 2. Rescind and reserve **591—Chapter 15**.

[Filed 11/2/07, effective 12/26/07]

[Published 11/21/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/07.

**ARC 6410B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences hereby amends Chapter 59, "Administrative and Regulatory Authority for the Board of Cosmetology Arts and Sciences Examiners," Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences," Chapter 62, "Fees," Chapter 63, "Sanitation for Salons and Schools of Cosmetology Arts and Sciences," Chapter 64, "Continuing Education for Cosmetology Arts and Sciences," and Chapter 65, "Discipline for Cosmetology Arts and Sciences Licensees, Instructors, Salons, and Schools," and rescinds Chapter 61, "Licensure of Salons and Schools of Cosmetology Arts and Sciences," Iowa Administrative Code, and adopts a new Chapter 61 with the same title.

These amendments streamline and consolidate the administrative process for individuals holding multiple licenses issued by the board, remove the temporary license provision and the issuance of initial manicurist licenses, and update the rules to provide consistency with national and professional norms.

Notice of Intended Action was published in the Iowa Administrative Bulletin September 12, 2007, as **ARC 6224B**. A public hearing was held on October 2, 2007, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No comments were received. The final amendments were revised as follows:

- In rule 60.4(157), introductory paragraph, the last sentence has not been adopted. Display requirements may be found in rule 61.5(157).

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- In paragraph 60.4(3)“e,” the word “product” has been replaced with the word “service” for clarification.
- Subrule 60.4(8) has not been adopted because subrule 65.2(13) already includes this stipulation.
- In Item 6, subrule 60.5(4) has been rescinded and a new subrule has been adopted for clarification. In addition, the word “acupuncture” has been added to the exclusions noted in subrule 60.5(5).
- In subrule 61.5(3) and paragraph 63.4(1)“a,” the phrase “or temporary permit” has been deleted. The granting of temporary permits prior to the obtaining of initial licensure status has been discontinued with this rule making.
- Subrule 61.15(2) has been revised by the addition of the phrase “as set forth in rule 645—60.4(157)” to clarify that the requirements of that rule apply to this subrule.
- In Item 13, in addition to rescinding subrule 62.1(9) as proposed in the Notice, subrules 62.1(10) through 62.1(13) are also rescinded because examination fees will be determined by the testing service.
- In Item 24, the amendment to subrule 63.17(2) has not been adopted because the proposed language duplicates that of rule 645—63.24(157).

These amendments were adopted by the Board of Cosmetology Arts and Sciences on October 22, 2007.

These amendments will become effective on January 1, 2008.

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

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 [amend Chs 59, 60, 62 to 65; adopt Ch 61] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 6224B**, IAB 9/12/07.

[Filed 10/24/07, effective 1/1/08]  
[Published 11/21/07]

[For replacement pages for IAC, see IAC Supplement 11/21/07.]

**ARC 6416B****PUBLIC SAFETY  
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 101.1, the State Fire Marshal hereby amends Chapter 51, “Flammable and Combustible Liquids,” and adopts new Chapter 221, “Flammable and Combustible Liquids,” Iowa Administrative Code.

Iowa Code section 101.1 authorizes and requires the State Fire Marshal to adopt administrative rules establishing reasonable requirements for the safe transportation, storage, handling, and use of flammable liquids. These rules were last extensively updated in 2003. The amendments adopted herein update these requirements, including basing them on the International Fire Code, which is the basis for general rules of the State Fire Marshal and has been widely adopted by local jurisdictions in Iowa. The flammable liquid rules are also moved to new Chapter 221, which is part of a general renumbering of the administrative rules of the Department of Pub-

lic Safety to make the rules more accessible to the public and to persons who are subject to the requirements established in the rules. The definitions of flammable and combustible liquids are revised for consistency with the definition of flammable liquid in Iowa Code chapter 101. A new, clearer definition of refinery is adopted, which would encompass any facility which produces flammable or combustible liquids on a commercial scale or which uses flammable or combustible liquids to produce motor fuel on a commercial scale, whether or not the end product is a flammable or combustible liquid. Provisions for dispensing E-85, included in 2007 Iowa Acts, Senate File 551, are included. Finally, provisions concerning under dispenser containment (UDC) for new and replacement dispensers are adopted. The Iowa Department of Natural Resources (DNR) has adopted such a requirement, in response to a federal requirement, for new and replacement dispensers and dispensers for which piping within 10 feet of a dispenser is repaired or replaced, at locations with underground storage tank systems. The Fire Marshal adopts the DNR requirement and extends it in two ways: (1) the requirement adopted herein applies to all new and replacement dispensers, regardless of whether or not there is an underground storage tank system on the premises and (2) an exception in the DNR requirement for locations that are not within 1,000 feet of a community water system or a potable drinking water well is omitted here. The rule adopted herein continues to exempt existing systems from installing UDC when only the following items are replaced: emergency shutoff, shear valves, or check valves, and also exempts any dispenser which sits on a solid concrete apron.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 26, 2007, as **ARC 6256B**. A public hearing on these proposed amendments was held on October 17, 2007. Comments in support of the rules have been received from representatives of the fire service. Additional comments were received from the Petroleum Marketers and Convenience Stores of Iowa. Several of those comments have been incorporated in these rules. The resulting changes include language allowing the submission of a completed Spill Prevention, Control and Countermeasure (SPCC) Plan, or portions thereof which contain all of the elements required for completion of a plan review by the Fire Marshal, in lieu of submission of construction plans prepared specifically for submission to the Fire Marshal. Many of the facilities required to submit construction plans to the Fire Marshal under these rules are also required to submit SPCC Plans to the U.S. Environmental Protection Agency; allowing the submission of a copy of the SPCC Plan or portions of it may represent significant cost savings to the owner of a facility with flammable liquid storage. A change was also made to the provision requiring that construction plans submitted to the Fire Marshal be prepared by a licensed professional engineer. This requirement is retained for construction plans for refineries; otherwise an engineer's seal on the plans is required only if required by another provision of Iowa law. Another change made from the proposed rules is additional clarification of the provisions requiring maintenance of a supply of fire-fighting foam at certain facilities. Also, a change is made from the proposed rule in the requirements adopted herein for under dispenser containment: When there is no underground storage tank system, the requirement for providing under dispenser containment applies only if a new or replacement dispenser is installed, but not if only piping is replaced. Other editorial changes were also made.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

These amendments will become effective on January 1, 2008.

These amendments are intended to implement Iowa Code chapter 101.

The following amendments are adopted.

ITEM 1. Rescind and reserve rules **661—51.200(101)** through **661—51.203(101)**, **661—51.205(101)**, **661—51.206(101)**, **661—51.250(101)**, **661—51.300(101)** and **661—51.350(101)**.

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

## CHAPTER 221

## FLAMMABLE AND COMBUSTIBLE LIQUIDS

**661—221.1(101) Scope.** This chapter provides the rules of the fire marshal for safe transportation, storage, handling, and use of flammable and combustible liquids. IFC, 2006 edition, sections 102.1 and 102.2, is adopted by reference.

**661—221.2(101) Definitions.** The following definitions shall apply to rules 661—221.1(101) through 661—221.8(101). These definitions are adopted in addition to those which appear in the International Fire Code, 2006 edition; NFPA 30, Flammable and Combustible Liquids Code, 2003 edition; and NFPA 30A, Code for Motor Fuel Dispensing and Repair Garages, 2003 edition. If a definition adopted in this rule conflicts with a definition included in a code or standard adopted by reference in this chapter, the definition found in this rule shall apply.

“Fire code official” means any employee of the fire marshal division of the department of public safety, of any local fire department, or of the department of natural resources if the employee is operating under an agreement between the department of public safety and the department of natural resources.

“ICC” means the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

“IFC” means the International Fire Code, published by the ICC. “IFC” will be followed by a year (e.g., IFC, 2006), which indicates the specific edition of the IFC to which reference is made.

“Mobile air-conditioning system” means mechanical vapor compression equipment which is used to cool the driver or passenger compartment of any motor vehicle.

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

“SPCC plan” means a spill prevention, control and countermeasure plan, as defined in 40 CFR 112, published January 1, 2007.

“Under dispenser containment” or “UDC” means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater.

**661—221.3(101) Flammable and combustible liquids.** The International Fire Code, 2006 edition, published by the ICC, Chapter 34 and references contained therein, and NFPA 30, Flammable and Combustible Liquids Code, 2003 edition and references contained therein, are adopted by reference as the rules for transportation, storage, handling, and use of flammable and combustible liquids. In any case in which a provision of the IFC conflicts with a provision of NFPA 30, the IFC provision shall apply. Any refinery shall comply with the provisions of this rule and with any applicable provisions of 661—Chapter 201.

**221.3(1)** The IFC, 2006 edition, is adopted with the following amendments:

a. In section 3402.1, amend the following definitions:

(1) Delete the definition of combustible liquid and insert in lieu thereof the following:

**COMBUSTIBLE LIQUID.** A liquid having a closed cup flash point at or above 100°F (38°C) and below 200°F (93°C). Combustible liquids shall be subdivided as follows:

Class II. Liquids having a closed cup flash point at or above 100°F (38°C) and below 140°F (60°C).

Class IIIA. Liquids having a closed cup flash point at or above 140°F (60°C) and below 200°F (93°C).

The category of combustible liquids does not include compressed gases or cryogenic fluids.

(2) Delete the definition of refinery and insert in lieu thereof the following:

**REFINERY.** A plant in which flammable or combustible liquids are produced on a commercial scale from crude petroleum, natural gasoline or other sources, or in which flammable or combustible liquids are used to produce on a commercial scale fuels intended for use in motor vehicles, whether or not those fuels are flammable or combustible liquids.

b. Delete section 3403.1 and insert in lieu thereof the following:

3403.1 Electrical. Electrical wiring and equipment shall be installed and maintained in accordance with NFPA 70, National Electrical Code, 2005 edition, published by NFPA.

c. Add the following new sections:

3403.6.12 Each connection to an aboveground tank through which liquid can normally flow shall be provided with an external control valve that is located as close as practical to the shell of the tank. In addition to the control valve or any other normal tank valves, there shall be an emergency internal check valve at each pipe connection to any tank opening below normal liquid level. The emergency internal check valve shall be effectively located inside the tank shell and shall be operable both manually and by an effective heat-activated device that, in case of fire, will automatically close the valve to prevent the flow of liquid from the tank even though the pipelines from the tank are broken.

3403.6.13 Any new or replacement piping connected to an aboveground storage tank shall be double-walled unless it lies entirely within the area of secondary containment.

3403.6.14 Any device dispensing Class I or Class II flammable liquids shall not be constructed or installed less than 100 feet from any existing dwelling unit.

d. Delete section 3404.2.8.12 and insert in lieu thereof the following:

3404.2.8.12 Liquid removal. Means shall be provided to recover liquid from the vault. Where a pump is used to meet this requirement, the pump shall not be permanently installed in the vault. Electric-powered portable pumps shall be suitable for use in Class I, Division 1 locations, as defined in NFPA 70, National Electrical Code, 2005 edition.

e. Delete section 3404.2.8.17 and insert in lieu thereof the following:

3404.2.8.17 Classified area. The interior of a vault containing a tank that stores a Class I liquid shall be designated a Class I, Division 1 location, as defined in NFPA 70, National Electrical Code, 2005 edition.

f. Delete section 3404.2.9.1.1, introductory paragraph, and insert in lieu thereof the following:

3404.2.9.1.1 Required foam fire protection systems. Foam fire protection shall be provided at any refinery and for aboveground tanks, other than pressure tanks operating at or above 1 pound per square inch gauge (psig) (6.89 kPa) when such tank, or group of tanks spaced less than 50 feet (15,240

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

mm) apart measured shell to shell, has a liquid surface area in excess of 1,500 square feet (139 m<sup>2</sup>), and is in accordance with any of the following:

g. Delete section 3404.2.9.1.2.1, introductory paragraph, and insert in lieu thereof the following:

3404.2.9.1.2.1 Where foam fire protection is required, it shall be provided in accordance with NFPA 11, 2005 edition, and shall be of a type or types and amount appropriate to suppress fires involving types and amounts of flammable and combustible liquids found on the premises. Where the flammable or combustible liquid contains more than 10 percent alcohol, the foam shall be alcohol-resistant. Fire-fighting foam shall be stored separately from any area in which flammable and combustible liquids are stored and in an area or areas that will be readily accessible to fire fighters responding to a fire at the facility.

h. Amend the exception to section 3404.2.9.1.2.1 by adding the following new numbered paragraphs:

6. The premises is not a refinery.

7. The premises does not include bulk storage of flammable or combustible liquids.

8. The premises does not contain total storage capacity to store one million gallons or more of flammable or combustible liquids.

**221.3(2)** Amend NFPA 30, section 4.3.2.3.3, by adding the following new paragraphs:

(10) Each secondary containment tank shall have top-only openings and shall be either a steel double-walled tank or a steel inner tank with an outer containment tank wall constructed in accordance with nationally accepted industry standards, such as those codified by the American Petroleum Institute, the Steel Tank Institute and the American Concrete Institute. Each tank shall be listed by an independent testing laboratory.

(11) Each fill opening in a secondary containment tank shall be provided with a spill container that will hold at least 5 gallons.

(12) For any secondary containment tank, interstitial tank space shall be monitored by an approved, continuous, automatic detection system that is capable of detecting liquids, including water. An automatic detection system may be either electronically or mechanically operated.

**221.3(3)** Plans and plan review fees.

a. The owner of any premises on which flammable or combustible liquids are or will be stored or used is required to submit construction plans to the fire marshal division, prior to commencing initial construction of the facility or prior to commencing any construction at an existing facility which includes the addition or replacement of an aboveground flammable or combustible liquid storage tank. The construction plans shall be sealed by a licensed professional engineer if the facility at which the construction will occur is or will be a refinery or if preparation of the plans by a licensed professional engineer is required by another provision of Iowa law.

Construction for which plans are required to be submitted for review shall not commence until approval of the plan has been received from the fire marshal.

EXCEPTION 1: Submission of construction plans is not required if the total flammable and combustible liquid storage capacity on the premises is or will be 1,100 gallons or less.

EXCEPTION 2: If an SPCC plan has been prepared pursuant to 40 CFR 112 for a facility other than a refinery, a copy of the SPCC plan may be submitted to the fire marshal in lieu of submission of separate construction plans, provided that the SPCC plan includes all of the elements required to be included in construction plans for the specific facility in this

subrule. If the fire marshal agrees, copies of portions of the SPCC plan may be submitted in lieu of a copy of the complete plan provided that all elements of construction plans which are required for the specific facility by this subrule are included. If an SPCC plan or portions thereof are submitted to the fire marshal, the person making the submission shall provide any additional information required by the fire marshal to evaluate compliance with the provisions of this chapter and Iowa Code chapter 101. The copy of the SPCC plan or portions thereof submitted to the fire marshal shall clearly identify the licensed professional engineer who prepared the plan or shall be accompanied by a letter making this identification.

b. Minimum requirements for plans submitted for review include the following:

(1) Drawings shall show the name of the person, firm or corporation proposing the installation, the location, and the adjacent streets or highways.

(2) In the case of refineries or bulk plants, the drawings shall show, in addition to any applicable features required under subparagraphs (4) and (5), the plot of ground to be utilized and its immediate surroundings on all sides; and a complete layout of buildings, tanks, loading and unloading docks, and heating devices, if any.

(3) In the case of service stations, the drawings shall show, in addition to any applicable features required under subparagraphs (4), (5), and (6), the plot of ground to be utilized; the complete layout of buildings, drives, dispensing equipment, and greasing or washing stalls; and the type and location of any heating device.

(4) In the case of aboveground storage, the drawings shall show the location and capacity of each tank; dimensions of each tank whose capacity exceeds 50,000 gallons; the class of liquid to be stored in each tank; the type of tank supports; the clearances; the type of venting and pressure relief relied upon and the combined capacity of all venting and pressure relief valves on each tank; and the tank control valves and the location of pumps and other facilities by which liquid is filled into or withdrawn from the tanks.

(5) In the case of underground storage, the drawings shall show the location and capacity of each tank; the class of liquids to be stored; and the location of fill, gauge, vent pipes, openings and clearances.

(6) In the case of an installation for storage, handling or use of flammable or combustible liquids within buildings or enclosures at any establishment or occupancy covered in this chapter, the drawing shall be in detail sufficient to show whether applicable requirements are to be met.

c. Fees for plan reviews shall apply as follows:

(1) \$100 plus \$25 for each new or replacement tank included in the plan, for any site or facility at which flammable or combustible liquids are or will be stored, except for new construction of a refinery.

(2) \$500 for review of the initial construction plans of a refinery if the projected construction costs are \$100,000,000 or less and \$1,000 for the initial construction plans for a refinery if the projected construction costs are greater than \$100,000,000.

(3) The owner shall submit payment of plan review fees in the form of a check, money order, or warrant payable to Treasurer, State of Iowa.

d. Plan review fees shall be refunded to the submitter if the plan review has not been completed and the submitter has not been notified of approval or disapproval of the plans within 60 days of receipt of the complete plans by the fire marshal division.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**221.3(4) Inspections.**

a. Any facility at which flammable or combustible liquids are stored is subject to inspection by any fire code official during the regular business hours of the facility. If the facility does not operate under regular business hours, a fire official shall have access to the facility between 8 a.m. and 4 p.m. on any day which is a business day for the state of Iowa, within four hours of notifying the owner of intent to inspect the facility.

b. Any inspection of a facility pursuant to this subrule conducted by an employee of the fire marshal division of the department of public safety shall result in an inspection fee of \$100 plus \$25 for each aboveground flammable or combustible liquid storage tank, except that there shall be no fee for an initial inspection or the first reinspection after an initial inspection that is conducted pursuant to the receipt of a complaint alleging that the facility is in violation of any provision of this chapter, 661—Chapter 224 or Iowa Code chapter 101.

c. Inspections may be initiated by the inspecting official at random or on any other basis; may be conducted at the request of the owner, operator, or manager of a facility; or may be conducted to investigate allegations made in a complaint. Such a complaint shall be in writing and shall specify the location and nature of the alleged violations. The complainant may or may not be identified. Complainants who identify themselves may request to be notified of the outcome of the inspection conducted in response to the complaint.

**661—221.4(101) Motor fuel dispensing facilities and repair garages.** The International Fire Code, 2006 edition, published by the ICC, Chapter 22 and references contained therein, and NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2003 edition and references contained therein, are adopted by reference as the rules for motor fuel dispensing facilities and repair garages. If any provision of the International Fire Code adopted herein is in conflict with any provision of NFPA 30A, the International Fire Code provision shall apply. The International Fire Code, 2006 edition, Chapter 22, is adopted with the following amendments:

**221.4(1)** Amend Table 2206.2.3 so that:

Each tank with a capacity of not more than 6,000 gallons for motor vehicle fuel dispensing systems and storing a Class I liquid, or with a capacity of not more than 12,000 gallons and storing a Class II or Class III liquid, that is located at a commercial, industrial, governmental, or manufacturing establishment, and that is intended for fueling vehicles used in connection with the establishment, is required to be located at least:

(a) 40 feet away from the nearest important building on the same property;

EXCEPTION: Tanks may be located closer than 40 feet to a building of noncombustible construction.

(b) 40 feet away from any property that is or may be built upon, including the opposite side of a public way;

EXCEPTION: No minimum separation shall be required for any tank that complies with NFPA 30A, section 4.3.2.6.

(c) 100 feet away from any residence or place of assembly.

**221.4(2)** Add the following new section:

2206.7.1.1 Dispensing of E-blend.

2206.7.1.1.1 Definitions.

“E-10” means a blend of petroleum and ethanol including no more than 15 percent ethanol intended for use as a motor vehicle fuel.

“E-blend” means a blend of petroleum and ethanol including more than 15 percent ethanol intended for use as a motor vehicle fuel.

2206.7.1.1.2 E-blend may only be dispensed if both of the following apply:

(a) Only a dispenser listed by an independent testing laboratory as compatible with ethanol blended gasoline shall be used to dispense E-blend.

(b) The owner or operator or a person authorized by the owner or operator shall visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure and maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

**221.4(3)** Add the following new section:

2206.7.10 Under dispenser containment (UDC). When installing a new motor fuel dispenser or replacing a motor fuel dispenser, UDC shall be installed whenever any of the following occurs:

(1) UDC is required by a rule adopted by the environmental protection commission.

NOTE: See 567—subrule 135.3(9), paragraph “h.”

(2) A motor fuel dispenser is installed at a location where there previously was no dispenser; or

(3) An existing motor fuel dispenser is removed and replaced with another dispenser. UDC is not required when only the emergency shutoff, shear valves or check valves are replaced.

UDC shall:

- Be intact and liquid tight on its sides and bottom and at any penetrations;

- Be compatible with the substance conveyed by the piping; and

- Allow for visual inspection and monitoring and access to the components in the containment system.

EXCEPTION: UDC shall not be required for a dispenser which sits directly upon a solid concrete apron.

**661—221.5(101) Aircraft fueling.** The International Fire Code, 2006 edition, published by the ICC, sections 1106 through 1106.21.1 and references contained therein, and NFPA 407, Standard for Aircraft Fuel Servicing, 2007 edition and references contained therein, are adopted by reference as the rules for aircraft fueling facilities. If any provision of the IFC adopted herein conflicts with any provision of NFPA 407, 2007 edition, the IFC provision shall apply.

**661—221.6(101) Helicopter fueling.** The International Fire Code, 2006 edition, published by the ICC, sections 1107 through 1107.8 and references contained therein, is adopted by reference as the rules for helicopter fueling facilities.

**661—221.7(101) Fuel-fired appliances.** The International Fire Code, 2006 edition, published by the ICC, sections 603 through 603.9 and references contained therein, is adopted by reference as the rules for fuel-fired appliances, except for LP-gas fired appliances, which are subject to the provisions of 661—Chapter 226.

**661—221.8(101) Stationary combustion engines and gas turbines.** The International Fire Code, 2006 edition, Chapter 6 and references contained therein, and NFPA 37, “Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines,” 2006 edition, are adopted by reference as the rules governing the installation and use of stationary combustion engines and gas turbines. If any provision of the IFC, 2006 edition, Chapter 6, adopted herein is in conflict

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with any provision of NFPA 37, 2006 edition, the provision of the IFC shall apply.

These rules are intended to implement Iowa Code chapter 101.

[Filed 11/1/07, effective 1/1/08]

[Published 11/21/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/07.

## ARC 6417B

### PUBLIC SAFETY DEPARTMENT[661]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 101.1 and 101.23, the State Fire Marshal hereby amends Chapter 51, "Flammable and Combustible Liquids," and adopts new Chapter 224, "Aboveground Petroleum Storage Tanks," Iowa Administrative Code.

Iowa Code sections 101.21 through 101.27 set out provisions for the State Fire Marshal to operate a program for the registration of aboveground petroleum storage tanks. Registration fees and late fees are established by statute. The State Fire Marshal is given authority to conduct inspections, issue orders to correct violations and issue civil penalties, and to adopt rules needed to maintain an accurate inventory of aboveground petroleum storage tanks. Iowa Code section 100.1, subsection 6, authorizes and requires the State Fire Marshal to establish and collect fees for inspections and plan reviews conducted in relation to this program. These rules provide for each of these items; fees for plan reviews and inspections are established in a new Chapter 221, which is being adopted at the same time as these rules. New Chapter 221 is published herein as **ARC 6416B**.

These rules were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 26, 2007, as **ARC 6255B**. One comment was received, noting that dispensing the remaining product contained in a tank when it is ordered to be placed out of service may be the most efficient way to dispose of the product. Consequently, provisions in the proposed rules barring dispensing fuel from a tank which has been ordered out of service have been deleted from the amendments adopted herein.

With these changes, subrule 224.6(4) now reads as follows:

**"224.6(4)** Emergency order. If the fire marshal finds that a violation identified during an inspection conducted pursuant to subrule 224.6(1) creates an imminent threat to public safety or public health, or if the fire marshal finds, after consultation with the department of natural resources, that such a violation creates an imminent threat of environmental damage, the fire marshal shall order that the tank be placed out of service immediately and may order that the tank be evacuated of liquid and purged of vapors. If a tank is ordered to be placed out of service pursuant to this subrule, the tank shall have a sticker prominently affixed to it which states that the tank is out of service by order of the state fire marshal and that it is a violation of law to transfer any petroleum product into the tank."

Additionally, rule 661—224.8(101), numbered paragraph "3," which allowed for a civil penalty if petroleum product

was issued from a tank ordered to be placed out of service or from a tank that was damaged or leaking, has been removed. Otherwise, the rules adopted herein are identical to those proposed in the Notice of Intended Action.

These amendments will become effective on January 1, 2008.

These amendments are intended to implement Iowa Code sections 101.21 through 101.27.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [rescind 51.204; adopt Ch 224] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 6255B**, IAB 9/26/07.

[Filed 11/1/07, effective 1/1/08]

[Published 11/21/07]

[For replacement pages for IAC, see IAC Supplement 11/21/07.]

## ARC 6414B

### PUBLIC SAFETY DEPARTMENT[661]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 101.1, the State Fire Marshal hereby amends Chapter 226, "Liquefied Petroleum Gas," Iowa Administrative Code.

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

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 12, 2007, as **ARC 6223B**. A public hearing on the proposed amendments was held on October 17, 2007. Extensive comments were submitted by the Iowa Propane Gas Association recommending changes to clarify the requirements. The amendments adopted herein reflect the recommended changes; no additional requirements are imposed beyond those contained in the proposed amendments, but the changes should facilitate compliance with the requirements because they are stated more clearly than in the language proposed in the Notice of Intended Action.

These amendments shall become effective on January 1, 2008.

These amendments are intended to implement Iowa Code chapter 101.

The following amendments are adopted:

ITEM 1. Amend rule 661—226.5(101) as follows:

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Rescind subrule 226.5(1) and insert in lieu thereof the following **new** subrule:

**226.5(1)** Pressure testing required. After assembly and after any modification or repair, metallic LP-gas piping and hose shall be pressure-tested as follows:

a. Piping systems having operating pressures greater than 20 psig shall be pressure-tested in accordance with the following:

(1) Prior to acceptance and initial operation, all piping installations shall be inspected and pressure-tested to determine that the materials, design, fabrication, and installation practices comply with the requirements of this chapter.

(2) Inspection shall consist of visual examination, during or after manufacture, fabrication, assembly, or pressure tests as appropriate. Supplementary types of nondestructive inspection techniques, such as magnetic-particle, radiographic, and ultrasonic, shall not be required unless specifically required in this chapter or a standard or code adopted by reference in this chapter or in the engineering design.

(3) When repairs or additions are made following the pressure test, the affected piping shall be tested. Minor repairs and additions are not required to be pressure-tested, provided that the work is inspected and connections are tested with a noncorrosive, leak-detecting fluid or other leak-detecting methods approved by the authority having jurisdiction.

(4) When new branches are installed to a new appliance or appliances, only the newly installed branch or branches shall be required to be pressure-tested. Connections between the new piping and the existing piping shall be tested with a noncorrosive, leak-detecting fluid or approved leak-detecting methods.

(5) A piping system shall be tested as a complete unit or in sections. A valve in a line shall not be used as a bulkhead between gas in one section of the piping system and test medium in an adjacent section, unless two valves are installed in series with a valved "telltale" located between these valves. A valve shall not be subjected to the test pressure unless it can be determined that the valve, including the valve-closing mechanism, is designed to safely withstand the pressure applied during the test.

(6) Regulator and valve assemblies fabricated independently of the piping system in which they are to be installed shall be permitted to be tested with inert gas or air at the time of fabrication.

(7) The test medium shall be air, nitrogen, carbon dioxide, or an inert gas. Oxygen shall not be used.

(8) Test pressure shall be measured with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss due to leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made. Mechanical gauges used to measure test pressures shall have a range such that the highest end of the scale is not greater than five times the test pressure.

(9) The test pressure to be used shall be no less than 50 psi and shall not exceed 75 psi.

(10) Expansion joints shall be provided with temporary restraints, if required, for the additional thrust load under test.

(11) Appliances and equipment that are not to be included in the test shall be either disconnected from the piping or isolated by blanks, blind flanges, or caps. Flanged joints at which blinds are inserted to blank off other equipment during the test shall not be required to be tested.

(12) Where the piping system is connected to appliances or equipment designed for operating pressures of less than the test pressure, such appliances or equipment shall be iso-

lated from the piping system by disconnecting them and capping the outlet(s).

(13) Where the piping system is connected to appliances or equipment designed for operating pressures equal to or greater than the test pressure, such appliances or equipment shall be isolated from the piping system by closing the individual appliance or equipment shutoff valve(s).

(14) All testing of piping systems shall be done with due regard for the safety of employees and the public during the test. Bulkheads, anchorage, and bracing suitably designed to resist test pressures shall be installed if necessary. Prior to testing, the interior of the pipe shall be cleared of all foreign material.

(15) Test duration shall be not less than one-half hour for each 500 ft<sup>3</sup> (14 m<sup>3</sup>) of pipe volume or fraction thereof. The duration of the test shall not be required to exceed 24 hours.

EXCEPTION: When a system having a volume of less than 10 ft<sup>3</sup> (0.28 m<sup>3</sup>) is tested, the test duration shall be a minimum of 10 minutes.

b. Piping systems having operating pressures of 20 psig or less, all polyethylene and polyamide piping, and piping to which NFPA 54 National Fuel Gas Code, 2006 edition, is applicable, shall be tested in accordance with that code.

Rescind subrule 226.5(2) and adopt the following **new** subrule in lieu thereof:

**226.5(2)** Testing for leakage. All LP-gas piping systems having operating pressures of 20 psig or less and all polyethylene and polyamide piping shall have system and equipment leakage tests performed in accordance with this chapter and Section 8.2 NFPA 54 National Fuel Gas Code, 2006 edition.

Adopt the following **new** subrule:

**226.5(4)** Out-of-gas customers or interruption of service system start-up procedure. When a delivery of propane is made to any on-site container which is out of gas, or if propane service was interrupted, the delivery person shall comply with the following procedures.

a. When the "out-of-gas customer" is not present:

(1) The container service valve shall be shut off; and

(2) A tag shall be placed on the container service valve for the equipment the container services, indicating the container is out of service. The tag shall inform the gas customer to contact a qualified person to perform a leak check or other test on the system, as required by rules of the fire marshal, before turning on the container. Further action is the responsibility of the customer.

b. When the "out-of-gas customer" is present:

(1) The container service valve shall be shut off; and

(2) The gas customer shall be informed that the container is out of service and a qualified person must perform a leak check or other test on the system as required by this chapter or Section 8.2 of NFPA 54 National Fuel Gas Code, 2006 edition, before turning on the container service valve. Further action is the responsibility of the customer.

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

**661—226.6(101) Damages—reporting.**

**226.6(1)** Responsibility to report.

a. Any person who causes damage to any LP-gas piping system, including hoses, other than a person qualified in accordance with rule 661—226.4(101) and who has been authorized by the owner or occupant to repair the LP-gas installation, shall immediately turn off the supply of propane to the affected system and shall immediately notify the local fire department. After the call to the fire department, the person shall immediately notify the occupant of the property of the damage and the shutoff. If the occupant of the property can-

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not be contacted immediately, the owner of the property shall immediately be notified.

b. If the occupant or owner of property on which an LP-gas system is located has received notification that the system has been damaged and the occupant or owner finds that the supply of propane to the system has not been shut off, then the occupant or owner shall immediately shut off the supply of propane to the system and shall immediately notify the local fire department.

c. If the occupant or owner of property on which an LP-gas system is located finds that an LP-gas piping system has been damaged and the damage has not been reported to the occupant or owner as required by paragraph "a" of this sub-rule, the occupant or owner shall immediately shut off the supply of propane to the system and shall immediately notify the local fire department.

**226.6(2)** Notification to qualified person. The occupant or owner of the property on which an LP-gas system is located shall notify a person qualified pursuant to rule 661—226.4(101) of any damage to an LP-gas piping system immediately after receiving notification or otherwise becoming aware of the damage and shall arrange for the qualified person to inspect, repair, and test the damaged system prior to restoration of service to the damaged or repaired system.

Arrangement by the occupant or owner of the property for required repairs and testing shall not relieve the person who damaged the system of any liability, including the costs of repair or testing.

**226.6(3)** Restoration of service. LP-gas service shall not be restored to an LP-gas piping system which has been damaged until the system has been repaired and tested in accordance with rule 661—226.5(101).

[Filed 10/31/07, effective 1/1/08]

[Published 11/21/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/07.

## ARC 6413B

### PUBLIC SAFETY DEPARTMENT[661]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 300, "State Building Code—Administration," Chapter 301, "State Building Code—General Provisions," and Chapter 303, "State Building Code—Requirements for Energy Conservation in Construction," Iowa Administrative Code.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 12, 2007, as **ARC 6214B**. A public hearing was held on October 9, 2007, where comments were received from several parties regarding the proposed amendments. One significant change was incorporated in these adopted amendments from the proposed amendments; this is summarized in the description below of the adopted amendments. Some minor editorial changes were also included in the adopted rules.

Iowa Code chapter 103A establishes the State Building Code and assigns authority to the Building Code Commissioner to adopt the State Building Code, with the approval of

the Building Code Advisory Council. The amendments adopted herein update and clarify various provisions of the State Building Code. The following changes are adopted:

Item 1 amends the requirements for plan reviews so that:

- Preliminary meetings will be required for all projects submitted to the Building Code Bureau to evaluate compliance with the State Building Code. An inquiry was received during the public comment period asking if preliminary meetings have to be in person or if such meetings might be held by telephone. Building Code Bureau staff may allow meetings by telephone if this will allow major issues of code compliance to be addressed but will have the discretion to require face-to-face meetings.

- Approval of any project will not be given prior to compliance of the project with applicable requirements for life cycle cost analyses or energy reviews.

- Electronic submission of plans will be required for projects with projected construction costs of \$1 million or more.

- Electronic submission of plans or submission of two copies of plans will be required for any project with estimated construction costs of less than \$1 million if that project is subject to inspection by the Building Code Bureau.

- Fees for plan reviews of small fire suppression or fire alarm systems will be reduced.

- Provisions will be added for staged approvals of projects and for approval of fast-track projects.

Preliminary meetings between the design professionals working on a project and assigned Building Code Bureau staff have proven to be effective in reducing uncertainty and confusion regarding the applicability and interpretation of complex Code requirements. Electronic submission of plans represents a significant cost savings to the state and, consequently, will restrain what otherwise might be significant increases in plan review fees. It is anticipated that the dollar threshold for required electronic submission may be lowered over time until all or nearly all plans are submitted electronically. For projects that are to be inspected by the Building Code Bureau, a set of plans may be made available to the inspector electronically if the plans have been submitted electronically; if a set of plans is submitted in hard copy, a second set is needed for the inspector to take to the construction site. Setting a lower fee for reviews of plans of small fire alarm and fire suppression systems more accurately reflects the cost of these reviews than does the current schedule. Staged approvals of projects and fast-track projects are needed for some construction in the state. Iowa Code section 470.6 bars the expenditure of public funds on construction for which a life cycle cost analysis has not been completed if an analysis is required. Iowa Code section 103A.19, subsection 6, requires that an energy review of any construction over 100,000 cubic feet be completed.

Item 2 amends the rule regarding inspections by the Building Code Bureau. This new function of the Bureau is anticipated to commence in the near future. The rule was originally written with the expectation that inspections would occur under a third-party contract with the Department. Instead, the Department is in the process of hiring inspectors, as this appears to be a more efficient method of conducting inspections. The fee schedule for inspections is specified, and dates which were previously specified in the rule but which have passed have been removed. These changes are adopted for consistency with the administration of the inspection program as it is currently planned.

Item 3 deletes language which allows construction to adhere to the State Building Code as it read prior to its last major revision. This language applied only until April 1, 2007.

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Item 4 corrects a reference in the energy conservation rules. It also would remove duplicative language regarding the fee for energy reviews.

Item 5 clarifies the requirement for conducting life cycle cost analyses. Language has been added to this item providing for procedures to be followed when requesting exemptions from implementing recommendations contained in a life cycle cost analysis. Providing for such exemptions is required by Iowa Code section 470.8.

Item 6 increases from \$15 to \$25 the fee for filing energy reviews for compliance with energy conservation requirements established in the State Building Code. The increased fee is a more realistic reflection of the costs associated with filing these reviews.

These amendments will become effective on January 1, 2008.

These amendments are intended to implement Iowa Code chapter 103A.

The following amendments are adopted.

ITEM 1. Amend rule 661—300.4(103A) as follows:

Rescind subrule 300.4(1) and insert in lieu thereof the following **new** subrule:

**300.4(1) Plans and specifications review—approvals.**

a. Submissions to the building code commissioner of architectural technical documents, engineering documents, and plans and specifications are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.

b. “Responsible design professional” means a registered architect or licensed professional engineer who signs the documents submitted.

c. Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code and with sections 106.1 and 106.1.1 of the International Building Code, 2006 edition.

d. In sections 106.1 and 106.1.1 of the International Building Code, 2006 edition, the word “permit” shall be replaced by the words “plan review.”

e. Submittals to the commissioner shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.

f. Plans and specifications for projects with a construction cost of \$1 million or more or projects subject to inspection by the commissioner shall be submitted in an electronic format.

EXCEPTION: For projects with a construction cost of less than \$1 million that are subject to inspection by the commissioner, two identical sets of plans and specifications may be submitted in lieu of electronic submittal.

NOTE: The electronic submission of plans and specifications for projects that are not subject to inspection by the commissioner and with a construction cost of less than \$1 million is strongly encouraged but not required.

g. Any person planning to submit documents electronically shall contact the bureau for written instructions.

h. Architectural technical submissions, engineering documents, and plans and specifications for construction, renovation, or remodeling of all state-owned buildings or facilities, including additions to existing buildings, shall be sub-

mitted to the commissioner for review and comment. Subsequently, a written response by the design professional indicating corrective measures taken to address the commissioner’s plan review comments shall be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

i. Architectural technical submissions, engineering documents, and plans and specifications for the initial construction of any building or facility that will not, when completed, be wholly owned by the state or an agency of the state shall be submitted to the commissioner for review and comment, if the construction is financed in whole or in part with funds appropriated by the state and there is no local building code in effect in the local jurisdiction in which the construction is planned or, if there is such a local building code in effect, it is not enforced through a system which includes both plan reviews and inspections. Subsequently, a written response by the design professional indicating corrective measures taken to address the commissioner’s plan review comments shall be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

j. Architectural technical submissions, engineering documents, and plans and specifications for construction, renovation, or remodeling of all buildings or facilities, including additions to existing buildings, to which the state building code applies, other than those subject to paragraph “h” or “i,” shall be submitted to the commissioner for review and comment, unless applicability of the state building code is based upon a local ordinance enacted pursuant to Iowa Code section 103A.12. Subsequently, a written response by the design professional indicating corrective measures taken to address the commissioner’s plan review comments shall be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

k. If the state building code applies to a construction project based upon a local ordinance adopting the state building code, the submission shall be made to the local jurisdiction, provided that the local jurisdiction has established a building department, unless the local jurisdiction requires submission to the commissioner. Review and approval of such documents by the commissioner shall be at the discretion of the commissioner based upon available resources.

l. No project for which a life cycle cost analysis is required to be completed pursuant to Iowa Code section 470.2 shall be approved for construction prior to receipt by the commissioner of the life cycle cost analysis, final approval of the life cycle cost analysis by the commissioner and the department of natural resources pursuant to Iowa Code section 470.7, and the completion of all applicable requirements established in Iowa Code section 470.7.

m. No project for which an energy review is required pursuant to subrule 303.1(3) shall be approved for construction prior to the receipt by the commissioner of the energy review.

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NOTE: Compliance with the requirements of paragraphs "l" and "m" at the earliest practical time is strongly recommended. In no case shall the submission occur later than specified in the applicable statutory provisions and provisions of the state building code.

Amend subrule 300.4(2), paragraph "b," as follows:

b. The fees for plan reviews completed by the building code bureau shall be calculated as follows:

Estimated Construction Costs	Calculation of Plan Review Fee
Up to and including \$1 million	\$.58 per thousand dollars or fraction thereof (minimum fee \$200)
<del>Greater</del> More than \$1 million	\$580 for the first \$1 million plus \$.32 for each additional thousand dollars or fraction thereof
The plan review fees for fire suppression systems and fire alarm systems are separate fees and shall be calculated as follows:	
Fire Protection System Costs	Plan Review Fee
Fire suppression systems whose construction cost for <i>materials and installation</i> is calculated to be up to and including \$20,000 \$5,000	\$200 \$100
<i>Fire suppression systems whose construction cost for materials and installation is calculated to be more than \$5,000 and up to and including \$20,000</i>	\$200
Fire suppression systems whose construction cost for <i>materials and installation</i> is estimated to be <del>greater</del> more than \$20,000	\$400
Fire alarm systems whose construction cost for <i>materials and installation</i> is calculated to be up to and including \$20,000 \$5,000	\$200 \$100
<i>Fire alarm systems whose construction cost for materials and installation is calculated to be more than \$5,000 and up to and including \$20,000</i>	\$200
Fire alarm systems whose construction cost for <i>materials and installation</i> is estimated to be <del>greater</del> more than \$20,000	\$400

Payment of the assigned fee shall accompany each plan when submitted for review. Payment ~~may~~ shall be made by money order, check or draft made payable to the Iowa Department of Public Safety Building Code Bureau Treasurer, State of Iowa.

Amend subrule 300.4(3) as follows:

**300.4(3)** Preliminary meeting. The responsible design professional for a project is ~~strongly encouraged to~~ shall schedule a preliminary meeting with the building code bureau to discuss code compliance issues early in the design development phase. The responsible design professional ~~should~~ shall contact the bureau to schedule the preliminary meeting. There is no separate fee for a preliminary meeting. *If the responsible design professional plans to request approval to bid the project as part of the preliminary meeting, the responsible design professional shall request a copy of the document "Preliminary Meeting Checklist" at the time the meeting is scheduled and shall be prepared to address all applicable issues identified on the checklist at the preliminary meeting. Approval to bid the project shall not be given*

*unless all applicable issues identified on the checklist have been addressed to the satisfaction of the commissioner.*

Adopt the following **new** subrules:

**300.4(4)** Requests for staged approvals.

a. Requests for approval to begin foundation work shall be submitted to the building code bureau in writing and may be transmitted by mail, E-mail or fax or in person. Foundation approval may be granted by the bureau in writing, following a preliminary meeting, if the construction plans and specifications are found to be in compliance with the requisite code provisions.

b. Requests for approval to continue construction beyond the foundation, up to and including the shell of the building, shall be submitted to the bureau in writing and may be transmitted by mail, E-mail or fax or in person. These requests will be evaluated on a case-by-case basis, and approval or denial of the requests will be transmitted to the submitter in a written form.

**300.4(5)** Fast-track projects. While fast-track projects are not encouraged, fast-track projects may be considered by the commissioner on a case-by-case basis. If a fast-track project is initially approved, a written plan of submittal, review and approval will be developed for each project. All projects approved for fast-track review must be submitted in an electronic format that is acceptable to the commissioner.

NOTE: Fast-track projects are not encouraged and will be approved only on the basis of good cause shown.

ITEM 2. Amend rule 661—300.5(103A) as follows:

**661—300.5(103A) Inspections.**

**300.5(1)** ~~After March 1, 2007, any~~ Any building or facility for which construction is subject to a plan review by the commissioner, except construction involving any building or facility owned by the board of regents or by any institution subject to the authority of the board of regents, shall be subject to inspection by the commissioner or staff of the bureau or division at the direction of the commissioner or by a third party with whom the commissioner contracts to conduct inspections of buildings and facilities subject to the state building code. ~~Fees for inspections completed by a third party under contract with the building code commissioner shall be paid by the owner of the building or facility directly to the third-party contractor and shall be in an amount specified in the contract. Inspection fees established in a contract with a third party may vary according to the valuation or complexity of the project, or the amount of time required to complete and report upon any required inspections, or the number of inspections required before compliance with the provisions of the state building code is achieved, but shall not vary according to the geographical location within the state of Iowa of the building or facility or according to the travel time required of an inspector.~~

**300.5(2)** ~~After July 1, 2007, any~~ Any construction involving any building or facility owned by the board of regents or by an institution subject to the authority of the board of regents shall be subject to inspection by the commissioner or staff of the bureau or division at the direction of the commissioner.

*EXCEPTION: Construction which is limited to building additions, renovations or repairs shall not be subject to inspection by the commissioner.*

**300.5(3)** The fee schedule established in a contract or contracts for inspections conducted by a third party shall apply to inspections conducted by the commissioner or staff of the bureau or division at the direction of the commissioner, except that fees for inspections of buildings and facilities owned by the board of regents or by institutions under the control of the

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board of regents shall be established as provided in 2006 Iowa Acts, House File 2797, section 72, subsection 2. However, if inspections are conducted by the commissioner, or by staff of the bureau or division at the direction of the commissioner, the fees shall be paid by the owner directly to the bureau. Buildings subject to inspection by the state building code commissioner, except construction involving any building or facility owned by the board of regents or by any institution subject to the authority of the board of regents, shall pay an inspection fee based upon the construction cost of the project. The inspection fee shall be calculated as follows:

Construction Cost	Base Inspection Fee
Up to \$100,000	\$598
\$100,001 to \$1,000,000	\$645
\$1,000,001 to \$10,000,000	\$722
\$10,000,001 and above	\$783
Follow-up inspection	\$214

The base inspection fee shall cover three inspections—a foundation, rough-in and final. The base inspection fee shall be due and payable at the time completed construction documents are submitted for review. The plan review will not be conducted until the proper base inspection fee is paid. Checks should be made payable to the Treasurer, State of Iowa, and delivered to the bureau office. This fee is separate and distinct from the plan review fee established in subrule 300.4(2).

Additional inspections may occur for any of the following reasons:

- a. During one of the three base inspections, code violations are identified that require that a follow-up inspection be conducted to verify that the violations have been corrected.
- b. Upon arrival, the inspector finds that the project is not ready for the type of inspection requested.
- c. By special request of the project designer, contractor or owner.
- d. Upon order of the building code commissioner (no additional charge).

The fee for each additional inspection shall be calculated individually as follows:

- One hour on site = \$206
- One to two hours on site = \$240
- Two to three hours on site = \$273
- Three to four hours on site = \$307
- Four to five hours on site = \$341
- Five to six hours on site = \$374

Additional inspection fees will be billed to the responsible architect or building contractor on a monthly basis. The building may receive only temporary approval for occupancy if unpaid inspection fees remain at the time of final inspection.

Inspection fees and standard operating procedures for construction involving any building or facility owned by the board of regents or by any institution subject to the authority of the board of regents shall be established through a written agreement between the commissioner and the board of regents.

**300.5(4)** Any person who performs a building code inspection on behalf of the building code commissioner shall have and maintain one of the following: (1) current certification as a commercial building inspector by the International Code Council, or (2) other equivalent certification approved by the building code commissioner. An employee of the department who performs an inspection on behalf of the building code commissioner shall, in addition, meet any requirements for the job class in which the employee is classified as

established by the department of administrative services, pursuant to Iowa Code chapter 8A, subchapter IV, part 2.

EXCEPTION: An employee of the department who performs inspections on behalf of the building code commissioner may perform such inspections for no more than six months prior to obtaining the required certification.

ITEM 3. Amend rule **661—301.3(103A)** by striking the Exception as follows:

~~EXCEPTION: Prior to April 1, 2007, buildings or facilities subject to the state building code may be designed and constructed in compliance with the state building code as it read prior to January 1, 2007. "Prior to April 1, 2007" means that required submissions have been made to the building code commissioner or a local building department by the close of business on March 31, 2007.~~

ITEM 4. Amend rule 661—303.1(103A) as follows:

Amend subrule 303.1(2) as follows:

**303.1(2)** Applicability. Rules 661—303.1(103A) through 661—303.3(103A) apply to design and construction of buildings which provide facilities or shelter intended primarily for human occupancy or use throughout the state of Iowa. ~~All residential construction is covered, as is all nonresidential~~ Any new construction of public buildings; of any building within a jurisdiction which has adopted the state building code, a local building code, or a compilation of requirements for building construction; or any new construction of a building or facility with more than 100,000 cubic feet of enclosed space which is heated or cooled is covered. Rule 661—303.2(103A) establishes standards for design and construction of low-rise residential buildings. Rule 661—303.3(103A) establishes standards for nonresidential and high-rise residential design and construction.

The occupancy of any building covered by this chapter shall be determined based upon the occupancy definitions in chapter 3 of the International Building Code, 2003 2006 edition.

Amend subrule **303.1(3)** by rescinding and reserving paragraph "c."

ITEM 5. Amend rule 661—303.4(103A,473) as follows:

**661—303.4(103A,473 470) Life cycle cost analysis.**

**303.4(1)** Submission required. Any public agency as defined by Iowa Code section 470.1 shall prepare a life cycle cost analysis for any new construction having 20,000 square feet of usable floor space which is heated or cooled by a mechanical or electrical system or for any renovation where additions or alterations exceed 50 percent of the value of the facility and affect an energy system. The life cycle cost analysis shall be prepared in compliance with Iowa Code chapter 470 and shall be submitted to the state building code commissioner before construction commences.

**303.4(2)** Notification by state agency. Any public agency which is a state agency as defined in Iowa Code section 7D.34 shall, within 60 days of final selection of a design architect or engineer, notify the commissioner and the department of natural resources of the methodology to be used to perform the life cycle cost analysis. Notice shall be provided given on the forms provided by the department of natural resources for this purpose. A life cycle cost analysis prepared by a state agency shall be submitted in sufficient time ahead of the releasing release of plans for bids to allow for revisions or additions which may be made to the plans. Public funds shall not be used for the construction or renovation of a facility unless the design for the work is prepared in accordance

PUBLIC SAFETY DEPARTMENT[661](cont'd)

with Iowa Code chapter 470 and the actual construction or renovation is consistent with the design.

**303.4(3) Exemptions from implementation.** Any public agency responsible for construction or renovation of a public facility shall implement the recommendation of the life cycle cost analysis except as provided in this subrule.

a. A public agency responsible for construction or renovation of a public facility may apply to the commissioner for exemption from any recommendation of the life cycle cost analysis.

b. The public agency shall implement all recommendations of the life cycle cost analysis except those which have been approved for exemption by the commissioner and the director of natural resources.

*EXCEPTION:* The public agency is not required to implement any recommendation which would result in a violation of any other provision of law. If the public agency determines that compliance with any recommendation of the life cycle cost analysis would result in a violation of law, the public agency shall so notify the commissioner.

c. The commissioner and the director of natural resources shall evaluate each request for an exemption on a case-by-case basis.

d. The commissioner and the director of natural resources shall consider the following factors in determining whether or not to grant an exemption:

- (1) The purpose of the facility or renovation;
- (2) Preservation of historic architectural features;
- (3) Site considerations;
- (4) Health and safety concerns;
- (5) Compliance with any other provisions of law; and
- (6) The technical feasibility of implementing the recommendation. "Technically feasible" means that a recommendation may be implemented without altering major structural features of an existing facility.

ITEM 6. Amend rule 661—303.5(103A) as follows:

**661—303.5(103A) Submission Energy review fee.** ~~In-~~cluded The fee for filing an energy review shall be \$25. Payment of the fee, by money order, check, or warrant made payable to Treasurer, State of Iowa, shall be included with the submission of documents for an energy review ~~shall be a remittance of \$15, which may be by money order, check, or warrant made payable to Treasurer, State of Iowa.~~

[Filed 10/31/07, effective 1/1/08]

[Published 11/21/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/07.

## ARC 6419B

### REAL ESTATE APPRAISER EXAMINING BOARD[193F]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby amends Chapter 2, "Definitions," rescinds Chapter 4, "Associate Real Property Appraiser," and adopts a new Chapter 4 with the same title, and amends Chapter 8, "Investigations and Disciplinary Proceedings," Iowa Administrative Code.

The amendment to Chapter 2 corrects the definition of an associate real property appraiser or associate appraiser in ac-

cordance with 2007 Iowa Acts, Senate File 137. New Chapter 4 is the result of a complete rewrite of the current chapter; redundant information was removed, and the chapter was rewritten with the intent of making it easier to read. The amendment to Chapter 8 clarifies compensation for peer reviewers in accordance with the Professional Licensing and Regulation Bureau's revised contract.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 29, 2007, as **ARC 6190B**. No public comments were received. No changes have been made to the Notice of Intended Action.

These amendments were adopted by the Board on October 25, 2007.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

These amendments are intended to implement Iowa Code chapter 543D and 272C.

These amendments will become effective on December 26, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [2.1, Ch 4, 8.10(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 6190B**, IAB 8/29/07.

[Filed 11/2/07, effective 12/26/07]

[Published 11/21/07]

[For replacement pages for IAC, see IAC Supplement 11/21/07.]

## ARC 6415B

### REGENTS BOARD[681]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 262.9(1), the Board of Regents hereby adopts an amendment to Chapter 11, "Board of Regents Organization and General Rules," Iowa Administrative Code.

The amendment revises subrule 11.1(1) to reflect the current meeting schedule of the Board of Regents and how a vacancy in the office of president pro tem is filled.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 29, 2007, as **ARC 6177B**. A comment period was established. No comments were received. The final amendment is identical to the proposed amendment.

The Board of Regents adopted the amendment on October 31, 2007.

This amendment is intended to implement Iowa Code section 262.9(1).

This amendment will become effective December 26, 2007.

The following amendment is adopted.

**11.1(1)** President and president pro tem. ~~The president of the board of regents is elected by the board from its members at the April meeting in even-numbered years for a two-year term and until a successor is elected and qualified. Prior to May 1 in even-numbered years, a president shall be elected by the board of regents from its members for a two-year term to commence on May 1 in even-numbered years. A president pro tem shall be elected at the same meeting at which the~~

REGENTS BOARD[681](cont'd)

board president is elected. If a vacancy occurs in the office of board president, the president pro tem shall serve as president until such time as a new president is elected by the board. *If a vacancy occurs in the office of president pro tem, a successor shall be elected by the board of regents from its members as soon as practicable.*

[Filed 11/1/07, effective 12/26/07]

[Published 11/21/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/07.

## ARC 6418B

### UTILITIES DIVISION[199]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4 and 476.10 and 2007 Iowa Acts, Senate File 554, the Utilities Board (Board) gives notice that on November 1, 2007, the Board issued an order in Docket No. RMU-07-5, In re: Certificates of Franchise Authority for Cable and Video Service [199 IAC Chapter 44], "Order Adopting Amendment." The order adopted an amendment which was published under Notice of Intended Action in IAB Vol. XXX, No. 3 (8/01/07) p. 268, as **ARC 6124B**, with revisions described in the order.

The amendment is intended to implement 2007 Iowa Acts, Senate File 554 (S.F. 554 or "the Act"), which became effective upon enactment on May 29, 2007. Entitled "An Act Relating to Franchises for the Provision of Cable Service or Video Service Including Providing for Fees and Providing an Effective Date," the Act requires that providers of cable or video service have a franchise and states that the franchise may be issued either by the Board or a municipality. The Act directs the Board to adopt rules to administer the statute.

The rules define terms relating to certificates of franchise authority to be issued by the Board; prescribe the content of an initial application for a certificate of franchise authority; and establish procedures for applying for a certificate of franchise authority, modifying a service area, and transferring or terminating certificates of franchise authority. The rules require competitive providers to notify affected municipalities and the incumbent cable provider at least 30 days before providing service. The rules establish filing fees for applications, modifications, transfers, and terminations. The rules reflect the Act's provision that allows an incumbent cable provider to convert an existing municipal franchise to a Board-issued franchise.

Written comments addressing the proposed amendment were filed by Mr. N.E. Thornsberry of Waterloo, Iowa; Public Access Television, Inc.; the Rural Iowa Independent Telephone Association; the City of Iowa City, Iowa; the Iowa Telecommunications Association; and the Iowa Cable & Telecommunications Association, Inc.

A public hearing was held September 20, 2007. On September 21, 2007, the Board issued an order allowing interested persons to file additional comments by October 1, 2007. Additional written comments were received from the City of Iowa City, Iowa Cable & Telecommunications Association, Inc., and the Consumer Advocate Division of the Department of Justice.

The Board made three revisions to the amendment based on its final review of the comments. Specifically, changes

have been made to paragraph 44.3(3)"e" and to subrules 44.3(6) and 44.4(1). The Board's order adopting the revised amendment can be found on the Board's Web site, [www.state.ia.us/iub](http://www.state.ia.us/iub).

This amendment will become effective December 26, 2007.

This amendment is intended to implement Iowa Code sections 17A.4 and 476.10 and 2007 Iowa Acts, Senate File 554. The following amendment is adopted.

Adopt the following **new** chapter:

#### CHAPTER 44

#### CERTIFICATES OF FRANCHISE AUTHORITY FOR CABLE AND VIDEO SERVICE

**199—44.1(17A,476,82GA,SF554) Authority and purpose.** These rules are intended to implement 2007 Iowa Acts, Senate File 554, relating to certificates of franchise authority issued by the board for the provision of cable service or video service. The purpose of these rules is to establish procedures and filing fees for initial applications for and subsequent modifications, transfers, terminations, or updates of certificates of franchise authority issued by the board.

**199—44.2(17A,476,82GA,SF554) Definitions.** The following words and terms, when used in this chapter, shall have the meanings shown below:

"Board" means the utilities board within the utilities division of the department of commerce.

"Cable operator" means the same as defined in 47 U.S.C. Section 522.

"Cable service" means the same as defined in 47 U.S.C. Section 522.

"Cable system" means the same as defined in 47 U.S.C. Section 522.

"Certificate of franchise authority" means the certificate issued by the board authorizing the construction and operation of a cable system or video service provider's network in a public right-of-way.

"Competitive cable service provider" means a person who provides cable service over a cable system in an area other than the incumbent cable provider providing service in the same area.

"Competitive video service provider" means a person who provides video service other than a cable operator.

"Franchise" means an initial authorization, or renewal of an authorization, issued by the board or a municipality, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable system or video service provider's network in a public right-of-way.

"Franchise fee" means the fee imposed pursuant to 2007 Iowa Acts, Senate File 554, section 8.

"Incumbent cable provider" means the cable operator serving the largest number of cable subscribers in a particular franchise service area on January 1, 2007.

"Municipality" means a county or a city.

"Public right-of-way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the municipality has an interest, including other dedicated rights-of-way for travel purposes and utility easements. "Public right-of-way" does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcast

## UTILITIES DIVISION[199](cont'd)

services or utility poles owned by a municipality or a municipal utility.

“Video programming” means the same as defined in 47 U.S.C. Section 522.

“Video service” means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. “Video service” does not include any video programming provided by a provider of commercial mobile service as defined in 47 U.S.C. Section 332 or cable service provided by an incumbent cable provider or a competitive cable service provider or any video programming provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

**199—44.3(17A,476,82GA,SF554) Certificate of franchise authority.** As provided in 2007 Iowa Acts, Senate File 554, section 3, after July 1, 2007, a person shall not provide cable service or video service in Iowa without a franchise. The franchise may be issued by either the board pursuant to this chapter or by a municipality pursuant to Iowa Code section 364.2.

**44.3(1) Existing franchise agreements.** A person providing cable service or video service pursuant to a franchise agreement with a municipality in effect before July 1, 2007, is not subject to the requirement to obtain a franchise with respect to such municipality until the franchise agreement expires or, in the case of an incumbent cable provider, until the franchise is converted to a certificate of franchise authority issued by the board. Upon expiration of a franchise, a person may choose to renegotiate a franchise agreement with a municipality or may apply for a certificate of franchise authority from the board.

**44.3(2) Municipal utilities.** A municipal utility that provides cable service or video service in Iowa is not required to obtain a certificate of franchise authority in the municipality in which the provision of cable service or video service by the municipality was originally approved.

**44.3(3) Initial application.** Within 15 business days after receiving an application and affidavit from an applicant using a form developed by and available from the board, the board shall issue a certificate of franchise authority or notify the applicant that the application is incomplete. The application must be signed by an officer or general partner of the applicant and shall provide the following information:

a. A statement that the applicant has filed or will timely file with the Federal Communications Commission (FCC) all forms required by the FCC in advance of offering cable service or video service in Iowa;

b. A statement that the applicant agrees to comply with all applicable federal and state statutes, regulations, and rules;

c. A statement that the applicant agrees to comply with all applicable state laws and nondiscriminatory municipal ordinances and regulations regarding the use and occupation of a public right-of-way in the delivery of the cable service or video service, including the police powers of the municipalities in which the service is delivered;

d. A description of the service area to be served and the municipalities to be served by the applicant, including descriptions of unincorporated areas, if applicable;

e. The address of the applicant’s principal place of business and the names and titles of the applicant’s principal executive officers with direct authority over and responsibility for the applicant’s cable or video operations; and

f. The telephone number for customer service contact.

The service area description must be sufficiently detailed to enable the board to ascertain the boundaries of the applicant’s proposed service area. Applicants certificated by the board as local exchange carriers pursuant to Iowa Code section 476.29 may choose to refer to descriptions (including maps) of local exchange service areas on file with the board.

**44.3(4) Content of certificate.** A certificate of franchise authority issued by the board shall contain all of the following:

a. A grant of authority to provide cable service or video service in the service area designated in the application;

b. A grant of authority to use and occupy the public right-of-way in the delivery of cable service or video service, subject to the laws of Iowa, including the police powers of the municipalities in which the service is delivered;

c. A statement that the grant of authority provided by the certificate is subject to the lawful operation of the cable service or video service by the applicant or the applicant’s successor; and

d. A statement that the franchise is for a term of ten years, is renewable, and is nonexclusive.

**44.3(5) Modification of service area.** At least 14 days before expanding cable service or video service to a previously undesignated service area or making any other change to its previously designated service area, the holder of a certificate of franchise authority shall update the description of its service area on file with the board and shall notify the board upon expansion or other change in service area using a form developed by and available from the board.

**44.3(6) Transfer of certificate of franchise authority.** The holder of a certificate of franchise authority may transfer the certificate to any successor by filing a notice of transfer with the board and each affected municipality using a form developed by and available from the board. The notice of transfer shall include the address of the successor’s principal place of business and the names and titles of the successor’s principal executive officers with direct authority over and responsibility for the successor’s cable or video operations. A notice of transfer shall be effective on the date which is the later of (1) 14 business days after the date of filing of the notice of transfer with the board or (2) the effective date of transfer as designated by the certificate holder, provided such date is not less than 14 business days after the date the notice of transfer is filed with the board, unless the certificate holder files a notice of rescheduling of the transfer and provides a copy of such notice to each affected municipality. As of the effective date of the transfer, the successor shall assume all regulatory rights and responsibilities of the holder of the certificate.

**44.3(7) Termination of certificate of franchise authority.** The holder of a certificate of franchise authority may terminate the certificate by providing written notice of termination to the board and to each affected municipality using a form developed by and available from the board.

**44.3(8) Updates.** The holder of a certificate of franchise authority shall notify the board of any change in the name of the entity holding the certificate, contact personnel, principal executive officers, address of principal place of business, telephone number, and customer service contact information by sending a letter to the board specifying the change and certificate number. The notice shall be provided within 14 days after the effective date of the change.

**199—44.4(17A,476,82GA,SF554) Notice to municipality and incumbent cable provider.** A competitive service provider shall notify affected municipalities and incumbent cable providers of its plan to offer service as provided in this rule.

## UTILITIES DIVISION[199](cont'd)

**44.4(1)** At least 30 days before providing service in any part of a competitive cable or video service provider's certificated service area in which the provider has not yet offered service pursuant to a board-issued certificate of franchise authority, a competitive cable service provider or competitive video service provider shall notify each municipality with authority to grant a franchise in the part of the competitive provider's service area to be served and the incumbent cable provider in that area that the competitive provider will provide service within the jurisdiction of the municipality and when such service will begin. A competitive cable service provider or competitive video service provider shall not provide service without having provided the notice required by this rule.

**44.4(2)** The competitive cable service provider or competitive video service provider shall file a copy of the notice required by this rule with the board.

**44.4(3)** If the competitive cable service provider or competitive video service provider determines that its entry into the market will be delayed, no further notice will be required unless market entry is delayed for more than 30 days after the date service was expected to begin.

**199—44.5(17A,476,82GA,SF554) Conversion of municipal franchise by incumbent cable provider.** If a competitive cable service provider or a competitive video service provider applies for a certificate of franchise authority to operate within a municipality, the incumbent cable provider in that municipality may apply for a certificate of franchise authority for that same municipality using an application form devel-

oped by the board and providing the information required in 44.3(3). The board shall automatically grant the incumbent's application, if complete, effective on the same day a competitive cable service provider or competitive video service provider files the 30 days' notice of offering service as required pursuant to 44.4(17A,476,82GA,SF554) if the incumbent cable provider files its application within 30 days of the day the competitive service provider provides the 30 days' notice. If the incumbent cable provider files its application more than 30 days after the date the competitive service provider provides the 30 days' notice, the board shall grant the incumbent's application, if complete, to be effective on the date the application is filed with the board.

**199—44.6(17A,476,82GA,SF554) Filing fees.** Each applicant shall submit one or more of the following fees, as applicable:

1. A filing fee of \$100 with an initial application; and
2. A filing fee of \$50 with a notice of modification or transfer; and
3. A filing fee of \$25 with a notice of termination.

These rules are intended to implement Iowa Code sections 17A.4 and 476.10 and 2007 Iowa Acts, Senate File 554.

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