



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly 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"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

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CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

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

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

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2010

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 23 '09	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sep. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sep. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	***May 26***	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	***June 23***	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sep. 1	Nov. 29
May 26	June 16	July 6	July 21	July 23	Aug. 11	Sep. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sep. 29	Dec. 27
June 23	July 14	Aug. 3	Aug. 18	Aug. 20	Sep. 8	Oct. 13	Jan. 10 '11
July 9	July 28	Aug. 17	Sep. 1	***Sep. 1***	Sep. 22	Oct. 27	Jan. 24 '11
July 23	Aug. 11	Aug. 31	Sep. 15	Sep. 17	Oct. 6	Nov. 10	Feb. 7 '11
Aug. 6	Aug. 25	Sep. 14	Sep. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '11
Aug. 20	Sep. 8	Sep. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 7 '11
Sep. 1	Sep. 22	Oct. 12	Oct. 27	***Oct. 27***	Nov. 17	Dec. 22	Mar. 21 '11
Sep. 17	Oct. 6	Oct. 26	Nov. 10	***Nov. 10***	Dec. 1	Jan. 5 '11	Apr. 4 '11
Oct. 1	Oct. 20	Nov. 9	Nov. 24	***Nov. 24***	Dec. 15	Jan. 19 '11	Apr. 18 '11
Oct. 15	Nov. 3	Nov. 23	Dec. 8	***Dec. 8***	Dec. 29	Feb. 2 '11	May 2 '11
Oct. 27	Nov. 17	Dec. 7	Dec. 22	***Dec. 22***	Jan. 12 '11	Feb. 16 '11	May 16 '11
Nov. 10	Dec. 1	Dec. 21	Jan. 5 '11	Jan. 7 '11	Jan. 26 '11	Mar. 2 '11	May 30 '11
Nov. 24	Dec. 15	Jan. 4 '11	Jan. 19 '11	Jan. 21 '11	Feb. 9 '11	Mar. 16 '11	June 13 '11
Dec. 8	Dec. 29	Jan. 18 '11	Feb. 2 '11	Feb. 4 '11	Feb. 23 '11	Mar. 30 '11	June 27 '11
Dec. 22	Jan. 12 '11	Feb. 1 '11	Feb. 16 '11	Feb. 18 '11	Mar. 9 '11	Apr. 13 '11	July 11 '11

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
25	Friday, May 14, 2010	June 2, 2010
26	Wednesday, May 26, 2010	June 16, 2010
27	Friday, June 11, 2010	June 30, 2010

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*****

HISTORICAL DIVISION[223]

Historic preservation and cultural and entertainment district tax credits, 48.10 IAB 5/5/10 ARC 8721B	Tone Board Room, Third Floor West Historical Building 600 E. Locust St. Des Moines, Iowa	May 26, 2010 10 a.m.
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LABOR SERVICES DIVISION[875]

Clarification of board procedures and actions, amendments to chs 80 to 85, 90 IAB 4/21/10 ARC 8694B	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	May 12, 2010 8:30 a.m. (If requested)
Professional boxing; mixed martial arts, amendments to chs 173, 177 IAB 5/5/10 ARC 8752B	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	May 26, 2010 1:30 p.m. (If requested)

MEDICINE BOARD[653]

Iowa physician health committee, amendments to ch 14 IAB 5/5/10 ARC 8751B	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	May 25, 2010 11 a.m.
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Determination of residency status, 15.2, 15.9 to 15.11 IAB 5/5/10 ARC 8729B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 25, 2010 1 p.m.
Boating speed and distance zoning, amendments to ch 40 IAB 5/5/10 ARC 8728B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 25, 2010 1 p.m.
All-terrain vehicles, off-road motorcycles and off-road utility vehicles, ch 46 IAB 5/5/10 ARC 8730B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 25, 2010 2 p.m.
Snowmobiles, ch 47 IAB 5/5/10 ARC 8731B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 25, 2010 2 p.m.
All-terrain vehicle, off-road motorcycle, off-road utility vehicle, snowmobile and vessel bonding, ch 50 IAB 5/5/10 ARC 8732B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 25, 2010 2 p.m.

PUBLIC HEALTH DEPARTMENT[641]

State plumbing code, 25.1 to 25.5 IAB 4/21/10 ARC 8703B (ICN Network)	Sixth Floor, Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa	May 11, 2010 11 a.m. to 1 p.m.
	Kelison Room Public Library Information Center 2950 Learning Campus Dr. Bettendorf, Iowa	May 11, 2010 11 a.m. to 1 p.m.
	Public Library 400 Willow Ave. Council Bluffs, Iowa	May 11, 2010 11 a.m. to 1 p.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)**(ICN Network)**

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Room B111, Archdiocesan Pastoral Center 1229 Mount Loretta Dubuque, Iowa	May 11, 2010 11 a.m. to 1 p.m.
Room 113, Trinity Hospital 802 Kenyon Rd. Fort Dodge, Iowa	May 11, 2010 11 a.m. to 1 p.m.
University of Iowa 1 2222 Old Highway 218S Iowa City, Iowa	May 11, 2010 11 a.m. to 1 p.m.
Room 266, Burlington AEA 1200 University Place Burlington, Iowa	May 11, 2010 11 a.m. to 1 p.m.
Clarinda Center Iowa Western Community College 2923 Washington Clarinda, Iowa	May 11, 2010 11 a.m. to 1 p.m.
National Guard Armory 1160 19th St., S.W. Mason City, Iowa	May 11, 2010 11 a.m. to 1 p.m.
Great Prairie AEA 1 2814 N. Court St. Ottumwa, Iowa	May 11, 2010 11 a.m. to 1 p.m.
Meeting Room C, Public Library 415 Commercial St. Waterloo, Iowa	May 11, 2010 11 a.m. to 1 p.m.
Room 780, Morningside College 1501 Morningside Ave. Sioux City, Iowa	May 11, 2010 11 a.m. to 1 p.m.
Distance Learning Center Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	May 11, 2010 11 a.m. to 1 p.m.

RACING AND GAMING COMMISSION[491]

Licensees' responsibilities; gambling games; accounting and cash control, amendments to chs 5, 11, 12 IAB 5/5/10 ARC 8726B	Suite B 717 E. Court Ave. Des Moines, Iowa	May 25, 2010 9:30 a.m.
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The following list will be updated as changes occur.

“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 are included alphabetically in SMALL CAPITALS at the left-hand margin.

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and
FEMA DR-1880-IA**

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECTS
Iowa Homeland Security and Emergency Management Division (HSEMD)	<p>Hazard Mitigation Grant Program (HMGP)</p> <p>Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA)</p>	<ul style="list-style-type: none"> • State Agencies and Local Governments • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes and Authorized Tribal Organizations. • Private Non Profit (PNP) Organizations or institutions which operate a PNP facility as defined in 44 Code of Federal Regulations (CFR), Section 206.221(e). • All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP. • All Applicants for a project grant MUST have a FEMA-approved local hazard mitigation plan. <p>Application Process:</p> <ul style="list-style-type: none"> - Potential project & planning applicants must complete a Notice of Interest (NOI) Form located on the HSEMD website at: http://www.iowahomelandsecurity.org/ - NOI Form must be E-mailed to: hsemd.mitigation@iowa.gov - NOIs will be selected for full application development based on funding availability, the State's priority, and an initial eligibility review. - Entities selected for full project application development will be provided a minimum of two months to complete the application. <p style="text-align: center;">For additional information please contact:</p> <p style="text-align: center;">Jim Russell 515-253-2552 John Wageman 515-253-2581</p> <p style="text-align: center;">Iowa Homeland Security and Emergency Management Division 7105 NW 70th Avenue Camp Dodge, Bldg. W4 Johnston, Iowa 50131</p>	<p>Eligible Project Types</p> <p>Projects may be of any nature that will result in protection to public or private property, including but not limited to:</p> <ul style="list-style-type: none"> • Acquisition or relocation of hazardprone property for conversion to open space in perpetuity • Construction of safe rooms (tornado and severe wind shelters) • Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, flood-proofing, storm shutters, hurricane clips) • Minor structural hazard control or protection projects that may include vegetation management, storm water management (e.g., culverts, floodgates, retention basins), or shoreline/landslide stabilization • Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system <p>Planning Application</p> <p>The outcome of a mitigation planning grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA-approved hazard mitigation plan.</p>

ARC 8721B

HISTORICAL DIVISION[223]

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 303.1A, the Director of the Department of Cultural Affairs hereby gives Notice of Intended Action to amend Chapter 48, “Historic Preservation and Cultural and Entertainment District Tax Credits,” Iowa Administrative Code.

The rules in Chapter 48 set forth the procedures by which the public may access the historic preservation and cultural and entertainment district tax credits. The purpose of this amendment is to revise the method by which an applicant certifies project commencement.

Public comments concerning this proposed amendment will be accepted until 4:30 p.m. on May 26, 2010. Interested persons may submit written or oral comments by contacting Kathy Gourley, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)282-0502; E-mail Kathy.Gourley@iowa.gov. Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515)281-3989.

Also, there will be a public hearing on May 26, 2010, at 10 a.m. at the above address in the Tone Board Room, Third Floor West, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code chapters 303 and 404A.

The following amendment is proposed.

Rescind rule 223—48.10(303,404A) and adopt the following new rule in lieu thereof:

223—48.10(303,404A) Project commencement.

48.10(1) Once a tax credit reservation is made for a project, rehabilitation must begin before the end of the state fiscal year in which the SHPO approved part two of the application. The applicant shall submit to the SHPO a project commencement report and cover letter certifying the commencement date of rehabilitation and outlining expenditure of qualified rehabilitation costs. This report and cover letter are due within the first ten working days of the next state fiscal year. Information about the project commencement report is available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. It may also be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

48.10(2) In the event rehabilitation on a project does not begin before the end of the state fiscal year in which the SHPO approved part two of the application, the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A).

This rule is intended to implement Iowa Code chapters 303 and 404A.

ARC 8719B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 65, “Food Assistance Program Administration,” Iowa Administrative Code.

The proposed amendment provides that the Department shall replace a Food Assistance electronic benefits transfer card when three consecutive transactions have been made by manually keyed entry. The Department will consider three manual entries as evidence that the card is defective. The cost of a replacement card is the responsibility of the electronic benefits transfer vendor.

This amendment does 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 amendment on or before May 25, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 234.12.

The following amendment is proposed.

Amend paragraph **65.4(2)“b”** as follows:

b. Replacement of EBT cards.

(1) EBT cards shall be replaced within five business days after the client notifies the EBT customer service help desk of the need for replacement.

(2) The department shall replace a household’s EBT card when three consecutive transactions have been made by manually keyed entry.

ARC 8722B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

The proposed amendments:

- Clarify criteria for coverage of oxygen in nursing facilities. Significant hypoxemia measured according to Medicare criteria is required for coverage.
- Establish criteria for coverage of oxygen for infants and small children, whose oxygen needs are different from those of older people. Home oxygen equipment and oxygen may be covered for members through three years of age without regard to the member’s hypoxemia level.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Delete outdated documentation requirements for oxygen claims. With this change, providers will be able to bill oxygen claims electronically without the need for a document attachment.
- Clarify that nutritional products consumed orally are not separately payable for members in nursing facilities or ICF/MRs.

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 May 25, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

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

The following amendments are proposed.

ITEM 1. Amend paragraph **78.10(2)“a”** as follows:

a. Durable medical equipment will not be provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded except when a ~~Medicaid-eligible resident of~~ Medicaid member in a nursing facility ~~medically~~ has significant hypoxemia according to Medicare criteria and needs oxygen for 12 or more hours per day for at least 30 days or more. Medicaid will provide payment to medical equipment and supply dealers to provide oxygen services in a nursing facility when all of the following requirements and conditions have been met:

(1) A physician's, physician assistant's, or advanced registered nurse practitioner's prescription documents that a ~~resident of~~ member in a nursing facility has significant hypoxemia according to Medicare criteria and requires oxygen for 12 hours or more per day and the provider and physician, physician assistant, or advanced registered nurse practitioner jointly submit Certificate of Medical Necessity, Form CMS-484, from Medicare or a reasonable facsimile to the Iowa Medicaid enterprise with the monthly billing. The documentation submitted maintained in the provider record must contain the following:

1. to 5. No change.

Oxygen prescribed “PRN” or “as necessary” is not allowed.

(2) to (6) No change.

ITEM 2. Amend paragraph **78.10(2)“c,”** introductory paragraph, as follows:

c. Coverage of home oxygen equipment and oxygen will be considered reasonable and necessary only for members with significant hypoxemia, as shown by medical documentation. The physician's, physician assistant's, or advanced registered nurse practitioner's prescription shall document that other forms of treatment have been tried and have not been successful; and that oxygen therapy is required. EXCEPTION: Home oxygen equipment and oxygen are covered for children through three years of age when prescribed by a physician, physician assistant or advanced registered nurse practitioner. A pulse oximeter reading must be obtained at one year of age and at two years of age and documented in the provider record.

ITEM 3. Amend paragraph **78.10(3)“b”** as follows:

b. Only the following types of prosthetic devices shall be covered through the Medicaid program:

(1) Artificial eyes.

(2) Artificial limbs.

(3) Augmentative communications systems provided for members unable to communicate their basic needs through oral speech or manual sign language. Payment will be made for the most cost-effective item that meets basic communication needs commensurate with the member's cognitive and language abilities. See 78.10(3) “c” for prior approval requirements.

(4) Enteral delivery supplies and products. See 78.10(3) “c” for prior approval requirements.

(5) Hearing aids. See rule 441—78.14(249A).

(6) Oral nutritional products. See 78.10(3) “c” for prior approval requirements. Nutritional products consumed orally are not covered for members in nursing facilities or intermediate care facilities for the mentally retarded.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (7) Orthotic devices. See 78.10(3)“d” for limitations on coverage of cranial orthotic devices.
- (8) Ostomy appliances.
- (9) Parenteral delivery supplies and products. Daily parenteral nutrition therapy is considered necessary and reasonable for a member with severe pathology of the alimentary tract that does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the member’s general condition.
- (10) Prosthetic shoes. See rule 441—78.15(249A).
- (11) Tracheotomy tubes.
- (12) Vibrotactile aids. Vibrotactile aids are payable only once in a four-year period unless the original aid is broken beyond repair or lost. (Cross-reference 78.28(8))

ITEM 4. Amend subparagraph **78.10(3)“c”(3)** as follows:

(3) Oral nutritional products. Payment for oral nutritional products shall be approved as medically necessary only when the member is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology, to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake, or when the use of oral nutritional products is otherwise determined medically necessary in accordance with evidence-based guidelines for treatment of the member’s condition. Nutritional products consumed orally are not covered for members in nursing facilities or intermediate care facilities for the mentally retarded. A request for prior approval shall include a physician’s, physician assistant’s, or advanced registered nurse practitioner’s written order or prescription and documentation to establish the medical necessity for oral supplementation pursuant to these standards. The documentation shall include:

1. A statement of the member’s total medical condition that includes a description of the member’s metabolic, digestive, or psychological disorder or pathology.
2. Documentation of the medical necessity for commercially prepared products. The information submitted must identify other methods attempted to support the member’s nutritional status and indicate that the member’s nutritional needs were not or could not be met by regular food in pureed form.
3. Documentation to support the fact that regular foods will not provide sufficient nutritional value to the member. Examples of conditions that will not justify approval of oral supplementation are: weight-loss diets, wired-shut jaws, diabetic diets, milk or food allergies (unless the member is under five years of age and coverage through the Women, Infant and Children’s program is not available), supplementation to boost calorie or protein intake by less than 51 percent of the daily intake, and the absence of severe pathology of the body or psychological pathology or disorder.

ARC 8710B

IOWA FINANCE AUTHORITY[265]

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 16.5(1)“r” and 17A.3(1)“b” and 2010 Iowa Acts, House File 2487, the Iowa Finance Authority proposes to adopt new Chapter 37, “Recovery Zone Bond Allocation,” Iowa Administrative Code.

The purpose of these rules is to implement 2010 Iowa Acts, House File 2487, by providing a means of allocating bonding authority for recovery zone bonds.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

IOWA FINANCE AUTHORITY[265](cont'd)

The Authority will receive written comments on the proposed rules until 4:30 p.m. on May 25, 2010. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov.

The Authority anticipates that it may make changes to the proposed rules based on comments received from the public.

These proposed rules were also Adopted and Filed Emergency and are published herein as **ARC 8709B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These rules are intended to implement Iowa Code section 16.5(1)“r” and 2010 Iowa Acts, House File 2487.

ARC 8752B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 90A.7 and 2010 Iowa Acts, Senate File 2286, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 173, “Professional Boxing,” and Chapter 177, “Professional Shoot Fighting,” Iowa Administrative Code.

The proposed changes to Chapter 173 set forth rules governing the issuance, revocation, and denial of boxer registrations. The proposed changes to Chapter 177 implement 2010 Iowa Acts, Senate File 2286; adopt new definitions; make editorial and technical changes; require a promoter to provide the Labor Commissioner written notice of an event at least 30 days in advance; require a promoter to ensure an authorized emergency medical technician transport service is on site during an event; set forth requirements for an event license; require three judges and two referees for an event; set forth scoring procedures; increase the allowed size of a cage; change the requirements for weighing a contestant; prohibit officials and participants from threatening any person; clarify who may be present in a cage; change the limits on the length and number of rounds in a match; expand the list of fouls; set forth appropriate responses to fouls; and ban overtime.

The purposes of these amendments are to implement legislative intent and to protect the safety and health of contestants, participants, officials, and the general public.

If requested by the close of business on May 25, 2010, a public hearing will be held on May 26, 2010, at 1:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Interested persons may submit written data, views, or arguments to be considered in adoption no later than May 26, 2010, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

These amendments are intended to implement Iowa Code chapter 90A and 2010 Iowa Acts, Senate File 2286.

The following amendments are proposed.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 1. Adopt the following new rule 875—173.55(90A):

875—173.55(90A) Boxer registration. The commissioner participates in the Association of Boxing Commissions (ABC) national boxer registration system which allows authorities from different states to share information concerning boxers. The issuance of a registration card to a boxer does not guarantee the right to participate in a match.

173.55(1) Application. A boxer shall apply for registration in the state where the boxer resides, unless the state where the boxer resides does not participate in the ABC registration system. A person applying for a new or renewal boxer registration shall complete, sign, and submit to the division the ABC Boxer's Federal Identification Card Application. With the application, the applicant shall submit a \$25 fee; two 1" × 1.5" color photographs of the applicant's head; and a copy of a photo identification issued to the applicant by a governmental entity and containing the applicant's photograph and social security number or similar foreign identification number. The applicant must be recognizable in the photographs.

173.55(2) Expiration. The registration shall expire two years from the date of issuance.

173.55(3) Changes. The boxer shall notify the division at the time any of the information on the form changes.

173.55(4) Denials. The labor commissioner may refuse to issue or renew a boxer registration for failure to complete an application package properly.

ITEM 2. Amend **875—Chapter 177**, title, as follows:

~~PROFESSIONAL SHOOT FIGHTING MIXED MARTIAL ARTS~~

ITEM 3. Rescind rule 875—177.1(90A) and adopt the following new rule in lieu thereof:

875—177.1(90A) Definitions. The definitions contained in Iowa Code chapter 90A as amended by 2010 Iowa Acts, Senate File 2286, and the definitions in this rule shall apply to this chapter.

"*Contestant*" means a person who fights or is scheduled to fight in a match.

"*Event*" means a program or card of one or more matches covered by Iowa Code chapter 90A.

"*Match*" means a mixed martial arts match.

"*Mixed martial arts*" means a style of athletic contest that includes a combination of combative skills from the sports of boxing, wrestling, kickboxing and judo.

"*MMA*" means mixed martial arts.

ITEM 4. Rescind and reserve subrule **177.2(1)**.

ITEM 5. Amend subrules 177.2(2) to 177.2(4), 177.2(6) and 177.2(7) as follows:

177.2(2) General. The promoter shall:

~~a. Ensure have responsibility for compliance with the rules of this chapter. The promoter shall make certain;~~

~~b. Ensure that the referee is referees are familiar with and enforce the rules and that the referee enforces them. The promoter shall be;~~

~~c. Be responsible for the conduct of all officials and participants at a shoot fighting event. The promoter shall be answerable;~~

~~d. Answer to the commissioner for noncompliance; and~~

~~e. Be available to the commissioner throughout an event or identify a designee who shall be:~~

~~(1) Available to the commissioner throughout an event; and~~

~~(2) Authorized by the promoter to address issues that may arise.~~

177.2(3) Contracts. All contracts between a promoter and contestants shall be written and signed on official forms furnished by the commissioner. One copy of each contract shall be filed with the commissioner at least seven days prior to the date of the fight, unless a specific individual delay is approved by the commissioner. A promoter shall enter into a written contract with each contestant using the form furnished by the commissioner. Telegrams, fax transmissions, electronic mail, or letters indicating acceptance of terms will be considered an agreement between a contestant, the contestant's manager and the promoter pending the actual signing of the contract.

LABOR SERVICES DIVISION[875](cont'd)

177.2(4) *Event officials provided.* The promoter ~~is to~~ shall provide all officials and ensure their attendance during the entire ~~duration of all fights~~ event. The officials are subject to approval by the commissioner.

177.2(6) *Public safety.* The promoter ~~is to~~ shall ensure that adequate public safety is maintained at all ~~fights~~ events. At least one law enforcement officer, who is certified pursuant to Iowa Code chapter 80B, and adequate personnel provided by a private security company shall be furnished by the promoter, must be in attendance with additional law enforcement officers as required by the need to maintain adequate public safety. ~~The~~ When the commissioner finds that failure to provide adequate security to maintain public safety imperatively requires emergency action ~~to~~, the commissioner may immediately suspend the event license, pending license revocation procedures pursuant to Iowa Code ~~section 17A.18(3)~~ chapter 17A.

177.2(7) *Prohibited events.* No promoter, ~~matchmaker or any other person~~ shall arrange, ~~match~~ or advertise:

- a. A match ~~any contest~~ between persons of the opposite sex ~~or~~;
- b. A match ~~fights~~ in which more than two contestants are to appear in the ~~ring~~ cage at the same time;
- c. A match with a contestant who is younger than 18 years of age; or
- d. A match between a contestant who has previously fought in a professional MMA match and a contestant who has not previously fought in a professional MMA match. A promoter shall confirm the eligibility of a contestant under consideration for an amateur match at www.mixedmartialarts.com.

ITEM 6. Adopt the following new subrules 177.2(8) to 177.2(11):

177.2(8) *Advance notice of event.* A promoter shall submit advance notice of an event to the commissioner on the form provided by the commissioner at least 30 days prior to the event. The advance notice shall include:

- a. The date, time, and location of the event;
- b. The date, time, and location for weighing the contestants;
- c. The promoter's name and contact information;
- d. The name, contact information, and role of each proposed official; and
- e. Other relevant information requested by the commissioner on the form.

177.2(9) *License.* A promoter shall not hold an event prior to the promoter's obtaining a license. At least seven days before the event, the promoter shall submit an application for a license on the form provided by the commissioner. The promoter shall submit with the application each of the following:

- a. A bond in the sum of \$5,000, payable to the State of Iowa, conditioned upon the payment of the tax and penalties imposed by Iowa Code chapter 90A as amended by 2010 Iowa Acts, Senate File 2286, unless the promoter has a current valid bond on file with the division;
- b. The name, address, weight, gender, and opponent of each contestant;
- c. A copy of the medical license of the ringside physician;
- d. Copies of the contracts with the contestants, the emergency medical services company, and the security company;
- e. The name and contact information for the certified law enforcement officer that will attend the event;
- f. The date, time, and location of the ringside physician's examination of the contestants;
- g. The date, time, and location for weighing the contestants;
- h. Certificates of health and life insurance as required by rule 875—177.10(90A);
- i. Proof of age for each contestant that shall consist of a copy of one of the following documents:
 - (1) A certified birth certificate;
 - (2) A passport;
 - (3) A certified baptismal record;
 - (4) A U.S. visa;
 - (5) Photo identification issued to the contestant by a governmental entity and containing the contestant's photograph and social security number or similar foreign identification number; or

LABOR SERVICES DIVISION[875](cont'd)

(6) A U.S. resident alien card.

j. Other relevant information requested by the commissioner on the form.

177.2(10) Emergency medical service. A promoter shall ensure that an ambulance service authorized at the EMT-B, EMT-I, EMT-P or paramedic specialist level pursuant to 641—Chapter 132 is present at the event. A promoter is fully responsible for all charges assessed by the ambulance service related to the event except:

a. Charges covered by insurance.

b. Charges for services provided to persons other than participants and officials.

177.2(11) Cleaning. The promoter shall provide and maintain a container with a solution of ten parts water to one part bleach to clean bodily fluids from any part of the cage, cage enclosure, or floor.

ITEM 7. Amend paragraph **177.3(1)“a”** as follows:

a. *Size.* The ~~ring~~ cage shall not be less than 16 nor more than ~~22~~ 36 feet square.

ITEM 8. Rescind subrule **177.3(4)**.

ITEM 9. Amend subrules 177.4(1) and 177.4(3) as follows:

177.4(1) Officials. Officials ~~will~~ shall consist of three judges, ~~the referee~~ two referees, the physician, and the timekeeper.

177.4(3) Timekeeper. The timekeeper shall keep an exact record of time taken out at the request of a referee for an examination of a contestant by the physician, replacing a glove or adjusting any equipment during a round. The timekeeper shall ~~sound a whistle ten seconds before the start of the round and overtime~~ notify contestants at the beginning and end of each round. The timekeeper shall be impartial and shall not signal interested parties at any time during a ~~fight~~ match.

ITEM 10. Rescind and reserve subrule **177.4(5)**.

ITEM 11. Rescind subrule 177.4(6) and adopt the following **new** subrule in lieu thereof:

177.4(6) Scoring. Three judges shall score each match by evaluating striking, grappling, control of the cage, aggressiveness, and defense. The significance and number of legal strikes shall receive the greatest weight. The number of legal takedowns and reversals shall receive the second greatest weight. Control of the cage shall receive the third greatest weight. Aggression shall receive the fourth greatest weight. Defense shall receive the least weight. The winner of a round shall always receive a score of 10. The score for each round shall be one of the following:

a. If the contestants were evenly matched and neither dominated the round, the score shall be 10-10.

b. If a contestant won a round by a close margin, the score shall be 10-9.

c. If a contestant overwhelmingly dominated a round, the score shall be 10-8.

d. If a contestant totally dominated a round, the score shall be 10-7.

ITEM 12. Rescind subrule 177.4(7) and adopt the following **new** subrule in lieu thereof:

177.4(7) Length of match. Each match shall consist of no more than three rounds with no more than five minutes per round. However, the commissioner may authorize experienced contestants to compete in up to five rounds of up to five minutes each. There shall be a one-minute rest period between rounds. An overtime round shall not be allowed.

ITEM 13. Amend subrule 177.4(8) as follows:

177.4(8) Persons allowed in the ~~ring~~ cage. No person other than the two contestants and the referee shall enter the ~~ring~~ cage during the ~~fight~~ match. ~~except the attending physician if asked by the referee to examine a contestant. Seconds may not enter the ring between the round and the overtime. However,~~ the physician may enter the cage to examine a contestant upon the request of the referee.

ITEM 14. Amend paragraphs **177.4(9)“a,” “b”** and **“f”** as follows:

a. Unless special permission is granted by the commissioner, there shall be no more than two seconds. Before the start of the ~~fight~~ match, each corner shall notify the referee of the name of the chief second.

LABOR SERVICES DIVISION[875](cont'd)

b. Seconds shall not enter the ~~ring until~~ cage except as authorized by this paragraph. The chief second may enter the cage after the timekeeper indicates the termination of the round, and the chief second must leave at the sound of the timekeeper's whistle before the beginning of a round or overtime.

f. Seconds shall not throw or splash water upon a contestant. ~~A wet sponge may be used between the round and overtime to refresh the contestant.~~ Excess water on the floor of the ring cage shall be wiped up immediately. Water discharged from the mouth of a contestant shall be caught in a bucket.

ITEM 15. Adopt the following **new** subrule 177.4(10):

177.4(10) Decorum of officials and participants.

a. A promoter, official, or participant shall not:

- (1) Intentionally or recklessly strike or injure a person;
- (2) Speak or act in a threatening manner toward a person; or
- (3) Damage, destroy, or attempt to damage or destroy property.

b. The commissioner may immediately suspend the promoter's license if the promoter does not comply with paragraph 177.4(10) "a" or if the promoter does not take appropriate action to curtail activities in violation of paragraph 177.4(10) "a" by an official or a participant.

c. The commissioner may immediately suspend the authorization to participate in the event of an official or a participant who does not comply with paragraph 177.4(10) "a."

ITEM 16. Amend subrules 177.5(1), 177.5(5) and 177.5(9) as follows:

177.5(1) Time between contestants' fight participation matches. No contestant shall be permitted to compete if the contestant participated in a boxing, wrestling, kickboxing, judo, or ~~shoot fighting mixed martial arts~~ event within the previous five-day period.

177.5(5) Mouth protection. ~~A~~ Each contestant shall wear a mouthpiece ~~shall be worn by all contestants throughout the fight each match.~~ If the mouthpiece is knocked from a contestant's mouth, it shall be washed and then replaced.

177.5(9) Use of substances. ~~Excessive~~ A contestant shall not use of any substance including, but not limited to, cocoa butter, petroleum jelly, grease, ointments or strong-smelling substances ~~by a contestant during the progress of a fight will not be permitted~~ without permission of the referee.

ITEM 17. Adopt the following **new** subrules 177.5(12) and 177.5(13):

177.5(12) Weighing contestants.

a. The promoter shall arrange for each contestant to be weighed in Iowa during the 24-hour period prior to the event.

b. Accurate scales shall be furnished by the promoter.

c. An official who has been approved by the commissioner shall weigh each contestant and accurately record the contestant's name and weight and the date and time. The weight records shall be submitted to the commissioner on the date of the event.

d. All contestants scheduled for an event shall be weighed on the same date.

e. Contestants shall be weighed in the presence of their opponents and without shoes, clothes or equipment.

f. Unless both contestants weigh more than 200 pounds, there shall not be a weight difference of more than 20 pounds between opponents without the commissioner's consent.

g. No less than two weeks before the event, a promoter may request that a representative of the commissioner be present when contestants are weighed. The fee for this optional service shall be \$200 plus reasonable and necessary travel expenses.

177.5(13) Examination of contestants. On the day of the event, at a time and place to be approved by the commissioner, the ringside physician shall conduct a rigorous physical examination to determine the contestant's fitness to participate in an MMA match. A contestant deemed not fit by the physician shall not participate in the event.

ITEM 18. Rescind subrule 177.6(3) and adopt the following **new** subrule in lieu thereof:

177.6(3) Fouls. As set forth in this subrule, the referee may penalize a contestant for fouls by disqualifying the contestant or by deducting points. The referee shall immediately determine if each

LABOR SERVICES DIVISION[875](cont'd)

foul is flagrant or accidental. "Flagrant" means the foul was intentional or reckless. "Accidental" means the foul was unintentional or incidental.

a. Disqualification. If the referee determines that the foul was flagrant and the contestant who was fouled is unable to continue due to an injury resulting from the foul, the contestant who committed the foul shall be disqualified.

b. Deduction of points. In determining the number of points to be deducted, the referee shall consider the nature and severity of the foul and its effect upon the opponent. As soon as practical after the foul, the referee shall notify the judges, contestants, and the commissioner of the number of points, if any, to be deducted from the score of the offender and whether the foul was flagrant or accidental. Points shall be deducted in the round in which the foul occurred.

c. Continuation of match. This paragraph governs how a match shall be continued if a foul that does not result in disqualification occurs.

(1) If a foul occurred but did not cause a serious injury, the referee may order the match to continue after a five-minute delay for recuperation. If subsequent fair blows aggravate the injury inflicted by a foul and the referee orders the contest stopped because of the injury, the outcome will be determined by scoring the completed rounds and the round during which the referee stopped the match.

(2) If an accidental foul results in a concussive impact to the head, if a contestant's chance of winning has been seriously jeopardized as a result of an accidental foul, or if a contestant is not able to continue the match due to an injury caused by an accidental foul, "no contest" will be declared or the winner will be determined based on points as set forth below.

1. "No contest" will be declared if:

- The foul occurs during the first two rounds of a match scheduled for three rounds or fewer.
- The foul occurs during the first three rounds of a match scheduled for four or five rounds.

2. The winner will be determined by scoring the completed rounds and the round during which the referee stopped the match if:

- The foul occurs during the third round of a match scheduled for three rounds.
- The foul occurs during the fourth or fifth round of a match scheduled for four or five rounds.

d. Prohibited acts. Each of the following actions is a foul:

- (1) Butting with the head.
- (2) Eye gouging of any kind.
- (3) Biting.
- (4) Hair pulling.
- (5) Fishhooking.
- (6) Groin attacks of any kind.
- (7) Putting a finger into any orifice, cut, or laceration on an opponent.
- (8) Small joint manipulation.
- (9) Striking to the spine or behind the ears.
- (10) Striking using the point of the elbow.
- (11) Throat strikes of any kind, including, without limitation, grabbing the trachea.
- (12) Clawing, pinching or twisting the flesh.
- (13) Grabbing the clavicle.
- (14) Kicking the head of a grounded opponent.
- (15) Kneeing the head of a grounded opponent.
- (16) Stomping a grounded opponent.
- (17) Striking the kidney.
- (18) Dropping or slamming an opponent on an opponent's head or neck.
- (19) Throwing an opponent out of the cage or fenced area.
- (20) Holding the shorts or gloves of an opponent.
- (21) Spitting at an opponent.
- (22) Engaging in any unsportsmanlike conduct that causes an injury to an opponent.
- (23) Holding the ropes or the fence.
- (24) Using abusive language in the cage or fenced area.

LABOR SERVICES DIVISION[875](cont'd)

- (25) Attacking an opponent during a break.
- (26) Attacking an opponent who is under the care of the referee.
- (27) Attacking an opponent after the bell has sounded the end of the round.
- (28) Flagrantly disregarding the instructions of the referee.
- (29) Timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.
- (30) Interference by a second.
- (31) Throwing in the towel during competition.
- (32) Threatening or intentionally striking or injuring any person other than the contestant's opponent.

ITEM 19. Amend subrule 177.6(6) as follows:

177.6(6) Gloves. The gloves shall not be damaged or manipulated in any way by the contestants or their handlers. If a glove breaks or becomes undone during ~~the fight~~ a match, the referee will instruct the timekeeper to take time out while the glove is being adjusted or replaced.

ITEM 20. Rescind rule 875—177.7(90A) and adopt the following **new** rule in lieu thereof:

875—177.7(90A) Decision. A professional match concludes when:

177.7(1) A contestant submits.

177.7(2) The timekeeper indicates that time has expired in the final round of the match. The win will be awarded based on the judges' scores.

177.7(3) The referee stops the match.

177.7(4) The referee disqualifies a contestant for committing a foul pursuant to rule 875—177.6(90A).

177.7(5) A second or manager throws a towel into the cage to indicate the defeat of a contestant. The referee shall stop the match and award the win to the opponent.

177.7(6) A second or manager is in the cage when prohibited. The referee shall stop the match and award the win to the opponent.

ITEM 21. Amend rule 875—177.10(90A), catchwords, as follows:

875—177.10(90A) Health and life insurance.

ARC 8751B

MEDICINE BOARD[653]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272C.4, the Board of Medicine hereby proposes to amend Chapter 14, “Iowa Physician Health Committee,” Iowa Administrative Code.

The proposed amendments update language in the chapter and provide for the sharing of physician health program participant information with the Board if a participant's information held by the physician health committee indicates that a significant risk to the public exists.

The Board approved these amendments during a regularly scheduled meeting on April 9, 2010.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on May 25, 2010. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 SW Eighth Street, Suite C, Des Moines, Iowa 50309; or by E-mail to mark.bowden@iowa.gov.

MEDICINE BOARD[653](cont'd)

There will be a public hearing on May 25, 2010, at 11 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine is located at 400 SW Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapter 272C.

The following amendments are proposed.

ITEM 1. Amend rule **653—14.2(272C)**, definition of “Self-report,” as follows:

“Self-report” means an ~~applicant~~ applicant’s or a ~~licensee~~ licensee’s providing written or oral notification to the IPHC that the applicant or the licensee has been, is, or may be impaired ~~prior to the board’s receiving a complaint or report alleging the same from a third party.~~ Information related to an impairment or a potential impairment which is provided on a license application or renewal form may be considered a self-report upon the request of the applicant or licensee and authorization from the board and agreement by the IPHC.

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

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

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

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

14.5(1) An applicant’s or licensee’s participation in the program does not divest the board of its authority or jurisdiction over the applicant or licensee. An applicant or licensee with an impairment or suspected impairment as defined at 653—14.2(272C) may retain eligibility to participate in the program if appropriate while subject to investigation or discipline by the board for matters other than the alleged impairment.

14.5(1) 14.5(2) An applicant or a licensee is ~~deemed~~ may be determined to be ineligible to participate in the program as a self-reporter or a referral from the board if the committee finds sufficient evidence of any of the following:

a. ~~The applicant or licensee has engaged in the unlawful diversion or distribution of controlled substances or illegal substances to a third party or for personal profit or gain; provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the committee.~~

b. ~~At the time of self-reporting, the licensee is already under an Iowa board order related to an impairment; The applicant or licensee fails to sign a contract when recommended by the committee.~~

c. ~~The applicant or licensee has caused harm or injury to a patient; The IPHC determines it will be unable to assist the applicant or licensee.~~

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

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

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

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

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

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

MEDICINE BOARD[653](cont'd)

ITEM 4. Amend paragraph **14.7(1)“a”** as follows:

a. Participation in the program for applicants or licensees impaired as a result of alcohol or drug abuse, dependency, or addiction is set at a minimum of five years. The committee may offer a contract with a shorter duration to an applicant or licensee who can demonstrate successful participation in another state's physician health program, who can document similar experience, or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.

ITEM 5. Amend paragraph **14.7(2)“a”** as follows:

a. First instance. Upon receiving notification of a first instance of noncompliance including, but not limited to, a relapse, the IPHP shall make a report to the board which identifies the applicant or licensee by IPHP number, describes the relevant terms of the applicant's or licensee's contract and the nature of the noncompliance and includes recommendations as to whether the applicant or licensee should be allowed to remain in the program or whether formal disciplinary charges should be filed by the board.

ITEM 6. Amend subrules 14.9(1) to 14.9(4) as follows:

14.9(1) The IPHC ~~may~~ is authorized to communicate information about an IPHP participant to the applicable regulatory authorities, ~~professional societies~~, or impaired licensee programs of any jurisdiction of the United States or foreign nations in which the participant is currently licensed to practice medicine or in which the participant ~~may seek~~ seeks licensure. IPHP participants must report their participation to the applicable physician health program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

14.9(2) The IPHC ~~may~~ is authorized to communicate information about an IPHP participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance.

14.9(3) The IPHC ~~may~~ is authorized to communicate information about an IPHP participant to the board in the event a participant does not comply with the terms of the contract. The IPHC may provide the board with a participant's IPHP file in the event the participant does not comply with the terms of the contract and the IPHC refers the case to the board for the filing of formal disciplinary charges or other appropriate action. If the board initiates disciplinary action against a licensee for noncompliance with the terms of the contract, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing.

14.9(4) ~~The IPHC may communicate information about an IPHP participant to the board if the IPHP receives information that the participant has violated any of the grounds for eligibility contained in rule 653—14.5(272C).~~ The IPHC is authorized to communicate information about an IPHP participant to the board if the information held by the IPHC indicates a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

ITEM 7. Rescind subrule **14.9(5)**.

ITEM 8. Renumber subrules **14.9(6)** and **14.9(7)** as **14.9(5)** and **14.9(6)**.

ITEM 9. Amend paragraph **14.11(2)“f”** as follows:

f. The IPHC shall notify the board upon the licensee's successful completion of the program. The board ~~shall~~ may file an order recognizing the licensee's successful completion of the program, ~~and that order shall be a public record in cases where the referral was included in a public record.~~ An order recognizing completion of the program shall be a public record.

ITEM 10. Rescind subrule **14.11(3)**.

ARC 8729B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 15, “General License Regulations,” Iowa Administrative Code.

The proposed changes clarify what additional information may be sought by the Department to determine residency status of license applicants and license holders and provide a process for suspension and revocation of licenses not properly obtained.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 25, 2010. Such written materials should be directed to Mark Sedlmayr, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail mark.sedlmayr@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (712)769-2587.

Also, there will be a public hearing on May 25, 2010, at 1 p.m. in the Fifth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapter 483A.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **571—15.2(483A)**:

“*Immediate family member*” means the spouse, a domestic partner, and all minor children of the licensee or person seeking a license.

“*Nonresident*” means a person who meets the definition of nonresident as defined in 2009 Iowa Code Supplement section 483A.1A(8).

“*Principal and primary residence or domicile*” means the place that meets the definition of principal or primary residence or domicile as defined in 2009 Iowa Code Supplement section 483A.1A(9). Relevant factors used to determine a person’s principal and primary residence or domicile include the following:

1. Proof of place of employment, which must include the address of the person’s place of employment or business, including the area or region where a majority of the person’s work is performed.

2. Physical address, which shall be the person’s 911 address(es) or the address of an immediate family member. A post office box or a forwarded address shall not be accepted by the department to verify the person’s principal and primary residence or domicile.

3. Utility records, which must include the person’s name and be associated with the physical address provided for as the person’s principal and primary residence or domicile. The types of records that may be submitted include rental and lease documents and telephone, cellular phone, electricity, water, sewer, cable or satellite television, and any other utility records.

4. Real estate records, which include legal documents showing ownership or leasehold interests of any and all real estate related to the physical address used by the department to verify the person’s

NATURAL RESOURCE COMMISSION[571](cont'd)

principal and primary residence or domicile. These records should also provide the time period of such ownership or rental.

5. Vehicle registration(s) for any vehicles owned or leased by the person and immediate family members.

6. Portion of federal, state or local income tax returns filed during the relevant time period showing the address provided on those forms by the person.

7. Documentation of homestead tax exemption allowed to the person or immediate family member(s) for all states in which such exemption is allowed.

8. Documentation of any coinhabitants, other than the person's immediate family members, who use the same principal and primary residence or domicile.

"Resident" means a person who meets the definition of a resident as defined in 2009 Iowa Code Supplement section 483A.1A(10).

ITEM 2. Adopt the following new rules 571—15.9(483A) to 571—15.11(483A):

571—15.9(483A) Proof of residency required. The department shall have the authority to require persons applying for or who have received resident licenses to provide additional information to determine the person's principal and primary residence or domicile and residency status. Whether a person was issued resident or nonresident licenses by the department in previous years shall not be a determining factor of residency. Persons required to provide additional information under this rule shall be notified in writing by the department and shall have 60 days to submit all required information to the department.

571—15.10(483A) Residency status determination. Upon receipt of information requested from the person, the department may determine whether the person is a resident or a nonresident for purposes of these rules and Iowa Code chapter 483A. If the department changes the residency classification of the person, the department shall notify the person of the department's decision in writing, and the person shall be classified accordingly by the department for all licensing requirements unless or until the person's principal and primary residence or domicile changes or the person is otherwise successful under these rules in modifying that classification.

571—15.11(483A) Suspension or revocation of licenses when nonresidents obtain resident licenses.

15.11(1) Suspension or revocation of license. If the department finds that a nonresident has obtained a resident license, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7. If the department finds that a nonresident has obtained a resident license fraudulently or through intentional misrepresentation, the person shall be guilty of a simple misdemeanor, punishable as a scheduled violation under Iowa Code section 805.8B.

15.11(2) Dates of suspension or revocation. The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in 15.16(6) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

15.11(3) Magistrate authority. Nothing in this chapter shall limit the magistrate's authority as described in Iowa Code section 483A.21 to suspend or revoke licenses.

ARC 8728B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 40, “Boating Speed and Distance Zoning,” Iowa Administrative Code.

The proposed amendments replace the use of no-wake zones with defined speed restrictions of five miles per hour for the listed areas.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 25, 2010. Such written materials should be directed to Steve Dermand, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail steve.dermand@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515.

Also, there will be a public hearing on May 25, 2010, at 1 p.m. in the Fifth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapter 462A.

The following amendments are proposed.

ITEM 1. Amend rule 571—40.9(462A) as follows:

571—40.9(462A) Lake Odessa in Louisa County.

40.9(1) Areas may be designated restricted speed areas.

40.9(2) All motorboats, except authorized emergency vessels, shall be operated at ~~no-wake speed~~ a speed not greater than 5 miles per hour year around, on that portion of Lake Odessa known as the Sand Run Chute, lying south of the main lake to a point 100 yards south of the Sand Run Chute boat ramp.

40.9(3) All motorboats, except authorized emergency vessels, shall be operated at ~~no-wake speed~~ a speed not greater than 5 miles per hour year around, on those portions of Lake Odessa known as the lateral ditch, between the main lake and Bebee Pond, and on the channel between Yankee Chute and Beaver Pond.

ITEM 2. Amend rule 571—40.12(462A) as follows:

571—40.12(462A) Swan Slough, Camanche, Iowa. A restricted speed zone of not greater than 5 miles per hour is hereby established in all or part of the main channel of Swan Slough (Mississippi River mile 510.2 to 511.3), Camanche, Iowa, as designated by buoys.

ITEM 3. Amend rule 571—40.13(462A), introductory paragraph, as follows:

571—40.13(462A) Massey Slough. ~~Operation~~ The operation of vessels in Massey Slough of the Mississippi River at Massey Station, Dubuque County, Iowa, extending from a northerly to southerly direction from the upper end to the lower end of the slough, encompassing the water in Section 14, Township 88N, Range 3E of the 5th P.M., tract number NFIA-26M₂, is restricted as follows:

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 4. Amend subrule 40.14(2) as follows:

40.14(2) All vessels, except authorized emergency vessels, shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour when within 600 feet of the Franklin Street bridge. This 600-foot zone shall be designated by buoys, signs, or other approved uniform waterway marking devices.

ITEM 5. Amend rule 571—40.15(462A), introductory paragraph, as follows:

571—40.15(462A) Mitchell County waters. Operation of vessels in Mitchell County is restricted to speeds not greater than 5 miles per hour where a speed zone is designated by buoys on the following impounded waters:

ITEM 6. Amend rule 571—40.17(462A), introductory paragraph, as follows:

571—40.17(462A) Zoning of off-channel waters of the Wapsipinicon River in Pinicon Ridge Park in Linn County. No motorboat shall be operated at a speed ~~which will create a wake~~ greater than 5 miles per hour within the zoned area designated by regulatory buoys or signs on the off-channel waters of the Wapsipinicon River above the dam at Central City, Linn County, Iowa.

ITEM 7. Amend rule 571—40.19(462A), introductory paragraph, as follows:

571—40.19(462A) Zoning of Little Wall Lake. No motorboat shall be operated at a speed ~~which will create a wake~~ greater than 5 miles per hour within the zoned area designated by regulatory buoys on Little Wall Lake in Hamilton County.

ITEM 8. Amend subrule 40.20(1) as follows:

40.20(1) All vessels shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour when within 50 feet of another vessel which is not underway or is operating at a no-wake speed.

ITEM 9. Amend rule 571—40.22(462A) as follows:

571—40.22(462A) Upper Gar Lake, Dickinson County. Operation of vessels on Upper Gar Lake (~~5 mile per hour zone~~ is restricted to a speed not greater than 5 miles per hour between the Henshaw Bridge at the north end of Upper Gar and south end of East Lake and the Old Sawmill Bridge at the south end of Upper Gar and the north end of Minnewashta).

ITEM 10. Amend rule 571—40.23(462A) as follows:

571—40.23(462A) Zoning of the Mississippi River, Guttenberg river mile 616, Clayton County.

40.23(1) All vessels operated between the ice dike and Bussey Lake access shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

40.23(2) The city will designate the ~~no-wake~~ 5-mile-per-hour speed zone with buoys approved by the natural resource commission.

ITEM 11. Amend rule 571—40.24(462A) as follows:

571—40.24(462A) Mt. Ayr City Lake (Loch Ayr). A motorboat shall not be operated within 100 feet of shore at a speed ~~greater than ten miles per hour~~ greater than 5 miles per hour.

ITEM 12. Amend subrule 40.26(2) as follows:

40.26(2) A restricted speed zone (~~five of no more than 5 miles per hour/no-wake~~) is established in the vicinity of Chaplain Schmitt Memorial Island in proximity to the Schmitt Island municipal launching ramp and in waters adjacent to the southerly shoreline in the area of the Dubuque Yacht Basin.

ITEM 13. Amend subrules 40.27(1) and 40.27(2) as follows:

40.27(1) All vessels operated in Harpers Slough between a point 200 feet above the state ramp and 200 feet out from the west shore extending downstream to a point known as Sandy Point Road Dead-End, shall operate at a ~~no-wake~~ speed not greater than 5 miles per hour.

40.27(2) The city of Harpers Ferry will designate the ~~no-wake~~ 5-mile-per-hour speed zone with buoys approved by the natural resource commission.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 14. Amend subrule 40.28(1) as follows:

40.28(1) No motorboat shall ~~operate~~ be operated at a speed ~~which will create a wake~~ greater than 5 miles per hour within the zoned area marked by the regulatory buoys. The zoned area shall be the area commonly known as Town Bay on the northwest corner of Black Hawk Lake in Sac County.

ITEM 15. Amend rule 571—40.29(462A), introductory paragraph, as follows:

571—40.29(462A) Speed and other restrictions on Brown's Lake, Woodbury County. All vessels shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour within the two zoned areas designated by regulatory buoys or other approved uniform waterway markers.

ITEM 16. Amend rule 571—40.30(462A), introductory paragraph, as follows:

571—40.30(462A) Speed and other restrictions on Snyder Bend Lake, Woodbury County. All vessels shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour within the zoned area 400 yards from the boat ramp south to the regulatory sign and buoys.

ITEM 17. Amend rule 571—40.31(462A), introductory paragraph, as follows:

571—40.31(462A) Speed restrictions on East Okoboji and West Okoboji Lakes in Dickinson County. No motorboat shall be operated at a speed ~~which will create a wake~~ greater than 5 miles per hour within the three zoned areas designated by regulatory buoys on East Okoboji and West Okoboji Lakes in Dickinson County.

ITEM 18. Amend rule 571—40.36(462A) as follows:

571—40.36(462A) Zoning of the Iowa River, Iowa Falls, Hardin County.

40.36(1) All vessels operated in a designated zone between the River Street Bridge and the dock at Dougan's Landing shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

40.36(2) The city of Iowa Falls shall designate and maintain the ~~no-wake~~ 5-mile-per-hour speed zone with marker buoys approved by the natural resource commission.

ITEM 19. Amend rule 571—40.37(462A) as follows:

571—40.37(462A) Zoning of Crystal Lake. No motorboat shall be operated at a speed ~~which will create a wake~~ greater than 5 miles per hour within the 25-acre zoned area designated by regulatory buoys on Crystal Lake in Hancock County.

ITEM 20. Amend subrule 40.42(1) as follows:

40.42(1) All vessels shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

ITEM 21. Amend rule 571—40.43(462A) as follows:

571—40.43(462A) Zoning of the Mississippi River, Bellevue, Jackson County.

40.43(1) All vessels shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour within the area designated by buoys or other approved uniform waterway markers beginning at the mouth of Mill Creek and extending upstream 900 feet, and extending 200 feet perpendicular from shore. The area shall be designated by a minimum of four approved buoys to be uniformly placed along the 900-foot length of the zone parallel to the shore.

40.43(2) The city of Bellevue will designate the ~~no-wake~~ 5-mile-per-hour speed zone with buoys approved by the natural resource commission.

ITEM 22. Amend subrule 40.44(1) as follows:

40.44(1) All vessels shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour when within 50 feet of another vessel which is not underway or is operating at a ~~no-wake~~ speed not greater than 5 miles per hour.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 23. Amend paragraph **40.44(2)“b”** as follows:

b. No motorboats, except authorized emergency vessels, shall be operated in marked bay areas at a speed greater than the limit designated by buoys or signs marking said bay. No motorboats, except authorized emergency vessels, shall be operated other than at a ~~no-wake~~ speed not greater than 5 miles per hour above a line of buoys placed across the lake at the point where County Road H33 intersects the lake. All buoys or signs shall be in accordance with 571—Chapter 41.

ITEM 24. Amend subrules 40.45(1) and 40.45(2) as follows:

40.45(1) Nashua, Chickasaw County. All vessels operated in a designated zone extending east 150 feet from the intersection of Wabash Street and Charles City Road and north 380 feet shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour. The city of Nashua shall designate and maintain the ~~no-wake 5-mile-per-hour speed~~ zone with marker buoys approved by the natural resource commission.

40.45(2) Nashua, Chickasaw County. All vessels operated in a designated zone extending north 131 feet from the intersection of Wabash Street and the north entrance to Cedar View Circle and east 80 feet and west 80 feet from this point along the shoreline and extending 110 feet north into the lake shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour. The city of Nashua shall designate and maintain the ~~no-wake 5-mile-per-hour speed~~ zone with marker buoys approved by the natural resource commission.

ITEM 25. Amend rule 571—40.46(462A) as follows:

571—40.46(462A) Zoning of Carter Lake, Pottawattamie County.

40.46(1) All vessels operated in a designated zone known as Shoal Pointe Canal shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

40.46(2) The city of Carter Lake shall designate and maintain the ~~no-wake 5-mile-per-hour speed~~ zone with marker buoys approved by the natural resource commission.

ITEM 26. Amend rule 571—40.47(462A) as follows:

571—40.47(462A) Zoning of the Mississippi River, McGregor, Clayton County.

40.47(1) All vessels, except commercial barge traffic, shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour within the area of river mile markers 634 and 633.4 and designated by buoys or other approved uniform waterway markers.

40.47(2) The city of McGregor will designate the ~~no-wake 5-mile-per-hour speed~~ zone with buoys approved by the natural resource commission.

ITEM 27. Amend rule 571—40.48(462A) as follows:

571—40.48(462A) Zoning of the Mississippi River, Marquette, Clayton County.

40.48(1) All vessels, except commercial barge traffic, shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour within the area of river mile markers 634.5 and 634.9 and designated by buoys or other approved uniform waterway markers.

40.48(2) The city of Marquette will designate and maintain the ~~no-wake 5-mile-per-hour speed~~ zone with buoys approved by the natural resource commission.

ITEM 28. Amend rule 571—40.49(462A) as follows:

571—40.49(462A) Zoning of Green Island, Jackson County. All motorboats except authorized emergency vessels shall ~~operate~~ be operated at a ~~no-wake~~ speed no greater than 5 miles per hour year around on boat channels adjacent to the interior channel 4 levee at the Green Island State Wildlife area. Both channels begin at the Green Island county road parking lot and proceed north 7920 feet along each side of the channel 4 levee to an intersection with the Snag Slough complex.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 29. Amend rule 571—40.51(462A) as follows:

571—40.51(462A) Little River Lake, Decatur County. Motorboats of outboard or inboard-outdrive type shall be permitted on Little River Lake. Vessels operating within a designated area beginning at the dam and extending north approximately to the mouth of “Bait Shop Bay” ~~may operate~~ shall be operated at ~~speeds greater than no-wake~~ a speed no greater than 5 miles per hour. The Decatur County conservation board shall designate the speed zone with marker buoys approved by the natural resource commission.

ITEM 30. Amend rule 571—40.52(462A) as follows:

571—40.52(462A) Zoning of the Mississippi River, Johnson Slough, Clayton County. All vessels shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour within the area of river mile markers 627 and 629.8, in a backwater known as Johnson Slough and designated by marker buoys approved by the natural resource commission.

ITEM 31. Amend rule 571—40.53(462A) as follows:

571—40.53(462A) Zoning of the Mississippi River, Mud Lake, Dubuque County. All vessels shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour within the area of river mile markers 587.6 to 589.3, in a backwater known as Mud Lake and designated by marker buoys approved by the natural resource commission.

ITEM 32. Amend subrule 40.55(2) as follows:

40.55(2) Areas within close proximity of dredging operations may be designated ~~restricted-speed areas~~ as areas where the speed of vessels is restricted to not greater than 5 miles per hour.

ITEM 33. Amend rule 571—40.57(462A) as follows:

571—40.57(462A) Zoning of Catfish Creek, Mines of Spain State Recreation Area, Dubuque County. All vessels shall be operated at ~~no-wake~~ a speed not greater than 5 miles per hour within the area beginning at the mouth of Catfish Creek and extending upstream to the confluence of Catfish Creek and Granger Creek and designated by uniform marker buoys approved by the natural resource commission.

ITEM 34. Amend rule 571—40.58(462A) as follows:

571—40.58(462A) Zoning of Lake Cornelia, Wright County. All vessels shall be operated at a ~~no-wake~~ speed not greater than 5 miles per hour in the boat harbor and at the boat harbor entrance within the zoned area extending 300 feet from two points on shore and 100 feet in width, equidistant from either side of the harbor entrance. The Wright County conservation board shall designate the boat harbor entrance and the public swimming area with uniform marker buoys approved by the natural resource commission.

ITEM 35. Adopt the following new rule 571—40.59(462A):

571—40.59(462A) Zoning of lakes in Dickinson County. All vessels shall be operated at a speed not greater than 5 miles per hour within 300 feet of shore on all lakes in Dickinson County.

ARC 8730B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code Supplement section 321I.22(9) and section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 46, “All-Terrain Vehicle and Snowmobile Bonding,” and adopt a new Chapter 46, “All-Terrain Vehicles, Off-Road Motorcycles and Off-Road Utility Vehicles,” Iowa Administrative Code.

The proposed new chapter clarifies the procedures for registration, renewal, titling, decal placement and accident reporting for all-terrain vehicles, off-road motorcycles and off-road utility vehicles. Division II of the new chapter establishes minimum standards for all-terrain vehicle dealers as authorized under Iowa Code Supplement section 321I.22(9). Division III provides for the regulation of designated off-highway vehicle riding areas.

Rules related to bonding requirements that are currently included in Chapter 46 are proposed to be moved to new Chapter 50, “All-Terrain Vehicle, Off-Road Motorcycle, Off-Road Utility Vehicle, Snowmobile and Vessel Bonding” (see **ARC 8732B** herein).

Any interested person may make written suggestions or comments on the proposed rules on or before May 25, 2010. Such written materials should be directed to David Downing, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail david.downing@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-3449.

Also, there will be a public hearing on May 25, 2010, at 2 p.m. in the Fifth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

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

These rules are intended to implement Iowa Code chapter 321I.

The following amendment is proposed.

Rescind 571—Chapter 46 and adopt the following **new** chapter in lieu thereof:

CHAPTER 46
ALL-TERRAIN VEHICLES, OFF-ROAD MOTORCYCLES AND
OFF-ROAD UTILITY VEHICLES

DIVISION I
REGISTRATION, RENEWAL, TITLING, DECAL PLACEMENT
AND ACCIDENT REPORTS

571—46.1(321I) Definitions. For purposes of this chapter, the following definitions shall apply:

“*All-terrain vehicle*” means a motorized flotation-tire vehicle with not less than three and not more than six low-pressure tires that is limited in engine displacement to less than 1,000 cubic centimeters and in total dry weight to less than 1,000 pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

NATURAL RESOURCE COMMISSION[571](cont'd)

“*A scale*” means the physical scale marked “A” and graduated in decibels on a sound level meter which meets the requirements of the American National Standards Institute, Incorporated, publication S1.4-1983, General Purpose Sound Level Meters.

“*Commission*” means the natural resource commission established in Iowa Code section 455A.5.

“*Department*” means the department of natural resources established in Iowa Code section 455A.2.

“*Designated riding area*” means an off-highway vehicle riding area on any public land or ice under the jurisdiction of the department that has been designated by the commission under Iowa Code chapter 321I for such use.

“*Designated riding trail*” means an off-highway vehicle riding trail on any public land or ice under the jurisdiction of the department that has been designated by the department for all-terrain vehicle use.

“*Off-road motorcycle*” means a two-wheeled motor vehicle that has a seat or saddle designed to be straddled by the operator and handlebars for steering control and that is intended by the manufacturer for use on natural terrain. “Off-road motorcycle” includes a motorcycle that was originally issued a certificate of title and registered for highway use under Iowa Code chapter 321, but which contains design features that enable operation over natural terrain.

“*Off-road utility vehicle*” means a motorized flotation-tire vehicle with not less than four and not more than eight low-pressure tires that is limited in engine displacement to less than 1,500 cubic centimeters and in total dry weight to not more than 1,800 pounds and that has a seat that is of bucket or bench design, not intended to be straddled by the operator, and a steering wheel or control levers for control. A motorized vehicle that was previously titled or is currently titled under Iowa Code chapter 321 shall not be registered or operated as an off-road utility vehicle.

“*Operator*” means a person who operates or is in actual physical control of a regulated vehicle.

“*Owner*” means a person, other than a lien-holder, having the property right in or title to an all-terrain vehicle. “Owner” includes a person entitled to the use or possession of an all-terrain vehicle subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation. “Owner” excludes a lessee under a lease not intended as security.

“*Public land*” means land owned by the federal government, the state of Iowa, or a political subdivision of the state and land acquired or developed for public recreation pursuant to Iowa Code section 321I.8.

“*Regulated vehicle*” means all-terrain vehicles, off-road motorcycles, and off-road utility vehicles, either collectively or individually.

“*Roadway*” means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

571—46.2(321I) Off-road motorcycles.

46.2(1) Off-road motorcycles shall be considered all-terrain vehicles for the purpose of:

a. Registration requirements of this chapter; and

b. Titling requirements of this chapter, if a title has not previously been issued under Iowa Code chapter 321.

46.2(2) An operator of an off-road motorcycle is subject to the provisions of Iowa Code chapter 321I and this chapter, except that the operator is exempt from the safety instruction and certification program requirements of Iowa Code chapter 321I.

571—46.3(321I) Off-road utility vehicles.

46.3(1) An owner of an off-road utility vehicle operating the off-road utility vehicle on public land or ice, a designated riding area, or a designated riding trail shall register the off-road utility vehicle in accordance with Iowa Code chapter 321I and this chapter.

46.3(2) An operator of an off-road utility vehicle is subject to the provisions of Iowa Code section 321.234A and chapter 321I and this chapter, except that the operator is exempt from the safety instruction and certification program requirements of Iowa Code chapter 321I.

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46.3(3) An operator of an off-road utility vehicle shall not operate the vehicle on a designated riding area or designated riding trail unless the department has posted signage indicating the riding area or trail is open to the operation of off-road utility vehicles.

46.3(4) Off-road utility vehicles are exempt from the dealer registration and dealer titling requirements of Iowa Code chapter 321I and this chapter.

571—46.4(321I) Operation on roadways, highways, streets, and snowmobile trails. A person shall not operate a regulated vehicle upon roadways, highways, streets, or snowmobile trails except as provided in Iowa Code section 321.234A and 2009 Iowa Code Supplement section 321I.10.

NOTE: Additional driving and operation limitations are listed in Iowa Code section 321I.14.

571—46.5(321I) Registration for all-terrain vehicles and off-road motorcycles.

46.5(1) General. A person shall not operate, maintain, or give permission for the operation or maintenance of an all-terrain vehicle or off-road motorcycle on public land, a designated riding area, a designated riding trail, or ice unless the all-terrain vehicle or off-road motorcycle:

- a. Is registered in accordance with the requirements of Iowa Code chapter 321I and this chapter;
- b. Displays a current annual nonresident user permit decal issued as provided in rule 571—46.6(321I); or
- c. Is exempt from registration pursuant to Iowa Code section 321I.9.

46.5(2) Registration requirements.

a. The owner of each all-terrain vehicle or off-road motorcycle required to be registered shall file an application for registration with the department through a county recorder and pay all applicable fees pursuant to Iowa Code section 321I.4 and these rules, except that an all-terrain vehicle dealer shall make application and pay all applicable registration and title fees on behalf of a purchaser of an all-terrain vehicle or off-road motorcycle.

(1) Application forms. The applicant shall use DNR Form 542-8067 in making application for registration. In the event the applicant does not have documentation required by DNR Form 542-8067, the applicant shall use DNR Form 542-8065 and may be required to secure a bond consistent with the requirements of 571—Chapter 50.

(2) Fees. The applicant shall pay the following fees: \$15 for the permit fee; \$1 for the writing fee; and \$1.50 for the administrative fee. In addition, a county recorder may collect an additional 25 cents for the writing fee if the county recorder issues the registration.

b. At such time the department or the county recorder is satisfied with the application and has received the required fees, the department or county recorder shall issue to the applicant a registration certificate and registration decal.

46.5(3) Preregistration grace period.

a. *Dealer purchases.* An unregistered all-terrain vehicle or off-road motorcycle sold by a dealer to an Iowa resident for use in Iowa shall bear a card made of pasteboard or other similar material that includes the words “registration applied for” and the date of purchase. Such card shall entitle the purchaser to operate the all-terrain vehicle or off-road motorcycle for 45 days immediately following the purchase. The purchaser shall place this card on the rear of the all-terrain vehicle and the steering yoke of an off-road motorcycle in a position so as to be clearly visible at all times and maintained in a legible manner. The operator of any all-terrain vehicle or off-road motorcycle displaying a “registration applied for” card described in this paragraph shall carry and provide upon request to any peace officer a valid bill of sale for the all-terrain vehicle or off-road motorcycle.

b. *Nondealer purchases.* All-terrain vehicles and off-road motorcycles may be sold by nondealers, and the registration grace period may apply depending on the current registration of the vehicle.

(1) An all-terrain vehicle or off-road motorcycle that is currently registered in the state of Iowa may be legally operated for 30 days before it is registered under the purchaser’s name.

(2) An all-terrain vehicle or off-road motorcycle not currently registered in the state of Iowa shall not be operated until it is titled and registered in the purchaser’s name. Valid registration in another state does not authorize preregistration operation.

NATURAL RESOURCE COMMISSION[571](cont'd)

46.5(4) Registration—renewals. Every all-terrain vehicle and off-road motorcycle registration certificate and registration decal expires at midnight December 31 of the year issued or at the time specified on the registration decal. Applications for renewal shall be completed pursuant to Iowa Code section 321I.7.

571—46.6(321I) Nonresident user permits.

46.6(1) A nonresident wishing to operate a regulated vehicle, other than such vehicle owned by a resident and registered pursuant to Iowa Code chapter 321I, on public land, a designated riding area, a designated riding trail, or ice of this state must first obtain a user permit from the department.

46.6(2) The department, a county recorder or license agent designated by the director may issue nonresident user permits. The applicant shall pay the following fees for a user permit: \$15 for the permit fee; \$1 for a writing fee; and \$1.50 for an administrative fee. In the event the county recorder issues such a permit, the county recorder may charge an additional 25 cents for the writing fee.

46.6(3) A nonresident user permit issued under this rule shall be valid for the calendar year or time period specified in the permit and be limited to the vehicle specified at the time of application.

46.6(4) Nonresident user permits are issued to a vehicle and are not transferable.

571—46.7(321I) Display of registration and user permit decals. The owner shall display the registration decal or nonresident user permit decal as follows:

46.7(1) All-terrain vehicle. The decal shall be affixed to the rear of the all-terrain vehicle so that the decal is clearly visible.

46.7(2) Off-road motorcycle. The decal shall be affixed to the steering yoke in such a manner that the decal does not cover up the vehicle identification number and is clearly visible.

46.7(3) Off-road utility vehicle. The decal shall be affixed to the rear of the vehicle so that the decal is clearly visible.

571—46.8(321I) Registration certificate.

46.8(1) An operator of a regulated vehicle shall carry the registration certificate either in such vehicle or on the person of the operator when the regulated vehicle is in use.

46.8(2) The operator of a regulated vehicle shall exhibit the registration certificate to all of the following:

- a.* To a peace officer or department personnel upon request;
- b.* To a person injured in an accident involving the regulated vehicle, or that person's agent;
- c.* To the owner or operator of another regulated vehicle when the regulated vehicle is involved in a collision or accident of any nature with the other regulated vehicle, or that person's agent;
- d.* To the owner of personal or real property when the regulated vehicle is involved in a collision or accident of any nature with the property of the other person, or that person's agent; and
- e.* To the property owner or tenant when the regulated vehicle is being operated on private property without permission from the property owner or tenant, or that person's agent.

571—46.9(321I) Owner's certificate of title.

46.9(1) The owner of an all-terrain vehicle or off-road motorcycle acquired on or after January 1, 2000, other than an all-terrain vehicle used exclusively as a farm implement or an off-road motorcycle previously issued a title pursuant to Iowa Code chapter 321, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the all-terrain vehicle or off-road motorcycle. The owner shall make application within 30 days after acquisition of the all-terrain vehicle or off-road motorcycle, using DNR Form 542-8067, and shall include the required fees set out in Iowa Code section 321I.32.

46.9(2) A certificate of title issued by the county recorder shall be on DNR Form 542-0974.

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571—46.10(321I) Procedures for application and for issuance of a vehicle identification number (VIN) for homebuilt regulated vehicles.

46.10(1) A person, other than a manufacturer, who constructs or rebuilds a regulated vehicle for which there is no legible VIN may make application to the department on DNR Form 542-8065 for the issuance of a new VIN. The application process shall include an inspection of the regulated vehicle by the department. If the application is approved, the VIN shall be affixed to the vehicle by a conservation officer. The completed application shall then be surrendered to the county recorder.

46.10(2) The conservation officer shall permanently affix the VIN as follows:

- a. *All-terrain vehicle.* The VIN shall be affixed to the frame under the seat.
- b. *Off-road motorcycle.* The VIN shall be affixed to the steering yoke.
- c. *Off-road utility vehicle.* The VIN shall be affixed to the frame under the seat.

571—46.11(321I) Accident report.

46.11(1) Whenever any regulated vehicle is involved in an accident resulting in injury or death to any person or property damage amounting to \$1,000 or more, the operator or a person acting for the operator shall immediately notify the county sheriff or another law enforcement agency in the state.

46.11(2) If the accident occurred on public land, a designated riding area, a designated riding trail, or ice under the jurisdiction of the commission, the operator shall file a report of the accident with the department within 72 hours. The report shall be on DNR Form 542-8093, Off-Highway Vehicle Incident Report Form.

46.11(3) Accidents other than those specified in 46.11(2) shall be reported as required in Iowa Code section 321.266.

571—46.12(321I) Sound level limitation.

46.12(1) No person shall operate an all-terrain vehicle or off-road motorcycle that is constructed or altered in a manner that noise emitted from the all-terrain vehicle or off-road motorcycle exceeds 96 decibels on the A scale when measured in the manner prescribed in the revised 2008-05, Society of Automotive Engineers Standard J1287, titled "Measurement of Exhaust Sound Pressure Levels of Stationary Motorcycles."

46.12(2) The Society of Automotive Engineers Standard J1287, titled "Measurement of Exhaust Sound Pressure Levels of Stationary Motorcycles," is available for inspection at the following locations:

- a. Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319.
- b. State Law Library, Capitol Building, 1007 East Grand Avenue, Des Moines, Iowa 50319.

571—46.13 to 46.20 Reserved.

DIVISION II
ALL-TERRAIN VEHICLE DEALERS

571—46.21(321I) Purpose. The rules in this division apply to registered all-terrain vehicle dealers, manufacturers, and distributors. These rules establish minimum standards for all-terrain vehicle dealers as authorized under 2009 Iowa Code Supplement section 321I.22(9).

571—46.22(321I) Definitions. For purposes of this division, the following definitions shall apply:

"*Consumer use*" means use of an all-terrain vehicle for business or pleasure, not for sale at retail, by a person who has obtained a certificate of title and has registered the vehicle in conformance with Iowa Code chapter 321I.

"*Dealer*" means a person engaged in the business of buying, selling, or exchanging all-terrain vehicles required to be registered under Iowa Code chapter 321I and this chapter and who has an established place of business for that purpose in this state.

NATURAL RESOURCE COMMISSION[571](cont'd)

“Designated location” means the primary place of business of the dealer or a building actually occupied by a dealer where the public and the department may contact the dealer during regular business hours.

“Distributor” means a person, resident or nonresident, who sells or distributes all-terrain vehicles to all-terrain vehicle dealers in this state or who maintains distributor representatives.

“Engaged in the business,” or similar wording, means doing any of the following acts for the purpose of selling all-terrain vehicles at retail: acquiring, selling, exchanging, holding, offering, displaying, brokering, accepting on consignment or conducting a retail auction, or acting as an agent for the purpose of doing any of these acts. A person selling at retail more than five all-terrain vehicles during a 12-month period may be presumed to be engaged in the business.

“Established place of business” means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the books and records are kept and the dealer’s or manufacturer’s business is primarily transacted.

“Manufacturer” means a person engaged in the business of constructing or assembling all-terrain vehicles required to be registered under Iowa Code chapter 321I and this chapter and who has an established place of business for that purpose in this state.

“Manufacturer’s certificate of origin” means a certification signed by the manufacturer, distributor or importer that the all-terrain vehicle described has been transferred to the person or dealer named, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. A manufacturer’s certificate of origin may also be referred to as a manufacturer’s statement of origin.

571—46.23(321I) Dealer’s established place of business. A dealer’s established place of business shall include telephone service and an adequate office area for keeping business records, manufacturers’ certificates of origin, certificates of title or other evidence of ownership for all-terrain vehicles offered for sale.

571—46.24(321I) Zoning. Dealers licensed under these rules must comply with applicable local zoning ordinances. Upon request by the department, a dealer shall provide to the department written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the dealer’s established place of business is located, that the dealer’s established place of business complies with all applicable zoning provisions.

571—46.25(321I) Sales tax permit. A dealer shall provide to the department written evidence that the dealer has obtained a sales tax permit issued by the department of revenue.

571—46.26(321I) Special registration certificates for manufacturers, distributors, and dealers.

46.26(1) A manufacturer, distributor, or dealer owning an all-terrain vehicle required to be registered under Iowa Code chapter 321I and this chapter may operate the unregistered all-terrain vehicle for purposes of transporting, testing, demonstrating, or selling it if both of the following requirements are met:

a. The manufacturer, distributor, or dealer obtains from the department a special registration certificate containing a general identification number in accordance with Iowa Code section 321I.22. An application for a special registration certificate shall be submitted on DNR Form 542-0846; and

b. The manufacturer, distributor, or dealer has the assigned identification number printed upon or attached to a removable sign which is temporarily but firmly attached to the all-terrain vehicle being used.

46.26(2) If a manufacturer, distributor, or dealer has an established place of business in more than one location, the manufacturer, distributor, or dealer shall obtain from the department a separate and distinct special registration certificate and general identification number for each place of business.

46.26(3) Duplicate special registration certificates may be obtained pursuant to the conditions set forth in Iowa Code section 321I.22.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—46.27(321I) Information provided to purchaser. At the time of sale, a dealer shall provide all purchasers of all-terrain vehicles with both (1) a copy of current all-terrain vehicle laws and regulations governing the usage of all-terrain vehicles in the state of Iowa, and (2) the most up-to-date list of public places open for all-terrain vehicle usage. The department shall provide this required information on its Web site, www.iowadnr.gov. Information provided on the department's Web site shall be deemed current and the most up-to-date information for purposes of this rule.

571—46.28(321I) Right of inspection. The department or any peace officer has the authority to inspect the following at any dealer location: (1) all-terrain vehicles or component parts of vehicles, (2) business records, and (3) manufacturers' certificates of origin, certificates of title and other evidence of ownership for all-terrain vehicles offered for sale. The department has the right at any time to verify compliance with all statutory and regulatory requirements by a dealer registered under Iowa Code chapter 321I.

571—46.29(321I) Denial or revocation. The department may deny a dealer application or revoke a dealer registration certificate when the director determines the applicant or dealer has violated any rule of this chapter or Iowa Code chapter 321I or when continuation of the permit is not in the public interest. Such denial or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the denial or revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation or denial, the applicant or dealer, whichever is applicable, may file a notice of appeal, requesting a contested case pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be issued or reinstated.

571—46.30 to 46.50 Reserved.

DIVISION III
REGULATION OF DESIGNATED RIDING AREAS

571—46.51(321I) Definitions. In addition to the definitions in division I and division II of this chapter, the following definitions shall apply:

“Direct supervision” means to provide supervision of another person while maintaining visual and verbal contact at all times.

“Local sponsor” means the entity that owns the designated riding area or is otherwise responsible for the day-to-day operations of the designated riding area. A local sponsor may or may not be a unit of government.

“Operate” means to ride in or on, other than as a passenger, use, or control the operation of a regulated vehicle in any manner, whether or not the regulated vehicle is moving.

“Regulated vehicle” means all-terrain vehicles, off-road motorcycles, and off-road utility vehicles, either collectively or individually.

571—46.52(321I) Designated riding areas.

46.52(1) Designated off-highway vehicle (OHV) riding areas shall be considered to be public land, available and open to the public to use and enjoy consistent with these rules.

46.52(2) The following areas are hereby established as designated riding areas:

- a. Bluff Creek OHV Park, Mahaska County.
- b. Lakeview OHV Park, Johnson County.
- c. Gypsum City OHV Park, Webster County.
- d. Nicholson-Ford OHV Park, Marshall County.
- e. Rathbun OHV Park, Appanoose County.
- f. River Valley OHV Park, Pottawattamie County.
- g. Riverview OHV Park, Black Hawk County.
- h. Tama County OHV Park, Tama County.

46.52(3) A local sponsor may request that the commission adopt the local sponsor's riding area as a designated riding area by contacting the chief of the department's law enforcement bureau in writing

NATURAL RESOURCE COMMISSION[571](cont'd)

and providing information, as requested by the department, that demonstrates that the local sponsor's proposed designated riding area meets the minimum qualifications described in these rules. All studies or surveys required by these rules shall be at the local sponsor's expense. The department may require additional surveys or studies and conduct an on-site evaluation for each proposed designated riding area to determine whether the department should recommend that the commission adopt the proposed area as a designated riding area. The commission may adopt additional designated riding areas that meet the following minimum qualifications:

a. The site and plan for development and management is suitable for off-highway vehicle recreation. The department shall give greater consideration to sites that were previously disturbed areas, such as agricultural lands, mining operations, road surfaces or other intensive land uses that have resulted in the elimination of high-quality natural areas, native plant communities, critical habitats and cultural resources. Soil survey reports for the trail portions of the proposed designated riding area shall indicate the general soil classification of the riding areas and must indicate that those soils are of moderate risk or less for path or trail development.

b. There is demand for the proposed designated riding area. Consideration shall be given to nearby populations, distance to other OHV facilities, partnership possibilities and local support.

c. The local sponsor demonstrates a willingness and ability to maintain the proposed designated riding area consistent with these rules.

d. There is evidence that adjacent property owners, including those within the viewshed and within earshot of the proposed designated riding area, that exist at the time of establishment have been notified of the plan and do not disapprove of the plan or have otherwise had their concerns satisfactorily addressed.

e. The proposed development and management of the proposed designated riding area comply with local, state or federal laws, including without limitation zoning ordinances and accommodation laws.

f. Any federal- or state-listed threatened or endangered species are identified and a plan to ensure that the development and management of the proposed designated riding area would not negatively impact those species is included.

g. Any cultural, historical or high-quality natural resources on the site are identified and a plan to ensure that the development and management of the proposed designated riding area would not negatively impact those resources is included. High-quality areas include those areas of high-quality native plant communities, highly restorable native plant communities or other areas which provide critical wildlife habitat. In addition, if a site contains fragments of high-quality areas, but has been determined by the commission as suitable for use as a designated riding area, the local sponsor shall include in the plan how it will protect and enhance those fragments.

46.52(4) Designated riding areas approved by the commission shall be subject to these rules and shall be managed according to the plan approved by the commission. Major modifications to the plan, including expansions, must be approved by the commission for the designated riding area to continue to be a recognized designated riding area under these rules.

571—46.53(3211) Department law enforcement at designated riding areas. A local sponsor may request that the department provide law enforcement and other management assistance and oversight at the designated riding area, including adjacent parking and unloading areas, and at camping areas if applicable. The department, in its sole discretion, may provide such law enforcement and other management assistance and oversight it deems appropriate, provided that the local sponsor and the department enter into a written agreement describing what role and responsibilities department personnel shall have at the park and affording the department the right to terminate such agreement at any time, for any reason.

571—46.54(3211) General rules for regulated vehicle operation in designated riding areas. Operation on designated riding areas is limited to regulated vehicles as defined in this chapter and as described below:

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46.54(1) Allowable vehicles. Persons shall operate only the vehicles allowed at a designated riding area that is signed as open for the specified vehicle.

46.54(2) Compliance with signs. Persons at designated riding areas shall comply with all signs erected and maintained by the local sponsor or the department consistent with its relationship to the local sponsor under rule 571—46.53(321I).

46.54(3) Hours of operation. Designated riding areas shall be open from sunrise to sunset, unless signed by the local sponsor, or the department consistent with its relationship to the local sponsor under rule 571—46.53(321I), as open for operation during other hours as approved by the department. There may be instances when operating regulated vehicles in dark conditions is permissible. In those instances, persons operating regulated vehicles between sunset and sunrise, or in otherwise dark conditions, in designated riding areas must equip their regulated vehicles with a headlight and a taillight and use such lights.

46.54(4) Registration required. A person shall not operate, maintain, or give permission for the operation or maintenance of a regulated vehicle in a designated riding area unless the regulated vehicle is registered and such registration is displayed in accordance with Iowa Code chapter 321I and these rules. This requirement includes nonresidents operating regulated vehicles in a designated riding area who are required to have nonresident user permits for their regulated vehicles.

46.54(5) Safety equipment required. All operators shall wear helmets while operating a regulated vehicle on a designated riding area, including parking and unloading areas. The local sponsor, or the department consistent with its relationship to the local sponsor under rule 571—46.53(321I), may post signs that require operators to wear additional safety gear depending on conditions.

46.54(6) Working brakes. Every regulated vehicle operated in a designated riding area, including parking and unloading areas, shall be equipped with working brakes.

46.54(7) Minors—supervision. A person under 12 years of age shall not operate an all-terrain vehicle or an off-road motorcycle on a designated riding area unless one of the following applies:

a. The person is taking a prescribed education training course and the operation of the vehicle is under the direct supervision of a certified education instructor.

b. The operation of the vehicle is under the direct supervision of a responsible parent or guardian of at least 18 years of age who is experienced in all-terrain vehicle or off-road motorcycle operation and who possesses a valid driver's license as defined in Iowa Code section 321.1.

46.54(8) Valid driver's license required. A person shall not operate a regulated vehicle in a designated riding area without possession of a valid driver's license as defined in Iowa Code section 321.1.

571—46.55(321I) Unauthorized vehicles. The local sponsor, or the department consistent with its relationship to the local sponsor under rule 571—46.53(321I), may tow unauthorized vehicles, including hauling equipment. Towing shall be at the owner's expense.

571—46.56(321I) Parking and unloading areas. All vehicles, other than regulated vehicles, and trailers shall be parked in designated parking areas. No such vehicles, other than regulated vehicles, shall be left unattended in any park drive access point, unloading area, road or highway, except in the case of an emergency.

571—46.57(321I) Operation with passengers.

46.57(1) Persons shall not operate regulated vehicles on designated riding areas with a passenger unless the regulated vehicle is designed and constructed according to the manufacturer's specifications to carry a passenger. Passengers shall not ride on regulated vehicles that have been modified from the manufacturer's original design and construction to carry a passenger.

46.57(2) A person shall not operate a regulated vehicle in a designated riding area with a passenger without possession of a valid driver's license as defined in Iowa Code section 321.1.

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46.57(3) The number of passengers on a regulated vehicle in a designated riding area shall not exceed the manufacturer's capacity recommendation and shall not exceed the number of passenger restraints originally installed by the manufacturer.

46.57(4) A passenger on an all-terrain vehicle or off-road motorcycle must be seated behind the operator and have the physical ability to securely hold on to the operator or passenger handles.

46.57(5) Passengers on an off-road utility vehicle must be able to place both feet flat on the floor boards with their backs resting against the seat back.

571—46.58(321I) Off-road utility vehicle requirements. The following additional restrictions apply to the operation of off-road utility vehicle operation in designated riding areas signed open to such use:

46.58(1) Driver's license required. A person shall not operate an off-road utility vehicle in a designated riding area without possession of a valid driver's license as defined in Iowa Code section 321.1.

46.58(2) Vehicles shall not be homebuilt or substantially modified from the manufacturer's specifications in the sole opinion of the director or the director's designee.

46.58(3) Vehicles must be equipped with a roll-over protection system (ROPS) installed by the manufacturer.

46.58(4) Vehicles must be equipped with manufacturer seat belts that are in good working order. The operator and all passengers must wear seat belts at all times the vehicle is in motion.

46.58(5) The operator and all passengers must keep their hands, arms, legs, and feet inside the vehicle at all times the vehicle is in motion.

46.58(6) The vehicle must be no wider than 60 inches.

571—46.59(321I) Youth operational areas. The local sponsor, or the department consistent with its relationship to the local sponsor under rule 571—46.53(321I), may establish areas for youth all-terrain vehicle and off-road motorcycle operation on designated riding areas; may restrict the age of the operator and the size of the all-terrain vehicle; may limit the engine displacement for both all-terrain vehicles and off-road motorcycles; and shall post such restrictions.

571—46.60(321I) Unlawful operation. A person shall not operate a regulated vehicle in any of the following instances:

46.60(1) At a rate of speed greater than reasonable or proper under all existing circumstances or greater than the posted speed, whichever is less. In no event shall a person operate any vehicle in a parking area of or adjacent to a designated riding area in excess of 5 miles per hour.

46.60(2) In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.

46.60(3) While under the influence of intoxicating substances or narcotics or habit-forming drugs.

46.60(4) Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of 500 feet ahead.

46.60(5) Off established or marked trails or in prohibited areas.

46.60(6) In violation of official signs posted by the local sponsor or by the department consistent with its relationship to the local sponsor under rule 571—46.53(321I).

46.60(7) If the person's license to operate a motor vehicle is under suspension, revocation, bar, disqualification, cancellation or denial by this state or any other state.

571—46.61(321I) Alcohol prohibited. Persons shall not consume or possess alcohol in designated riding areas, except that the consumption and possession of alcohol shall be permitted at designated camping areas.

571—46.62(321I) Pets. Pets shall not be permitted in designated riding areas, except for parking and camping areas, if any.

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571—46.63(321I) Camping. Camping shall not be permitted in designated riding areas, except for areas specifically designed for and identified by the local sponsor, or the department consistent with its relationship to the local sponsor under rule 571—46.53(321I), for such use. In such instances, camping rules shall be posted in such areas.

These rules are intended to implement Iowa Code chapter 321I.

ARC 8731B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code Supplement section 321G.21(9) and section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 47, “Vessel Bonding,” and adopt new Chapter 47, “Snowmobiles,” Iowa Administrative Code.

The proposed new chapter clarifies the procedures for registration, renewal, titling, decal placement and accident reporting for snowmobiles. Division II of the new chapter establishes minimum standards for snowmobile dealers as authorized under Iowa Code Supplement section 321G.21(9).

Rules related to bonding requirements that are currently included in Chapter 47 are proposed to be moved to new 571—Chapter 50, “All-Terrain Vehicle, Off-road Motorcycle, Off-road Utility Vehicle, Snowmobile and Vessel Bonding” (see **ARC 8732B** herein).

Any interested person may make written suggestions or comments on the proposed rules on or before May 25, 2010. Such written materials should be directed to David Downing, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail david.downing@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-3449.

Also, there will be a public hearing on May 25, 2010, at 2 p.m. in the Fifth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

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

These rules are intended to implement Iowa Code chapter 321G.

The following amendment is proposed.

Rescind 571—Chapter 47 and adopt the following **new** chapter in lieu thereof:

CHAPTER 47
SNOWMOBILES

DIVISION I
REGISTRATION, RENEWAL, TITLING, DECAL PLACEMENT
AND ACCIDENT REPORTS

571—47.1(321G) Definitions. For purposes of this chapter, the following definitions shall apply:

“*Commission*” means the natural resource commission established in Iowa Code section 455A.5.

“*Department*” means the department of natural resources established in Iowa Code section 455A.2.

NATURAL RESOURCE COMMISSION[571](cont'd)

“*Operator*” means a person who operates or is in actual physical control of a snowmobile.

“*Owner*” means a person, other than a lien-holder, having the property right in or title to a snowmobile. “Owner” includes a person entitled to the use or possession of a snowmobile subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation. “Owner” does not include a lessee under a lease not intended as security.

“*Public land*” means land owned by the federal government, the state of Iowa, or a political subdivision of the state and land acquired or developed for public recreation pursuant to Iowa Code section 321G.7.

“*Roadway*” means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

“*Snowmobile*” means a motorized vehicle weighing less than 1,000 pounds which uses sled-type runners or skis, endless belt-type tread with a width of 48 inches or less, or any combination of runners, skis, or tread and is designed for travel on snow or ice. “Snowmobile” does not include an all-terrain vehicle, as defined in Iowa Code section 321I.1, which has been altered or equipped with runners, skis, belt-type tracks, or treads.

571—47.2(321G) Operation on roadways, highways, streets and snowmobile trails. A person shall not operate a snowmobile upon roadways, highways, streets, or designated snowmobile trails except as provided in Iowa Code section 321G.9.

NOTE: Additional driving and operation limitations are listed in Iowa Code section 321G.13.

571—47.3(321G) Registration for snowmobiles.

47.3(1) General. A person shall not operate, maintain, or give permission for the operation or maintenance of a snowmobile on public land, a designated snowmobile trail, or ice unless the snowmobile:

- a. Is registered in accordance with the requirements of Iowa Code chapter 321G and this chapter;
- b. Displays a current annual nonresident user permit decal issued as provided in rule 571—47.4(321G); or
- c. Is exempt from registration pursuant to Iowa Code section 321G.8.

47.3(2) Registration requirements.

a. The owner of each snowmobile required to be registered shall file an application for registration with the department through a county recorder and pay all applicable fees pursuant to Iowa Code section 321G.4 and these rules, except that a snowmobile dealer shall make application and pay all applicable registration and title fees on behalf of a purchaser of a snowmobile.

(1) Application forms. The applicant shall use DNR Form 542-8067 in making application for registration. In the event the applicant does not have the documentation required by DNR Form 542-8067, the applicant shall use DNR Form 542-8065 and may be required to secure a bond consistent with the requirements of 571—Chapter 50.

(2) Fees. The applicant shall pay the following fees: \$15 for the permit fee; \$1 for the writing fee; and \$1.50 for the administrative fee. In addition, a county recorder may collect an additional 25 cents for the writing fee if the county recorder issues the registration.

b. At such time the department or the county recorder is satisfied with the application and has received the required fees, the department or county recorder shall issue to the applicant a registration certificate and registration decal.

47.3(3) Preregistration grace period.

a. *Dealer purchases.* An unregistered snowmobile sold by a dealer to an Iowa resident for use in Iowa shall bear a card made of pasteboard or other similar material that includes the words “registration applied for” and the date of purchase. Such card shall entitle the purchaser to operate the snowmobile for 45 days immediately following the purchase. The purchaser shall place this card on the windshield area of the snowmobile in a position so as to be clearly visible at all times and maintained in a legible manner. The operator of any snowmobile displaying a “registration applied for” card described in this paragraph shall carry and provide upon request to any peace officer a valid bill of sale for the snowmobile.

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b. Nondealer purchases. Snowmobiles may be sold by nondealers, and the registration grace period may apply depending on the current registration of the vehicle.

(1) A snowmobile that is currently registered in the state of Iowa may be legally operated for 30 days before it is registered under the purchaser's name.

(2) A snowmobile not currently registered in the state of Iowa shall not be operated until it is titled and registered in the purchaser's name. Valid registration in another state does not authorize preregistration operation.

47.3(4) Registration—renewals. Every snowmobile registration certificate and registration decal expires at midnight December 31 of the year issued or at the time specified on the registration decal. Applications for renewal shall be completed pursuant to Iowa Code section 321G.6.

571—47.4(321G) Nonresident user permits.

47.4(1) A nonresident wishing to operate a snowmobile, other than such vehicle owned by a resident and registered pursuant to Iowa Code chapter 321G, on public land, a designated snowmobile trail, or ice of this state must first obtain a user permit from the department.

47.4(2) The department, a county recorder or license agent designated by the director may issue nonresident user permits. The applicant shall pay the following fees for a user permit: \$15 for the permit fee; \$1 for a writing fee; and \$1.50 for an administrative fee. In the event the county recorder issues such a permit, the county recorder may charge an additional 25 cents for the writing fee.

47.4(3) A user permit issued under this rule shall be valid for the calendar year or time period specified in the permit and shall be limited to the vehicle specified at the time of application.

47.4(4) Nonresident user permits are issued to a vehicle and are not transferable.

571—47.5(321G) Display of registration and user permit decals. The owner of a snowmobile shall display the registration decal or nonresident user permit decal on the windshield of the snowmobile so that the decal is clearly visible. If the snowmobile does not have a windshield, then the decal shall be affixed to the area of the hood near the headlamp so that the decal is clearly visible.

571—47.6(321G) Registration certificate.

47.6(1) An operator of a snowmobile shall carry the registration certificate either in such vehicle or on the person of the operator when the snowmobile is in use.

47.6(2) The operator of a snowmobile shall exhibit the registration certificate to all of the following:

- a. To a peace officer or department personnel upon request;
- b. To a person injured in an accident involving the snowmobile, or that person's agent;
- c. To the owner or operator of another snowmobile when the snowmobile is involved in a collision or accident of any nature with the other snowmobile, or that person's agent;
- d. To the owner of personal or real property when the snowmobile is involved in a collision or accident of any nature with the property of the other person, or that person's agent; and
- e. To the property owner or tenant when the snowmobile is being operated on private property without permission from the property owner or tenant, or that person's agent.

571—47.7(321G) Owner's certificate of title.

47.7(1) The owner of a snowmobile acquired on or after January 28, 1998, other than a snowmobile used exclusively as a farm implement or a previously registered snowmobile that is more than 30 years old, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the snowmobile. The owner shall make application within 30 days after acquisition of the snowmobile, using DNR Form 542-8067, and shall include the required fees set out in Iowa Code section 321G.30.

47.7(2) A certificate of title issued by the county recorder shall be on DNR Form 542-0974.

571—47.8(321G) Procedures for application and for issuance of a vehicle identification number (VIN) for homebuilt snowmobiles.

47.8(1) A person, other than a manufacturer, who constructs or rebuilds a snowmobile for which there is no legible VIN may make application to the department on DNR Form 542-8065 for the issuance

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of a new VIN. The application process shall include an inspection of the snowmobile by the department. If the application is approved, the VIN shall be affixed to the vehicle by a conservation officer. The completed application shall then be surrendered to the county recorder.

47.8(2) The conservation officer shall permanently affix the VIN to the frame under the seat of the snowmobile.

571—47.9(321G) Accident report.

47.9(1) Whenever any snowmobile is involved in an accident resulting in injury or death to anyone or property damage amounting to \$1,000 or more, the operator or someone acting for the operator shall immediately notify the county sheriff or another law enforcement agency of the state.

47.9(2) If the accident occurred on public land, a designated snowmobile trail, or ice under the jurisdiction of the commission, the operator shall file a report of the accident with the department within 72 hours. The report shall be on DNR Form 542-8093, Off-Highway Vehicle Incident Report Form.

47.9(3) Accidents other than those specified in 47.9(2) shall be reported as required in Iowa Code section 321.266.

571—47.10 to 47.20 Reserved.

DIVISION II
SNOWMOBILE DEALERS

571—47.21(321G) Purpose. The rules in this division apply to registered snowmobile dealers, manufacturers, and distributors. These rules establish minimal standards for snowmobile dealers as authorized under Iowa Code Supplement section 321G.21.

571—47.22(321G) Definitions. For purposes of this division, the following definitions shall apply:

“Consumer use” means use of a snowmobile for business or pleasure, not for sale at retail, by a person who has obtained a certificate of title and has registered the vehicle in conformance with Iowa Code chapter 321G.

“Dealer” means a person engaged in the business of buying, selling, or exchanging snowmobiles required to be registered under Iowa Code chapter 321G and this chapter and who has an established place of business for that purpose in this state.

“Designated location” means the primary place of business of the dealer or a building actually occupied by a dealer where the public and the department may contact the dealer during regular business hours.

“Distributor” means a person, resident or nonresident, who sells or distributes snowmobiles to snowmobile dealers in this state or who maintains distributor representatives.

“Engaged in the business,” or similar wording, means doing any of the following acts for the purpose of selling snowmobiles at retail: acquiring, selling, exchanging, holding, offering, displaying, brokering, accepting on consignment or conducting a retail auction, or acting as an agent for the purpose of doing any of these acts. A person selling at retail more than five snowmobiles during a 12-month period may be presumed to be engaged in the business.

“Established place of business” means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the books and records are kept and the dealer’s or manufacturer’s business is primarily transacted.

“Manufacturer” means a person engaged in the business of constructing or assembling snowmobiles required to be registered under Iowa Code chapter 321G and this chapter and who has an established place of business for that purpose in this state.

“Manufacturer’s certificate of origin” means a certification signed by the manufacturer, distributor or importer that the snowmobile described has been transferred to the person or dealer named, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. A manufacturer’s certificate of origin may also be referred to as a manufacturer’s statement of origin.

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571—47.23(321G) Dealer's established place of business. A dealer's established place of business shall include telephone service and an adequate office area for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all snowmobiles offered for sale.

571—47.24(321G) Zoning. Dealers licensed under these rules must comply with applicable local zoning ordinances. Upon request by the department, a dealer shall provide to the department written evidence issued by the office responsible for the enforcement of zoning ordinances in the city or county where the dealer's established place of business is located that the dealer's established place of business complies with all applicable zoning provisions.

571—47.25(321G) Sales tax permit. A dealer shall provide to the department written evidence that the dealer has obtained a sales tax permit issued by the department of revenue.

571—47.26(321G) Special registration certificates for manufacturers, distributors and dealers.

47.26(1) A manufacturer, distributor, or dealer owning a snowmobile required to be registered under Iowa Code chapter 321G and this chapter may operate the unregistered snowmobile for purposes of transporting, testing, demonstrating, or selling it if both of the following requirements are met:

a. The manufacturer, distributor, or dealer obtains from the department a special registration certificate and decal containing a general identification number in accordance with Iowa Code section 321G.21. An application for a special registration certificate shall be submitted on DNR Form 542-0846; and

b. The manufacturer, distributor, or dealer has the assigned decal attached to a removable sign which is temporarily but firmly attached to the snowmobile being used.

47.26(2) If a manufacturer, distributor, or dealer has an established place of business in more than one location, the manufacturer, distributor, or dealer shall obtain from the department a separate and distinct special registration certificate, decal and general identification number for each place of business.

47.26(3) Duplicate special registration certificates and decals may be obtained pursuant to the conditions set forth in Iowa Code section 321G.21.

571—47.27(321G) Information provided to purchasers. At the time of sale, a dealer shall provide all purchasers of snowmobiles with both (1) a copy of current snowmobile laws and regulations governing the usage of snowmobiles in the state of Iowa, and (2) the most up-to-date list of public places open for snowmobile usage. The department shall provide this required information on its Web site, www.iowadnr.gov. Information provided on the department's Web site shall be deemed current and the most up-to-date information for purposes of this rule.

571—47.28(321G) Right of inspection. The department or any peace officer has the authority to inspect the following at any dealer location: (1) snowmobiles or component parts of vehicles, (2) business records, and (3) manufacturers' certificates of origin, certificates of title and other evidence of ownership for snowmobiles offered for sale. The department has the right at any time to verify compliance with all statutory and regulatory requirements by a dealer registered under Iowa Code chapter 321G.

571—47.29(321G) Denial or revocation. The department may deny a dealer application or revoke a dealer registration certificate when the director determines the applicant or dealer has violated any rule of this chapter or Iowa Code chapter 321G or when continuation of the permit is not in the public interest. Such denial or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the denial or revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation or denial, the applicant or dealer, whichever is applicable, may file

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a notice of appeal, requesting a contested case pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be issued or reinstated.

These rules are intended to implement Iowa Code chapter 321G.

ARC 8732B**NATURAL RESOURCE COMMISSION[571]****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 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 50, “All-Terrain Vehicle and Snowmobile Accident Reports, Titling, Registration and Numbering,” and to adopt new Chapter 50, “All-Terrain Vehicle, Off-Road Motorcycle, Off-Road Utility Vehicle, Snowmobile and Vessel Bonding,” Iowa Administrative Code.

The proposed new Chapter 50 defines each of the regulated vehicles covered by these rules, clarifies the criteria that require the bonding of a regulated vehicle or vessel, and updates the process used to bond a regulated vehicle or vessel. Responsibilities for both the applicant and the Department are delineated. The specifics for regulated vehicles are covered in Division I of the chapter, and the specifics for vessels are captured in Division II of the chapter. Presently administrative rules which pertain to the Department’s requirements for bonding of all-terrain vehicles and snowmobiles are contained in 571—Chapter 46, and the administrative rules which pertain to the Department’s requirements for bonding vessels are contained in 571—Chapter 47. This proposed rule making also combines the rules for bonding in one chapter. Existing rules found in Chapter 50 will be moved to new 571—Chapter 46 and 571—Chapter 47 as part of an update and reorganization of the rules pertaining to the Off-Highway Vehicle Program and the Snowmobile Program (see **ARCs 8730B** and **8731B** herein).

The purpose of bonding a regulated vehicle or vessel is to secure a proper chain of ownership of the regulated vehicle or vessel when registration or title paperwork is missing or improperly transferred.

Any interested person may make written suggestions or comments on the proposed rules on or before May 25, 2010. Such written materials should be directed to David Downing, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail david.downing@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-3449.

Also, there will be a public hearing on May 25, 2010, at 2 p.m. in the Fifth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

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

These rules are intended to implement Iowa Code sections 321G.21, 321G.29, 321I.22, 321I.31 and 462A.5A.

The following amendment is proposed.

NATURAL RESOURCE COMMISSION[571](cont'd)

Rescind 571—Chapter 50 and adopt the following **new** chapter in lieu thereof:

CHAPTER 50

ALL-TERRAIN VEHICLE, OFF-ROAD MOTORCYCLE, OFF-ROAD UTILITY VEHICLE, SNOWMOBILE AND VESSEL BONDING

571—50.1(321G,321I) Definitions.

“*All-terrain vehicle*” means a motorized flotation-tire vehicle with not less than three and not more than six low-pressure tires that is limited in engine displacement to less than 1,000 cubic centimeters and in total dry weight to less than 1,000 pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

“*Off-road motorcycle*” means a two-wheeled motor vehicle that has a seat or saddle designed to be straddled by the operator and handlebars for steering control and that is intended by the manufacturer for use on natural terrain. “Off-road motorcycle” includes a motorcycle that was originally issued a certificate of title and registered for highway use under Iowa Code chapter 321, but which contains design features that enable operation over natural terrain.

“*Off-road utility vehicle*” means a motorized flotation-tire vehicle with not less than four and not more than eight low-pressure tires that is limited in engine displacement to less than 1,500 cubic centimeters and in total dry weight to not more than 1,800 pounds and that has a seat that is of bucket or bench design, not intended to be straddled by the operator, and a steering wheel or control levers for control. A motorized vehicle that was previously titled or is currently titled under Iowa Code chapter 321 shall not be registered or operated as an off-road utility vehicle.

“*Regulated vehicle*” means all-terrain vehicles, off-road motorcycles, and off-road utility vehicles, either collectively or individually. For purposes of this chapter only, “regulated vehicle” shall also include a snowmobile.

“*Snowmobile*” means a motorized vehicle weighing less than 1,000 pounds which uses sled-type runners or skis, endless belt-type tread with a width of 48 inches or less, or any combination of runners, skis, or tread, and is designed for travel on snow or ice. “Snowmobile” does not include an all-terrain vehicle which has been altered or equipped with runners, skis, belt-type tracks, or treads.

“*Vessel*” means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. Ice boats are watercraft.

“*Watercraft*” means any vessel which through the buoyant force of water floats upon the water and is capable of carrying one or more persons. Docks, defined and regulated by 571—Chapter 16, are not watercraft.

DIVISION I

ALL-TERRAIN VEHICLES, OFF-ROAD MOTORCYCLES, OFF-ROAD UTILITY VEHICLES AND SNOWMOBILES

571—50.2(321G,321I) Bond required before issuance of title or registration. If the county recorder or the department is not satisfied as to the ownership of the regulated vehicle or that there are no undisclosed security interests in the regulated vehicle, the recorder or the department shall require completion of the following procedures prior to issuing title and registration:

50.2(1) Identification. The applicant shall contact the department and provide identifying information in regard to the regulated vehicle. The required identifying information shall include the identification number and such additional information about the regulated vehicle as may be requested by the department. If no identification number is currently affixed to the regulated vehicle, the applicant shall complete the department’s procedure for obtaining such number, and the assigned number shall be affixed before the applicant may proceed with the application process set forth in this chapter.

50.2(2) Records search. Upon receipt of sufficient identifying information from an applicant, the department shall:

a. Search the department’s registration records to determine if there is an owner of record for the regulated vehicle and if the regulated vehicle has been reported stolen; and

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b. Notify the applicant, orally or in writing, in regard to whether a record of prior ownership has been located and, if so, provide the name and last-known address of the owner of record.

50.2(3) Examination. At any time after being contacted by the applicant and before approval of an application, the department may examine the regulated vehicle.

50.2(4) Notice to owner of record. If the department finds a record of prior ownership in the department's registration records, the department shall provide the applicant with a bonding packet containing instructions that describe how to complete the bonding process. The packet shall include a notice to the owner of record and a certified mail envelope, return receipt requested, with a return address of the department. The notice shall state that the owner of record may assert the owner's right to claim the regulated vehicle. If neither the applicant nor the department receives a response from the owner of record within ten days after receipt of notice or the post office returns the notice to the applicant or the department as undeliverable or unclaimed, the department will continue processing the bond application.

50.2(5) Submission of application. To register the regulated vehicle, the applicant must submit the appropriate forms and fees described in 571—Chapter 46. In addition, the application shall include a statement obtained from an Iowa-registered dealer for the same type of regulated vehicle for which the value is being sought or documentation from the North American Dealers' Association indicating the current value of the regulated vehicle. In addition to the appropriate application form required under 571—Chapter 46, the following documents shall be submitted with the application form:

a. Photographs of the regulated vehicle which show the front, rear, and one side of the regulated vehicle.

b. The written ownership document received at the time that the regulated vehicle was acquired.

c. Satisfactory proof of the regulated vehicle identification number or DNR Form 542-8065. Examples of what constitutes satisfactory proof include, without limitation, corresponding photographs of the vehicle identification number and the vehicle or a readable pencil rubbing of the vehicle identification number.

d. The undeliverable or unclaimed certified letter and envelope addressed to the previous owner or the signed certified mail receipt, if available, if a record of prior ownership was located by the department.

e. A surety bond on DNR Form 542-8092 in an amount equal to one and one-half times the current value of the regulated vehicle, if required.

50.2(6) Approval. If the department determines that the applicant has complied with this rule, that there is sufficient evidence to indicate that the applicant is the rightful owner, and that there is no known unsatisfied security interest, the department shall forward the original application to the county recorder and notify the applicant that the regulated vehicle may be registered and titled in Iowa.

50.2(7) Disapproval. If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, that there is an unsatisfied security interest, or that the owner of record asserts a claim for the regulated vehicle, the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s).

571—50.3 to 50.9 Reserved.

DIVISION II
VESSELS

571—50.10(462A) Bond required before issuance of title or registration. In the event the county recorder or the department is not satisfied as to the ownership of a vessel or that there are no undisclosed security interests in the vessel, the recorder or the department shall require completion of the following procedures prior to issuing title or registration:

50.10(1) Identification. The applicant shall contact the department and provide the department with identifying information in regard to the vessel. The required identifying information shall include the hull identification number, if applicable, and such additional information as may be requested by the

NATURAL RESOURCE COMMISSION[571](cont'd)

department. If no hull identification number is currently affixed on a vessel otherwise required by law to have a hull identification number, the applicant shall complete the department's procedure for obtaining such number, and the assigned number shall be affixed after the applicant has completed the registration and bonding process set forth in this chapter.

50.10(2) *Records search.* Upon receipt of sufficient identifying information from an applicant, the department shall:

a. Search the department registration records to determine if there is an owner of record for the vessel and if the vessel has been reported stolen; and

b. Notify the applicant, orally or in writing, in regard to whether a record of prior ownership has been located and, if so, provide the name and last-known address of the owner of record.

50.10(3) *Examination.* At any time after being contacted by the applicant and before approval of an application, the department may examine the vessel.

50.10(4) *Notice to owner of record.* If the department finds a record of prior ownership in the department's registration records, the department shall provide the applicant with a bonding packet containing instructions that describe how to complete the bonding process. The packet shall include a notice to the owner of record and a certified mail envelope, return receipt requested, with a return address of the department. The notice shall state that the owner of record may assert the owner's right to claim the vessel. If neither the applicant nor the department receives a response from the owner of record within ten days after receipt of notice or the post office returns the notice to the applicant or the department as undeliverable or unclaimed, the department will continue processing the bond application.

50.10(5) *Submission of application.* The applicant shall submit an application on DNR Form 542-8067. The form shall include a statement obtained from an Iowa-registered dealer for vessels or documentation from the North American Dealers' Association indicating the current value of the vessel. The following documents shall be submitted with the application form:

a. Photographs of the vessel which show the front, rear, and one side of the vessel.

b. The written ownership document received at the time that the vessel was acquired.

c. Satisfactory proof of the hull identification number or DNR Form 542-2000. Examples of what constitutes satisfactory proof include, without limitation, corresponding photographs of the hull identification number and the vessel or a readable pencil rubbing of the hull identification number.

d. The undeliverable or unclaimed certified letter and envelope addressed to the previous owner or the signed certified mail receipt, if available, if a record of prior ownership was located by the department.

e. A surety bond on DNR Form 542-8092 in an amount equal to one and one-half times the current value of the vessel.

50.10(6) *Approval.* If the department determines that the applicant has complied with this rule, that there is sufficient evidence to indicate that the applicant is the rightful owner, and that there is no known unsatisfied security interest, the department shall forward the original application to the county recorder and notify the applicant that the vessel may be registered and titled in Iowa.

50.10(7) *Disapproval.* If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, that there is an unsatisfied security interest, or that the owner of record asserts a claim for the vessel, the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s).

These rules are intended to implement Iowa Code sections 321G.21, 321G.29, 321I.22, 321I.31 and 462A.5A.

ARC 8726B**RACING AND GAMING COMMISSION[491]****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 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 5, “Track, Gambling Structure, and Excursion Gambling Boat Licensees’ Responsibilities,” Chapter 11, “Gambling Games,” and Chapter 12, “Accounting and Cash Control,” Iowa Administrative Code.

Item 1 clarifies the existing subrule regarding firearms possession within licensed facilities.

Item 2 specifies the need for a standard operating procedure addressing surveillance maintenance, emergency plans, and capabilities.

Item 3 removes “implements of gambling” from the items for which written notice of sale or removal is required.

Item 4 allows for bonus systems that are connected or integrated with slot machines.

Item 5 allows for the keno payout to be 70 percent.

Item 6 makes unclaimed ticket adjustments consistent with slot machine tickets.

Item 7 prohibits gaming floor designation for the sole purpose of keno runners when no other gambling games are present.

Item 8 allows for slot machines that incorporate an ability-based bonus as a small percentage of the overall slot machine payout.

Item 9 clarifies what type of slot system access commission representatives have.

Item 10 clarifies what types of meters must be recorded by the slot machine game.

Item 11 clarifies what slot machines are progressive slot machines and what games are considered bonus features.

Item 12 clarifies what revenue exceptions shall be reported to the commission representative.

Item 13 requires surveillance departments to be operated in an autonomous fashion.

Item 14 requires control for access to, method for removal of, and procedures governing the record of implements of gambling, such as cards and dice.

Item 15 clarifies key control of table game containers.

Item 16 clarifies key control of slot machine containers.

Item 17 clarifies what changes to the slot system shall be logged.

Item 18 allows for an emergency drop during defined circumstances.

Item 19 allows for alternative wear by the drop team when conducting the drop.

Item 20 allows for empty containers to be stored in a secure cart after the count.

Item 21 allows for the removal of containers for repair or destruction.

Item 22 clarifies when the table game information shall be reconciled in the accounting department.

Any person may make written suggestions or comments on the proposed amendments on or before May 25, 2010. Written material should be directed to the Racing and Gaming Commission, 717 E. Court Avenue, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on May 25, 2010, at 9:30 a.m. in the office of the Racing and Gaming Commission, 717 E. Court Avenue, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 1. Amend subrule 5.4(6) as follows:

5.4(6) *Firearms possession within ~~casino~~ licensed facility.*

a. No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a ~~casino~~ licensed facility without the express written approval of the administrator unless:

- (1) The person is a peace officer, on duty, acting in the peace officer's official capacity; or
- (2) The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that ~~casino~~ licensed facility.

b. Each ~~casino~~ licensee shall post in a conspicuous location at each entrance ~~to the casino~~ a sign that may be easily read stating, "Possession of any firearm within the ~~casino~~ licensed facility without the express written permission of the Iowa racing and gaming commission is prohibited".

ITEM 2. Adopt the following **new** paragraphs **5.4(7)“d”** and **“e”**:

d. A surveillance department shall develop a standard operating procedure manual, which shall include surveillance system maintenance and emergency plans. This manual shall be made available for inspection by the commission and DCI.

e. A facility may include capabilities within the surveillance system for video recording of other areas of a facility and grounds, provided that commission and DCI access is unrestricted.

ITEM 3. Amend paragraph **11.4(6)“a”** as follows:

a. Any entity providing slot machines, gambling games or implements of gambling to a licensed facility must file written notice with the commission at least five calendar days prior to receipt by the facility. A licensed facility selling or an owner removing slot machines, or gambling games or implements of gambling from the facility must file written notice with the commission at least one day prior to removal. All methods of disposal for slot machines, gambling games or implements of gambling are subject to administrator approval. Notification by facsimile or electronic mail shall be considered written notice.

ITEM 4. Amend subrule 11.5(3) as follows:

11.5(3) The administrator is authorized to approve variations of approved gambling games and bonus features or progressive wagers associated with approved gambling games, subject to the requirements of rule ~~491—11.4(99F)~~.

a. Features utilizing a controller or a system linked to gambling games that do not require direct monetary consideration and are not otherwise integrated within a slot machine game theme may be allowed as bonus features. Payouts from these bonus features may be included in winnings for the calculation of wagering tax adjusted gross receipts when the following conditions are met:

(1) The only allowable nonmonetary consideration to be expended by a participant shall be active participation in a gambling game with a bonus feature or use of a player's club card, or both.

(2) The actual bonus payout deductible in any month from all qualified system bonuses requiring no additional direct monetary consideration shall be:

1. No more than 2 percent of the coin-in for all slot machines linked to any system bonuses for that month, if slot machines linked to system bonuses exceed 20 percent of the total number of slot machines;

or

2. No more than 3 percent of the coin-in for all slot machines linked to any system bonuses for that month, if slot machines linked to system bonuses are less than or equal to 20 percent of the total number of slot machines; or

3. No more than 3 percent of the amount wagered on the qualifying bets for all table games linked to any system bonus for that month.

(3) The probability of winning a system bonus award shall be the same for all persons participating in the bonus feature.

b. Noncashable credit payouts may be allowed as bonus feature payouts subject to the administrator's approval of individual accounting, expiration and redemption practices.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 5. Amend subrule 11.8(3) as follows:

11.8(3) For any type of wager offered, the payout must be at least ~~80~~ 70 percent.

ITEM 6. Amend subrule 11.8(6) as follows:

11.8(6) All winning tickets shall be valid up to a maximum of one year from the date of purchase. ~~The dollar value of all All expired and unclaimed winning tickets shall be added to existing keno jackpots in a manner approved by the administrator. subject to the requirements in 491—paragraph 12.11(2) “b.”~~

ITEM 7. Adopt the following **new** subrule 11.8(9):

11.8(9) An area of a facility shall not be designated as gaming floor for the sole purpose of keno runners, who accept patron wagering funds remotely from the keno game location.

ITEM 8. Amend paragraph **11.9(1)“a”** as follows:

a. A slot machine game's theoretical payout must be at least 80 percent and no more than 100 percent of the amount wagered. The theoretical payout percentage is determined using standard methods of probability theory. Slot machine games with a bonus feature that is available with varying payouts based on the player's ability shall be allowed if the difference between the minimum and maximum payout for all ability-based outcomes does not exceed a 4 percent contribution to the overall theoretical payout of the slot machine game.

ITEM 9. Amend subrule 11.9(5) as follows:

11.9(5) Communication equipment. Equipment must be installed in each slot machine that allows for communication to an online monitoring and control system accessible, with read-only access, to the commission representatives using a communications protocol provided to each licensed manufacturer by the commission for the information and control programs approved by the administrator.

ITEM 10. Amend subrule 11.9(6) as follows:

11.9(6) Meter clears. Prior to the clearing of electronic accounting meters detailed in paragraph 11.10(2) “c,” a licensee must notify a commission representative. All meters must be recorded before and after being cleared recorded by the game must be retained according to the requirements in 491—subrule 5.4(14).

ITEM 11. Amend subrule 11.12(1) as follows:

11.12(1) Meter required. A progressive machine is a slot machine game with an award amount that increases based on a function of credits bet on the slot machine and that is awarded when a particular configuration of symbols or events is displayed on the slot machine. Random events generating awards independent of the base slot machine game and not dependent on any specific slot machine game shall be considered bonus features. A progressive slot machine or group of linked progressive slot machines must have a meter showing the progressive jackpot payout.

ITEM 12. Amend subrule 12.2(4) as follows:

12.2(4) Whenever forms or serial numbers are required to be accounted for or copies of forms are required to be compared for agreement and exceptions are noted, such exceptions irreconcilable gambling revenue exceptions shall be reported immediately and in writing to the commission. All other exceptions shall be recorded in a log, accessible to commission representatives, maintained according to the requirements in 491—subrule 5.4(14).

ITEM 13. Rescind paragraph **12.3(1)“e”** and adopt the following **new** paragraph in lieu thereof:

e. Surveillance internal controls that include:

(1) Surveillance departments that shall be operated in an autonomous fashion, as separate and distinct entities from all other departments. A gaming facility's organizational structure shall place the director of the surveillance department directly under the span of control and authority of the operator's board of directors or appropriate parent company executive where practical. Under no circumstances will the director of surveillance report to or take direction from any authority at a level below the general manager.

(2) Administration of the network for the purpose of utilizing and transmitting live or recorded views or images of a video surveillance system for asset protection, loss prevention, investigation of

RACING AND GAMING COMMISSION[491](cont'd)

tort/liability claims, game protection, employee oversight, resolution of patron disputes, corporate governance, management analysis, or other use consistent with a licensee's statutory responsibilities as approved by the administrator.

ITEM 14. Adopt the following **new** paragraph **12.3(1)“f”**:

f. Game control, including but not limited to procedures for the storage, removal and record of implements of gambling. The gaming control shall be designed to document:

- (1) Access to implements of gambling not in use.
- (2) Method for removal of implements of gambling from an active gambling game.
- (3) Procedures governing the record of total inventory of implements of gambling, documenting both additions to and removal from storage and active use.

ITEM 15. Amend paragraphs **12.5(1)“a”** and **“b”** as follows:

a. A lock securing the contents of the container, the key to which shall be ~~checked out~~ logged out by the drop count team.

b. A separate lock securing the container to the gaming table, the key to which shall be different from ~~each of the keys to locks securing the contents of the container~~ the key in paragraph 12.5(1) “a” and shall be logged out by the drop team, count team, or emergency drop personnel pursuant to subrule 12.13(1).

ITEM 16. Rescind rule 491—12.9(99F) and adopt the following **new** rule in lieu thereof:

491—12.9(99F) Slot machine container and key. Each slot machine shall have a container(s) that is housed in a locked compartment(s) separate from any other compartment of the slot machine.

12.9(1) Each container shall:

a. Have a lock securing the contents of the container, the key to which shall be logged out by the count team or employees authorized by the internal controls to address container malfunction issues.

b. Have a lock to each compartment securing the container to the slot machine, the key to which shall be different from the key in paragraph 12.9(1) “a” and shall be logged out by the drop team, employees authorized by the internal controls to address container malfunction issues, or employees transporting container(s) according to rule 491—12.13(99F).

c. Be identified at the time of removal by a number corresponding to the number of the slot machine from which the container is removed.

12.9(2) Keys referred to in subrule 12.9(1) shall be maintained and controlled by the security department in a secured area. The facility shall establish a log-out procedure for all keys removed from the secured area.

12.9(3) Other keys to each slot machine or any device connected thereto which may affect the operation of the slot machine shall be maintained in a secure place and controlled by the slot department.

ITEM 17. Amend subrule 12.12(5) as follows:

12.12(5) The licensee shall maintain a current log, accessible to commission representatives, of all changes and updates made to the online monitoring and control system that affect any part of the system's message digest. ~~All~~ These changes and updates shall be approved as required by 491—subrule 11.4(1).

ITEM 18. Amend subrule 12.13(1) as follows:

12.13(1) Each facility shall place on file with a commission representative a schedule setting forth the specific times at which the containers will be brought to or removed from the gaming tables or slot machines for transport to the count room. An emergency drop that deviates from the schedule shall be permissible for instances of full containers or container malfunctions provided that representatives from the security department and another department conduct the drop and the process is recorded by the surveillance department from the time of machine entry until the container is secured in the count room or other approved secure location. The commission representative shall be notified after each occurrence.

ITEM 19. Amend paragraph **12.13(3)“a”** as follows:

a. Be removed by a drop team ~~who shall wear~~ wearing uniforms or outer garments as required by subrule 12.15(2).

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 20. Amend paragraph **12.15(4)“f”** as follows:

f. Immediately after the contents of a container are emptied onto the count table or coin scale, the inside of the container shall be held up to the full view of a closed circuit surveillance camera and shall be shown to at least one other count team member to ensure all contents of the container have been removed and, if applicable, the container shall then be locked. ~~Empty~~ By the end of the count process, empty containers shall be secured in a container cart or an area separate from uncounted containers.

ITEM 21. Amend subrule 12.13(5) as follows:

12.13(5) ~~Empty containers not secured to the gaming tables or slot machine cabinets~~ compartment shall be stored in the count room or an approved secured location. Empty containers may be removed from the count room or secured area for repair or destruction provided the surveillance department is notified and the inside of the container is held up to the full view of a closed circuit television camera prior to removal.

ITEM 22. Amend paragraph **12.15(5)“h”** as follows:

h. The originals and copies of the master game report, requests, slips, table inventory slips, and the test receipts from the currency counting equipment shall, on a daily gaming day basis in the accounting department, be:

(1) to (6) No change.

ARC 8708B

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 17A.3(1)“b,” the Iowa Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

The purpose of the proposed subrule is to provide voters and other interested persons with the opportunity to review the summary to be printed on the ballot for the proposed constitutional amendment that is to be voted upon at the November 2, 2010, General Election. Because the only purpose for this Notice is to solicit public comments, following the comment period the Notice will be terminated without adopting the subrule.

Any interested person may make written suggestions or comments on this proposed subrule through 4:30 p.m. on Tuesday, May 25, 2010. Written suggestions or comments should be directed to Sarah Reisetter, Elections Director, 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)242-5071 or at the Secretary of State’s office on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by Tuesday, May 25, 2010.

This amendment is intended to implement Iowa Code section 49.44.

The following amendment is proposed.

Adopt the following new subrule 21.200(4):

21.200(4) A proposed constitutional amendment was passed by the Eighty-second General Assembly as Senate Joint Resolution 2002, and by the Eighty-third General Assembly as House Joint Resolution 1. This proposed amendment will be voted upon at the general election to be held on November 2, 2010.

SECRETARY OF STATE[721](cont'd)

The summary that is proposed by the Secretary of State appears below:

1

Summary: Adopts Iowa's Water and Land Legacy Amendment which creates a dedicated trust fund for the purposes of protecting and enhancing water quality and natural areas in the State including parks, trails, and fish and wildlife habitat and conserving agricultural soils in this State.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

May 1, 2009 — May 31, 2009	4.75%
June 1, 2009 — June 30, 2009	5.00%
July 1, 2009 — July 31, 2009	5.25%
August 1, 2009 — August 31, 2009	5.75%
September 1, 2009 — September 30, 2009	5.50%
October 1, 2009 — October 31, 2009	5.50%
November 1, 2009 — November 30, 2009	5.50%
December 1, 2009 — December 31, 2009	5.50%
January 1, 2010 — January 31, 2010	5.50%
February 1, 2010 — February 28, 2010	5.50%
March 1, 2010 — March 31, 2010	5.75%
April 1, 2010 — April 30, 2010	5.75%
May 1, 2010 — May 31, 2010	5.75%

ARC 8727B**ADMINISTRATIVE SERVICES DEPARTMENT[11]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 8A.104 and 8A.413, the Department of Administrative Services hereby amends Chapter 60, "Separations, Disciplinary Actions and Reduction in Force," Iowa Administrative Code.

The purpose of this amendment is to clarify the issue of indemnification by the State under the State Tort Claims Act, Iowa Code chapter 669, for participants in the state employee retirement incentive program. 2010 Iowa Acts, Senate File 2062, which established the state employee retirement incentive program for eligible executive branch employees, requires the adoption of administrative rules and provides that such rules may be adopted on an emergency basis pursuant to Iowa Code section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph "b."

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable due to the immediate need for rule making to administer the aspects of the program approved by the Legislature.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on April 16, 2010, as it confers a benefit upon the executive branch agencies and employees.

The Department adopted this amendment on April 16, 2010.

This amendment is intended to implement 2010 Iowa Acts, Senate File 2062, and Iowa Code section 8A.413.

This amendment became effective on April 16, 2010.

The following amendment is adopted.

Adopt the following **new** paragraph **60.1(7)"k"**:

k. The state's obligations and duties under Iowa Code chapter 669 are not altered or diminished by a participant's signing of the program application and release form. Participants may pursue any remedy allowed in Iowa Code chapter 669 without regard to program eligibility.

[Filed Emergency 4/16/10, effective 4/16/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8712B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

Iowa's Food Assistance employment and training program rules currently mandate participation by certain categories of Food Assistance recipients and provide for penalties for failure to participate as prescribed by federal regulations. The employment and training program is a federal program operated by states under the umbrella of the federal Supplemental Nutrition Assistance Program.

Federal regulations provide an option for an all-volunteer employment and training program. These amendments implement that option. States are required to submit an annual employment and training state plan to the USDA Food and Nutrition Service for approval before implementing the volunteer program. Upon plan approval and negotiation of administrative contracts, notice of program availability will be mailed to Food Assistance recipients with instructions to request services through the Iowa Workforce Development Department or a participating community college.

HUMAN SERVICES DEPARTMENT[441](cont'd)

A volunteer program will help Food Assistance recipients who truly want help to become employed and those who need more education or vocational training to compete in the current job market and become employed. Volunteers are also likely to be more successful participants than those who simply participate to avoid being disqualified from the Food Assistance program. This change will allow the program to focus on Food Assistance recipients who can most benefit and will make the best use of the limited funding that is available to provide services.

These amendments do not provide for waivers in specified situations because the amendments remove restrictions on participation and Food Assistance eligibility. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 24, 2010, as **ARC 8535B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on April 14, 2010.

The Department finds that these amendments confer a benefit on Food Assistance recipients by making employment and training options available to more people and removing participation requirements. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 234.12 and 2009 Iowa Acts, chapter 182, section 6.

These amendments became effective on April 15, 2010.

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 [65.28(6) to 65.28(14)] is being omitted. These amendments are identical to those published under Notice as **ARC 8535B**, IAB 2/24/10.

[Filed Emergency After Notice 4/14/10, effective 4/15/10]

[Published 5/5/10]

[For replacement pages for IAC, see IAC Supplement 5/5/10.]

ARC 8714B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

These amendments change Medicaid coverage requirements to eliminate the need for some exceptions to policy that are routinely approved.

- Item 1 allows use of another state's Medicaid sterilization consent form in lieu of the Iowa Medicaid form. Iowa Medicaid members who live near state borders often receive services in the bordering state. Since the content of the sterilization consent is detailed in federal Medicaid regulations, these forms are very similar across states. Denying a claim if the consent meets all requirements except the Iowa form number is not a cost-effective action.

- Items 2 and 3 remove the requirement that a member report the results of a trial use of an enclosed bed before requesting prior authorization for an enclosed bed. Enclosed beds are not available on a rental basis for a trial period, and the alternative of overnight hospitalization for observation of a trial is not cost-effective.

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 24, 2010, as **ARC 8538B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on April 14, 2010.

The Department finds that these amendments streamline approval procedures and confer a benefit on Medicaid members who are requesting sterilization or who need enclosed beds. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments became effective on May 1, 2010.

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

The following amendments are adopted.

ITEM 1. Amend paragraphs **78.1(16)“b,” “f” and “h”** as follows:

b. The sterilization shall be performed as the result of a voluntary request for the services made by the person on whom the sterilization is performed. The person’s consent for sterilization shall be documented on:

(1) Form 470-0835 or 470-0835(S), Consent Form, or

(2) An official sterilization consent form from another state’s Medicaid program that contains all information found on the Iowa form and complies with all applicable federal regulations.

f. At least 30 days and not more than 180 days shall have elapsed following the signing of the informed consent except in the case of premature delivery or emergency abdominal surgery which occurs not less than 72 hours after the informed consent was signed. The informed consent shall have been signed at least 30 days prior to before the expected delivery date for premature deliveries. Consent shall be obtained on Form 470-0835 or 470-0835(S), Consent Form, and shall be attached to the claim for payment.

h. Form 470-0835 or 470-0835(S), Consent Form, The consent form described in paragraph 78.1(16)“b” shall be attached to the claim for payment and shall be signed by:

(1) the individual The person to be sterilized,

(2) the The interpreter, when one was necessary,

(3) the The physician, and

(4) the The person who provided the required information.

ITEM 2. Amend subparagraph **78.10(2)“d”(1)** as follows:

(1) Enclosed beds. Payment for an enclosed bed will be approved when prescribed for a patient who meets all of the following conditions:

1. The patient has a diagnosis-related cognitive or communication impairment that results in risk to safety.

2. The patient’s mobility puts the patient at risk for injury.

3. The patient has suffered injuries when getting out of bed.

4. ~~The patient has had a successful trial with an enclosed bed.~~

ITEM 3. Rescind subparagraph **78.28(1)“g”(4)**.

[Filed Emergency After Notice 4/14/10, effective 5/1/10]

[Published 5/5/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8709B**IOWA FINANCE AUTHORITY[265]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 16.5(1)“r” and 17A.3(1)“b” and 2010 Iowa Acts, House File 2487, the Iowa Finance Authority hereby adopts new Chapter 37, “Recovery Zone Bond Allocation,” Iowa Administrative Code.

The purpose of these rules is to implement 2010 Iowa Acts, House File 2487, by providing a means of allocating bonding authority for recovery zone bonds.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that the normal notice and public participation process would delay implementation of the newly created program which is designed to aid in the economic recovery of the state. The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 8710B** herein.

The Authority finds that adoption of these rules confers a benefit on the public in that the amendment promotes the economic recovery of the state. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

The Authority adopted this amendment on April 7, 2010.

This amendment became effective April 12, 2010.

These rules are intended to implement Iowa Code section 16.5(1)“r” and 2010 Iowa Acts, House File 2487.

The following amendment is adopted.

Adopt the following **new** 265—Chapter 37:

CHAPTER 37

RECOVERY ZONE BOND ALLOCATION

265—37.1(16) General. The American Recovery and Reinvestment Act of 2009 created two types of recovery zone (“RZ”) bonds: recovery zone economic development (“RZED”) bonds and recovery zone facility (“RZ facility”) bonds. The applicable provisions are codified in Sections 1400U-1 – 1400U-3 of the Internal Revenue Code of 1986, as amended. The law provides that eligible issuers in Iowa may issue up to \$90 million of RZED bonds and up to \$135 million of RZ facility bonds. Through Notice 2009-50, the Internal Revenue Service published the applicable RZ bond allocations for Iowa, which amounts are included as Exhibit A to this chapter.

Pursuant to 2010 Iowa Acts, House File 2487 (the “Act”), the Iowa finance authority (“authority”) has been charged with tracking the issuance of RZ bonds and making certain allocations of RZ bonding authority to ensure maximum use of this resource in the state.

265—37.2(16) Forms. Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. The telephone number of the authority is (515)725-4900. Information and forms are also available at www.iowafinanceauthority.gov.

265—37.3(16) Notice from the authority to issuers. The authority will provide written notice to each county and to each large municipality (defined as a city with a population exceeding 100,000) of the amount of RZ bonding authority that has been allocated to it by the Internal Revenue Service. This written notice will include information about waiving such authority, pursuant to rule 265—37.5(16), as well as notification of the requirement that issuers provide written notice to the authority of any issuance of RZ bonds.

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265—37.4(16) Notice from issuers to the authority. Within five business days of the issuance thereof (or within five business days of its receipt of the authority letter issued under rule 265—37.3(16), for those issuers that have issued RZ bonds prior to April 12, 2010), each county or large municipality that issues RZED bonds or RZ facility bonds (or that allocates RZ bond authority to a local issuer) shall give the authority written notice, on a form provided by the authority, detailing the amount and type of RZ bonds that were issued.

265—37.5(16) Waiver of RZ bonding authority.

37.5(1) A county or large municipality that has received an allocation of RZ bonds may, prior to July 1, 2010, voluntarily waive all or part of such allocation to the authority by completing the applicable RZ bond waiver form provided by the authority.

37.5(2) As provided in the Act, any portion of a county or large municipality's RZ bond allocation that has not been used by July 1, 2010, is deemed waived, and such amount will be subject to reallocation by the authority pursuant to rule 265—37.7(16). The authority will consider an allocation (or a portion thereof) used if the issuer for such allocation has taken substantive action toward issuance of the applicable RZ bonds. "Substantive action" includes, but is not limited to, (a) the adoption of resolutions or ordinances authorizing the sale or issuance of bonds, or (b) the completion of procedures, such as public hearings, referenda or related petition periods, to vest authority for the issuance of bonds.

265—37.6(16) Application for allocation of recaptured or waived RZ bond authority.

37.6(1) An applicant or beneficiary, or the duly authorized agent of an applicant or beneficiary, requesting an allocation must make an application by filing the form entitled "Application for Recovery Zone Bonds" available from the authority. Such applicant must possess the ability to issue RZ bonds under state and federal law.

37.6(2) As part of its application, the applicant must include a copy of the resolution or other official action designating the recovery zone for which the application is being made.

265—37.7(16) Allocations.

37.7(1) The authority will track the amount and type of RZ bonds issued and the amount of RZ bonding authority available to be allocated.

37.7(2) Allocations will only be made for eligible projects in those counties that received an allocation of authority to issue RZ bonds pursuant to IRS Notice 2009-50. While the allocations will be limited to projects within those counties that originally received an allocation, the amount of the allocation from the authority will not be limited to the original allocated amounts under Notice 2009-50.

37.7(3) Allocations shall be made to eligible applicants on the basis of the chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the authority.

37.7(4) All applications that are received by the authority on or prior to April 12, 2010, pursuant to the provisions of rule 265—37.6(16) shall be considered simultaneously received at the opening of business on April 12, 2010, and the same date, hour and minute shall be stamped on each application so received. If the total amount of allocations requested in all of the applications received on such date exceeds the total amount determined by the authority as available to be allocated, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in subrule 37.7(5).

37.7(5) In order to determine the order of allocation to two or more applications that are simultaneously received pursuant to subrule 37.7(4) and for which there is insufficient capacity to allocate to each the full allotment requested, each such application shall be assigned a preference number determined by a random drawing to be conducted at the authority's offices within one week following the receipt of the applications. The authority shall notify the affected applicants in writing and shall post a notice at its offices of the time and place of the drawing not less than three days prior to the scheduled drawing. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall

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also be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allotment. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

37.7(6) Applications received after April 12, 2010, shall be added to the appropriate list (whether for RZED bonds or RZ facility bonds) depending upon the subject of the application in the chronological order received.

265—37.8(16) Certification of allocation. Upon receipt of a completed application and verification that sufficient RZ bonding authority exists for such application, the authority shall promptly certify to the applicant the amount of the RZED bond or RZ facility bond allocation, as applicable, awarded to the project for which the application was submitted. The authority shall continue to award allocations for eligible projects until the available recovery zone bonding authority is allocated. If the remaining capacity is not sufficient to fully fund an application which is next in order for allocation, the authority shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the authority of its decision to take the available allocation within five calendar days of receiving notice of that option, an allotment shall be offered to the next application on the list under the same conditions.

265—37.9(16) Expiration of allocations. An allocation of recovery zone bonding authority pursuant to this chapter shall remain valid for 120 days from the date of allocation. If the sale of bonds for which an allocation was made has not closed within such time, the allocation shall expire and the allotment shall revert to the authority to be reallocated, if possible; provided, however, that if the 120th day following the date of allocation is a Saturday, Sunday, or any day on which the offices of the state banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date shall be extended to the first day thereafter which is not a Saturday, Sunday or previously described day.

265—37.10(16) Resubmission of expired allocations. If an allocation expires, the applicant may resubmit its application for the same project or purpose. However, the resubmitted application shall be treated as a new application, and preference, priority or prejudice shall not be given to the application or the applicant as a result of the prior application.

265—37.11(16) Application and allocation fees. The Iowa finance authority may set and charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the recovery zone bond allotments in accordance with these rules.

EXHIBIT A

	Recovery Zone Economic Development Bonds	Recovery Zone Facility Bonds
Iowa's Total Allocation	\$90,000,000	\$135,000,000
Large Municipalities		
Cedar Rapids	1,972,000	2,958,000
Des Moines	5,571,000	8,356,000
Counties		
Adair County	564,000	845,000
Adams County	0	0

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Iowa's Total Allocation	Recovery Zone Economic Development Bonds \$90,000,000	Recovery Zone Facility Bonds \$135,000,000
Allamakee County	3,212,000	4,818,000
Appanoose County	0	0
Audubon County	382,000	574,000
Benton County	390,000	586,000
Black Hawk County	2,343,000	3,514,000
Boone County	0	0
Bremer County	447,000	670,000
Buchanan County	72,000	109,000
Buena Vista County	785,000	1,177,000
Butler County	411,000	616,000
Calhoun County	0	0
Carroll County	350,000	525,000
Cass County	0	0
Cedar County	0	0
Cerro Gordo County	0	0
Cherokee County	1,795,000	2,693,000
Chickasaw County	0	0
Clarke County	648,000	972,000
Clay County	0	0
Clayton County	0	0
Clinton County	0	0
Crawford County	0	0
Dallas County	1,731,000	2,596,000
Davis County	612,000	918,000
Decatur County	865,000	1,298,000
Delaware County	463,000	694,000
Des Moines County	3,550,000	5,325,000
Dickinson County	0	0
Dubuque County	4,363,000	6,545,000
Emmet County	0	0
Fayette County	1,115,000	1,672,000
Floyd County	2,500,000	3,749,000
Franklin County	1,220,000	1,829,000
Fremont County	821,000	1,232,000
Greene County	0	0
Grundy County	221,000	332,000
Guthrie County	306,000	459,000
Hamilton County	1,578,000	2,367,000
Hancock County	853,000	1,280,000
Hardin County	0	0
Harrison County	0	0
Henry County	1,409,000	2,113,000
Howard County	1,654,000	2,481,000

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Iowa's Total Allocation	Recovery Zone Economic Development Bonds \$90,000,000	Recovery Zone Facility Bonds \$135,000,000
Humboldt County	1,320,000	1,980,000
Ida County	0	0
Iowa County	0	0
Jackson County	32,000	48,000
Jasper County	692,000	1,038,000
Jefferson County	1,163,000	1,745,000
Johnson County	0	0
Jones County	286,000	429,000
Keokuk County	403,000	604,000
Kossuth County	604,000	906,000
Lee County	2,793,000	4,190,000
Linn County	1,280,000	1,920,000
Louisa County	837,000	1,256,000
Lucas County	0	0
Lyon County	370,000	555,000
Madison County	435,000	652,000
Mahaska County	841,000	1,262,000
Marion County	857,000	1,286,000
Marshall County	2,431,000	3,647,000
Mills County	0	0
Mitchell County	962,000	1,443,000
Monona County	0	0
Monroe County	0	0
Montgomery County	588,000	882,000
Muscatine County	3,136,000	4,703,000
O'Brien County	149,000	223,000
Osceola County	0	0
Page County	2,274,000	3,411,000
Palo Alto County	547,000	821,000
Plymouth County	2,322,000	3,484,000
Pocahontas County	0	0
Polk County	6,992,000	10,487,000
Pottawattamie County	0	0
Poweshiek County	3,083,000	4,625,000
Ringgold County	246,000	368,000
Sac County	181,000	272,000
Scott County	0	0
Shelby County	0	0
Sioux County	946,000	1,419,000
Story County	0	0
Tama County	2,004,000	3,007,000
Taylor County	475,000	712,000
Union County	0	0

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Iowa's Total Allocation	Recovery Zone Economic Development Bonds \$90,000,000	Recovery Zone Facility Bonds \$135,000,000
Van Buren County	125,000	187,000
Wapello County	910,000	1,365,000
Warren County	1,352,000	2,029,000
Washington County	0	0
Wayne County	0	0
Webster County	0	0
Winnebago County	1,304,000	1,956,000
Winneshiek County	4,090,000	6,134,000
Woodbury County	612,000	918,000
Worth County	0	0
Wright County	1,155,000	1,733,000

These rules are intended to implement Iowa Code section 16.5(1) "r" and 2010 Iowa Acts, House File 2487.

[Filed Emergency 4/12/10, effective 4/12/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8749B**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 1, "Rules of Practice," Iowa Administrative Code.

This chapter addresses rules of practice before the Commission. These amendments update the address of the Commission and modify sentence structure and grammar to improve the clarity of the administrative rules and to conform to current practice and procedure.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8578B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement Iowa Code section 216.5.

These amendments will become effective on June 9, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.1(1), 1.2, 1.5] is being omitted. These amendments are identical to those published under Notice as **ARC 8578B**, IAB 3/10/10.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

[For replacement pages for IAC, see IAC Supplement 5/5/10.]

ARC 8746B**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 2, "General Definitions," Iowa Administrative Code.

This amendment will facilitate public access to the administrative rules by reducing legalese and unnecessarily complex sentence structures through modifications to style and grammar.

Notice of Intended Action for this amendment was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8575B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Iowa Civil Rights Commission on April 15, 2010.

This amendment is intended to implement Iowa Code section 216.15.

This amendment will become effective on June 9, 2010.

The following amendment is adopted.

Amend paragraph **2.1(10)"a"** as follows:

a. The term "administratively closed" shall mean that, ~~in the opinion of the investigating official, no useful purpose would be served by further action by the commission respecting a complaint, such as where the commission staff has not been successful in locating a complainant after diligent efforts, where the respondent has gone out of business, where a right to sue letter has been issued, or where, after a probable cause decision has been made, it is determined that the record does not justify proceeding to public hearing.~~ the commission will cease action on a complaint because, in the opinion of the investigating official, no useful purpose would be served by further efforts. Administratively closing a case is appropriate in circumstances such as the following: The commission staff has not been successful

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in locating a complainant after diligent efforts; the respondent has gone out of business; a right-to-sue letter has been issued; or after a probable cause decision has been made, it is determined that the record does not justify proceeding to public hearing.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8748B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 2, "General Definitions," Iowa Administrative Code.

These amendments define and distinguish different types of mail.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8577B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement 2009 Iowa Code Supplement sections 216.15(3) and 216.15(4).

These amendments will become effective on June 9, 2010.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 2.1(14):

2.1(14) The term "certified mail" shall mean delivery by United States Postal Service mail designated as certified mail.

ITEM 2. Adopt the following **new** subrule 2.1(15):

2.1(15) The term "local mail" shall mean Iowa state government local (interoffice) delivery. Local mail is sent and delivered between state government offices in an envelope designated "Local," without the need for postage.

ITEM 3. Adopt the following **new** subrule 2.1(16):

2.1(16) The term "mail or regular mail" shall mean delivery by United States Postal Service mail delivered at regular speed or delivery by courier service.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8747B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 2, "General Definitions," Iowa Administrative Code.

These amendments define terms relating to a new form of filing documents with the Commission.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8576B**. A public hearing was held on April 6, 2010. No one attended

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the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement 2009 Iowa Code Supplement sections 216.15(3) and 216.15(4).

These amendments will become effective on June 9, 2010.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 2.1(17):

2.1(17) The term “electronic filing” shall mean submission of documents via the online case management system established and utilized by the commission or via another online system. The commission may require proof to ensure the accuracy and validity of online filings, including additional written verification of the veracity and accuracy of documents filed online. Senders shall include in the subject line of the E-mail the case number, if one exists, and a brief description of the submission. Filings by E-mail must be delivered to a valid E-mail address of current commission staff.

ITEM 2. Adopt the following **new** subrule 2.1(18):

2.1(18) The term “electronic signature” shall mean that a person attests to the validity of the electronic documents. Electronic signatures accompany various forms of electronic submissions including, but not limited to, E-mails and submissions made online through the case management system. The commission may permit and accept electronic signatures in E-mails, depending on the type of document. An electronic signature in the case management system consists of a person’s name typed and submitted into the designated field.

ITEM 3. Adopt the following **new** subrule 2.1(19):

2.1(19) The terms “written” and “in writing” shall mean the creation of words, phrases, or sentences by any means including, but not limited to, pen and paper, typewriter text, computer discs, computer text, electronic text and any other medium.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8744B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 3, “Complaint Process,” Chapter 6, “Discrimination in Credit,” Chapter 9, “Discrimination in Housing,” and Chapter 10, “Discrimination in Public Accommodation,” Iowa Administrative Code.

These chapters address the complaint process and discrimination in housing, credit and public accommodation before the Commission. These amendments modify the rules to conform to 2008 legislative changes by implementing changes in policy governing the deadline for filing a complaint with the Commission. The amendments also modify rules to conform to 2007 legislative changes by including sexual orientation and gender identity in existing rules on covered bases.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8573B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement Iowa Code section 216.5.

These amendments will become effective on June 9, 2010.

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The following amendments are adopted.

ITEM 1. Amend subrule 3.3(1) as follows:

3.3(1) Limitation. The complaint shall be filed within the ~~480~~ 300 days after the occurrence of an alleged unlawful practice or act.

ITEM 2. Amend subrule 6.2(1) as follows:

6.2(1) The criteria used to evaluate applicants for credit and the standards necessary to be met by the successful applicants shall be the same regardless of the age, color, creed, national origin, race, religion, marital status, sexual orientation, gender identity, sex or physical disability of the applicant.

ITEM 3. Amend subrule 9.5(2) as follows:

9.5(2) Time limit for administrative complaint. A complaint which alleges a discriminatory housing or real estate practice is governed by the ~~480~~ 300-day time limit provided in 2009 Iowa Code Supplement section 216.15(~~42~~ 13).

ITEM 4. Amend rule 161—10.2(216), introductory paragraph, as follows:

161—10.2(216) Discrimination prohibited. No person shall be discriminated against on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability by any public accommodation by:

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8743B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 3, "Complaint Process," Iowa Administrative Code.

Rules 161—3.5(216) and 161—3.6(216) address the filing of documents before the Commission. These amendments establish procedures for the E-filing of documents, clarify an existing procedure relating to the costs for copying documents, establish procedures for the filing of documents online via the case management system, and bring the rules into conformance with 2009 statutory changes.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8571B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement Iowa Code section 216.5 and 2009 Iowa Code Supplement section 216.15.

These amendments will become effective on June 9, 2010.

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 [3.5, 3.6] is being omitted. These amendments are identical to those published under Notice as **ARC 8571B**, IAB 3/10/10.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

[For replacement pages for IAC, see IAC Supplement 5/5/10.]

ARC 8742B**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 3, "Complaint Process," Iowa Administrative Code.

This chapter addresses the complaint process before the Commission. This amendment clarifies the administrative rules by establishing a procedure for e-filing of documents.

Notice of Intended Action for this amendment was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8570B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Iowa Civil Rights Commission on April 15, 2010.

This amendment is intended to implement Iowa Code section 216.5.

This amendment will become effective on June 9, 2010.

The following amendment is adopted.

Amend subrule 3.10(2) as follows:

3.10(2) Conditions precedent to right to sue. Upon a request under subrule 3.10(1), the commission shall mail to the complainant a right-to-sue letter where the following conditions have been met.

- a. The complaint was filed with the commission as provided in rule 161—3.5(216);
- b. The complaint has been on file with the commission for at least 60 days;
- c. The right-to-sue request has been submitted in writing with the signature of the complainant or the complainant's representative, unless otherwise prohibited by state or federal rules or contractual agreements. Electronic signatures are permissible for right-to-sue requests;
- d. The date of request is listed as well as the corresponding state and federal case numbers.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8741B**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 3, "Complaint Process," Iowa Administrative Code.

Rule 161—3.11(216) addresses mediation before the Commission. This amendment clarifies mediation procedures and may result in additional and expedited settlements.

Notice of Intended Action for this amendment was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8569B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Iowa Civil Rights Commission on April 15, 2010.

This amendment is intended to implement Iowa Code section 216.5.

This amendment will become effective on June 9, 2010.

The following amendment is adopted.

Amend rule 161—3.11(216) as follows:

161—3.11(216) Mediation. ~~The executive director or designee may conduct an impartial mediation of the complaint by offering the complainant and the respondent an opportunity to negotiate a~~

CIVIL RIGHTS COMMISSION[161](cont'd)

~~no-fault predetermination settlement for the purpose of amicably resolving the complaint prior to full investigation.~~

3.11(1) Mediation shall be available once a complaint has been filed, when a party to the complaint requests mediation, when the case has been preliminarily screened in for investigation pursuant to the procedures set forth in rule 161—3.12(216), or at any time while the complaint is still open and the parties agree to participate. Mediation is a neutral, non-fact-finding process, at which parties attempt to negotiate a no-fault predetermination settlement for the purpose of amicably resolving the complaint. Mediation shall be available to all parties irrespective of representation by counsel. Mediation may encompass all issues in the case which could have been investigated by the commission including any claims for unlawful retaliation that may exist through the date of the mediation notice. If the parties agree to seek and obtain a global settlement not limited to a resolution of the civil rights issues, the mediation may be expanded to include these collateral claims.

3.11(2) Mediation notification shall be sent via regular or electronic mail to all parties and their respective counsels, if applicable. Notification may include detailed information on the mediation process.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8740B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 3, "Complaint Process," Iowa Administrative Code.

These amendments streamline the filing of documents by all parties and increase public understanding of the procedures for filing the answers to questionnaires.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8568B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement Iowa Code section 216.5.

These amendments will become effective on June 9, 2010.

The following amendments are adopted.

ITEM 1. Amend paragraph **3.12(1)“a”** as follows:

a. Questionnaire. As soon as practicable after receipt of a complaint, the commission may draft and mail to the parties written questionnaires. Respondent and complainant may respond via regular, certified or local mail, electronic mail, or online via the commission's case management system. Complainant and respondent will receive different sets of questions as ~~they~~ the complainant and respondent typically have different items of information and different interpretations of the facts. The questionnaire will be as specific as practicable to the particular complaint.

ITEM 2. Amend subparagraph **3.12(1)“b”(1)** as follows:

(1) Respondent and complainant are required to respond in writing to their respective questionnaires. The answers ordinarily should be responsive to the questions asked, though elaboration is encouraged. If a question does not apply, the responder can so indicate. In lieu of answers responsive to the particular questions, the commission will accept written position statements, provided the statements respond to the allegations. The position statements should cover the same general subject areas covered by the questionnaire. Accompanying supportive evidence is required, including

CIVIL RIGHTS COMMISSION[161](cont'd)

application materials, job descriptions, organizational charts, selection procedures, policies, procedures, employee handbooks, job descriptions, signed statements from witnesses, performance evaluations, discipline records, E-mails, photographs, internal investigation records, and other documents that are relevant. The documents should encompass how the complainant was treated and how persons similarly situated to the complainant were treated.

ITEM 3. Amend subparagraph **3.12(1)“b”(2)** as follows:

(2) Responses are due 30 days from the mailing of the questionnaire. Extensions will be granted on an informal basis. Requests for extensions may be oral and may be granted or denied orally. No notice of the request for an extension or of the disposition of that request need be given to the nonrequesting party. A requesting party may assume the extension is approved unless otherwise notified. Requests for extensions may be granted for 30 days or less. Extensions greater than 30 days may be subject to review by the executive director or designee. The legislature encourages preliminary screening to be completed within 120 days of the filing of the complaint; therefore, requests for extensions are strongly discouraged. A request for an extension by a party shall constitute a waiver by that party of any objection to the commission taking longer than the 120-day period to screen the complaint.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8739B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 3, “Complaint Process,” Iowa Administrative Code.

This amendment more accurately reflects agency procedure relating to the screening process.

Notice of Intended Action for this amendment was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8566B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Iowa Civil Rights Commission on April 15, 2010.

This amendment is intended to implement Iowa Code section 216.5.

This amendment will become effective on June 9, 2010.

The following amendment is adopted.

Amend paragraph **3.12(1)“e”** as follows:

e. Preliminary screening ~~committee process.~~ As soon as practicable after the receipt of all materials responsive to the questionnaires, ~~a committee of commission staff members may meet and the executive director or designee shall~~ review the submitted answers and materials. ~~This preliminary screening committee will~~ The executive director or designee shall then determine whether the case will be “screened in” ~~for~~ as warranting further processing or “screened out” as not warranting further investigation.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8738B**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 3, "Complaint Process," Iowa Administrative Code.

This chapter addresses the complaint process before the Commission. These amendments clarify investigation and cause determination procedures and the role of the administrative law judge. The amendments will assist in maintaining case processing deadlines without hiring additional staff. The amendments will also facilitate prompt processing and resolution of complaints.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8567B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement Iowa Code section 216.5.

These amendments will become effective on June 9, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 161—3.13(216), introductory paragraph, as follows:

161—3.13(216) Investigation. The executive director or designee shall make a prompt investigation of the complaint ~~and make a recommendation.~~ The administrative law judge may participate in the investigation and may direct the investigation. The investigator shall make a recommendation to the administrative law judge. ~~And~~ The administrative law judge shall review the recommendation and issue a determination of probable cause or no probable cause for the commission.

ITEM 2. Amend subrule 3.13(1) as follows:

3.13(1) Cause determinations. After a complaint has been filed, the executive director or a designated staff member shall assign a member of the investigatory staff to make a prompt investigation of the complaint. The investigator may confer with, be assisted by, or be directed by the administrative law judge during the investigation. The administrative law judge may participate in the investigation and engage in ex parte communications with the parties or their counsel. The investigator shall review all of the evidence and make a recommendation of probable cause or no probable cause or other appropriate action to the administrative law judge designated to issue findings. The administrative law judge shall review the case file and issue ~~an independent~~ a determination of probable cause or no probable cause, or other appropriate action on behalf of the commission.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8745B**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 3, "Complaint Process," Iowa Administrative Code.

This chapter addresses the complaint process before the Commission. These amendments will facilitate public understanding of the administrative rules by revision of complex sentence structure and through modifications to style and grammar.

CIVIL RIGHTS COMMISSION[161](cont'd)

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8574B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement Iowa Code section 216.5.

These amendments will become effective on June 9, 2010.

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 [3.14, 3.16] is being omitted. These amendments are identical to those published under Notice as **ARC 8574B**, IAB 3/10/10.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

[For replacement pages for IAC, see IAC Supplement 5/5/10.]

ARC 8750B**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 3, "Complaint Process," Iowa Administrative Code.

This amendment rescinds rule 161—3.17(216). Arbitration has not been used by the agency in the recent past (for at least six years), and removal of this rule more accurately reflects agency procedure.

Notice of Intended Action for this amendment was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8565B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Iowa Civil Rights Commission on April 15, 2010.

This amendment is intended to implement Iowa Code section 216.5.

This amendment will become effective on June 9, 2010.

The following amendment is adopted.

Rescind and reserve rule **161—3.17(216)**.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8737B**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 4, "Contested Cases," Iowa Administrative Code.

These amendments facilitate public understanding of the administrative rules by simplifying sentence structure.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8564B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

CIVIL RIGHTS COMMISSION[161](cont'd)

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement Iowa Code section 216.5.

These amendments will become effective on June 9, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 4.28(1) as follows:

4.28(1) Retention of jurisdiction. In any final decision in which it is determined that the complainant is entitled to an award of attorney's fees, but the actual amount has not yet been determined, there is, by operation of this rule, an express retention of jurisdiction of the case by the commission in order to determine the actual amount of attorney's fees to which the party is entitled and to enter a subsequent order awarding those fees. The commission shall take this action regardless of whether or not such retention of jurisdiction is expressed in the final decision. In such case, the decision is final in all other respects except the determination of the amount of the attorney's fees.

ITEM 2. Amend rule 161—4.31(17A) as follows:

161—4.31(17A) Hearing—other reasons. At any other time, the commission, executive director, or designee may, ~~in~~ at its discretion, convene a hearing: whenever a problem of discrimination arises; in order to expedite the disposition of preliminary matters in any action before it; or when in the judgment of the commission, executive director, or designee, the circumstances warrant.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8735B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 8, "Discrimination in Employment," Iowa Administrative Code.

These amendments facilitate public understanding of the administrative rules by more accurately representing agency procedure and statute coverage. Specifically, rule 161—8.46(216) is rescinded, and its content is adopted in a new preamble that is applicable to the entire chapter.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8562B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement Iowa Code sections 216.5 and 216.6.

These amendments will become effective on June 9, 2010.

The following amendments are adopted.

ITEM 1. Amend **161—Chapter 8** by adopting the following new preamble:

PREAMBLE

GENERAL PRINCIPLES

References to "employer" and "employers" in these rules state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities as defined in the Act (Iowa Code section 216.6).

CIVIL RIGHTS COMMISSION[161](cont'd)

ITEM 2. Rescind and reserve rule **161—8.46(216)**.

[Filed 4/16/10, effective 6/9/10]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8734B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 8, "Discrimination in Employment," Iowa Administrative Code.

This amendment rescinds rules 161—8.1(216) to 161—8.7(216) because the rules are outdated and do not conform to common procedure. References to federal regulations are also outdated and are not available to provide guidance in establishing and publishing new rules.

Notice of Intended Action for this amendment was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8561B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Iowa Civil Rights Commission on April 15, 2010.

This amendment is intended to implement Iowa Code sections 216.5 and 216.6.

This amendment will become effective on June 9, 2010.

The following amendment is adopted.

Rescind and reserve rules **161—8.1(216)** to **161—8.7(216)**.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8736B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 8, "Discrimination in Employment," Iowa Administrative Code.

These amendments facilitate public access to the administrative rules by clarifying the language through modifications to style and grammar.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8563B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Iowa Civil Rights Commission, on April 15, 2010.

These amendments are intended to implement Iowa Code sections 216.5 and 216.6.

These amendments will become effective on June 9, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 8.47(1), introductory paragraph, as follows:

8.47(1) The following situations do not warrant ~~the application of the~~ a bona fide occupational qualification exception:

CIVIL RIGHTS COMMISSION[161](cont'd)

ITEM 2. Amend paragraph **8.47(1)“a”** as follows:

a. The refusal to hire ~~a woman~~ an individual because of ~~her sex~~ gender, based on assumptions of the comparative employment characteristics of ~~women~~ that gender in general, ~~for example, the assumption that the turnover rate among women is higher than among men;~~

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8733B

CIVIL RIGHTS COMMISSION[161]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216.5, the Iowa Civil Rights Commission hereby amends Chapter 11, “Public Records and Fair Information Practices,” and Chapter 15, “Miscellaneous Provisions,” Iowa Administrative Code.

These amendments update the location of the Commission.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8560B**. A public hearing was held on April 6, 2010. No one attended the hearing, and no written or oral comments were received. One change from the Notice has been made. In subrule 15.3(6), an outdated cross reference to Iowa Code section 216.15(4) was changed to Iowa Code Supplement section 216.15(5).

These amendments were adopted by the Iowa Civil Rights Commission on April 15, 2010.

These amendments are intended to implement Iowa Code section 216.5.

These amendments will become effective on June 9, 2010.

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 [11.3(1), 15.3] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8560B**, IAB 3/10/10.

[Filed 4/16/10, effective 6/9/10]

[Published 5/5/10]

[For replacement pages for IAC, see IAC Supplement 5/5/10.]

ARC 8713B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This amendment implements the annual adjustment to premium amounts for Medicaid members in the coverage group for employed people with disabilities (MEPD) whose income is more than 150 percent of the federal poverty level for a one-person household. Iowa law requires that the maximum premium for these members be commensurate with the average cost to the state for state employees' health insurance. Because the cost of state employees' health insurance has increased by almost one-third, the MEPD premium scale is adjusted to reflect that increase.

The premium for a person with income between 150 percent and 180 percent of the federal poverty level (applicable to more than half of the members who are required to pay a premium) increases from \$25 per month to \$33 per month. Increases for other income levels are proportionate. The five highest

HUMAN SERVICES DEPARTMENT[441](cont'd)

income levels are adjusted upward to keep all premiums below 7.5 percent of income. The new premium will be assessed at the member's next annual eligibility review occurring on or after August 1, 2010.

This amendment does not provide for waivers in specified situations because the Department believes that the premium schedule should be applied uniformly. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on April 14, 2010.

The Department finds that notice and public participation are unnecessary because this amendment represents an annual adjustment based on defined parameters. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

This amendment is intended to implement Iowa Code section 249A.3(2)“a.”

This amendment shall become effective on August 1, 2010.

The following amendment is adopted.

Amend subparagraph **75.1(39)“b”(3)** as follows:

(3) Premiums shall be assessed as follows:

IF THE INCOME OF THE APPLICANT IS ABOVE:	THE MONTHLY PREMIUM IS:
150% of Federal Poverty Level	\$ 25 <u>\$33</u>
180% of Federal Poverty Level	\$ 40 <u>\$53</u>
220% of Federal Poverty Level	\$ 55 <u>\$73</u>
250% of Federal Poverty Level	\$ 70 <u>\$94</u>
280% of Federal Poverty Level	\$ 85 <u>\$109</u>
310% of Federal Poverty Level	\$ 100 <u>\$129</u>
340% of Federal Poverty Level	\$ 120 <u>\$154</u>
370% of Federal Poverty Level	\$ 140 <u>\$188</u>
400% of Federal Poverty Level	\$ 165 <u>\$221</u>
430% of Federal Poverty Level	\$ 190 <u>\$255</u>
460% of Federal Poverty Level	\$ 220 <u>\$295</u>
490% <u>510%</u> of Federal Poverty Level	\$ 255 <u>\$342</u>
530% <u>590%</u> of Federal Poverty Level	\$ 295 <u>\$396</u>
575% <u>680%</u> of Federal Poverty Level	\$ 340 <u>\$457</u>
620% <u>775%</u> of Federal Poverty Level	\$ 390 <u>\$524</u>
670% <u>900%</u> of Federal Poverty Level	\$ 452 <u>\$608</u>

[Filed Without Notice 4/14/10, effective 8/1/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8715B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 156, “Payments for Foster Care,” Iowa Administrative Code.

The amendment:

- Deletes interim provisions used to authorize payment during the transition from rehabilitative treatment services to remedial and child welfare services in state fiscal year 2007.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Adds provisions for periodic redetermination of the proportion of foster group care costs allocated to maintenance and to services. This allocation is important because maintenance costs are eligible for federal financial participation through the federal Foster Care and Adoption Assistance Program authorized under Title IV-E of the Social Security Act.

Cost report data for foster group care services is available to the Department because most foster group care providers also participate in the Medicaid remedial services program, which requires annual cost reports. Foster group care providers must attach an additional schedule to the cost report allocating the costs between remedial services and child welfare service and maintenance. Based on these reports, the Department will calculate an aggregate allocation percentage which will be applied to all foster group care rates when determining the amount of the payment to claim for federal Title IV-E reimbursement. This calculation will be made at least annually, and providers will be notified of any changes in the allocation. The total combined reimbursement rate paid to the provider will not change.

This amendment does not provide for waivers in specified situations because the Department is required to reconcile claims charged to the IV-E Program and the allocation does not affect provider payments.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on January 27, 2010, as **ARC 8490B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on April 14, 2010.

This amendment is intended to implement Iowa Code section 234.38.

This amendment shall become effective on July 1, 2010.

The following amendment is adopted.

Rescind paragraph **156.9(1)“d”** and adopt the following **new** paragraph in lieu thereof:

d. No less than annually, the department shall redetermine the allocation of the combined child welfare service per diem rate between the maintenance and service portions based on review of verified remedial services cost reports for foster group care services providers. If the new allocation differs from the current allocation, the department shall:

- (1) Reallocate the combined child welfare service per diem for foster group care between the maintenance and service portions of the combined rate; and
- (2) Notify all providers of any change in the allocation between maintenance and service rates and the effective date.

[Filed 4/14/10, effective 7/1/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8716B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 232.142(4), the Department of Human Services amends Chapter 167, “Juvenile Detention Home Reimbursement,” Iowa Administrative Code.

These amendments more clearly define standards for costs eligible for reimbursement and specify forms and procedures for claiming reimbursement, as follows:

- “Eligible costs” are defined as costs that are directly attributable to the function of detaining youth in the home. Costs for alternatives to detention in the home, such as community tracking, monitoring, and outreach, are not eligible for reimbursement.
- Detention facilities shall submit detailed income and expense information and a certified financial audit as evidence that expenses were allocated properly. Capital expenses shall be depreciated over the useful life of the item, and only the annual depreciation amount for an eligible cost may be claimed for reimbursement.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- The deadline for submission of cost data is May 15 of the year following the end of the state fiscal year for which reimbursement will be made, with an August 10 deadline for submitting the actual claim. The Department will review the fiscal information to determine the eligible costs and will determine the percentage of eligible costs to be reimbursed.

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).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 10, 2010, as **ARC 8527B** and a public hearing was held on March 5, 2010. Two persons attended the hearing, and six persons or agencies submitted comments. In response to these comments, the Department has made the following changes to the amendments as published under Notice of Intended Action:

- The definition of "eligible costs" in Item 1 is revised to read as follows: "Eligible costs' are those allowable costs that are directly attributable to the function of detaining youth in the home, from the point of intake through discharge from the home, as further defined in subrule 167.3(3)." This change makes the definition more specific and clarifies that transportation to the facility before intake and from the facility after discharge are not eligible costs.

- Paragraph 167.3(2)"b" is revised to specify that the income and expense reports shall be submitted on the certification page and Schedules A, C, and D of Form 470-0664, Financial and Statistical Report for Purchase of Service Contracts. This report is also used for Medicaid home- and community-based waiver services and is available in an Excel version on the Department's Iowa Medicaid Enterprise Web site.

- Language is added to the introductory paragraph of subrule 167.3(3) to specify that the home's cost allocation methodology shall follow generally accepted accounting principles (GAAP).

- The following sentence is added to paragraph 167.3(3)"a," introductory paragraph: "County payments to an eligible home for the function of detaining youth in the home ("care and keep") are not considered to be supplemental funding, reimbursement, or refund sources for the purpose of this subrule." Such payments are considered eligible for reimbursement.

- Subparagraph 167.3(3)"d"(1) is revised to raise the threshold for depreciation of capital expenses from \$1,000 to \$5,000.

- Rule 441—167.5(232) is reformatted by dividing the content into subrules to improve readability.

The Council on Human Services adopted these amendments on April 14, 2010.

These amendments are intended to implement Iowa Code section 232.142.

These amendments shall become effective on July 1, 2010.

The following amendments are adopted.

ITEM 1. Adopt the following new definition of "Eligible costs" in rule **441—167.1(232)**:

"Eligible costs" are those allowable costs that are directly attributable to the function of detaining youth in the home, from the point of intake through discharge from the home, as further defined in subrule 167.3(3).

ITEM 2. Amend subrules 167.3(2) and 167.3(3) as follows:

167.3(2) The home submits ~~Form 07-350, Purchase Order/Payment Voucher, within the time frames of 441—167.5(232).~~ the following by May 15 of the year following the conclusion of the state fiscal year for which reimbursement will be made:

a. A written statement delivered in printed form or via electronic mail identifying the eligible total net cost that will be claimed under rule 441—167.5(232).

b. A printed or electronic copy of the following sections of Form 470-0664, Financial and Statistical Report for Purchase of Service Contracts:

(1) Certification page.

(2) Schedule A, Revenue Report.

(3) Schedule C, Property and Equipment Depreciation and Related Party Property Costs.

(4) Schedule D, Expense Report.

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. A printed or electronic copy of the home's certified audit containing financial information for the period for which reimbursement is being claimed.

167.3(3) Rescinded IAB 9/30/92, effective 10/1/92. The department has reviewed the information submitted and determined that the costs to be claimed meet eligibility requirements. Eligible costs shall be determined by using a cost allocation methodology that follows generally accepted accounting principles (GAAP). Eligible costs shall be based on the portions of the allowable costs that are directly attributable to the function of detaining youth in the home.

a. Costs are not eligible for reimbursement if a supplemental funding, reimbursement, or refund source is available to the home. County payments to an eligible home for the function of detaining youth in the home ("care and keep") are not considered to be supplemental funding, reimbursement, or refund sources for the purpose of this subrule. Ineligible costs include, but are not limited to:

(1) Refundable deposits.
(2) Services funded by sources other than the juvenile detention reimbursement program.
(3) Operational activities such as the food and nutrition program that is funded by the Iowa department of education.

b. Costs attributed to portions of the home not directly used for detaining children are not eligible for reimbursement.

c. Costs of alternatives to detaining youth in the approved detention home are not eligible for reimbursement. Services ineligible for reimbursement include, but are not limited to:

(1) Community tracking and monitoring activities.
(2) Transportation not related to detention.
(3) Outreach services.
(4) In-home detention.

d. Capital expenses shall be depreciated over the useful life of the item following generally accepted accounting principles. The annual depreciated amount for items that are eligible costs may be claimed for reimbursement.

(1) Capital expenses shall include items costing more than \$5,000 that have a useful life of over two years.

(2) Depreciation schedules shall be filed annually as needed.

ITEM 3. Amend rule 441—167.5(232) as follows:

441—167.5(232) Submission of voucher. Eligible facilities shall submit ~~Form 07-350, Purchase Order/Payment Voucher, for the legislatively authorized percentage of their allowable costs for the year ending June 30~~ a complete signed and dated Form GAX, General Accounting Expenditure, to the department to claim reimbursement.

167.5(1) Form GAX shall be submitted to the Department of Human Services, Division of Fiscal Management, First Floor, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, by August 10.

167.5(2) The form shall include the total net eligible costs incurred between July 1 and June 30 of the year covered by the reimbursement. The total net eligible costs will be used to calculate the legislatively authorized percentage of the home's allowable costs for the year covered by the reimbursement.

167.5(3) Only facilities which ~~that~~ submit ~~Form 07-350, Purchase Order/Payment Voucher, Form GAX~~ by August 10 shall receive reimbursement.

[Filed 4/14/10, effective 7/1/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8717B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 187, “Aftercare Services and Supports,” Iowa Administrative Code.

These amendments:

- Expand the definition of “foster care experience” used to determine eligibility for the aftercare services program, which assists youth leaving foster care in their successful transition to adulthood.
- Lower the employment requirements for aftercare eligibility from 25 hours per week to 80 hours per month. This requirement matches the federal guidelines for foster care eligibility for youth over the age of 18 and will provide for a smoother transition should the Department choose to expand eligibility for foster care.
- Exclude nonrecurring lump-sum payments from consideration in determining a youth’s eligibility for a preparation for adult living (PAL) stipend. Such payments include refunds of security deposits or retroactive payment of benefits such as Supplemental Security Income or unemployment insurance.
- Require recoupment of PAL benefits that are continued pending an appeal of a decision to reduce or cancel the stipend if the Department’s decision is upheld, and provide for recoupment through reduction of any future stipends. These provisions mirror those in effect for other cash assistance programs.

Under these amendments, youth who are at least 16 years old when they leave foster care for subsidized guardianship or for adoption are eligible for aftercare services when they reach the age of 18. A psychiatric medical institution for children (PMIC) is also a qualifying foster care placement for aftercare services eligibility. Aftercare services may include development of an individual self-sufficiency plan, life skills training, vendor payments to meet direct expenses necessary in order for the youth to meet the goals of the plan, follow-up by program staff, ongoing assessment, and case management.

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).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 24, 2010, as **ARC 8536B**. The Department received one comment from the Coalition for Family and Children’s Services in Iowa, which was in support of these amendments. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on April 14, 2010.

These amendments are intended to implement Iowa Code section 234.6 and Public Law 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008.

These amendments shall become effective on July 1, 2010.

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 [187.2(3), 187.11(4), 187.12] is being omitted. These amendments are identical to those published under Notice as **ARC 8536B**, IAB 2/24/10.

[Filed 4/14/10, effective 7/1/10]

[Published 5/5/10]

[For replacement pages for IAC, see IAC Supplement 5/5/10.]

ARC 8718B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment defines eligibility and components of Iowa's independent living program, which provides transition assistance to youth leaving foster care. The program is based on Public Law 106-169, the Foster Care Independence Act of 1999, which created the John H. Chafee Foster Care Independence Program. The amendment is needed to define the population on which the Department is required to report for the National Youth in Transition Database.

Beginning in October 2010, the Department is required to report on the population receiving independent living services as well as on a baseline population of all youth in foster care who reach their seventeenth birthday in the federal fiscal year. For federal reporting purposes, children in foster care include all children placed away from their parents for whom the Department has placement and care responsibility. This includes children in unlicensed and unpaid placements with relatives. Eventually, a follow-up report will be required on youth who were part of the baseline population report and reach their twenty-first birthday during the federal fiscal year.

Independent living services may be provided to youth aged 16 to 21 who are in foster care, who were adopted or placed in subsidized guardianship from foster care after reaching the age of 16, or who are participating in the aftercare services program. The independent living program offers a life skills assessment, development of a transition plan, and provision of transition services. Transition services may include education or employment services or services to develop the youth's physical or mental health skills, housing and money management skills, or supportive relationship skills.

This amendment does 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).

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on February 24, 2010, as **ARC 8537B**. The Department received one comment from the Coalition for Family and Children's Services in Iowa, which was in support of the amendment. This amendment is identical to the one published under Notice of Intended Action.

The Council on Human Services adopted this amendment on April 14, 2010.

This amendment is intended to implement Iowa Code section 234.6(6)"b."

This amendment shall become effective on July 1, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [202.11(7)] is being omitted. This amendment is identical to that published under Notice as **ARC 8537B**, IAB 2/24/10.

[Filed 4/14/10, effective 7/1/10]

[Published 5/5/10]

[For replacement pages for IAC, see IAC Supplement 5/5/10.]

ARC 8723B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(1)"r," the Iowa Finance Authority hereby amends Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

The purpose of these amendments is to update and replace the current Low Income Housing Tax Credit Program Compliance Monitoring Manual with an updated compliance monitoring manual, which is incorporated by reference in rule 265—12.3(16).

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 10, 2010, as **ARC 8508B**. The Authority received public comment on the proposed amendments, and as a result made one technical change to the Compliance Manual adopted by reference to correct an inconsistency. The Authority has made no other changes to the amendments published under Notice.

The Iowa Finance Authority adopted these amendments on April 7, 2010.

IOWA FINANCE AUTHORITY[265](cont'd)

These amendments are intended to implement Iowa Code sections 16.4(3) and 16.52, Internal Revenue Code Section 42, and the Housing and Economic Recovery Act of 2008.

These amendments will become effective on June 9, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 265—12.3(16) as follows:

265—12.3(16) Compliance manual. The Low Income Housing Tax Credit Program Compliance Monitoring Manual, dated January ~~31, 2009~~ 1, 2010, is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

ITEM 2. Amend rule 265—12.4(16) as follows:

265—12.4(16) Location of copies of the manual. The compliance manual can be reviewed and copied in its entirety on the authority's Web site at www.iowafinanceauthority.gov. Copies of the compliance manual shall be deposited with the administrative rules coordinator and at the state law library. The compliance manual incorporates by reference IRC Section 42 and the regulations in effect as of ~~February 27, 2009~~ October 31, 2009. Additionally, the compliance manual incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and links to these statutes, regulations and rules are on the authority's Web site. Copies are available from the authority upon request at no charge.

[Filed 4/15/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8724B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r,” the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9, the Iowa Finance Authority hereby amends Chapter 30, “Qualified Midwestern Disaster Area Bond Allocation,” Iowa Administrative Code.

The purpose of these amendments is to implement a per-applicant cap on allotments and to provide a set-aside to the Iowa Department of Economic Development for directing allotments of Midwestern Disaster Area bonds issued and sold pursuant to the Heartland Disaster Tax Relief Act of 2008.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 24, 2010, as **ARC 8549B**. These amendments were also Adopted and Filed Emergency and were published as **ARC 8548B** on the same date. The Authority received public comment on the proposed amendments. In response to the public comment received, the Authority has made one change to the amendments as published under Notice. The following sentence has been added to the end of paragraph 30.4(1)“a”: “This limitation shall not apply to any project recommended by the Iowa department of economic development.”

The Iowa Finance Authority adopted these amendments on April 7, 2010.

These amendments are intended to implement Iowa Code section 16.5(1)“r,” the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9.

IOWA FINANCE AUTHORITY[265](cont'd)

These amendments will become effective on June 9, 2010, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [30.3(1)“b,” 30.3(2), 30.4, 30.6] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8549B** and Adopted and Filed Emergency as **ARC 8548B**, IAB 2/24/10.

[Filed 4/15/10, effective 6/9/10]

[Published 5/5/10]

[For replacement pages for IAC, see IAC Supplement 5/5/10.]

ARC 8725B**IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, division III, section 13(4), the Iowa Finance Authority hereby amends Chapter 33, “Water Quality Financial Assistance Program,” Iowa Administrative Code.

The purpose of these amendments is to modify and clarify certain provisions of the selection process under the Water Quality Financial Assistance Program to add additional criteria and to cap the maximum amount of assistance a community may receive on a per capita basis due to the large number of applications received and the amount of funds requested from the large community fund under the program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 10, 2010, as **ARC 8511B**. These amendments were also Adopted and Filed Emergency and were published as **ARC 8510B** on the same date. The Authority did not receive any public comment on the proposed amendments. The Authority has made no changes to the amendments as published under Notice.

The Iowa Finance Authority adopted these amendments on April 7, 2010.

These amendments are intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, division III, section 13(4).

These amendments will become effective on June 9, 2010, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 33.4(1) as follows:

33.4(1) Program fund. Of the amount appropriated, \$20 million shall be allocated to the large community assistance fund. The maximum award for a recipient under the large community assistance fund shall be \$100 per capita. For purposes of these rules, the population of a community shall be assumed to be the United States Census Bureau's 2008 population estimate for that community.

ITEM 2. Amend subrule 33.5(1) as follows:

33.5(1) Priority for all projects. Priority shall be given to projects that will provide significant improvement to water quality in the relevant watershed; this criterion will be determined by the score given to a project by the department pursuant to the project priority rating system used for the water pollution control state revolving fund set forth in 567—Chapter 91, Iowa Administrative Code. For drinking water projects, priority will be determined by the project priority system used for the drinking water state revolving fund set forth in 567—Chapter 44, Iowa Administrative Code. Priority will also be given to projects based on the date upon which construction could begin.

ITEM 3. Adopt the following **new** subrule 33.5(3):

33.5(3) Large community assistance fund priority. Under the large community assistance fund, priority will be given to communities that did not receive funds from the I-Jobs disaster recovery

IOWA FINANCE AUTHORITY[265](cont'd)

program, the community development block grant (CDBG) disaster allocation or the State Revolving Fund (SRF) federal American Recovery and Reinvestment Act (ARRA).

[Filed 4/15/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8707B

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code chapters 147, 148E, and 272C, the Board of Medicine hereby amends Chapter 8, "Fees," and Chapter 17, "Licensure of Acupuncturists," Iowa Administrative Code.

These amendments revise the acupuncture rules to include a criminal background check as part of the licensure process, to further define the process for denial of licensure, and to remove or revise outdated rules related to registrants and lapsed licenses.

Notice of Intended Action for these amendments was published in the February 10, 2010, Iowa Administrative Bulletin as **ARC 8524B**. A public hearing was held on March 2, 2010. No changes to the amendments were required.

The Board of Medicine voted to adopt these amendments during a regularly scheduled meeting on April 9, 2010.

These amendments will become effective on June 9, 2010.

These amendments are intended to implement Iowa Code chapters 147, 148E, 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 [amendments to Chs 8, 17] is being omitted. These amendments are identical to those published under Notice as **ARC 8524B**, IAB 2/10/10.

[Filed 4/12/10, effective 6/9/10]

[Published 5/5/10]

[For replacement pages for IAC, see IAC Supplement 5/5/10.]

ARC 8720B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12, 321.449 and 321.450, the Department of Transportation, on April 14, 2010, adopted amendments to Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8555B**.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations (FMCSR) promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR), Parts 385 and 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations (HMR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

Commercial vehicles transporting goods in interstate commerce are subject to the FMCSR on the effective dates specified in the Federal Register (FR). Commercial vehicles transporting hazardous

TRANSPORTATION DEPARTMENT[761](cont'd)

materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the HMR on the effective dates specified in the FR. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the FR to allow a period for public comment; and, after adoption, the final regulations are published in the FR. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year.

The amendments to the FMCSR and the HMR that have become final and effective since the 2008 edition of the CFR are listed in the information below. The parts affected are followed by FR citations.

Amendments to the FMCSR and Federal HMR

Parts 385 and 395 (FR Vol. 73, No. 224, Pages 69567-69586, 11-19-08)

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) adopts the provisions of the December 17, 2007, interim final rule concerning hours of service for commercial motor vehicle (CMV) drivers. This final rule allows CMV drivers to continue to drive up to 11 hours within a 14-hour, nonextendable window from the start of the workday, following at least 10 consecutive hours off duty (11-hour rule). The rule also allows motor carriers and drivers to continue to restart calculations of the weekly on-duty limits after the driver has at least 34 consecutive hours off duty (34-hour restart). Effective date: January 19, 2009.

Parts 390 and 391 (FR Vol. 73, No. 231, Pages 73095-73128, 12-01-08)

This final rule from the FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSR) to require commercial driver's license (CDL) holders subject to the physical qualification requirements of 49 CFR Part 391 to provide a current copy of their medical examiner's certificate to their state driver licensing agency (SDLA). FMCSA also requires the SDLA to record on the Commercial Driver License Information System (CDLIS) driver record the self-certification the driver made regarding the applicability of the federal driver qualification rules and, for drivers subject to those requirements, the medical certification status information specified in this final rule. This action is required by Section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). Effective dates: This final rule is effective January 30, 2009. State compliance (for the SDLA) is required by January 30, 2012. All CDL holders must comply by January 30, 2014, with the requirement to submit to the SDLA their self-certification on whether they are subject to the physical qualification rules.

Parts 385 and 390 (FR Vol. 73, No. 242, Pages 76472-76497, 12-16-08)

This final rule from the Federal Motor Carrier Safety Administration (FMCSA) adopts the New Entrant Safety Assurance Program regulations initiated by a Notice of Proposed Rulemaking (NPRM) on December 21, 2006 (FR Vol. 71, No. 245, pages 76729-76793). These changes do not impose additional regulatory requirements on any new entrant motor carrier because these carriers are already required to comply with all applicable rules. Effective date: February 17, 2009. Compliance with this rule is required beginning December 16, 2009.

Parts 385, 390, 392, 393, and 396 (FR Vol. 73, No. 243, Pages 76793-76827, 12-17-08)

This final rule from the FMCSA adopts regulations implementing Section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The regulations require intermodal equipment providers (IEPs) to: register and file with FMCSA an Intermodal Equipment Provider Identification Report; establish a systematic inspection, repair, and maintenance program to ensure the safe operating condition of each intermodal chassis; maintain documentation of their maintenance program; and provide a means to effectively respond to driver and motor carrier reports about intermodal chassis mechanical defects and deficiencies. The regulations also require IEPs to mark each intermodal chassis with a U.S. Department of Transportation (U.S. DOT) identification number. These new regulations, for the first time, make IEPs subject to the Federal Motor Carrier Safety Regulations (FMCSR) and call for shared safety responsibility among IEPs, motor

TRANSPORTATION DEPARTMENT[761](cont'd)

carriers, and drivers. Additionally, this final rule adopts inspection requirements for motor carriers and drivers operating intermodal equipment. Effective date: June 17, 2009. Implementation Date: Intermodal equipment providers must comply with the requirements for establishing inspection, repair, maintenance programs, and record-keeping systems by December 17, 2009. Intermodal equipment providers must comply with the requirement to mark their intermodal chassis with a U.S. DOT identification number by December 17, 2010.

Parts 171, 172, 173, and 178 (FR Vol. 74, No. 9, Pages 2199-2270, 01-14-09)

This final rule from the Pipeline and Hazardous Materials Safety Administration (PHMSA) revises the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various changes to proper shipping names, hazard classes, packing groups, special provisions, and packaging authorizations. These revisions are necessary to harmonize the HMR with recent changes to the Transport Canada's Transportation of Dangerous Goods Regulations and the United Nations Recommendations on the Transport of Dangerous Goods. Effective date: February 13, 2009. Delayed Compliance Date: Except as specified in 49 CFR Sections 171.14, 171.25, 172.102, 172.448, and 178.703 as amended to October 1, 2009, compliance with the amendments adopted in this final rule is required beginning January 1, 2010.

Parts 171, 173, 178, and 180 (FR Vol. 74, No. 67, Pages 16135-16144, 04-09-09)

The final rule from the PHMSA amends the HMR to revise certain requirements applicable to the manufacture, maintenance, and use of DOT and Motor Carrier specification cargo tank motor vehicles, DOT specification cylinders and United Nations pressure receptacles. The revisions are based on petitions for rule making submitted by the regulated community and are intended to enhance the safe transportation of hazardous materials in commerce, clarify regulatory requirements, and reduce operating burdens on cargo tank and cylinder manufacturers, requalifiers, carriers, shippers, and users. The most significant amendment adopted in this final rule addresses a safety issue identified by the National Transportation Safety Board concerning the transportation of compressed gases in cylinders mounted on motor vehicles or in frames, commonly referred to as tube trailers. Effective Date: This final rule is effective May 11, 2009. Voluntary Compliance Date: Voluntary compliance with all these amendments, including those with delayed mandatory compliance, is authorized as of April 9, 2009.

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective June 9, 2010.

Rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, ~~2008~~ 2009).

ITEM 2. Amend paragraph **520.1(1)“b”** as follows:

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~2008~~ 2009).

[Filed 4/15/10, effective 6/9/10]

[Published 5/5/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/10.

ARC 8711B

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby amends Chapter 21, "Unemployment Insurance Services Division," Chapter 22, "Employer Records and Reports," Chapter 23, "Employer's Contribution and Charges," and Chapter 24, "Claims and Benefits," Iowa Administrative Code.

The adopted amendments make the following changes:

The amendments to paragraphs 21.1(1)"c" and "d" update the description of functions performed in the tax bureau.

The amendment to subrule 22.3(1) includes new electronic filing provisions.

The amendment to subrule 22.3(6) provides for electronically filed reports.

The amendment to rule 871—22.4(96) removes obsolete language and updates procedures.

The amendment to rule 871—22.11(96) provides for reporting units in lieu of separate account numbers.

The amendment to rule 871—22.12(96) provides information regarding reporting units.

The amendment to rule 871—22.13(96) reflects electronic filing, which will have reporting units in place of location codes.

The amendment to paragraph 22.17(4)"i" provides a description of current audit procedures.

The amendment to paragraph 22.17(4)"k" updates the current procedures of the Department.

The amendments to subrules 22.18(1) and 22.18(2) update the information required of employer representatives to include electronic filing.

The amendment to subrule 23.8(3) includes the due date for new agricultural and domestic employers.

The amendment to rule 871—23.9(96) reflects the format of the current form.

The amendments to subrules 23.11(3) to 23.11(6) remove obsolete language.

The amendments to subrules 23.17(1), 23.17(9) and 23.17(14) remove obsolete language and update procedures.

The amendment to subrule 23.18(3) excludes sons or daughters from coverage for performing services for parents as part of a community-based support program.

The amendment to subrule 23.31(2) updates the items transferred in a partial successorship.

The amendments to subrule 23.32(4) remove obsolete language.

The amendment to rule 871—23.36(96) updates procedures.

The amendment to rule 871—23.37(96) removes obsolete language and updates procedures.

The amendment to rule 871—23.46(96) rescinds the rule because the applicable accounts have been eliminated.

The amendment to rule 871—23.47(96) clarifies that employer accounts with no activity are placed in inactive status.

The amendment to rule 871—23.48(96) provides that a reactivated account will retain the same account number.

The amendment to subrule 23.60(2) provides the current penalty structure for obsolete reports.

The amendment to subrule 23.70(11) clarifies that an employer changing status will retain the same account number.

The amendment to paragraph 24.22(2)"f" conforms with federal law contained in the American Recovery and Reinvestment Act of 2009 and provides that individuals must be available for work for the same number of hours as they earned wages in the base period.

The amendment adopting new rule 871—24.40(96) implements the new training extension benefits established in 2009 Iowa Acts, Senate File 197, and is designed to be in conformity with the American Recovery and Reinvestment Act of 2009.

The amendment to subrule 24.58(1) extends the duration of a voluntary shared work program by an employer from 26 weeks to 52 weeks.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

The amendment to rule 871—24.58(96) updates the implementation sentence.

The amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

No variance provisions are included in these rules. Variance procedures are set forth in 871—Chapter 41 where applicable.

Notice of Intended Action was published in the March 10, 2010, Iowa Administrative Bulletin as **ARC 8583B**. No written comments were submitted by the public. No requests for oral presentation were made, thus a public hearing was not held. Since publication of the Notice of Intended Action, a revision was made to the amendment to subrule 24.58(1). 2010 Iowa Acts, Senate File 2279, signed by Governor Culver on April 7, 2010, made changes to the law for Voluntary Shared Work. The adopted amendment has been modified to include the update by removing the following sentence from subrule 24.58(1) in Item 33: “An employing unit is eligible for only one plan during a 24-month period.”

These amendments will become effective on June 9, 2010.

These amendments are intended to implement Iowa Code sections 96.4(3), 96.6(2), 96.7(2), 96.7(2)“b,” 96.7(2)“b”(5), 96.7(7), 96.7(10), 96.8, 96.8(2), 96.8(4), 96.11(1), 96.11(6), 96.11(6)“a,” 96.14(2), 96.19(18)“a”(2), 96.19(18)“g”(5), 96.19(16)“l” and “m,” and 96.19(17); 2009 Iowa Code Supplement sections 96.3(5) and 96.3(6)“b”; and 2009 Iowa Code Supplement section 96.40(2)“i” as amended by 2010 Iowa Acts, Senate File 2279.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 21 to 24] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8583B**, IAB 3/10/10.

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[For replacement pages for IAC, see IAC Supplement 5/5/10.]

AGENCY	RULE	DELAY
Environmental Protection Commission[567]	135.5(1)“e” [IAB 1/13/10, ARC 8469B]	Effective date of February 17, 2010, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 2010. [Pursuant to §17A.4(7)] At its meeting held April 13, 2010, the Committee delayed the effective date until adjournment of the 2011 Session of the General Assembly. [Pursuant to §17A.8(9)]