



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXVI
July 9, 2003

NUMBER 1
Pages 1 to 88

CONTENTS IN THIS ISSUE

Pages 11 to 87 include **ARC 2561B** to **ARC 2612B**

ALL AGENCIES		
Schedule for rule making	4	
Publication procedures	5	
Administrative rules on CD-ROM	5	
Agency identification numbers	9	
CITATION OF ADMINISTRATIVE RULES	8	
ECONOMIC DEVELOPMENT, IOWA		
DEPARTMENT OF[261]		
Notice, Housing fund, ch 25 ARC 2591B	11	
Notice, Self-employment loan program; targeted small business financial assistance program, amendments to chs 51, 55 ARC 2594B	15	
Notice, Enterprise zones, amendments to ch 59 ARC 2592B	16	
Notice, Cogeneration pilot program, ch 62 ARC 2593B	23	
Filed, Update and clarification of rules, amend chs 1, 21, 50, 163; rescind chs 38, 42, 43, 45, 52, 101, 131 ARC 2589B	75	
Filed, Community economic betterment program, 53.2, 53.11 to 53.17 ARC 2590B	75	
Filed, Public records and fair information practices, ch 169 ARC 2588B	76	
ENERGY AND GEOLOGICAL RESOURCES		
DIVISION[565]		
NATURAL RESOURCES DEPARTMENT[561]"umbrella"		
Filed, Energy efficiency and renewable energy applications—conformity with U.S. Department of Energy requirements, rescind chs 4, 7, 8, 16, 17, 19; amend 18.1 to 18.5 ARC 2596B	76	
ENVIRONMENTAL PROTECTION		
COMMISSION[567]		
NATURAL RESOURCES DEPARTMENT[561]"umbrella"		
Notice, Emission standards for contaminants, 23.2 ARC 2597B	24	
Notice, Scope of title—definitions—forms; criteria for rating and ranking projects for the water pollution control state revolving fund; state revolving fund loans for wastewater treatment and water pollution control; onsite wastewater treatment system assistance program, adopt chs 90 to 92; amend ch 93 ARC 2595B	26	
ETHICS AND CAMPAIGN DISCLOSURE		
BOARD, IOWA[351]		
Notice, Permanent organizations forming temporary political committees; one-time contributor filing Form DR-OTC, 4.1(1)"c," 4.35 ARC 2605	45	
Notice, Computer-generated reports; signature on DR-2 Report Summary Page, 4.4(3), 4.13 ARC 2604B	46	
Notice, Documents provided electronically by board, 4.8(3) ARC 2606B	47	
Notice, Contributions from political committees not organized in Iowa, 4.32 ARC 2603B	47	
Filed, Iowa ethics and campaign disclosure board, adopt ch 1; rescind ch 12 ARC 2585B	77	
Filed, Personal financial disclosure; contested case procedures, chs 7, 11 ARC 2586B	77	
HUMAN SERVICES DEPARTMENT[441]		
Notice, Departmental organization and procedures—HAWK-1 board, 1.10 ARC 2607B	48	
Notice, Fiscal procedure—applying credits due counties from a state institution or institutional program, 28.13(2)"c" ARC 2609B	48	
Notice, Medicaid—HCBS waiver for persons with mental retardation, 77.37, 78.41, 79.1(2), 83.66 ARC 2564B	49	
Notice, Medicaid—reimbursement to hospitals and hospital-based nursing facilities for dually eligible recipients, 78.3, 79.1(22), 81.6(20) ARC 2565B	50	

PREFACE

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

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

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

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

Subscriptions and Distribution	Telephone:	(515)281-3568
	Fax:	(515)281-8027
KATHLEEN K. BATES, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Assistant Editor	Fax:	(515)281-4424

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

July 1, 2003, to June 30, 2004	\$300
October 1, 2003, to June 30, 2004	\$225
January 1, 2004, to June 30, 2004	\$150
April 1, 2004, to June 30, 2004	\$ 75

Single copies may be purchased for \$22.

Iowa Administrative Code

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

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

Iowa Administrative Code - \$1,350

(Price includes complete set of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders may be purchased for \$14.)

Iowa Administrative Code Supplement - \$475

(Subscription expires June 30, 2004)

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

Attn: Stephanie Cox
Legislative Services Agency
Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

Notice, Medicaid recipients—supplemental payment adjustment for physician services at publicly owned acute care teaching hospitals, 79.1(2), 79.1(7) **ARC 2566B** 50

Notice, Medicaid—reimbursement policies for prescription drugs, 79.1(8) **ARC 2567B** 51

Notice, Medicaid services—recipient copayment, 79.1(13) **ARC 2568B** 51

Notice, HAWK-I program, 86.2(4), 86.13(6) **ARC 2608B** 52

Notice, Medicaid managed health care option—MediPASS, 88.41, 88.44, 88.45, 88.46(6), 88.47(1), 88.48(1), 88.50(3) **ARC 2572B** 52

Notice, Parental obligation pilots and incentives for parents—extension of expiration date, 100.3(2), 100.8 **ARC 2610B** 53

Notice, Child care licensing and registration—criminal and child abuse record checks, 109.1, 109.2, 109.6(6), 110.1, 110.7, 110.14 **ARC 2571B** 53

Notice, Reimbursement rates—purchase of service providers, rehabilitative treatment and supportive services; suspension of ability of department to renegotiate rates for RTS services, 150.3(5), 185.112(1) **ARC 2569B** 54

Notice, Eligibility for child care assistance, 170.2 **ARC 2570B** 54

Filed Emergency, Departmental organization and procedures—HAWK-I board, 1.10 **ARC 2612B** 58

Filed, Disputed county billings, ch 15 **ARC 2573B** 77

Filed Emergency, Medicaid—HCBS waiver for persons with mental retardation, 77.37, 78.41, 79.1(2), 83.66 **ARC 2575B** 58

Filed Emergency, Medicaid—reimbursement to hospitals and hospital-based nursing facilities for dually eligible recipients, 78.3, 79.1(22), 81.6(20) **ARC 2576B** 60

Filed Emergency, Medicaid recipients—supplemental payment adjustment for physician services at publicly owned acute care teaching hospitals, 79.1(2), 79.1(7) **ARC 2577B** 62

Filed Emergency, Medicaid—reimbursement policies for prescription drugs, 79.1(8) **ARC 2578B** 63

Filed Emergency, Medicaid services—recipient copayment, 79.1(13) **ARC 2579B** 63

Filed Emergency After Notice, Medicaid home- and community-based mental retardation waiver—age for eligibility for supported employment services, 83.61(1) **ARC 2574B** 64

Filed Emergency, HAWK-I program, 86.2(4), 86.13(6) **ARC 2611B** 65

Filed Emergency, Medicaid managed health care option—MediPASS, 88.41, 88.44, 88.45, 88.46(6), 88.47(1), 88.48(1), 88.50(3) **ARC 2583B** 65

Filed Emergency, Child care licensing and registration—criminal and child abuse record checks, 109.1, 109.2, 109.6(6), 110.1, 110.7, 110.14 **ARC 2582B** 67

Filed Emergency, Reimbursement rates—purchase of service providers, rehabilitative treatment and supportive services; suspension of ability of department to renegotiate rates for RTS services, 150.3(5), 185.112(1) **ARC 2580B** 70

Filed Emergency, Eligibility for child care assistance, 170.2 **ARC 2581B** 71

LAW ENFORCEMENT ACADEMY[501]

Notice, Training of an individual who intends to become certified as a law enforcement officer, 3.12 **ARC 2562B** 55

Filed Emergency, Training of an individual who intends to become certified as a law enforcement officer, 3.12 **ARC 2561B** 71

MANAGEMENT DEPARTMENT[541]

Notice, Grants enterprise management system, ch 11 **ARC 2587B** 55

Filed Emergency, Grants enterprise management system, ch 11 **ARC 2602B** 73

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Notice, After-hours fishing list—addition of Clear Lake State Park, Ritz Unit, Cerro Gordo County, 61.9 **ARC 2598B** 55

Notice, Block deer hunts, 106.11(4) **ARC 2599B** 56

Filed, Deer hunting by residents, 106.1(5), 106.5(2), 106.6, 106.7(1), 106.8, 106.10 **ARC 2600B** 78

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Filed, Dietitians, 80.4, 80.6, 81.6, ch 83 **ARC 2584B** 80

PUBLIC HEARINGS

Summarized list 6

PUBLIC SAFETY DEPARTMENT[661]

Filed, State of Iowa building code, 16.700 to 16.710, 16.720 **ARC 2563B** 82

TRANSPORTATION DEPARTMENT[761]

Notice, Signing on primary roads for county conservation parks, 131.8(1) **ARC 2601B** 56

Schedule for Rule Making 2003

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
3	Friday, July 18, 2003	August 6, 2003
4	Friday, August 1, 2003	August 20, 2003
5	Friday, August 15, 2003	September 3, 2003

PLEASE NOTE:

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

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

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

PUBLICATION PROCEDURES

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

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

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

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

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

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

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

IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM

2002 WINTER EDITION

Containing: **Iowa Administrative Code** (updated through March 5, 2003)
Iowa Administrative Bulletins (July 2002 through March 5, 2003)
Iowa Court Rules (updated through February 2003)

For free brochures and order forms contact:

Legislative Services Agency
Attn: Ms. Stephanie Cox
State Capitol
Des Moines, Iowa 50319
Telephone: (515)281-3566 Fax: (515)281-8027
lsbinfo@staff.legis.state.ia.us

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
--------	------------------	--------------------------

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Housing fund, ch 25 IAB 7/9/03 ARC 2591B	First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	July 29, 2003 1:30 p.m.
Eligibility for targeted small business financial assistance program, 51.1 to 51.7, 55.1 to 55.4 IAB 7/9/03 ARC 2594B	Second Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	July 29, 2003 3 p.m.
Enterprise zones, 59.1 to 59.7, 59.9, 59.10, 59.13, 59.14 IAB 7/9/03 ARC 2592B	Second Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	July 29, 2003 2 to 3 p.m.
Cogeneration pilot program, ch 62 IAB 7/9/03 ARC 2593B	Second Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	July 29, 2003 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 21.2, 22.1, 23.1, 25.1(9) IAB 6/11/03 ARC 2525B	Conference Room 4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	July 15, 2003 1 p.m.
Open burning, 23.2 IAB 7/9/03 ARC 2597B	Conference Rooms 2 and 3 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	August 7, 2003 1 p.m.
Reauthorization for general permit no. 4, 64.15(4), 69.1(2), 69.2, 69.9(1), 69.10(6), 69.11(1) IAB 6/11/03 ARC 2526B	Helen Wilson Gallery, Public Library 120 E. Main Washington, Iowa	July 9, 2003 9 a.m. to 12 noon
Water pollution control state revolving fund, chs 90 to 92; 93.1, 93.3, 93.10, 93.12 IAB 7/9/03 ARC 2595B	Muse-Norris Conference Center NIACC 500 College Dr. Mason City, Iowa	July 10, 2003 12 noon to 3 p.m.
	Rooms A and B Third Floor, Iowa Hall Kirkwood Community College Cedar Rapids, Iowa	July 31, 2003 7:30 p.m.
	Conference Room 401 SW Seventh St. Des Moines, Iowa	August 4, 2003 1:30 p.m.

IOWA FINANCE AUTHORITY[265]

Low-income housing tax credits— qualified allocation plan, 12.1, 12.2 IAB 6/25/03 ARC 2560B (ICN Network)	Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	July 16, 2003 9 to 11:30 a.m.
	Public Library 424 Central Ave. Fort Dodge, Iowa	July 16, 2003 9 to 11:30 a.m.
	Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	July 16, 2003 9 to 11:30 a.m.
	Room 3, Contin. Ed. Bldg. Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	July 16, 2003 9 to 11:30 a.m.
	Room 107, Technical Center Southwestern Community College 1501 W. Townline Rd. Creston, Iowa	July 16, 2003 9 to 11:30 a.m.
	Kimberly Center 1002 W. Kimberly Davenport, Iowa	July 16, 2003 9 to 11:30 a.m.
	Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa	July 16, 2003 9 to 11:30 a.m.
	Room 153, Mason City High School 1700 Fourth SE Mason City, Iowa	July 16, 2003 9 to 11:30 a.m.
	Videoconferencing and Training Center Indian Hills Community College 651 Indian Hills Dr. Ottumwa, Iowa	July 16, 2003 9 to 11:30 a.m.
	Room 127B, Building B Western Iowa Tech Community College 4647 Stone Ave. Sioux City, Iowa	July 16, 2003 9 to 11:30 a.m.
	Classroom A, Gerard Hall Allen College 1950 Heath St. Waterloo, Iowa	July 16, 2003 9 to 11:30 a.m.

LAW ENFORCEMENT ACADEMY[501]

Training of an individual who intends to become certified as a law enforcement officer, 3.12 IAB 7/9/03 ARC 2562B (See also ARC 2561B herein)	Conference Room Iowa Law Enforcement Academy Camp Dodge Johnston, Iowa	July 29, 2003 10 a.m.
---	---	--------------------------

MANAGEMENT DEPARTMENT[541]

Grants enterprise management system, ch 11 IAB 7/9/03 ARC 2587B (See also ARC 2602B herein)	Room G14 State Capitol Des Moines, Iowa	August 7, 2003 10 a.m.
---	---	---------------------------

MEDICAL EXAMINERS BOARD[653]

Physician eligibility to supervise a physician assistant, 21.1 IAB 6/25/03 ARC 2545B	Suite C 400 SW Eighth St. Des Moines, Iowa	July 15, 2003 3 p.m.
--	--	-------------------------

NATURAL RESOURCE COMMISSION[571]

Addition of Clear Lake State Park, Ritz Unit, to after-hours fishing list, 61.9(4) to 61.9(21) IAB 7/9/03 ARC 2598B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 29, 2003 10 a.m.
Deer hunting—designated block hunt areas, 106.11(4) IAB 7/9/03 ARC 2599B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 31, 2003 10 a.m.

TRANSPORTATION DEPARTMENT[761]

Signs for county conservation parks, 131.8(1) IAB 7/9/03 ARC 2601B	First Floor South Conference Room Administration Bldg. 800 Lincoln Way Ames, Iowa	July 31, 2003 10 a.m. (If requested)
--	--	--

UTILITIES DIVISION[199]

Definition of “eligible customers,” 22.1 IAB 6/25/03 ARC 2549B	Hearing Room 350 Maple St. Des Moines, Iowa	August 12, 2003 10 a.m.
--	---	----------------------------

CITATION of Administrative Rules

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

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

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

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

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

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

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

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CAPITAL INVESTMENT BOARD, IOWA[123]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of African-Americans, Division on the[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INFORMATION TECHNOLOGY DEPARTMENT[471]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 2591B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF [261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development (IDED) hereby gives Notice of Intended Action to rescind Chapter 25, “Housing Fund,” Iowa Administrative Code, and adopt a new chapter with the same title.

The proposed revisions reflect the findings of the Housing Study commissioned by IDED and the Iowa Finance Authority and completed by the University of Iowa in January 2003. The proposed changes include:

1. Targeting eligible uses of funds to housing rehabilitation, rental rehabilitation and new construction of rental units. (Two eligible uses were eliminated: tenant base rental assistance and home ownership assistance.)
2. Setting caps on projects funding: \$300,000 for single family housing rehabilitation project/maximum six units; \$800,000 for rental unit construction or rehabilitation/maximum of 16 assisted units.
3. Setting a \$50,000 per unit assistance cap including all lead-based paint remediation activity. (Prior cap per unit was \$24,999.)
4. Establish preferences for project funding that include priority for persons with disabilities and for persons/households with income below 50 percent of area family median income.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on July 29, 2003. Interested persons may submit written or oral comments by contacting Roselyn McKie Wazny, Community Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515) 242-4822.

A public hearing to receive comments about the proposed new chapter will be held on July 29, 2003, at 1:30 p.m. at the above address in the first floor northwest conference room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on July 28, 2003, to be placed on the hearing agenda.

These rules are intended to implement Iowa Code section 15.108(1)“a.”

The following amendment is proposed.

Rescind 261—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
HOUSING FUND

261—25.1(15) Purpose. The primary purpose of the housing fund, made up of federal CDBG and HOME funds, is to expand the supply of decent and affordable housing for low- and moderate-income Iowans and to further the housing goals of the state of Iowa.

261—25.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

“Activity” means one or more specific housing activities, projects or programs assisted through the housing fund.

“Administrative plan” means a document that a housing fund recipient establishes that describes the operation of a funded activity in compliance with all state and federal requirements.

“CDBG” means Community Development Block Grant Nonentitlement Program, the grant program authorized by Title I of the Housing and Community Development Act of 1974 for counties and cities, except those designated by HUD as entitlement areas.

“CHDO” means community housing development organization, a nonprofit organization registered with the Iowa secretary of state and certified as such by IDED, pursuant to 24 CFR 92.2 (April 1, 1997).

“Consolidated plan” means the state’s housing and community development planning document and the annual action plan update approved by HUD.

“HART” means the housing application review team, a body of affordable housing funding agencies which meets to review housing proposals.

“HOME” means the HOME investment partnership program, authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990.

“Housing fund” means the program implemented by this chapter and funded through the state’s annual HOME allocation from HUD and 25 percent of the state’s CDBG allocation from HUD.

“HUD” means the U.S. Department of Housing and Urban Development.

“IDED” means the Iowa department of economic development.

“IFA” means the Iowa finance authority.

“Lead-based paint” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.

“Lead-based paint activities” means, in the case of target housing and child-occupied facilities, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, lead abatement, visual risk assessment, clearance testing conducted after lead abatement, and clearance testing conducted after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340.

“Lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint that is deteriorated or present on accessible surfaces, friction surfaces, and impact surfaces that would result in adverse human health effects.

“Lead hazard abatement” means any measure or set of measures designed to permanently eliminate lead-based paint hazards.

“Lead hazard reduction” means the reduction or abatement of lead-based paint hazards which include deteriorated lead-based paint; lead-based paint on friction surfaces, impact surfaces and accessible surfaces; and dust and soil that are contaminated with lead above a specified standard.

“Lead professional” means a person who is certified to conduct lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after lead abatement, or clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340.

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

“LIHTC” means low-income housing tax credits and federal tax incentives created through the Tax Reform Act of 1986 and allocated through the Iowa finance authority for affordable rental housing development.

“Local support” means involvement and financial investment by the community, citizens and organizations in the community that promote the objectives of the housing activities assisted through the housing fund.

“New construction rental units” means the on-site construction or erection of a building, or buildings, for the purpose of providing rental housing units. New construction rental units include conventional, on-site, stick-built construction and on-site erection or fabrication of manufactured housing units or components of units. New construction rental units also include the addition of any rental units outside the existing walls (the building envelope) of an existing building, or buildings, that are part of a rental rehabilitation, renovation or conversion project.

“Program income” means funds generated by a recipient or subrecipient from the use of CDBG or HOME funds.

“Recipient” means the entity under contract with IDED to receive housing funds and undertake the funded housing activity.

“Subrecipient” means an entity operating under an agreement or contract with a recipient to carry out a funded housing activity.

261—25.3(15) Eligible applicants. Eligible applicants for housing fund assistance include all incorporated cities and counties within the state of Iowa; nonprofit organizations; CHDOs; and for-profit corporations, partnerships and individuals.

1. Any eligible applicant may apply directly or on behalf of a subrecipient.

2. Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—25.4(15) Eligible activities and forms of assistance.

25.4(1) Eligible activities include rental housing preservation or rehabilitation (including conversion), rental housing new construction, and owner-occupied housing rehabilitation. Assisted housing may be single-family housing or multifamily housing and may be designated for occupancy by homeowners or tenants.

a. Assisted rental units shall be affordable.

(1) For rental activities, all assisted units shall rent at the lesser of the area HOME fair market rent or at a rent based on 30 percent of 65 percent of the area median family income for the required affordability period of the project. For projects with five or more units, at least 20 percent of the units shall rent at the lesser of the fair market rent or at a rent based on 30 percent of 50 percent of the area median family income.

(2) Assisted rental units shall remain affordable for a specified period: 5 years for rehabilitated units receiving less than \$15,000; 10 years for rehabilitated units receiving \$15,000 to \$40,000 in assistance; 15 years for rehabilitated units receiving over \$40,000; and 20 years for newly constructed units.

b. For owner-occupied housing rehabilitation, the after rehabilitation value of rehabilitated units shall not exceed 95 percent of the HUD-calculated median purchase price for the same type of single-family housing in the area.

c. Assisted households shall meet income limits established by federal program requirements.

(1) For rental activities, all assisted units shall be rented to households with incomes at or below 80 percent of the area’s median family income (90 percent of the units must initially be rented to households with incomes at or below 60 percent of the area’s median family income). For projects with five or more units, 20 percent of the units shall be rented to households with incomes at or below 50 percent of the area’s median family income.

(2) For owner-occupied housing rehabilitation, only households with incomes at or below 80 percent of the area median family income shall be assisted.

d. All single-family housing rehabilitation must be done in compliance with Iowa’s Minimum Housing Rehabilitation Standards (November 1999) and all applicable state and local codes, rehabilitation standards and ordinances, and shall, at a minimum, meet HUD Section 8 Housing Quality Standards, 24 CFR 882 (April 1, 1997). Multifamily housing rehabilitation must be done in compliance with all applicable state and local codes, rehabilitation standards and ordinances, and shall, at a minimum, meet HUD Section 8 Housing Quality Standards, 24 CFR 882 (April 1, 1997). New units must be constructed pursuant to one of the standards specified at 24 CFR 92.251(a)(1) (April 1, 1997).

e. For owner-occupied housing rehabilitation activities, only single-family residential units constructed prior to 1978 will be eligible to receive housing fund assistance.

f. No housing fund assistance may be used for purposes of acquisition, clearance or demolition; or permanent relocation of the occupants of single-family units (owner-occupied or rental), determined to be infeasible for rehabilitation.

g. Owner-occupied housing rehabilitation activities shall include provisions for costs related to lead hazard reduction or lead hazard abatement, as applicable.

h. Rehabilitation activities (owner-occupied or rental housing) must include provisions for energy conservation enhancement.

i. For owner-occupied housing rehabilitation activities, housing fund assistance to the client beneficiary shall be provided in the form of a five-year forgivable loan. Repayable loans shall not be allowed.

j. For rental rehabilitation, preservation or conversion activities, only units constructed prior to 1978 will be eligible to receive assistance.

k. Rental rehabilitation, preservation or conversion activities shall include provisions for lead hazard abatement.

25.4(2) Eligible forms of housing fund assistance to direct award recipients shall include grants, interest-bearing loans, non-interest-bearing loans, forgivable loans or other forms of assistance as may be approved by IDED.

261—25.5(15) Application procedure.

25.5(1) All potential housing fund applicants for rental activities are encouraged, but not required, to complete and submit a HART form describing the proposed activity prior to the submittal of a formal application. If the proposal is determined to be appropriate for housing fund assistance, IDED shall inform the applicant of the appropriate application procedure by mail. HART forms shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4825; or on the Internet at <http://www.community.ided.state.ia.us>. HART forms are accepted year-round.

25.5(2) Applicants may request technical assistance from IDED staff in the preparation of housing fund applications. Upon the submission of a housing fund application, no addi-

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

tional staff assistance shall be provided during the review period.

25.5(3) Each application may include only one housing activity per application. An applicant may submit more than one application per funding round.

25.5(4) Housing fund applications shall be reviewed through an annual competition. Once funds have been allocated, IDED will not accept applications seeking funding for review until the next established deadline.

25.5(5) All applicants for the housing fund must meet the threshold requirements outlined in rules 25.4(15), 25.6(15) and 25.7(15) in order to be considered for award.

25.5(6) For applicants requesting funding from both the housing fund and low-income housing tax credit (LIHTC) programs, the applicant may request application forms and related material from the Iowa finance authority (IFA). IFA shall forward an application package to a potential applicant and make the application package available in electronic form either by diskette or on the Internet at <http://www.ifahome.com>. The applicant must submit the completed application, with required housing fund attachments, to IFA by the deadline established in the IFA application package.

a. IDED and IFA shall establish a joint review team to discuss and review applications for both housing fund and LIHTC funds. Staff for each agency may communicate frequently regarding common applications. Information contained in each application may be shared.

b. IDED staff shall review applications for eligibility and for activity threshold requirements. The joint review team shall meet to compare and discuss each common application. Final decisions regarding funding recommendations will be made in accordance with IFA's qualified allocation plan. Staff from each agency will make recommendations for funding to their respective decision makers. A decision by one agency does not bind the other agency to fund an application.

261—25.6(15) Minimum application requirements. To be considered for housing fund assistance, an application shall meet the following threshold criteria:

25.6(1) The application shall propose a housing activity consistent with the housing fund purpose, eligibility requirements, and the state consolidated plan.

25.6(2) The application shall document the applicant's capacity to administer the proposed activity. Such documentation may include evidence of successful administration of prior housing activities similar to those proposed. Documentation of the availability of certified lead professionals and contractors trained in safe work practices may also be required. IDED reserves the right to deny funding to an applicant that has failed to comply with federal or state requirements in the administration of a previous activity funded by IDED.

25.6(3) The application shall provide evidence of the need for the proposed activity, the potential impact of the proposed activity and the feasibility of the proposed activity.

25.6(4) The application shall demonstrate local support for the proposed activity.

25.6(5) The application shall show that a need for housing fund assistance exists after all other financial resources have been identified and secured for the proposed activity.

25.6(6) The application shall include a certification that the applicant will comply with all applicable state and federal laws and regulations.

25.6(7) An application for an activity located in a locally designated participating jurisdiction (PJ) must show evi-

dence of a financial commitment from the local PJ equal to 25 percent of the total HOME funds requested.

261—25.7(15) Application review criteria. IDED shall evaluate applications and make funding decisions based on housing fund activity criteria, need, impact, feasibility, and activity administration based upon the specific type of activity. The activity criteria shall be a part of the application. A workshop will be held at least 60 days prior to the application deadline to provide information, materials, and technical assistance to potential applicants.

25.7(1) As applicable, the review criteria for owner-occupied housing rehabilitation applications shall include the following:

a. General criteria.

(1) Activity objectives.

(2) Area of benefit and reason for selection.

(3) Condition of infrastructure in the activity area served.

(4) Form of assistance to homeowner (type of conditional loan, amount).

(5) Selection criteria for participants.

(6) Method to ensure that the property is and will continue to be the homeowner's principal residence.

(7) Compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999).

(8) Assurance of compliance with HUD lead-safe housing regulations.

(9) Activity time line.

b. Need, impact and feasibility criteria.

(1) Evidence of need for the activity.

(2) Percentage of identified need to be met through the activity.

(3) Number and percentage of low- and moderate-income persons in the area served.

(4) Housing costs, housing supply, condition of housing, vacancy rate of owner-occupied housing in the area served.

(5) Other recent or current housing improvement activities in the area served.

(6) Ongoing comprehensive community development efforts in the area served.

(7) New businesses or industries in the past five years in the area served.

(8) Local involvement and support.

(9) Financial contribution to the activity from other sources.

c. Administrative criteria.

(1) Plan for activity administration.

(2) Previous activity administrative experience.

(3) Budget for administration.

(4) List of prior CDBG and HOME funding.

(5) If application is for a continuation of a prior activity, describe current status of activity and list performance targets completed.

d. Funding preferences. Preference will be given to those proposals that:

(1) Benefit only households with children under six years of age and households with disabled persons.

(2) Benefit only persons or households whose incomes are at or below 50 percent of the area median family income limits for that household size as established by HUD.

(3) Include local financial support (non-housing fund-related and non-program income-related funds).

25.7(2) As applicable, the review criteria for rental housing assistance applications shall include the following:

a. General criteria.

(1) Activity objectives.

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

- (2) Total number of rental units and total number of assisted rental units.
- (3) Activity description and cost estimate.
- (4) Eligibility criteria for renters of assisted units (income, age, disability, other).
- (5) Rationale for activity location.
- (6) Availability and condition of infrastructure; availability of utilities.
- (7) Zoning compliance.
- (8) Environmental issues.
- (9) Potential tenant displacement including estimated Uniform Relocation Act (URA) costs.
- (10) Accessibility.
- (11) Assurance of compliance with HUD lead-safe housing regulations.
- (12) Activity time line.
 - b. Need, impact and feasibility criteria.
 - (1) Evidence of need for the activity.
 - (2) Percentage of need to be met through this activity.
 - (3) Number and percentage of low- and moderate-income persons in the area served.
 - (4) Rental housing costs, rental unit supply, condition of available rental housing, rental vacancy rate in the area served.
 - (5) If new construction, documentation of need for new construction.
 - (6) Other recent or current housing improvement activities in the area served.
 - (7) Ongoing comprehensive community development efforts in the area served.
 - (8) New businesses or industries in the past five years in the community or area served.
 - (9) Local involvement and support.
 - (10) Opposition to the activity and plans to alleviate concerns.
 - (11) Financial contributions to the activity from other sources (including all underwriting criteria, as applicable).
 - (12) Justification for "gap" in the activity financing and housing fund request amount.
 - c. Administrative criteria.
 - (1) Plan for activity administration and property management.
 - (2) Previous administrative and property management experience.
 - (3) Plan to ensure long-term affordability and compliance.
 - (4) Plan for annual certification of tenant eligibility and compliance with Section 8 Housing Quality Standards.
 - (5) Previous CDBG- and HOME-funded housing activities and current status.
 - (6) Applicant's other completed rental housing activities and their locations.
 - d. Preferences. Preference will given to applications that are for:
 - (1) New construction of rental units:
 1. That serve either persons or households with incomes at or below 40 percent of the area median family income for that household size as established by HUD, or
 2. That serve persons in households whose incomes are at or below 60 percent of the area median family income as established by HUD and that will be occupied by one or more disabled persons.
 - (2) Rehabilitated units assisting only persons or households at or below 50 percent of the area median family income established by HUD.
 - (3) Rehabilitated units suitable for children.

(4) Rehabilitated units located in one of the counties designated as high incidence for lead in housing: Cass, Dickinson, Ida, Lucas, Montgomery, Osceola, Page, Sac, Washington, Wayne, or Worth.

25.7(3) IDED staff may conduct site evaluations of proposed activities. IDED may request additional information prior to issuing a final decision.

261—25.8(15) Allocation of funds.

25.8(1) IDED may retain a portion of the amount provided for at rule 261—23.4(15) of the state's annual CDBG allocation from HUD and up to 10 percent of the state's annual HOME allocation from HUD for administrative costs associated with program implementation and operation.

25.8(2) Not less than 15 percent of the state's annual HOME allocation shall be reserved for eligible housing activities proposed by CHDOs.

25.8(3) Up to a maximum of 60 percent of the state's annual HOME allocation may be reserved for rental housing activities jointly funded with HOME and low-income housing tax credits.

25.8(4) IDED will determine the appropriate source of funding, either CDBG or HOME, for each housing fund award based on the availability of funds, the nature of the housing activity and the recipient type.

25.8(5) IDED reserves the right to limit the amount of funds that shall be awarded for any single activity type.

25.8(6) Awards shall be limited to no more than \$300,000 for owner-occupied housing rehabilitation activities and \$800,000 for rental housing activities.

25.8(7) The maximum per unit housing fund subsidy is \$50,000. The \$50,000 maximum per unit subsidy includes all costs of direct administration, lead hazard reduction or abatement, lead hazard reduction or abatement carrying costs and any temporary relocation costs associated with rehabilitation activities.

25.8(8) The maximum number of units assisted per one application are:

a. Owner-occupied housing rehabilitation, 6 units may be assisted with a housing fund award.

b. Rental housing units, 16 units may be subsidized with a housing fund award.

25.8(9) Recipients shall justify administrative costs in the housing fund application. IDED reserves the right to negotiate the amount of funds provided for general and direct administration, but in no case shall the amount for general administration exceed 5 percent of a total housing fund award.

25.8(10) IDED reserves the right to negotiate the amount and terms of a housing fund award prior to executing a contract between the parties.

25.8(11) IDED reserves the right to make award decisions such that the state maintains the required level of local match to HOME funds.

25.8(12) A preaward survey will be required of all for-profit and nonprofit direct recipients of grants that exceed \$150,000 as outlined in Iowa Code section 11.36. All preaward surveys will be conducted by the office of the state auditor.

261—25.9(15) Administration of awards. Applications selected to receive housing fund awards shall be notified by letter from the IDED director.

25.9(1) A contract shall be executed between the recipient and IDED. These rules, the approved housing fund application, the housing fund management guide and all applicable federal and state laws and regulations shall be part of the contract.

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

a. The recipient shall execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for IDED to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Contracts may be conditioned upon the timely completion of these requirements.

c. Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. Release of funds shall be conditioned upon IDED's receipt of an administrative plan for the funded activity.

e. Release of funds shall be conditioned upon IDED's receipt and approval of documentation of environmental clearance, including state historic preservation office review and clearance.

25.9(2) Requests for funds. Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in whole dollar amounts equal to or greater than \$500 per request, except for the final draw of funds.

25.9(3) Record keeping and retention. The recipient shall retain all financial records, supporting documents and all other records pertinent to the housing fund activity for five years after contract expiration. Representatives of IDED, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a housing fund award.

25.9(4) Performance reports and reviews. Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform reviews or field inspections necessary to ensure recipient performance.

25.9(5) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alterations of the funded activities affecting the scope, location, objectives or scale of the approved activity. Amendments shall be requested in writing by the CEO of the recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between the recipient and IDED.

25.9(6) Contract closeout. Upon the contract end date or work completion date, as applicable, IDED shall initiate contract closeout procedures. Recipients shall comply with applicable audit requirements described in the housing fund application and management guide.

25.9(7) Compliance with federal, state and local laws and regulations. Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable federal, state and local regulations.

25.9(8) Remedies for noncompliance. At any time, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved activities in a timely manner.

25.9(9) Appeals process for findings of noncompliance. Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director shall make the final decision on all appeals.

These rules are intended to implement Iowa Code section 15.108(1)"a."

ARC 2594B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 51, "Self-Employment Loan Program," and Chapter 55, "Targeted Small Business Financial Assistance Program," Iowa Administrative Code.

The proposed amendment rescinds the existing program rules for SELP and adopts one rule to govern current SELP awards during the transition. The proposed amendments to the Targeted Small Business Financial Assistance Program (TSBFAP) expand program eligibility to permit an applicant to qualify on the basis of low income. The amendments add new definitions of "low-income individual" and "sponsor," and revise threshold and eligibility requirements to include applicants that meet low-income guidelines.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 29, 2003. Interested persons may submit written or oral comments by contacting Donna Lowery, Bureau of Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4813; E-mail donna.lowery@ided.state.ia.us.

A public hearing to receive comments about the proposed amendments will be held on July 29, 2003, at 3 p.m. at the above address in the northwest conference room on the second floor.

These rules are intended to implement Iowa Code chapter 15 as amended by 2003 Iowa Acts, House File 390.

The following amendments are proposed.

ITEM 1. Rescind rules **261—51.1(15)** through **261—51.7(15)** and adopt **new** rule 261—51.1(15) as follows:

261—51.1(15) Transition. Prior to July 1, 2003, the department of economic development administered a self-employment loan program (SELP). The purpose of the SELP was to provide loans to low-income persons and persons with a disability to establish or expand small business ventures. Pursuant to 2003 Iowa Acts, House File 390, this program

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

was repealed, and the targeted small business financial assistance program (TSBFAP) (261—Chapter 55) was amended to include applicants qualifying as low-income. The SELP rules in effect on June 30, 2003, will apply to all SELP loans awarded prior to July 1, 2003.

ITEM 2. Amend rule 261—55.1(15) as follows:

261—55.1(15) Targeted small business financial assistance program (TSBFAP). The purpose of the targeted small business financial assistance program is to assist in the creation and expansion of women and minority-owned small businesses within the state of Iowa women, minorities, persons with disabilities and low-income individuals to establish or expand small business ventures in Iowa.

ITEM 3. Amend rule 261—55.2(15) by adding the following **new** definitions in alphabetical order:

“Low-income individual” means an individual with an annualized household income that is 200 percent of the current poverty income guidelines published annually by the federal Department of Health and Human Services.

“Sponsor” means a representative from an Iowa workforce development office, a local chamber of commerce, the institute for social and economic development (ISED) or any other organization approved by IDED willing to offer assistance and guidance to a low-income applicant.

ITEM 4. Amend rule 261—55.3(15) as follows:

261—55.3(15) Eligibility requirements.

55.3(1) Residence. An applicant must be a resident of Iowa for at least six months to be eligible to apply for assistance. Applicants may be asked to provide necessary documentation to prove legal residency.

55.3(2) Business location. The business, or proposed business, must be located in the state of Iowa and be a for-profit business.

55.3(3) Targeted small business or low-income individual.

a. *TSB.* An applicant may apply only on behalf of a business which meets the targeted small business definition. A business must be certified as a “targeted small business” by the department of inspections and appeals prior to application for financial assistance under this program. *Only persons who are owners (i.e., at least 51 percent owners and operators) of a targeted small business are eligible to apply as a TSB. (This restriction does not prevent such individuals from receiving help in preparing an application from a city, county, areawide planning organization, community college, small business development centers, private sector service providers or other similar agencies.)*

b. *Low-income individual.* An applicant meeting the low-income guidelines may apply for assistance under this program. *Low-income individuals must have their income verified by one of the following agencies or sponsors: an Iowa workforce development office, a local chamber of commerce, the institute for social and economic development (ISED) or any other organization approved by IDED.*

55.3(4) Who may apply. Only persons who are owners (i.e., at least 51 percent owners and operators) of a targeted small business are eligible to apply. (This restriction does not prevent such individuals from receiving help in preparing an application from a city, county, areawide planning organization, community college, small business development centers, private sector service providers or other similar agencies.)

55.3(5) (4) Other program requirements. All applicants for financial assistance shall comply with the requirements of 261—Chapter 80 168.

ITEM 5. Amend subrule 55.4(2) as follows:

55.4(2) Maximum funding levels. In no case shall an award exceed \$25,000 \$50,000, nor in the case of a loan shall the interest rate charged exceed 5 percent per annum or be less than 0 percent per annum. Under no circumstances shall the targeted small business financial assistance program fund 100 percent of a project.

ITEM 6. Amend subrule 55.4(6) as follows:

55.4(6) Threshold criteria. Applicants for funds under the targeted small business financial assistance program must meet the following minimum criteria before their application applications will be considered complete and eligible for ranking:

a. *The If applying as a TSB, the business must be certified as a “targeted small business” by the department of inspections and appeals before applying for funding. In order to be certified as a targeted small business, a business owner must be a woman, a targeted minority, or a person with a disability and have established at least 51 percent ownership of the business, and be actively involved in the day-to-day management of the business. (The targeted small business owner must have the expertise or related experience in order to be considered actively involved in the day-to-day management of the business.)*

b. After the TSB has been awarded a loan or grant, the TSB must continue to be a certified TSB for the life of the loan or grant. Failure to meet this requirement may result in the loan or grant being called and due within 30 days. This will include all principal, interest and any penalties that have been assessed. If recertification occurs within 30 days of the date of the notice, the original terms will be reinstated.

c. *If applying as an individual that meets the low-income guidelines, an applicant must have submitted verification of income as required in paragraph 55.3(3) “b.”*

ITEM 7. Amend subrule 55.4(9) by adopting the following **new** paragraph “h” as follows:

h. Extra points (up to 5 points). Extra credit points may be awarded to applicants meeting the requirements described in 261—Chapter 168 for the award of extra points (e.g., project is in a blighted, brownfield or distressed area).

ARC 2592B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 59, “Enterprise Zones,” Iowa Administrative Code.

The proposed amendments establish a project initiation rule for a development business project; amend the defini-

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

tions of “Act” and “Project initiation”; update the eligibility requirements and the procedures for certifying, amending, or decertifying Enterprise Zones; remove references to “alternative eligible business”; establish additional eligibility and reporting requirements for development business projects; update the method in which the repayment of benefits will be calculated; address how layoffs and closures elsewhere in the state would be handled; and allow the department the discretion to grant businesses a one-year extension to meet the requirements of the program.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 29, 2003. Interested persons may submit written or oral comments by contacting Amy Johnson, Business Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4735.

A public hearing to receive comments about the proposed amendments will be held on July 29, 2003, from 2 to 3 p.m. at the above address in the northwest conference room on the second floor.

These rules are intended to implement Iowa Code chapter 15E as amended by 2003 Iowa Acts, House File 576, and House File 681.

The following amendments are proposed.

ITEM 1. Amend rule 261—59.1(15E) as follows:

261—59.1(15E) Purpose. The purpose of the establishment of an enterprise zone in a county or city is to promote new economic development in economically distressed areas. Businesses that are eligible and locating or located in an enterprise zone and approved by the department are authorized under this program to receive certain tax incentives and assistance. The intent of the program is to encourage communities to target resources in ways that attract productive private investment in economically distressed areas within a county or city. Projects, ~~except for those of development businesses,~~ that have already been initiated before receiving formal application approval by the department shall not be eligible for tax incentives and assistance under this program.

ITEM 2. Amend the definitions of “Act” and “project initiation” in rule **261—59.2(15E)** as follows:

“Act” means Iowa Code Supplement (2003) sections 15E.191 through 15E.196 as amended by 1998 Iowa Acts, House Files 2164, 2395, section 17, and 2538 2003 Iowa Acts, House File 576.

“Project initiation” means any one of the following: the start of construction of new or expanded buildings; the start of rehabilitation of existing buildings; the purchase or leasing of existing buildings; or the installation of new machinery and equipment or new computers to be used in the operation of the business’s project. The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion, or rehabilitation shall not constitute project initiation. ~~This definition does not apply to eligible development businesses.~~

ITEM 3. Amend rule 261—59.3(15E) as follows:

261—59.3(15E) Enterprise zone certification. An eligible county or a *an eligible* city may request the board to certify an area meeting the requirements of the Act and these rules as an enterprise zone. ~~Zone designations Certified enterprise zones~~ will remain in effect for a period of ten years from the date of the board’s certification ~~by the board as a zone.~~ A county or city may request zone ~~designation certification~~ under subrule

59.3(1) ~~or 59.3(2)~~ at any time prior to July *December* 1, 2003. *A county or city may request zone certification under subrule 59.3(2) or 59.3(3) at any time prior to July 1, 2005.*

59.3(1) County—eligibility based on distress criteria in section 15E.194, Iowa Code (2001).

a. Requirements. To be eligible for enterprise zone ~~designation certification~~, a county must meet at least two of the following criteria:

(1) The county has an average weekly wage that ranks among the bottom 25 counties in the state based on the 1995 annual average weekly wage for employees in private business.

(2) The county has a family poverty rate that ranks among the top 25 counties in the state based on the 1990 census.

(3) The county has experienced a percentage population loss that ranks among the top 25 counties in the state between 1990 and 1995.

(4) The county has a percentage of persons 65 years of age or older that ranks among the top 25 counties in the state based on the 1990 census.

b. Zone parameters. Up to 1 percent of a county area may be ~~designated certified~~ as an enterprise zone. A county may establish more than one enterprise zone. The total amount of land ~~designated certified~~ as enterprise zones ~~under subrules 59.3(1) and 59.3(2), other than those zones certified pursuant to subrule 59.3(5), shall not exceed in the aggregate 1 percent of the total county area (excluding any area which qualifies as an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993).~~ An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county’s board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to Iowa Code chapter 28E regarding the establishment of the enterprise zone.

59.3(2) County—eligibility based on distress criteria in section 15E.194, Iowa Code (2003).

a. Requirements. To be eligible for enterprise zone certification, a county must meet at least two of the following criteria:

(1) The county has an average weekly wage that ranks among the bottom 25 counties in the state based on the 2000 annual average weekly wage for employees in private business.

(2) The county has a family poverty rate that ranks among the top 25 counties in the state based on the 2000 census.

(3) The county has experienced a percentage population loss that ranks among the top 25 counties in the state between 1995 and 2000.

(4) The county has a percentage of persons 65 years of age or older that ranks among the top 25 counties in the state based on the 2000 census.

b. Zone parameters. Up to 1 percent of a county area may be certified as an enterprise zone. A county may establish more than one enterprise zone. The total amount of land certified as enterprise zones, other than those zones certified pursuant to subrule 59.3(5), shall not exceed in the aggregate 1 percent of the total county area. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county’s board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an

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

agreement pursuant to Iowa Code chapter 28E regarding the establishment of the enterprise zone.

59.3(2) (3) City—eligibility.

a. Requirements. To be eligible for enterprise zone designation certification, a city (population of 24,000 or more as shown by the 1990 2000 certified federal census) must meet at least two of the following criteria:

(1) The area has a per capita income of \$9,660 \$12,648 or less based on the 1990 2000 census.

(2) The area has a family poverty rate of 12 percent or higher based on the 1990 2000 census.

(3) Ten percent or more of the housing units are vacant in the area.

(4) The valuations of each class of property in the designated area is 75 percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.

(5) The area is a blighted area, as defined in Iowa Code section 403.17.

b. Population limits. A city with a population of 24,000 or more, as shown by the 1990 2000 certified federal census, may request enterprise zone certification by the board. The zone shall consist of one or more contiguous census tracts, as determined in the most recent federal census, or alternative geographic units approved by the department, for that purpose. In creating an enterprise zone, an eligible city may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units otherwise meet the criteria on their own and the contiguous city agrees to be included in the enterprise zone.

c. Zone parameters. A city may establish more than one enterprise zone. Up to 1 percent of the county in which the city is located may be designated certified as enterprise zones (not including those zones certified pursuant to subrule 59.3(5)). If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be designated certified by the state as an enterprise zone. (The area meeting the requirements for eligibility for an urban or rural enterprise community shall not be included for the purpose of determining the 1 percent aggregate area limitation for enterprise zones.)

59.3(3) (4) Designation Certification procedures.

a. Request with supporting documentation. All requests for designation certification shall be made using the application provided by the department and shall include the following attachments:

(1) Documentation that meets the distress criteria of Iowa Code Supplement section 15E.194.

(2) (1) A legal description of the proposed enterprise zone area and a detailed map showing the boundaries of the proposed enterprise zone.

(3) (2) Certification that the enterprise zone to be designated is within the overall limitation that may not exceed in the aggregate 1 percent of the county area and that the boundaries of the area to be designated are under the jurisdiction of the city or county requesting the designation. If the proposed county enterprise zone contains a city whose boundaries extend into an adjacent county, documentation of the resolution of the board of supervisors of the adjacent county approving the establishment of the zone and a copy of an executed 28E agreement must be submitted to the department as part of the request for zone certification.

(4) (3) Resolution of the city council or board of supervisors, as appropriate, requesting designation of the enterprise

zone(s). Included within this resolution may be a statement of the schedule of value-added property tax exemptions that will be offered to all eligible businesses and eligible development businesses that are approved for incentives and assistance that may locate or expand within the proposed enterprise zone. If a property tax exemption is made applicable only to a portion of the property within the enterprise zone, the designation request submitted to the department must include a description of the uniform criteria which further some planning objective that has been established by the city or county enterprise zone commission and approved by the eligible city or county must be submitted to the department. Examples of acceptable "uniform criteria" that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. "Planning objectives" may include, but are not limited to, land use, rehabilitation of distressed property, or "brown-fields" remediation.

This schedule of value-added property tax exemptions may be approved at the time of the zone designation request, but must be approved by the city council or board of supervisors, as appropriate, before the establishment of the local enterprise zone commission. This schedule of value-added property tax exemptions may also include the other property tax exemptions or other property tax related incentives that may be used in conjunction with the enterprise zone such as property tax exemptions that may exist in Urban Revitalization Areas or Tax Increment Financing (TIF) districts that may exist within Urban Renewal Areas. Property tax exemptions authorized under Iowa Code chapter 427B may not be used, as stated in Iowa Code section 427B.6, in conjunction with property tax exemptions authorized by city council or county board of supervisors within the local enterprise zone. The city or county shall forward a copy of the official resolution listing the property tax exemption schedule(s) to the department and to the local assessor.

b. Board review. The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

c. Notice of board action. The department will provide notice to a city or county of the board's certification, denial, or deferral of the city's or county's request for designation certification of an area as an enterprise zone. If an area is certified by the board as an enterprise zone, the notice will include the date of the zone certification and the date this certification expires.

d. Amendments and decertification. A certified enterprise zone may be amended or decertified upon application at the request of the city or county that originally applying applied for the zone designation certification. Requests must be in writing and be received by the department prior to December 1, 2003, if the county is eligible pursuant to subrule 59.3(1) or July 1, 2005, if the county or city is eligible pursuant to subrule 59.3(2) or 59.3(3). Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified, the reason an amendment is being requested and the number of acres the zone will contain if the amendment is approved. A legal description of the amended enterprise zone and a map which shows both the original enterprise zone boundaries and the proposed changes to those boundaries shall accompany the written request.

A city requesting an amendment that consists of an area being added to the enterprise zone must include documentation that demonstrates that the area being added meets the

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

eligibility requirements of subrule 59.3(3). A city requesting an amendment that consists of an area being removed from the enterprise zone must include documentation that demonstrates that the remaining area still meets the eligibility requirements of subrule 59.3(3).

However, an amendment shall not extend the zone's ten-year expiration date, as established when the zone was initially certified by the board. After July 1, 2003, the statutory deadline for cities and counties to request zone certification, an amendment shall not add area to a certified enterprise zone. An amendment or decertification request shall include, but is not limited to the following information: reason(s) for the amendment or decertification and confirmation that the amended zone meets the requirements of the Act and these rules. The board will review the request and may approve, deny, or defer the proposed amendment or decertification.

e. Decertification. A county or city may request decertification of an enterprise zone. Requests must be in writing and be received by the department prior to December 1, 2003, if the county is eligible pursuant to subrule 59.3(1) or July 1, 2005, if the county or city is eligible pursuant to subrule 59.3(2) or 59.3(3). Requests must include the enterprise zone name and number, as established by the department when the zone was certified, and the date the zone was originally certified. Requests for enterprise zone decertification will be reviewed by the board and may be approved, denied or deferred. If the county or city requesting decertification designates a subsequent enterprise zone, the expiration date of the subsequent enterprise zone shall be the same as the expiration date of the decertified enterprise zone. A county or city shall not be allowed to decertify an enterprise zone that contains an eligible business, eligible housing business, or eligible development business that has received incentives and assistance under this program.

~~59.3(4) County not eligible under subrule 59.3(1). Rescinded IAB 1/23/02, effective 2/27/02.~~

59.3(5) City or county with business closure.

a. Requirements. A city of any size or any county may designate an enterprise zone at any time prior to July 1, 2010, when a business closure occurs involving the loss of full-time employees, not including retail employees, at one place of business totaling at least 1,000 employees or 4 percent of the county's resident labor force based upon the most recent annual resident labor force statistics from the department of workforce development, whichever is lower.

b. Zone parameters. The enterprise zone may be established on the property of the place of business that has closed and the enterprise zone may include an area up to an additional ~~one mile~~ *three miles* adjacent to the property. The area meeting the requirements for enterprise zone eligibility under this subrule shall not be included for the purpose of determining the area limitation pursuant to Iowa Code section 15E.192, subsection 4.

c. Certification procedures. All requests for certification shall be made using the application provided by the department. The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

d. Amendments. A city or county which designated an enterprise zone under this subrule on or after June 1, 2000, may request an amendment to include additional area within the enterprise zone. Requests must be in writing and be approved by the department within three years of the date the enterprise zone was originally certified. Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone

was originally certified, and the number of acres the zone will contain if the amendment is approved. A legal description of the amended enterprise zone and a map which shows both the original enterprise zone boundaries and the proposed changes to those boundaries shall accompany the written request.

e. Restrictions. Enterprise zones established pursuant to this subrule shall not be used to provide incentive for eligible housing businesses to construct new housing units or rehabilitate existing housing units.

ITEM 4. Amend paragraph **59.4(1)“a”** as follows:

a. County enterprise zone commission. A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses (including eligible housing businesses) located or requesting to locate within a certified enterprise zone. The enterprise zone commission shall consist of nine members. Five of these members shall be comprised of:

- (1) One representative for the county board of supervisors,
- (2) One member with economic development expertise selected by the department,
- (3) One representative of the county zoning board,
- (4) One member of the local community college board of directors, and
- (5) One representative of the local workforce development center selected by the Iowa workforce development department unless otherwise designated by a regional advisory board.

The five members identified above shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that community. If the enterprise zone is located in a county that does not have a county zoning board, the representatives identified in 59.4(1)“a”(1), (2), (4), and (5) shall select an individual with zoning expertise to serve as a member of the commission.

ITEM 5. Amend subrule 59.5(1) as follows:

59.5(1) Program categories. To participate in the enterprise zone program, a business must qualify under one of ~~four~~ *three* categories: an eligible business, ~~an alternative eligible business,~~ an eligible housing business, or an eligible development business. Refer to rule 261—59.6(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible business.” Refer to rule 261—59.7(15E) for a description of the eligibility requirements and benefits available to a qualified “~~alternative eligible business.~~” Refer to rule 261—59.8(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible housing business.” Refer to rule 261—59.9(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible development business.”

ITEM 6. Amend paragraph **59.6(3)“b”** as follows:

b. Value-added property tax exemption.

(1) The county or city for which an eligible enterprise zone is certified may exempt from all property taxation *all* or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. This exemption shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible business un-

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

der this program. The amount of the value added for purposes of Iowa Code section 15E.196 shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone.

(2) If an exemption is made applicable only to a portion of the property within an enterprise zone, there must be approved uniform criteria which further some planning objective established by the city or county commission. These uniform criteria must also be approved by the eligible city or county. Examples of acceptable "uniform criteria" that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. "Planning objectives" may include, but are not limited to, land use, rehabilitation of distressed property, or "brown-fields" remediation.

(3) The exemption may be allowed for a period not to exceed ten years beginning the year value added by improvements to real estate is first assessed for taxation in an enterprise zone.

(4) *This value-added property tax exemption may be used in conjunction with other property tax exemptions or other property tax related incentives such as property tax exemptions that may exist in Urban Revitalization Areas or Tax Increment Financing (TIF). Property tax exemptions authorized under Iowa Code chapter 427B may not be used, as stated in Iowa Code section 427B.6, in conjunction with property tax exemptions authorized by city council or county board of supervisors within the local enterprise zone.*

ITEM 7. Amend subparagraph **59.6(3)"c"(1)** as follows:

(1) Investment tax credit. An eligible business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. If the business is a partnership, subchapter S corporation, limited liability company, *cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes*, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. Subject to prior approval by the department in consultation with DRF, an eligible business whose project primarily involves the production of value-added agricultural products may elect to apply for a refund for all or a portion of an unused tax credit. For purposes of this paragraph, an eligible business includes a cooperative as described in Section 521 of the United States Internal Revenue Code which is not required to file an Iowa corporate income tax return, ~~and whose approved project primarily involves the production of ethanol.~~ The refund may be used against a tax liability imposed for individual income tax, corporate income tax, or franchise tax. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead, *prior to project completion*, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, ~~or may elect to submit a new application within the enterprise zone.~~

ITEM 8. Amend **59.6(3)"c"(5)"2"** as follows:

2. The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those eligible businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the United States Internal Revenue Code ~~that is not required to file an Iowa corporate income tax return,~~ the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member eligible for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credits for which the cooperative's members are requesting a tax credit certificate.

ITEM 9. Amend **59.6(3)"c"(5)"3"** as follows:

3. The department will make public by June 1 of each year the total number of requests for tax credit certificates and the total amount of requested tax credit certificates that have been submitted. ~~By June 15 of each year any business that has submitted a request for a tax credit certificate for that year may be allowed to amend or withdraw any such request.~~ The department will issue tax credit certificates within a reasonable period of time.

ITEM 10. Amend **59.6(3)"c"(5)"5"** as follows:

5. Tax credit certificates shall not be valid until the tax year following project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the United States Internal Revenue Code ~~and which is not required to file an Iowa corporate income tax return, and whose approved project primarily involves the production of ethanol.~~ For such a cooperative, the individual members of the cooperative are eligible to receive the tax credit certificates. Tax credit certificates shall be used in tax years beginning on or after July 1, 2001. A business shall not claim a refund of unused investment tax credit unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year during which the tax credit is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until the eligible business's unused investment tax credit is depleted, whichever occurs first. For example, an eligible business which completes a project in October 2001 and has an investment tax credit of \$1 million may apply for a tax credit certificate in May 2002. If, because of the proration of the \$4 million of available *refundable* credits for the fiscal year, the business is awarded a tax credit certificate in the amount of \$300,000, the business may claim the \$300,000 refund and carry forward the unused investment tax credit of \$700,000 for up to seven years or until the credit is depleted, whichever occurs first.

ITEM 11. Rescind and reserve rule **261—59.7(15E)**.

ITEM 12. Amend paragraph **59.9(1)"a"** as follows:

a. The development business must construct, expand or rehabilitate a building space *within a certified enterprise zone* with a minimum capital investment of at least \$500,000.

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

There are two partial exemptions to the \$500,000 investment requirement:

(1) If the development business will be buying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed \$250,000 as determined by the local enterprise zone commission, shall be counted toward the minimum \$500,000 capital investment requirement.

(2) If the development business will be rehabilitating an existing building space that has been located within an area for at least five years and that area has been certified as an enterprise zone, the fair market value as established by an appraisal of the building, not to exceed \$250,000, shall be counted toward the minimum \$500,000 capital investment requirement. Only one of these two exemptions may be used as an exemption by the development business in meeting the minimum capital investment requirement of at least \$500,000.

ITEM 13. Amend paragraph **59.9(1)“d”** as follows:

d. ~~Prior to applying for assistance under this rule receiving benefits,~~ an eligible development business shall enter into an agreement with at least one nondevelopment business for purposes of locating the business in all or a portion of the building space for a period of at least five years. *The one or more nondevelopment businesses locating in the building space must meet the following requirements:*

(1) *The business locating in the building space cannot have closed or reduced its operations in one area of the state or city and relocated substantially the same operation in the enterprise zone.*

(2) *The business locating in the building space must on its own or in combination with other qualified businesses locating in the same building space create at least ten full-time positions with an average wage that is equal to or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, the wage paid by the businesses shall not be less than \$7.50 per hour.*

(3) *Each business locating in the building space shall not be a retail business or a business where entrance is limited by a cover charge or membership requirement.*

(4) *Each business locating in the building space shall provide all full-time employees with the option of choosing one of the following:*

1. *The business pays 80 percent of the cost of a standard medical insurance plan and a standard dental insurance plan or an equivalent plan; or*

2. *The business provides the employee with a plan that is monetarily equivalent to the plan provided for in “1.”*

(5) *If a business locating in the building space occupies 90 percent or less of the building space, the business shall not share common ownership or common management with the development business.*

ITEM 14. Amend subrule **59.9(2)** by adopting the following new paragraphs **“d”** and **“e”**:

d. The development business shall receive a pro-rata share of the total incentives and assistance available based on the percentage of the building space that is leased to qualifying nondevelopment businesses as defined in paragraph 59.9(1)“d.” Upon completion of the construction, expansion, or rehabilitation of the building space, the development business shall notify the department in writing that the project has been completed. For each qualifying nondevelopment business, as defined in paragraph 59.9(1)“d,” the development business will provide the following:

(1) A list of the new jobs the business will create and the starting wage for each position.

(2) A brief description of the business’s operation.

(3) Information on the business’s employee benefit package.

(4) The percentage of the building space that the business will occupy.

(5) A copy of the lease agreement between the business and the development business.

Based on this information, the department will notify the DRF that the development business is eligible to receive a specified percentage of the available benefits. The percentage of benefits the development business will receive shall be equal to the percentage of the building space leased to qualified nondevelopment businesses, as determined by the department.

e. If a qualified nondevelopment business vacates the building space, the development business shall have six months from the date the space becomes vacant to enter into an agreement with a qualified nondevelopment business as defined in paragraph 59.9(1)“d.” If the development business fails to enter into an agreement with a qualified nondevelopment business within six months from the date the space becomes vacant, the development business shall be subject to the repayment of benefits as described in subrule 59.14(4).

ITEM 15. Amend rule 261—59.9(15E) by adopting the following new subrule 59.9(5):

59.9(5) Annual report. An eligible development business shall submit annually a written report to the department and the city or county, as applicable, detailing and certifying the number of signed leases with qualified nondevelopment businesses, pursuant to paragraph 59.9(1)“d”; the total number of jobs created and the average wage for those jobs; and information on the total occupancy of the building space. An approved development business shall submit a written report on December 31 of the year in which the application was approved and shall continue to submit written reports annually until incentives and assistance provided pursuant to subrule 59.9(2) are no longer being received by the development business.

ITEM 16. Amend subrule 59.10(2) as follows:

59.10(2) Application. The department will develop a standardized application that it will make available for use by a business applying for benefits and assistance as an eligible business, ~~an alternative eligible business,~~ an eligible housing business or an eligible development business. The commission may add any additional information to the application that it deems appropriate for a business to qualify as an eligible business, an eligible housing business or an eligible development business. If the commission determines that a business qualifies for inclusion in an enterprise zone and that it is eligible for benefits under the Act, the commission shall submit an application for incentives or assistance to the department.

ITEM 17. Amend rule 261—59.13(15E) as follows:

261—59.13(15E) Agreement. After the department negotiates and approves the application and the amount of incentives and assistance that the *eligible business, eligible housing business, or eligible development business* shall receive, the department and the city or county, as applicable, shall enter into an agreement with the *eligible business, eligible housing business, or eligible development business*. ~~The term of the agreement shall be ten years from the agreement effective date plus any additional time necessary for the business to sat-~~

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

isfy the job maintenance requirement. This three-party agreement shall include, but is not limited to, provisions governing the number of jobs to be created, representations by the business that it will pay the wage and benefit levels pledged and meet the other requirements of the Act as described in the approved application, reporting requirements such as an annual certification by the *eligible business, eligible housing business, or eligible development business* that it is in compliance with the Act, the amount or level of tax incentives and assistance that the *eligible business, eligible housing business, or eligible development business* shall receive as negotiated by the department, and the method for determining the amount of incentives or assistance received by the *eligible business, eligible housing business, or eligible development business* which will be repaid in the event of failure to maintain the requirements of the Act and these rules. In addition, the agreement will specify that a *an eligible business, eligible housing business, or eligible development business* that fails to maintain the requirements of the Act and these rules shall not receive incentives or assistance for each year during which the business is not in compliance.

ITEM 18. Amend subrule 59.14(1) as follows:

59.14(1) Annual certification. A *An eligible business or eligible housing business* that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable, and the department its compliance with the requirements of the Act and these rules.

ITEM 19. Amend subrule 59.14(2) as follows:

59.14(2) Repayment. If a *an eligible business, eligible housing business, or eligible development business* has received incentives or assistance under ~~1998 Iowa Acts, House Files 2164 and 2538, or Iowa Code Supplement section 45E.196~~ the Act and fails to meet and maintain any one of the requirements of the Act or these rules to be an eligible business, *eligible housing business, or eligible development business*, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

ITEM 20. Rescind subrule 59.14(3) and adopt in lieu thereof the following **new** subrule:

59.14(3) Calculation of repayment due for a business. If the department, in consultation with the city or county, determines that a business has failed in any year to meet any one of the requirements of the Act or these rules to be an eligible business, the business is subject to repayment of all or a portion of the amount of incentives received.

a. Job creation. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, repayment shall be calculated as follows:

(1) If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.

(2) If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to create in jobs.

(3) If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to create in jobs.

(4) If the business has not met the minimum job creation requirement of ten new full-time jobs, the business shall repay all of the incentives and assistance that it has received.

b. Wages and benefits. If a business fails to comply with the wage or benefit requirements, the business shall not re-

ceive incentives or assistance for each year during which the business is not in compliance.

c. Capital investment. If a business does not meet the capital investment requirement, repayment shall be calculated as follows:

(1) If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to invest.

(2) If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to invest.

(3) If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to invest.

(4) If the business has not met the minimum investment requirement of \$500,000, the business shall repay all of the incentives and assistance that it has received.

ITEM 21. Amend subrule 59.14(4) as follows:

59.14(4) Calculation of repayment due for a development business. *If, within the five years following project completion, a development business, or its successor, fails to meet or maintain any one of the requirements of the Act or these rules, as determined by the department, the development business shall proportionally refund the value of any tax credits, refunds or property tax exemptions that were claimed under this program.* The proportion of any tax credits, refunds or property tax exemptions claimed that are due for repayment if a ~~development business, or its successor, sells or leases building space to a retail business~~ will be determined by dividing the square footage of building space occupied by ~~the retail~~ a *nondevelopment business that no longer qualifies pursuant to paragraph 59.9(1)“d”* by the total square footage of the total building space as described in the application and approved for benefits under this program.

ITEM 22. Amend rule 261—59.14(15E) by adopting the following **new** subrule 59.14(6):

59.14(6) Layoffs or closures. If an eligible business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business shall be subject to repayment of all or a portion of the incentives and assistance that it has received.

ITEM 23. Amend rule 261—59.14(15E) by adopting the following **new** subrule 59.14(7):

59.14(7) Extensions. If an eligible business, eligible housing business, or eligible development business fails to meet its requirements under the Act, these rules, or the agreement described in rule 261—59.13(15E), the department, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements.

ARC 2593B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt a new Chapter 62, “Cogeneration Pilot Program,” Iowa Administrative Code.

The proposed new chapter establishes application requirements, evaluation criteria and procedures for participation in the Cogeneration Pilot Program in accordance with 2003 Iowa Acts, House File 391.

Public comments concerning the proposed chapter will be accepted until 4:30 p.m. on July 29, 2003. Interested persons may submit written or oral comments by contacting Allen Williams, Business Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4771; E-mail allen.williams@ided.state.ia.us.

A public hearing to receive comments about the proposed chapter will be held on July 29, 2003, at 1 p.m. at the above address in the northwest conference room on the second floor.

These rules are intended to implement 2003 Iowa Acts, House File 391.

The following **new** chapter is proposed.

CHAPTER 62**COGENERATION PILOT PROGRAM**

261—62.1(80GA, HF391) Purpose. The purpose of the cogeneration pilot program (CPP) is to foster the development of electricity cogeneration within the state in order to diversify Iowa’s electricity supply and foster economic development.

261—62.2(80GA, HF391) Eligible activities. The department may choose up to two projects for participation in the cogeneration pilot program.

261—62.3(80GA, HF391) Eligibility requirements. To be eligible for the cogeneration pilot program, a business shall meet each of the following requirements:

62.3(1) Generation capacity. Each cogeneration pilot project facility must involve a project of 200 megawatts or less of electric generation capacity.

62.3(2) Investment location. Each cogeneration pilot project facility must be located within Iowa.

62.3(3) Economic impacts. The business shall demonstrate, as a result of the proposed project, significant beneficial economic impacts to the state or to a region of the state.

62.3(4) No closure or reduction in operations. The business shall not close or substantially reduce operations at one location in Iowa and relocate substantially the same operation elsewhere in the state if the closure or reduction results in loss of employment.

261—62.4(80GA, HF391) Application procedures.

62.4(1) Application required. To receive designation as an approved cogeneration pilot program project, an application must be submitted in the format specified by the department. A business shall submit an application on its own behalf.

62.4(2) Application contents. Applications shall include the following:

a. A project description including the activities involved and the impact the project is expected to have on electricity cost, availability and reliability.

b. A description of the consistency of the proposed project with state and regional plans for economic development.

c. An identification of the number of jobs to be created or retained as a result of the project and an explanation of why the jobs are considered quality, high-wage jobs. The explanation shall include the job classifications, pay ranges, and benefits to be provided to the employees.

d. An identification of the amount, terms, and sources of all proposed public and private investments in the project and a statement that indicates whether the other financing has been secured or is still to be arranged.

e. Cost estimates for all project activities.

f. A time frame within which the project will be completed.

g. A description of the immediate (within 24 months) economic development impacts as a result of the project.

h. A description of the long-term (beyond 24 months), speculative economic development impacts as a result of the project.

i. An explanation as to why the project could not otherwise occur without the benefits of this program.

62.4(3) Application due date. In order to be considered for review, an application must be submitted to the department before April 1, 2007.

261—62.5(80GA, HF391) Application review. Completed applications will be reviewed using the following factors:

62.5(1) The expected immediate and long-term economic impacts the project will have on the state of Iowa and region(s) of Iowa including, but not limited to, the likelihood that the project will result in additional new private investment and quality job creation in Iowa. In determining the quality of possible new jobs to be created, the department will consider projected wage levels, fringe benefit packages, turnover rate, full-time and career positions, and other relevant factors.

62.5(2) Substantiality of the capital investment pledged by the business.

62.5(3) The likelihood of closure or relocation of the business’s operations and any resulting loss of employment.

62.5(4) The number of direct jobs to be created by the project.

62.5(5) The amount, terms, and sources of all proposed public and private investments that the project will leverage.

62.5(6) The degree of coordination the project has with state and regional economic development plans.

62.5(7) The feasibility of the project.

62.5(8) Any other information about the business that has a bearing on the likely success of the project.

261—62.6(80GA, HF391) Award process.

62.6(1) Applications will be reviewed and summarized by department staff. Staff will prepare a summary for the director of the department, who shall make a final decision on the application.

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

62.6(2) Upon an application's submission, department staff will consult with the Iowa utilities board and any other relevant state agency or interested party in order to gain additional information or to seek comment.

62.6(3) The department shall not approve any application after June 30, 2007.

261—62.7(80GA, HF391) Annual progress report. Every approved pilot project designee shall submit an annual progress report, whose format will be determined by the department. The annual report shall be submitted no later than November 1, beginning in the year 2004 and every year thereafter, up to and including 2007.

These rules are intended to implement 2003 Iowa Acts, House File 391.

ARC 2597B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

These amendments include implementation of Iowa Code section 455B.133(10).

Subrule 23.2(2) in Item 1 pertains to the process for requesting a waiver from the state open burning regulations. The rules in Chapter 23 already identify the process in 567—Chapter 21 for requesting a waiver from the Department. However, the proposed amendment emphasizes that additional information may be required when a variance from the open burning rules is requested and stresses the Department's obligation to ensure that the national ambient air quality standards (NAAQS) are not adversely affected by the open burning.

The proposed amendment in Item 2 clarifies the fact that disaster debris burning of structures or structural debris has never been exempted from the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP).

In Item 3, existing paragraph 23.2(3)"g," which pertains only to training fires, is rescinded and a new paragraph "g" that contains two categories of open burning is proposed, one category for training fires and another category for controlled burning of a demolished building. These two types of activities, because of their similarity, are kept together under the same paragraph. Nonetheless, there are clear distinctions between the two types of burning.

The open burning requirements for training fires in new paragraph "g" are the same as those in the existing paragraph, with the exception of the following: definitions for "training fire" and "bona fide training" are added, a requirement that the building must be structurally intact is added, the specific form to be used in the notification process is identified, and an explanation is added that controlled burning of a demolished building is now included in the existing limit for burning asphalt shingles. Proposed paragraph "g" also details the

conditions and requirements for the "new" exemption provided to a city for "controlled burning of a demolished building" in accordance with the provisions of Iowa Code section 455B.133(10). The requirements for conducting "controlled burning of a demolished building" are:

- Notification to the Department,
- Compliance with the federal asbestos NESHAP,
- A maximum of two burns in which asbestos-free asphalt roofing on the structure can be burned without removal,
- A maximum size limit on buildings to be burned,
- Restrictions limiting the time of day for open burning,
- Restrictions on the burning of nonstructural materials,
- Record-keeping requirements, and
- A limit on the number of controlled demolition debris burns that can be conducted in a given area.

The Department conducted ambient air quality modeling and determined that, if the requirements listed above are met, the ambient air quality standards for PM10 are predicted to be maintained throughout the state. Because of potential impacts to the public health from the controlled burning of demolished buildings, the amendments contain a limit of three controlled burns of demolished buildings in any three-year period in any overlapping 0.6 mile radius circle. If a city wishes to conduct additional controlled burns, the city, in accordance with the variance provisions in 567—subrules 21.2(1) and 23.2(2), may request that the Department conduct a special review of the ambient air impacts. Upon conducting this review, the Department may approve or deny the city's request for any additional controlled burns. The city is required to maintain records of each controlled burn of a demolished building.

The proposed amendment in Item 4 adds clarification to the existing open burning rules covering agricultural structures that any burning of such structures must be conducted in accordance with 40 CFR Section 61.145, the federal asbestos NESHAP.

Any person may make written suggestions or comments on the proposed amendments on or before August 13, 2003. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094. Comments may be sent by E-mail to Christine.Paulson@dnr.state.ia.us.

A public hearing will be held on August 7, 2003, at 1 p.m. in Conference Rooms 2 and 3 at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than August 13, 2003.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend subrule 23.2(2) as follows:

23.2(2) Variances from rules. Any person wishing to conduct open burning of materials not exempted in 23.2(3) may make application for a variance as specified in 567—subrule 21.2(1). *In addition to requiring the information specified under 567—subrule 21.2(1), the director may require any person applying for a variance from the open burning rules to submit adequate documentation to allow the director to assess whether granting the variance will hinder attainment or maintenance of a National Ambient Air Quality Standard*

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(NAAQS). Adequate documentation requested may include, but is not limited to, the information required under 23.2(3)“g”(2)“2.”

ITEM 2. Amend subrule **23.2(3)**, paragraph “a,” as follows:

a. Disaster rubbish. The open burning of rubbish, including landscape waste, for the duration of the community disaster period in cases where an officially declared emergency condition exists. *Burning of any structures or demolished structures shall be conducted in accordance with 40 CFR Section 61.145 as amended through January 16, 1991, which is the “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants.*

ITEM 3. Rescind subrule **23.2(3)**, paragraph “g,” and adopt the following **new** paragraph “g” in lieu thereof:

g. Training fires and controlled burning of a demolished building.

(1) Training fires. For the purpose of this paragraph, a “training fire” is a fire set for the purpose of conducting bona fide training of public or industrial employees in fire fighting methods. For the purpose of this subparagraph, “bona fide training” means training that is conducted according to the National Fire Protection Association 1403 Standard on Live Fire Training Evolutions (2002 Edition), or a comparable training fire standard. A training fire may be conducted, provided that all of the following conditions are met:

1. A training fire on a building is conducted with the building structurally intact.

2. The training fire does not include the controlled burning of demolition debris.

3. Written notification must be provided to the department on DNR Form 542-XXXX, “Notification of a Controlled Burn,” and must be postmarked or delivered to the director at least ten working days before such action commences.

4. Notification shall be made in accordance with 40 CFR Section 61.145 as amended through January 16, 1991, which is the “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants.

5. All asbestos-containing materials shall be removed prior to the training fire.

6. Asphalt shingles may be burned in a training fire only if the notification to the director contains testing results indicating that none of the layers of the asphalt shingles contain asbestos. During each calendar year, each fire department may conduct no more than two training fires on buildings where asphalt roofing has not been removed, provided that for each of those training fires the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each fire department’s limit on the burning of asphalt shingles shall include both training fires and the controlled burning of a demolished building, as specified in 23.2(3)“g”(2).

7. Rubber tires shall not be burned during a training fire.

(2) Controlled burning of a demolished building. A city, as defined in Iowa Code section 362.2, may conduct a controlled burn of a demolished building, provided that all of the following conditions are met:

1. The controlled burning of a demolished building is prohibited within the city limits of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City or any other area

where area-specific state implementation plans require the control of particulate matter.

2. For each building proposed to be burned, the city fire department or a city official shall submit to the department a completed notification postmarked at least 30 days before the proposed controlled burn commences. Notification shall be provided on DNR Form 542-XXXX, “Notification of a Controlled Burn.” Information required to be provided shall include: the exact location of the burn site, the approximate distance to the nearest neighboring residence or business, the method used by the city to notify city residents of the proposed burn, an explanation of why alternative methods of demolition debris management are not being used, and information required by 40 CFR Section 61.145 as amended through January 16, 1991, which is the “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP).

3. All asbestos-containing materials shall be removed before the building is demolished. The department may require proof that any applicable inspection, notification, removal and demolition occurred, or will occur, in accordance with 40 CFR Section 61.145 as amended through January 16, 1991, which is the “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP).

4. During each calendar year, each city shall conduct no more than two controlled burns of a demolished building in which asphalt roofing has not been removed, provided that for each controlled burn of a demolished building, the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each city’s limit on the burning of asphalt shingles shall include both controlled burning of demolished building and training fires, as specified in 23.2(3)“g”(1).

5. For each proposed controlled burn, more than one demolished building may be included in the burn, provided that the sum total of all buildings to be burned does not exceed 1700 square feet in size. For purposes of this paragraph, “square feet” includes both finished and unfinished basements and excludes unfinished attics, carports, attached garages, and porches that are not protected from weather.

6. The controlled burning of a demolished building may only be conducted between the hours of 6 a.m. and 6 p.m. and only when weather conditions are favorable with respect to surrounding property. The city shall adequately schedule and sufficiently control the burn to ensure that burning is completed by 6 p.m.

7. Rubber tires, chemicals, furniture, carpeting, trade waste, garbage, rubbish and other nonstructural materials shall not be burned.

8. Each city may undertake no more than three controlled burns in every overlapping 0.6 mile radius circle in any three-year period. In accordance with 567—subrules 21.2(1) and 23.2(2), a city may apply for a variance from this requirement and may request that the director conduct a review of the ambient air impacts of the request. The director may approve or deny the request in accordance with 567—subrule 21.2(3).

9. The city shall maintain a map of the exact location and date of each controlled burn. The map shall be maintained at the city clerk’s office and shall be made available for inspection by the department upon request.

ITEM 4. Amend subrule **23.2(3)**, paragraph “i,” as follows:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

i. Agricultural structures. The open burning of agricultural structures, provided that the open burning occurs on the premises and, for agricultural structures located within a city or town, at least one-fourth mile from any building inhabited by a person other than the landowner, a tenant, or an employee of the landowner or tenant conducting the open burning unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department prior to the open burning; all chemicals and asphalt shingles are removed; burning is conducted only when weather conditions are favorable with respect to surrounding property; and permission from the local fire chief is secured in advance of the burning. Rubber tires shall not be used to ignite agricultural structures. *The asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991, requires the burning of agricultural structures to be conducted in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation."*

For the purposes of this subrule, "agricultural structures" means barns, machine sheds, storage cribs, animal confinement buildings, and homes located on the premises and used in conjunction with crop production, livestock or poultry raising and feeding operations. "Agricultural structures" for asbestos NESHAP purposes, includes all of the above, with the exception of one home that has been used only for residential purposes.

ARC 2595B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455B.291 through 455B.298 as amended by 2002 Iowa Acts, chapter 1019 (79GA,SF2145), and Iowa Code section 455B.299, the Environmental Protection Commission hereby gives Notice of Intended Action to rescind Chapter 90, "Scope of Title—Definitions—Forms—Rules of Practice," and adopt new Chapter 90, "Scope of Title—Definitions—Forms"; rescind Chapter 91, "Criteria for Award of Grants," and adopt new Chapter 91, "Criteria for Rating and Ranking Projects for the Water Pollution Control State Revolving Fund"; rescind Chapter 92, "State Revolving Fund Loans for Wastewater Treatment," and adopt new Chapter 92, "State Revolving Fund Loans for Wastewater Treatment and Water Pollution Control"; and amend Chapter 93, "Onsite Wastewater Treatment System Assistance Program," Iowa Administrative Code.

The rules in Chapters 90, 91, 92 and 93 describe the requirements for the terminated construction grants program and the present state revolving fund loan program. This amendment removes all references to the defunct construction grants program, adds administrative requirements for financial assistance for nonpoint source water pollution control projects, consolidates the administrative requirements

for municipal point source water pollution control projects, and makes changes to allow for consistent terminology.

The rules in Chapter 90 provide the scope of title and provide the forms used to apply for assistance. In addition, in new Chapter 90, definitions for words and terms used in Chapters 91, 92 and 93 are added. The forms for applying for assistance are identified.

The rules in Chapter 91 provide the administrative requirements, project priority list management elements and the point source rating criteria for the defunct construction grants program. In the new chapter, the out-of-date language is removed, and the rating and ranking criteria for water pollution control projects applying for assistance from the water pollution control state revolving fund are provided.

The rules in Chapter 92 provide for the administration of the state revolving fund program to assist municipal point source water pollution control projects. In new Chapter 92, out-of-date requirements for municipal point source water pollution control projects are removed, the ongoing requirements are consolidated, and administrative requirements for nonpoint source water pollution control projects are added.

The rules in Chapter 93 provide for the administration of the onsite wastewater treatment system assistance program. These amendments make wording changes for consistency with Chapters 90, 91, and 92. The amendments also remove the 50 percent cap for targeting problem water quality areas.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 5, 2003. Such written materials should be directed to the Wastewater Section, Environmental Services Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact Darrell McAllister at the Water Supply Section offices at (515)725-0290 or at the Water Supply Section offices at 401 SW 7th, Suite M, Des Moines, Iowa.

Also, there will be three public hearings at which time persons may present their views either orally or in writing. At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. The hearings will be held as follows:

July 30, 2003 7:30 p.m.	Area Education Agency 824 Flindt Drive Suite 105 Storm Lake
July 31, 2003 7:30 p.m.	Kirkwood Community College 3rd Floor, Iowa Hall Room A & B Cedar Rapids
August 4, 2003 1:30 p.m.	DNR Water Supply Offices Conference Room 401 SW 7th Des Moines

Any persons who intend to attend a public hearing and have special requirements, such as those relating 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 sections 455B.291 through 455B.298 as amended by 2002 Iowa Acts, chapter 1019.

The following amendments are proposed.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 1. Amend **Title VII**, caption, as follows:

TITLE VII
SEWAGE WORKS CONSTRUCTION GRANTS
WATER POLLUTION CONTROL STATE REVOLVING FUND

ITEM 2. Rescind 567—Chapter 90 and adopt the following **new** chapter in lieu thereof:

CHAPTER 90
SCOPE OF TITLE—DEFINITIONS—FORMS

567—90.1(455B,17A) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control pollution. As a part of that general responsibility, the department and the Iowa finance authority are jointly designated to administer the water pollution control state revolving fund pursuant to Iowa Code sections 455B.291 to 455B.298 as amended by 2002 Iowa Acts, chapter 1019, and section 455B.299 and the federal Clean Water Act. This chapter provides the definitions and forms in the department's administration of the water pollution control state revolving fund. 567—Chapter 91 contains the criteria for rating and ranking water pollution control projects. 567—Chapter 92 contains the general project and program administration rules.

567—90.2(455B,17A) Definitions. The following words and terms shall have the following meanings unless the context clearly indicates otherwise. The following definitions are applicable for this chapter and 567—Chapters 91, 92 and 93.

“Authority” means the Iowa finance authority (IFA) as established by Iowa Code chapter 16.

“Clean Water Act” means the federal Water Pollution Control Act of 1972, P.L. 92-500, as amended by the Water Quality Act of 1987, P.L. 100-4, as published in 33 U.S.C. 1251-1376.

“Commission” means the Iowa department of natural resources environmental protection commission of the state of Iowa.

“Comprehensive Nutrient Management Plan” or “CNMP” means a conservation system that is unique to an animal feeding operation (AFO). A CNMP is a grouping of conservation practices and management activities which, when implemented as part of a conservation system, will help to ensure that both production and natural resource protection goals are achieved. A CNMP incorporates practices to use animal manure and organic by-products as beneficial resources. A CNMP addresses natural resource concerns dealing with soil erosion, manure, and organic by-products and their potential impacts on all natural resources including water and air quality, which may derive from an AFO. A CNMP is developed to assist an AFO owner/operator in meeting all applicable local, tribal, state, and federal water quality goals or regulations. For nutrient-impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, tribal, state, or federal water quality goals or regulations. [From proposed Natural Resources Conservation Service Environmental Quality Incentives Program (NRCS EQIP) rules.]

“Department” or “DNR” means the Iowa department of natural resources.

“Director” means the director of the Iowa department of natural resources.

“Eligible cost” means the cost of all labor, material, machinery, equipment, loan initiation and service fees, design

and construction engineering services, legal fees and expenses related to the project; capitalized interest during construction of the project; and construction and rehabilitation of all or part of a project incurred after the date of approval of an intended use plan which contains the project on a list approved for WPCSRF assistance. For point source projects, facility planning and design engineering services are eligible costs when incurred before the approval of an intended use plan if the costs are included in the application for WPCSRF assistance.

“Eligible entity” means a person eligible under the provisions of the Clean Water Act, the Safe Drinking Water Act, and the commission rules to receive loans for projects from either of the revolving loan funds.

“Equity fund” means the fund to receive grant proceeds pursuant to a capitalization grant agreement, amounts transferred from the deficiency fund, investment earnings from certain accounts in the master trust, and all loan principal and interest payments received for loans made from the clean water account, including prepayments but excluding repayments on loans transferred to a series of bonds. The equity fund is to be used to originate a loan agreement with an applicant for project costs and subsequently disburse funds to the applicant, to transfer for deposit in a reserve account established under a series of bonds, or to transfer or disburse funds and enter into loan agreements for any other purposes, programs or undertakings that may be authorized by the Water Quality Act and rules enacted by the department.

“Fiscal year” means the state fiscal year starting July 1 and ending June 30.

“Fundable applicant” means an eligible entity that meets the following criteria:

1. Appears on the state project priority list;
2. Has submitted a complete application for a water pollution control project with eligible costs;
3. Will be in a state of readiness to proceed with construction and use loan payments in a timely manner; and
4. Has been included on the state's intended use plan as a proposed loan recipient or is otherwise eligible as described in 567—paragraph 92.11(1)“c,” 92.12(1)“c,” or 92.13(1)“c” or 567—subrule 93.4(4).

“Intended use plan” or “IUP” means a plan identifying the intended uses of funds available for loans in the WPCSRF for each fiscal year as described in Section 606(c) of the Clean Water Act.

“Municipality” means the city, county, sanitary district, state agency, or other governmental corporation or body empowered to provide sewage collection and treatment services, or any combination of two or more such governmental bodies, or corporations acting jointly, in connection with a project.

“Needs category” means identified categories of needs which comprise mutually exclusive classes of facilities:

1. Category I—Secondary treatment. This category includes wastewater treatment needs necessary to meet the minimum level of treatment required by the federal Clean Water Act.
2. Category II—More stringent treatment. This category includes the wastewater treatment needs necessary when more stringent wastewater treatment than secondary (Category I) is required to protect the receiving waters.
3. Category IIIa—Infiltration/inflow correction. This category includes rehabilitation of existing sanitary sewers to preclude the entrance of storm water inflow or groundwater infiltration into the sewer. Rehabilitation can include sewer or manhole repairs by sealing, lining or replacement and physical removal of inflow sources. Infiltration/inflow

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

correction removes flow from the sewer system by elimination and thereby reduces volumes of wastewater to be treated.

4. Category IIIb—Major sewer system rehabilitation. This category includes sewer replacement and major rehabilitation of collection or transmission sewers where necessary to the total integrity and performance of the wastewater conveyance and treatment facilities. Category IIIb does not have infiltration and inflow removal as its basic justification. “Replacement” is defined as the construction of parallel sewer or sewers which perform the function of existing sewers where existing sewers are to be abandoned. “Major rehabilitation” is defined as extensive repair of existing sewers beyond the scope of normal maintenance programs and necessary to maintain structural integrity. Sewer work associated with infiltration/inflow elimination is considered a Category IIIa need. Relief sewers do not fall within this category since they are newly constructed sewers with a function beyond that of existing sewers.

5. Category IVa—New collectors and appurtenances. This category includes sewers which will serve to collect wastewater in existing communities. The collection system is considered as those public sewers which have a principal purpose of providing service for individual users in existing residential and commercially developed areas to enable collection of wastewater in a centralized system. Pumping stations and force mains and other related appurtenant structures are considered part of the collection system if their primary mechanical function relates to the collection system.

6. Category IVb—New interceptors and appurtenances. This category includes sewers which have a principal purpose of transporting wastewater from a collection system to a wastewater treatment site. Relief sewers are included in this category where additional sewer capacity is required to accommodate all wastewater in a separate sewer system to ensure that it is transported to a wastewater treatment plant for adequate treatment, and to prevent public health hazards within the service area. Relief sewers may include parallel sewers. Pumping stations and force mains and other related appurtenant structures are considered in this category if their primary mechanical function relates to the interceptor’s principal purpose. Equalization basins are included in this category.

7. Category V—Correction of combined sewer overflows. This category includes any construction to control the discharge of pollutants from combined storm and sanitary overflows and bypasses, including sewer separation or rehabilitation, detention basins, lagoons or other facilities to control or treat such discharges.

8. Category VI—Storm water. This category includes municipal storm water management programs required pursuant to NPDES permits for discharges from municipal separate storm sewers systems. These management programs include programs or source control measures, or both, structural and nonstructural.

9. Category VIIa—Agricultural cropland sources. This category includes nonpoint source needs caused by agricultural activities such as plowing, pesticide spraying, irrigation, fertilizing, planting, and harvesting.

10. Category VIIb—Animal sources. This category includes nonpoint source needs caused by agricultural activities related to animal production such as confined animal facilities and grazing.

11. Category VIIc—Silviculture. This category includes nonpoint source needs caused by forestry activities such as removal of streamside vegetation, road construction and use,

timber harvesting, and mechanical preparation for the planting of trees.

12. Category VIId—Urban sources. This category includes nonpoint source needs associated with new or existing development in urban or rural settings, such as erosion, sedimentation, and discharge of pollutants (e.g., inadequately treated wastewater, oil, grease, road salts, and toxic chemicals) into water resources from construction sites, roads, bridges, parking lots, and buildings.

13. Category VIIe—Groundwater protection (unknown sources). This category includes the needs that address groundwater protection nonpoint source needs such as well-head and recharge protection activities.

14. Category VIIf—Marinas. This category includes needs associated with boating and marinas such as poorly flushed waterways, boat maintenance activities, discharge of sewage from boats, and the physical alteration of shoreline, wetlands, and aquatic habitat during the construction and operation of marinas.

15. Category VIIg—Resource extraction. This category includes needs associated with nonpoint source activities from mining and quarrying activities.

16. Category VIIh—Brownfields. This category includes needs that address nonpoint source problems associated with abandoned, idle and underused industrial sites.

17. Category VIIi—Storage tanks. This category includes the needs that address nonpoint source problems caused by tanks designed to hold gasoline or other petroleum products or chemicals.

18. Category VIIj—Landfills. This category includes the needs to address nonpoint source problems caused by sanitary landfills.

19. Category VIIk—Hydromodification. This category includes the needs to address nonpoint source problems associated with channelization and channel modification, dam, and streambank and shoreline erosion.

20. Category VIII—Concentrated animal feeding operations (CAFO). This category includes the needs for a combination of unit processes or best management practices designed to address water quality or public health problems caused by agricultural activities related to animal production that are subject to the federal concentrated animal feeding operation regulations.

21. Category IX—Point source mining. This category addresses the needs for a combination of unit processes or best management practices designed to address water quality or public health problems caused by point source mining and quarrying activities.

“New animal feeding operation” means, for use in 567—Chapter 91 and 567—Chapter 92, an animal feeding operation for which construction was initiated on or after December 31, 2001.

“Nontraditional project” means a project where the primary purpose of the project is not to protect or improve water quality. A secondary purpose of the project does include water quality improvement or protection.

“Project” means, in the context of the water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in Section 212 of the Clean Water Act, or the implementation and development of management programs established under Sections 319 and 320 of the Clean Water Act, including construction and undertaking of nonpoint source water pollution control projects

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

and related development activities authorized under those sections.

“Project completion” means the date operations of the project are initiated or are capable of being initiated, whichever is earlier.

“Quasi-public agency” means an agency that provides public services and is under private ownership or control.

“Revolving loan funds” means the water pollution control works revolving loan fund and the drinking water facilities revolving loan fund established by Iowa Code sections 455B.291 to 455B.298 as amended by 2002 Iowa Acts, chapter 1019, and section 455B.299.

“State project priority list (PPL)” means the list of projects in priority order that may qualify for WPCSRF loan assistance. The list is developed in accordance with 567—Chapter 91. (Also known as the planning list.)

“WPCSRF” means the water pollution control works financing program described in this chapter.

567—90.3(455B,17A) Forms. The following forms are used to apply for assistance and to provide required documentation. All forms may be obtained from Environmental Services Division, Department of Natural Resources, Henry A. Wallace Building, 502 E. Grand, Des Moines, Iowa 50319. Recipients of assistance shall also comply with applicable requirements of the department’s rules.

90.3(1) Point source water pollution control project forms.

- a. Application package – Form 92.7(1).
- b. Loan Agreement form – Form 92.7(8).
- c. Interim payment form – Form 92.8(1).

90.3(2) Livestock water quality facilities forms.

- a. Application form for loan assistance – Forms 92.11(2) and 92.11(4).
- b. Reserved.

90.3(3) Local water protection project forms.

- a. Application form for loan assistance – Forms 92.12(2), 92.12(4) and 92.12(5).
- b. Reserved.

90.3(4) General nonpoint source project forms.

- a. Application form for loan assistance – Forms 92.13(2), 92.13(4) and 92.13(5).
- b. Reserved.

90.3(5) Onsite wastewater treatment assistance forms.

- a. Application form for loan assistance – Forms 93.5(1), 93.5(4) and 93.5(5)“a.”
- b. Reserved.

These rules are intended to implement Iowa Code sections 455B.291 to 455B.298 as amended by 2002 Iowa Acts, chapter 1019.

ITEM 3. Rescind 567—Chapter 91 and adopt the following new chapter in lieu thereof:

CHAPTER 91

CRITERIA FOR RATING AND RANKING PROJECTS
FOR THE WATER POLLUTION CONTROL
STATE REVOLVING FUND

567—91.1(455B) Statutory authority. The authority for the Iowa department of natural resources to provide loans to eligible entity applicants to assist in the construction of wastewater treatment facilities and water pollution control works is provided in Iowa Code sections 455B.291 to 455B.298 as amended by 2002 Iowa Acts, chapter 1019, and section 455B.299. The requirement to have selection criteria and a

method for selecting projects or programs for loans is provided in 40 CFR Part 35.3150, July 1, 2002.

567—91.2(455B) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control pollution. As part of that general responsibility, the department and the Iowa finance authority are jointly designated to conduct the administration of the water pollution control state revolving fund (WPCSRF) loan assistance program to assist in the financing of infrastructure projects pursuant to the Clean Water Act. A project must comply with this chapter and 567—Chapter 92 to be eligible for a WPCSRF loan. This chapter provides the rating criteria to be used to rank eligible projects for funding. Rating criteria are provided for point source projects and nonpoint source projects. The nonpoint source projects are divided into three activities:

1. Livestock water quality facilities;
2. Local water protection projects; and
3. General nonpoint source projects.

Rating criteria for onsite wastewater systems are not included at this time because the loan assistance is based on a first-come, first-funded concept.

567—91.3(455B) Purpose of water pollution control state revolving fund. The WPCSRF provides financial assistance to eligible water pollution control works for the design and construction of facilities to protect and improve the state’s water quality. The fund reserves a percentage of money each year for administrative purposes. The Iowa department of natural resources (department) administers the program, along with the Iowa finance authority (authority). The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E. The department establishes priorities for the use of the WPCSRF and publishes them each year in its intended use plan (IUP).

The financial assistance is described in more detail in 567—Chapter 92. This chapter identifies the criteria that are used to rate projects and activities, both point source and nonpoint source projects and activities. This chapter describes how the criteria will be used to calculate a total score for ranking projects. The commission is to set funding targets for point source and nonpoint source activities and to adjust the fundable project list to ensure that the short- and long-term goals of the IUP are achieved. The public has an opportunity annually to comment on both the fundable list and the short- and long-term goals of the intended use plan.

567—91.4 and 91.5 Reserved.

567—91.6(455B) General information—priority rating system. The department shall use the priority rating system to rate eligible projects for funding. An eligible project may be either a point source project or a nonpoint source project or activity. A nonpoint source project activity must be identified in the most recent Iowa Nonpoint Source Management Program to be considered eligible.

567—91.7 Reserved.

567—91.8(455B) Project priority rating system.

91.8(1) Point source rating criteria. The point source rating criteria considers the use classification of the receiving waters, water quality of the receiving waters, compliance status of the discharger, project benefits, readiness to proceed and a tie breaker. Priority ranking for the projects shall be based on the total points awarded for all the categories; the greater the total number of points, the higher the ranking.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

The ranking will be done annually at the time the IUP is prepared and will not be updated during the year. The tie breaker category will be used when necessary.

a. Use classification of receiving waters. This category addresses the receiving water that is impacted or potentially impacted by the existing situation and that would be improved or protected by the proposed project. Points shall be awarded for only one use: the applicable use or classification with the highest point value. Points for sludge stabilization, sewers and lift station projects normally will be based on the assigned use of the waters that receive or could receive the effluent discharge. Points for a sewer project that eliminates the need for septic tanks shall be based on the Class C use classification.

Use and Classification	Points
Outstanding national resource waters	50
High quality waters	40
High quality resource waters	10
Class A waters	
Lakes or streams draining to lakes	50
Streams	45
Urban streams	45
Cold water streams	50
Losing streams and karst topography	40
Class C (waters used as a drinking water supply)	40
Class B waters	
Lakes or streams draining to lakes	40
Wetlands	35
Streams	30
Publicly owned lakes (and streams draining to publicly owned lake)	50
Other lakes	30

b. Water quality of receiving waters. This category addresses the quality of water in the receiving stream and whether or not the water has been designated as impaired for some uses. Bodies of water that are impaired by pollutants are identified as Section 303(d) waters. The Section 303(d) list of waters also identifies probable pollutant source categories for these impairments. Projects that primarily impact these waters are awarded points if the water body that receives or could receive the wastewater discharge is included on the Section 303(d) list and the probable pollutant source is a point source. Waters are also identified in the Section 305(b) report on their use attainment status. Projects that primarily impact these waters are awarded points depending on the use impairment identified for the water body that receives or could receive the wastewater discharge. If no use impairment is identified indicating the water was not assessed, the partially supporting status points will be awarded. Points will be awarded for both sections and then totaled for this category.

Indication of water quality	Points
A	
Section 303(d) listed water	
Identified as probable source or contributing to problem: point source	50
High rating for total maximum daily load (TMDL) development	45
Medium rating for TMDL development	35
Low rating for TMDL development	25

B	
Section 305(b) status	
Fully supporting	10
Fully supporting/threatened	15
Partially supporting	20
Not supporting	30
Not assessed	20

c. Compliance status. This category addresses the compliance status of the proposed project. To provide an incentive for municipal facilities to maintain compliance, more points are given to projects that are in compliance with their NPDES discharge permit when they apply for a loan. Projects that are not in compliance at the time of application, have bypasses, have received administrative orders from the department or have been referred for legal action are given fewer points than a project in compliance. Unsewered community projects will be considered to be in compliance if they are taking action to eliminate public health problems or water quality problems, or both, prior to formal action by the department.

Compliance Status	Points
Has been referred to Iowa attorney general for discharge violation	35
Received administrative order from DNR for discharge violations	28
Compliance schedule in NPDES permit—existing discharge requirements are not being met	25
Compliance schedule in NPDES permit—new discharge requirements are being imposed	38
Bypassing during dry weather has been reported in previous 12 months	32
Bypassing during wet weather has been reported in previous 12 months	20
Discharge has met all NPDES permit requirements for 12 months (at time of application)	38
Discharge is in compliance with NPDES permit—no action taken by department (at time of application)	40
Unsewered community and initiates project on its own	40
Unsewered community and has received an administrative order from DNR	25
Plan of action requested or plan of action has been submitted to the department	25
Discharge is not in compliance with NPDES permit—no action taken by department (at time of application)	27

d. Project benefit. This category incorporates several factors including type of project and the relative level of the impact on the environment. Points for multiple benefits shall be awarded but the project benefits total can not exceed 20 points.

Project Benefits	Points
Implementation of TMDL plan	20
Replacement or upgrade of wastewater treatment works to meet water quality-based permit limits	20
Reduce impairments to Class C waters [drinking water]	19
Repair of lift station or collection system to eliminate dry weather bypassing	18
Replacement or upgrade of advanced wastewater treatment system to ensure continued compliance	18
Public health benefit by elimination of frequent sewer backups in homes and businesses	15

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Disinfection of wastewater	10
Replacement or upgrade of secondary wastewater treatment system to ensure continued compliance	17
Collection and treatment to replace failed onsite wastewater systems	14
Upgrade of wastewater treatment works to allow for more reliable treatment (advanced or secondary)	16
Elimination of flat sewers	6
Separation of combined sewers	9
Sludge treatment and stabilization	10
Urban storm water management program	5
Sludge storage	10
Eliminate pump station	6

e. Readiness to proceed. This category addresses the status of the project planning, preparation of plans and specification, and overall readiness to proceed with project construction. This category is included to reduce the number of projects bypassed on the fundable list due to their inability to achieve readiness for a loan. Projects may still be bypassed or removed from the fundable list according to 567—subrule 91.7(2).

Project Status	Points
Plans and specifications submitted for review	10
Finding of No Significant Impact (FONSI) issued	8
Facility plan approved	7
Facility plan submitted	6
Facility plan being prepared	5
Plan of action approved	4
No planning completed	0

f. Total points. Total points are calculated using the following formula:

Total Points = Use Classification + Water Quality (A) + Water Quality (B) + Compliance Status + Project Benefit + Readiness

g. Tie breaker. Two or more projects may receive the same total points on the fundable list. If sufficient state revolving loan funds are not available to fund the projects, ties will be broken by determining which project has the highest score in each category in the following order:

- Water Quality of Receiving Streams (A) Highest
 - Water Quality of Receiving Streams (B)
 - Use and Classification
 - Project Benefits
 - Compliance Status
 - Readiness to Proceed Lowest
- ↕
- 91.8(2) Reserved.

567—91.9(455B) Livestock water quality facilities priority rating criteria system.

91.9(1) Livestock water quality facilities rating system. The livestock water quality facilities rating criteria consider the use classification of the receiving waters, water quality of the receiving waters, open feedlot plan rating and a tie breaker. Priority ranking for the projects is based on the total points awarded for all the categories; the greater the total number of points, the higher the ranking.

a. Use classification of receiving waters. This category addresses the receiving water that is impacted or potentially impacted by the existing operation and that would be improved or protected by the proposed project. Points shall be awarded for only one use: the applicable use or classification with the highest point value. The manure application sites, feedlots, lagoons and basins, and manure and litter storage

areas should be considered when determining the points to be awarded.

Use and Classification	Points
Outstanding national resource waters (proposed water use)	50
High quality waters	40
High quality resource waters	10
Class A waters	
Lakes or streams draining to lakes	60
Streams	45
Urban streams	45
Cold water streams	50
Losing streams and karst topography	40
Class C (waters used as a drinking water supply)	40
Class B waters	
Lakes or streams draining to lakes	50
Wetlands	35
Streams	30
Publicly owned lakes (and streams draining to publicly owned lake)	50
Other lakes	30

b. Water quality of receiving waters. This category addresses the quality of water in the receiving stream and whether or not the water has been designated as impaired for some uses. Bodies of water that are impaired by pollutants are identified as Section 303(d) waters. The Section 303(d) list of waters also identifies probable pollutant source categories for these impairments. Projects that primarily impact these waters are awarded points if the water body that receives or could receive the discharge is included on the Section 303(d) list and the probable pollutant source is a non-point source. Waters are also identified in the Section 305(b) report on their use attainment status. Projects that primarily impact these waters are awarded points depending on the use impairment identified for the water body that receives or could receive the discharge. If no use impairment is identified, the fully supporting status points will be awarded. Points will be awarded for both sections and then totaled for this category.

Indication of water quality	Points
A	
Section 303(d) listed water	
Identified as probable source or contributing to problem: Nonpoint source (if nonpoint sources are not the probable source of pollution, the following points are to be used)	100
High rating for TMDL development	90
Medium rating for TMDL development	80
Low rating for TMDL development	70
B	
Section 305(b) status	
Fully supporting	10
Fully supporting/threatened	20
Partially supporting	30
Not supporting	40

c. Iowa open feedlot plan rating. This category incorporates the rating given the animal feeding operation from the Iowa open feedlot plan.

Iowa Open Feedlot Plan Rating	Points
High	40
Medium	30

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Low	20
Unranked	10

d. Total points. Total points are calculated using the following formula:

$$\text{Total Points} = \text{Use and Classification} + \text{Water Quality (A)} + \text{Water Quality (B)} + \text{Iowa Open Feedlot Plan Rating}$$

e. Tie breaker. Two or more projects may receive the same total priority points. If sufficient state revolving loan funds are not available to fund the projects, ties will be broken by determining which project has the highest score in each category in the following order:

- Water Quality of Receiving Streams (A) Highest
 - Water Quality of Receiving Streams (B) ⇕
 - Use and Classification
 - Iowa Open Feedlot Plan Rating Lowest
- 91.9(2) Reserved.**

567—91.10(455B) Local water protection projects rating system.

91.10(1) Local water protection projects rating criteria. The local water protection projects rating criteria considers the use classification of the receiving waters, water quality of the receiving waters, the watershed management planning status in the watershed where the project is located and a tie breaker. Priority ranking for the projects is based on the total points awarded for all the categories. The greater total number of points, the higher the ranking.

NOTE: It is likely that the soil conservation projects will be assisted through a linked deposit mechanism and the rating criteria will be used by county soil and water conservation districts to select projects.

a. Use classification of receiving waters. This category addresses the receiving water use classification that would be improved or protected by the proposed project. Points shall be awarded for only one use: the applicable use or classification with the highest point value.

Use and Classification	Points
Outstanding national resource waters (proposed water use)	50
High quality waters	40
High quality resource waters	10
Class A waters	
Lakes or streams draining to lakes	60
Streams	45
Urban streams	45
Cold water streams	50
Losing streams and karst topography	40
Class C (waters used as a drinking water supply)	40
Class B waters	
Lakes or streams draining to lakes	50
Wetlands	35
Streams	30
Publicly owned lakes (and streams draining to publicly owned lake)	50
Other lakes	30

b. Water quality of receiving waters. This category addresses the quality of water in the receiving stream and whether or not the water has been designated as impaired for some uses. Bodies of water that are impaired by pollutants are identified as Section 303(d) waters. The Section 303(d) list of waters also identifies probable pollutant source categories for these impairments. Projects that primarily impact these waters are awarded points if the water body that receives or could receive the discharge is included on the Section 303(d) list and the probable pollutant source is a non-point source. Waters are also identified in the Section 305(b) report on their use attainment status. Projects that primarily impact these waters are awarded points depending on the use impairment identified for the water body that receives or could receive the discharge. If no use impairment is identified, the fully supporting status points will be awarded. Points will be awarded for both sections and then totaled for this category.

ceives or could receive the discharge is included on the Section 303(d) list and the probable pollutant source is a non-point source. Waters are also identified in the Section 305(b) report on their use attainment status. Projects that primarily impact these waters are awarded points depending on the use impairment identified for the water body that receives or could receive the discharge. If no use impairment is identified, the fully supporting status points will be awarded. Points will be awarded for both sections and then totaled for this category.

Indication of water quality	Points
A	
Section 303(d) listed water	
Identified as probable source or contributing to problem: Nonpoint source (if nonpoint sources are not the probable source of pollution, the following points are to be used)	100
High rating for TMDL development	90
Medium rating for TMDL development	80
Low rating for TMDL development	70
B	
Section 305(b) status	
Fully supporting	10
Fully supporting/threatened	20
Partially supporting	30
Not supporting	40

c. Watershed management planning status. This category incorporates the status of a watershed management plan.

Watershed Management Planning Status	Points
Watershed management plan developed and being implemented	40
Watershed management plan being developed	32
Watershed management plan does not exist	15
TMDL plan approved and being implemented	40
TMDL plan drafted	35
TMDL plan required in future	30
TMDL plan not required	20

d. Total points. Total points are calculated using the following formula:

$$\text{Total Points} = \text{Use and Classification} + \text{Water Quality (A)} + \text{Water Quality (B)} + \text{Watershed Management Planning Status}$$

e. Tie breaker. Two or more projects may receive the same total priority points on the fundable list. If sufficient state revolving loan funds are not available to fund the projects, ties will be broken by determining which project has the highest score in each category in the following order:

- Water Quality of Receiving Streams (A) Highest
 - Water Quality of Receiving Streams (B) ⇕
 - Use and Classification
 - Watershed Management Planning Status Lowest
- 91.10(2) Reserved.**

567—91.11(455B) General nonpoint source projects rating system.

91.11(1) General nonpoint source projects rating criteria. The general nonpoint source rating criteria considers the use classification of the receiving waters, water quality of the receiving waters, the project benefits and a tie breaker. Priority ranking for the projects is based on the total points awarded for all the categories. The greater total number of points, the higher the ranking.

a. Use classification of receiving waters. This category addresses the receiving water use classification that would be

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

improved or protected by the proposed project. Points shall be awarded for only one use: the applicable use or classification with the highest point value.

Use and Classification	Points
Outstanding national resource waters (proposed water use)	60
High quality waters	58
High quality resource waters	20
Class A waters	
Lakes or streams draining to lakes	60
Streams	45
Urban streams	48
Cold water streams	58
Losing streams and karst topography	48
Class C (waters used as a drinking water supply)	52
Class B waters	
Lakes or streams draining to lakes	53
Wetlands	35
Streams	30
Publicly owned lakes (and streams draining to publicly owned lake)	50
Other lakes	30

b. Water quality of receiving waters. This category addresses the quality of water in the receiving stream and whether or not the water has been designated as impaired for some uses. Bodies of water that are impaired by pollutants are identified as Section 303(d) waters. The Section 303(d) list of waters also identifies probable pollutant source categories for these impairments. Projects that primarily impact these waters are awarded points if the water body that receives or could receive the discharge is included on the Section 303(d) list and the probable pollutant source is a non-point source. Waters are also identified in the Section 305(b) report on their use attainment status. Projects that primarily impact these waters are awarded points depending on the use impairment identified for the water body that receives or could receive the discharge. If no use impairment is identified, the fully supporting status points will be awarded. Points will be awarded for both sections and then totaled for this category.

Indication of water quality	Points
A	
Section 303(d) listed water	
Identified as probable source or contributing to problem: Nonpoint source (if nonpoint sources are not the probable source of pollution, the following points are to be used)	100
High rating for TMDL development	90
Medium rating for TMDL development	80
Low rating for TMDL development	70
B	
Section 305(b) status	
Fully supporting	10
Fully supporting/threatened	20
Partially supporting	30
Not supporting	40

c. Project benefit. This category incorporates several factors including type of project and the relative level of the impact on the environment. Points for only one benefit shall be awarded: when a project has more than one significant benefit, the benefit with the highest point value shall be used.

Benefits	Points
Implementation of TMDL plan	40
Eliminate pollution source discharging to:	
• Cold water stream	40
• Publicly owned lake	38
• Class C drinking waters	35
• Other surface waters	28
• Disinfection of wastewater	12
Eliminate pollutant source to groundwater	37
Eliminate or reduce public health problem	25
Protect, improve or expand wetlands area	31
Project improves lake habitat and water quality	26
Project improves stream habitat or eliminates hydromodification degradation	29
Urban storm water control program in non-MS4 area	5
Gain control of land needed to protect or improve water quality	15

d. Total points. Total points are calculated using the following formula:

$$\text{Total Points} = \text{Use and Classification} + \text{Water Quality (A)} + \text{Water Quality (B)} + \text{Project Benefits}$$

e. Tie breaker. Two or more projects may receive the same total priority points on the fundable list. If sufficient state revolving loan funds are not available to fund the projects, ties will be broken by determining which project has the highest score in each category in the following order:

- Water Quality of Receiving Streams (A) Highest
- Water Quality of Receiving Streams (B)
- Use and Classification
- Project Benefits Lowest



91.11(2) Reserved.

91.11(3) Nontraditional projects. Nontraditional projects are those in which the primary purpose of the project is other than to improve or protect water quality. Applications may be submitted for nontraditional projects. The applications will be scored using the general nonpoint source projects rating criteria. The traditional projects will be given first priority. If sufficient funds remain in the general nonpoint source set-aside, the nontraditional projects will be listed on the fundable list in priority order after all of the fundable traditional projects are listed.

These rules are intended to implement Iowa Code sections 455B.291 to 455B.298 as amended by 2002 Iowa Acts, chapter 1019.

ITEM 4. Rescind 567—Chapter 92 and adopt the following **new** chapter in lieu thereof:

CHAPTER 92
STATE REVOLVING FUND LOANS FOR
WASTEWATER TREATMENT AND
WATER POLLUTION CONTROL

567—92.1(455B) Statutory authority. The authority for the Iowa department of natural resources to provide loans to eligible entity applicants to assist in the construction of wastewater treatment facilities and water pollution control projects is provided by Iowa Code sections 455B.291 to 455B.298 as amended by 2002 Iowa Acts, chapter 1019, and section 455B.299.

567—92.2(455B) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control pollution. As a part of that general

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

responsibility, the department and the Iowa finance authority are jointly delegated the administration of (1) the water pollution control state revolving fund (WPCSRF) to assist in water pollution prevention and abatement and water quality protection projects pursuant to the Clean Water Act, and (2) the drinking water facilities revolving loan fund (DWSRF) described in 567—Chapter 44. A project must comply with this chapter to be eligible for a WPCSRF loan. This chapter provides the general rules of practice for the department's administration of the WPCSRF program, including the criteria for loan eligibility, and the general project and program administration rules.

Iowa Code section 455B.291 as amended by 2002 Iowa Acts, chapter 1019, section 1, defines "eligible entity," and Iowa Code section 455B.293 as amended by 2002 Iowa Acts, chapter 1019, section 3, establishes that it is the policy of the state that it is in the public interest to make loans available from the state to eligible entities for water pollution control projects.

Section 603(c) of Title VI of the Clean Water Act allows the use of state revolving funds to assist municipalities to construct publicly owned treatment works and implementation of a nonpoint source pollution management plan as provided for in Section 319 of the Clean Water Act. Iowa's nonpoint source management plan identifies several sources of nonpoint source pollutants. In addition to assisting publicly owned treatment works, it is the intent of the commission to set aside a portion of the state revolving fund for the purpose of making low-interest loans for nonpoint source water pollution control projects. Four separate set-asides are identified as follows:

1. Onsite wastewater treatment and disposal systems fund: 567—Chapter 93 provides for the general administration of the onsite wastewater assistance fund. The purpose of this fund is to assist rural homeowners who need to rehabilitate or improve existing onsite wastewater treatment and disposal systems.

2. Livestock water quality facilities set-aside: Rule 567—92.11(455B) provides for the administration of loans for existing animal feeding operations. The purpose of the set-aside is to assist owners of existing animal feeding operations to meet state and federal requirements. Projects may be selected using the rating and ranking process in 567—Chapter 91.

3. Local water protection projects set-aside: Rule 567—92.12(455B) provides for the administration of loans for local water protection projects that will provide water quality improvement or protection. Projects may be selected using the rating and ranking process in 567—Chapter 91.

4. General nonpoint source project assistance set-aside: Rule 567—92.13(455B) provides for the administration of loans for general nonpoint source projects that will provide water quality improvements or water quality protection. This set-aside allows for funding of the water quality protection portion of nontraditional projects. Projects will be selected using the rating and ranking process from 567—Chapter 91.

Water pollution control projects that provide the best water quality improvements or protection based on the rating system and are ready to proceed are to be funded. This chapter provides for the general rules of practice for the department's administration of the WPCSRF program based on this principle.

567—92.3 Reserved.

567—92.4(455B) General policy. Loans up to 100 percent of the eligible costs of water pollution control projects will be made available pursuant to the requirements of these rules and Title VI of the Clean Water Act.

92.4(1) Administration. The department, in conjunction with the authority, has been delegated the responsibility of administering the WPCSRF program and the DWSRF program described in 567—Chapter 44. The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E.

The department may enter into agreements with other private, public or quasi-public agencies to assist with the implementation of the program.

92.4(2) Set-aside funding. Consistent with the pollution sources identified in the department's nonpoint source management program, set-asides will be used to target assistance to nonpoint source activities that are contributors of pollutants to Iowa's waters. Set-asides will be used for assisting construction of water pollution control facilities for livestock operations, local water protection projects, onsite wastewater management systems and general nonpoint source projects. The amount for each set-aside will be determined in the annual intended use plan based on anticipated needs and the amount in the equity fund.

NOTE: The equity fund will be the primary source of funds for the set-asides because of the reduced administrative requirements, although in some cases other funds could be used.

92.4(3) Decisions.

a. Departmental staff decisions in administering the WPCSRF loan program shall conform to generally accepted principles and standards of good practice. Guidance shall include, but not be limited to:

- (1) 40 CFR Parts 31 and 35, July 1, 2002;
- (2) Applicable state laws, rules, and court decisions;
- (3) Guidance available from the U.S. Environmental Protection Agency;
- (4) Any other applicable federal regulations.

b. Decisions of department staff are final unless the recipient files a written petition for review with the director. The petition must be addressed to the director and clearly state the decision in question and the basis for the requested review. The recipient has the right to appeal a decision to the commission pursuant to Iowa Code chapter 17A or to the state court.

92.4(4) Reserved.

92.4(5) Phased projects. Loan funds for future portions of phased or segmented projects cannot be ensured. Partial or phased funding for a project may be made on a case-by-case basis with no assurance of future funding. Loans made for separate phases or segments of a project will be administered separately.

92.4(6) Fundable project determination. Projects or activities qualifying for WPCSRF assistance shall be identified in an annual intended use plan. Only those projects or activities on the current fiscal year state project priority list developed pursuant to 567—Chapter 91 may be considered fundable. WPCSRF assistance will be available to point source projects in priority order. Funding for nonpoint source activities will be established annually in the intended use plan.

92.4(7) State capitalization grant. The Clean Water Act authorizes the Environmental Protection Agency (EPA) to offer capitalization grants to states for use in a revolving fund loan program. A portion of the capitalization grant, as allowed by Title VI of the Clean Water Act, will be used to administer the WPCSRF program.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

92.4(8) Loan commitments. Loan agreements shall be binding commitments based on estimated eligible costs prior to construction. A final adjustment to a loan amount may be made upon completion of construction.

92.4(9) Loan adjustments. Loans shall be made to applicants as soon as possible after moneys are available. The WPCSRF will be managed such that contingency moneys are available in loans to allow for final adjustments in allowable costs as approved by the department. If eligible costs exceed the loan amount, the recipient may request an increase. The department, in coordination with the authority, will evaluate the request by considering available moneys in the fund as well as the financial risk to determine the appropriate action, including renegotiation of the loan. Should costs be less than the loan amount, the loan shall be adjusted.

92.4(10) Federal funding coordination. Projects that have received a federal construction grant under provisions of the Clean Water Act are not eligible to receive a loan for the non-federal share of the project. Projects may use WPCSRF funds to complete the financing projects partially funded by other federal programs such as Environmental Quality Incentives Program and Community Development Block Grants.

567—92.5 Reserved.

567—92.6(455B) Intended use plan management.

92.6(1) Intend use plan preparation.

a. Development. The department shall prepare an intended use plan (IUP) each year. The IUP will be subject to a public hearing and approved by the commission.

b. Notification. A public hearing process is part of the IUP adoption process to provide opportunity for public participation. Notice is published in a newspaper of general circulation prior to the public hearing, and an announcement is released to television and radio stations. A general notice also is made to all communities and interested agencies and organizations. The notice explains the purpose of the IUP and how additional information may be obtained.

c. Comments. Comments regarding the proposed IUP will be accepted during the notice period, at the public hearing and in writing for ten days following the public hearing. After evaluation of all pertinent comments, the IUP will be revised, if necessary, and recommended for approval by the environmental protection commission. Subsequent approval by the EPA will establish the IUP to be used for loan assistance.

92.6(2) Contents. The IUP will identify the anticipated uses of loan funds available for that fiscal year, and will include the following:

a. State project priority list. The state project priority list contains the projects and set-asides eligible for WPCSRF loans. The state project priority list will include, for point source projects, the name of the eligible applicant, any applicable NPDES permit number and the projected amount of loan assistance. For nonpoint source set-asides, the IUP will include the name of the private, public or quasi-public agency to receive a pass-through loan, and the amount for each set-aside. The planning list is primarily an administrative tool used for department management purposes, to assist communities in planning improvements and to inform communities with compliance problems when loans should be available. The planning list indicates schedules for those projects that could anticipate funding from subsequent capitalization grants and the funds available in the equity fund of the WPCSRF.

b. Fundable list. The fundable list includes projects scheduled for loans from funds available during the fiscal

year. Projects will be considered in priority order for placement on the fundable list. Subsequent segments of a project which has been awarded financial assistance for Category I and Category II needs will be placed on the fundable list ahead of other new projects whose schedules also would allow funding during the fiscal year. The fundable lists of point source projects and nonpoint source set-asides shall be listed in priority order and shall include a schedule of estimated disbursement of funds, preliminary identification of point source projects that may undergo an environmental impact statement, and the need category(ies) of the projects. The department will consider the following in developing the list of fundable entities for the intended use plan:

(1) How the project conforms to the short- and long-term goals of the WPCSRF;

(2) The priority rating of the point source project;

(3) Whether a point source project will be ready to proceed on a schedule consistent with time requirements for outlay of funds;

(4) Whether the proposed project addresses the need upon which the eligible entity's priority is based;

(5) Eligible entity's financial capability to service the loan, to provide operation and maintenance, to provide replacement reserves, and, if required, to provide debt service reserves;

(6) Eligible entity's statement of willingness to accept all loan terms and conditions; and

(7) Funds available, department priorities and the administrative capacity of the department.

c. Contingency list. A contingency list will be included so that point source projects on the contingency list could become fundable in accordance with the procedures found in 567—subrule 92.7(14) should a fundable project not proceed in a timely manner.

d. Goals. The plan will include the long- and short-term goals of the WPCSRF.

e. Supported activities. The plan will include information on the types of activities to be supported by the WPCSRF. The IUP will identify any funds to be directed to the onsite wastewater assistance fund (OSWAF) described in rules 567—93.3(455B, 79GA,SF479) and 567—93.10(455B,79GA,SF479) and other nonpoint source set-asides to implement Iowa's nonpoint source management program.

f. Assurances. The plan will include assurances and specific proposals on how the state intends to meet requirements of the following sections of the Clean Water Act:

(1) 602(a) Environmental reviews;

(2) 602(b)(3) The state will agree to enter binding commitments equal to at least 120 percent of each quarterly federal capitalization grant payment within one year after receipt; and

(3) 602(b)(4) Certify that expenditure of all funds in the WPCSRF will be done in an expeditious and timely manner.

g. Amendments. The plan will include the method to be used by the department if the IUP is amended.

h. Consistency with water quality management plans. Projects must be consistent with the Des Moines Metropolitan Areawide Waste Treatment Management Plan or the Iowa Water Quality Management Plans to be considered for inclusion on the state project priority list.

92.6(3) Certification of priority for loan assistance. Projects on the fundable list will be certified in the order they attain readiness. The department must certify that a project is technically and administratively complete for the loan being requested, that it appears on the fundable list and that the de-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

partment has available funds to provide the loan. A community is responsible for complying with the technical procedures for facility planning and preparation of plans and specifications, including department approval of those documents.

92.6(4) Project bypass procedures.

a. Since the fundable list is based on the predicted readiness of projects, it is possible that projects included on the fundable list may not actually achieve readiness within the funding period. Projects that cannot attain readiness within the fiscal year may be removed and placed on the planning list. A project that is not certified for a loan prior to September 1 may be removed from the fundable list if it can be replaced with a project that can be certified.

b. Beginning September 1, projects will be considered for placement on the fundable list as they are ready to be certified. Should more than one project qualify on the same day, the projects will be considered for placement on the fundable list in priority order. Any project that is bypassed may be placed on a future fundable list in accordance with the priority rating system in effect at that time.

92.6(5) Project removal. The department will remove a project from the fundable list if:

- a. The project or project segment is fully funded;
- b. The project is no longer entitled to funding according to the priority rating system;
- c. The department determines that funds are inadequate to fund the project; or
- d. The project cannot attain readiness.

92.6(6) Additional funds. Additional funds may become available during the fiscal year. They may be used for expanding the fundable list by adding in priority order planning list projects which the department determines can be ready for funding within the fiscal year.

92.6(7) Decrease in funds available. The fundable list is initially based upon an anticipated amount of loan funds available to the department. The fundable list will be revised using the same considerations as were used in its original determination if the funds available decrease.

92.6(8) Annual update. The state project priority list will be reviewed annually to update schedules and project cost estimates.

92.6(9) Notification of revisions. The department will notify, in writing, all communities that are removed from or placed on an approved fundable list based on revisions.

92.6(10) State project priority list management.

a. Treatment needs. Any point source project with a demonstrated treatment deficiency in existing facilities shall be evaluated and assigned a rating and ranking based on the priority rating system. A point source project with a demonstrated treatment deficiency includes any project with a need to fulfill an enforceable requirement of the federal Clean Water Act where capital improvements are anticipated to satisfy the need. Unfunded projects will be reevaluated annually and kept on the planning list for potential funding in subsequent years.

b. Unsewered communities. Communities with documented public health or water quality problems identified by the department, local or state health departments, or other responsible sources, and which have indicated an intent to proceed by planning and implementing a solution, will be evaluated and assigned a priority rating and position based on the priority rating system.

c. Existing projects. Subsequent segments of a project previously funded are included on the state project priority list. These projects will appear on the state project priority

list and fundable list according to the priority system and 567—paragraph 92.6(2)“b.”

d. Combined facility priority ratings. When a community presently receives treatment of wastewater in a system other than its own, its needs will be considered for funding according to the priority rating of the treatment facility which provides its treatment. When communities with existing separate treatment facilities propose joint facilities, the communities will be considered for funding at the priority rating of the community with the highest rating. When a planning area proposes multiple facilities in an approved facility plan, all facilities will have the same priority. The combined facility priority rating will maintain the intent of the criteria to address existing water quality impact and also allow the funding of cost-effective treatment alternatives.

e. Special considerations. Exemptions to the point source rating criteria may be considered by the department and funding variances may be granted by the commission for projects that have unique or unusual circumstances but which do not logically fit into the criteria.

92.6(11) Nonpoint source priority assignments.

a. Nonpoint source rating criteria application. Nonpoint source projects are rated and placed on a planning list, if needed, in the appropriate nonpoint source set-aside according to the point source rating criteria in rules 567—91.9(455B), 567—91.10(455B) and 567—91.11(455B). Unfunded projects will be reevaluated annually and kept on the planning list for potential funding in subsequent years.

b. Special considerations. Exemptions to the nonpoint source rating criteria may be considered by the department and funding variances may be granted by the commission for projects that have unique or unusual circumstances which may not logically fit the criteria and are consistent with the short- or long-term goals of the IUP.

567—92.7(455B) Point source project procedures.

92.7(1) Application forms. The department will provide an application package for applicants to apply for WPCSRF loan assistance and to provide documentation on the project needed by the department. Forms may be obtained from the Environmental Services Division, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034. Forms may also be downloaded from the Iowa department of natural resources Web site at www.state.ia.us/epd/wastewtr/wastwtr.

92.7(2) Minimum/maximum loans. The minimum loan amount which will be considered is \$50,000 for point source projects. The maximum amount loaned to any municipality for a point source project shall not exceed 60 percent of the available loan funds in the WPCSRF allotted to assist point source projects.

92.7(3) General requirements. In addition to completing the application and providing documentation required in 567—subrule 92.7(1), the following items must be included in a complete WPCSRF loan application for point source projects:

a. Two copies of the facility plan. The facility plan shall be certified by a professional engineer licensed to practice in Iowa and in conformance with Chapter 11 of the Iowa Wastewater Facilities Design Standards (567—paragraph 64.2(9)“b”);

b. A schedule for submission of plans and specifications for the project;

c. A project construction schedule and cash-flow projection including the acquisition of necessary land;

d. A summary of all financial arrangements necessary to fund the project; and

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

e. A description of a dedicated revenue source for loan repayments.

92.7(4) Timing.

a. All applications received by the department for eligible projects will be given a score using the rating criteria in 567—Chapter 91 and will be placed on the state project priority list. Applications received on or before July 1 will be considered for loan assistance in the development of the IUP for that fiscal year.

b. Late applications (those received after July 1) will be placed on the state project priority list. The projects will be scored using the rating criteria in 567—Chapter 91 but will not be considered for loan assistance until the following fiscal year. If the WPCSRF contains sufficient funds that allow for late applications to receive loan assistance earlier, they may be placed on the IUP in priority order following the applicants which had applied on or by July 1.

92.7(5) Loan and project initiation conference. Each eligible applicant is encouraged to schedule a loan initiation conference with the department. The eligible applicant's official representative (and usually the applicant's consultant) will meet with the department to discuss:

- a. SRF loan program policies, procedures, and guidelines;
- b. Allowable costs;
- c. Wastewater treatment alternatives and technologies;
- d. Environmental impacts and review considerations;
- e. Public participation;
- f. Scheduling; and
- g. Other information as needed.

92.7(6) Review criteria for point source projects. The department shall review SRF loan applications for eligible applicants and verify the following items:

- a. The project is on the state project priority list;
- b. The applicant has prepared and received approval of an adequate facility plan report;
- c. The project will be in conformance with any applicable areawide water quality management plans;
- d. The applicant has or will adopt an acceptable user charge system; and
- e. The applicant has demonstrated its ability to provide the necessary legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance. If the department has reasonable grounds to believe that an applicant's wastewater treatment facilities are not viable, the department may require the applicant to submit management and financial plans as prescribed in Iowa Code section 455B.174.
- f. The applicant has provided an acceptable project schedule for project initiation and completion.
- g. The applicant's ability to repay the loan is consistent with the department's requirements after consultation with the authority.

92.7(7) Loan denial. The department shall inform the applicant in writing of the reason for denial and return any application not in substantial compliance with these rules.

92.7(8) Loan agreement conditions for point source projects. The department in coordination with the authority will prepare a loan agreement when the application has been determined to be in compliance with the requirements of the Clean Water Act and applicable state rules for WPCSRF funding. The loan agreement to be executed by the applicant and the department shall be a binding commitment under Iowa law and shall include conditions and terms to be effective for the loan period. If the loan is made to a governmental unit, it shall be accompanied by evidence of legality and tax-exempt

status satisfactory to the director. A copy of the current form of loan agreement shall be provided to the applicant at the time of application.

92.7(9) Allowable and unallowable costs. Allowable costs shall be limited to those eligible costs deemed necessary, reasonable, and directly related to the efficient completion of the project. Unallowable costs include the following:

- a. Cost of the nonfederal share of any project funded by an EPA grant under the provisions of the Clean Water Act;
- b. Cost of service lines and in-house plumbing;
- c. Administrative costs of the recipient;
- d. Vehicles and tools;
- e. Land purchase and easement or rights-of-way costs;
- f. Collector sewers except for unsewered communities;
- g. Interceptor sewers unless they terminate at the wastewater treatment plant or are needed in lieu of new or expanded wastewater treatment works;
- h. Relief sewers unless they terminate at the wastewater treatment plant or are needed in lieu of new or expanded wastewater treatment works;
- i. Correction of combined sewer overflows unless there are documented impacts on the receiving stream and correction would reduce or eliminate need for new or expanded wastewater treatment works;
- j. Storm sewer construction unless there are documented impacts on the receiving stream and correction would reduce or eliminate need for new or expanded wastewater treatment works. Storm sewer construction is eligible if the construction is consistent with the approved municipal storm sewer system plan and is included in the city's NPDES permit;
- k. Land for municipal sludge storage basins;
- l. Land for wastewater or sludge application for final disposal;
- m. Pumping and piping systems to be located on privately owned land that will be used for wastewater or sludge application;
- n. Pretreatment program development unless required by federal regulations; and
- o. Operation and maintenance costs.

92.7(10) Records requirements. The recipient shall maintain adequate records that document all costs associated with the project. Moneys from the WPCSRF and those contributed by the recipient shall be accounted for separately. Accounting procedures shall conform with generally accepted government accounting standards as defined by the current version of the U.S. General Accounting Office (GAO) publication, "Government Auditing Standards." All records shall be preserved and made available to the department, the authority, the state auditor, and the Office of the Inspector General of the EPA for at least three years from the date of the final loan payment.

92.7(11) Audit and inspection. The recipient shall provide access at all times for the department, the authority, the state auditor, and the U.S. EPA Office of Inspector General to all project records and documents for inspection and audit purposes for a period of three years after the date of last loan payment. The same access to the project site(s) shall be provided for inspection purposes.

92.7(12) Crosscutting laws. Other federal and state statutes and programs may affect an SRF project. Loan agreements will include an assurance that a recipient will comply with all applicable federal and state requirements.

92.7(13) Construction payment schedules. The recipient must submit an estimated construction drawdown schedule to the department prior to execution of the loan agreement.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

92.7(14) Project bypass. Any project identified in the intended use plan for funding in a fiscal year that has not signed a binding commitment by August 31 following the fiscal year in which a fundable priority was assigned may be bypassed by projects of a lower priority that are in a state of readiness and on the contingency list.

92.7(15) Termination. The department shall have the right to terminate any loan when terms of the agreement have been violated or project activities are not progressing in a satisfactory manner. Loans are subject to termination if construction has not begun within one year of the execution of a loan agreement. The director in coordination with the authority will establish a repayment schedule for funds already loaned to the recipient. All terminations must be in writing.

567—92.8(455B) Loan payment requirements for point source projects.

92.8(1) Interim payments.

a. General. Payments will be made to the recipient for actual costs incurred. Interim payment requests may be made monthly using forms furnished by the department with adequate documentation to ensure that the costs are allowable. Interim payment requests shall be certified by the recipient that costs incurred reflect the value of work in place and materials and equipment on hand. Documentation shall include evidence that costs are incurred but need not include evidence of payment by the loan recipient. Interim payments will be made in accordance with the loan agreement.

b. Retainage. The department will retain loan payments to the extent that progress payments to the contractor from the recipient are withheld according to state law.

c. Overpayment. Any funds paid to the recipient that are not expended after the project is complete shall be repaid to the WPCSRF after the loan is adjusted.

92.8(2) Final payment. Final payment to the recipient may be made after the final inspection request and the following documents have been submitted and approval given when appropriate:

- a. A request for final payment from the recipient;
- b. Certification by the recipient of project completion and acceptance by the recipient or an acceptable close-out settlement for projects that have encountered a dispute;
- c. Certification by the recipient that labor standard provisions have been met, if applicable;
- d. An acceptable and enacted user charge ordinance; and
- e. Execution of a certificate of final loan amount based on final costs.

567—92.9(455B) Point source project requirements. All wastewater treatment system projects receiving assistance from the WPCSRF which entered a binding loan commitment on or after October 1, 1994, and did not initiate construction of the loan project in whole or in part prior to October 1, 1994, shall meet the following requirements:

92.9(1) Planning. The planning phase of a project consists of those necessary plans and studies which directly relate to facilities needed to comply with enforceable requirements of the Clean Water Act and state statutes. It consists of a systematic evaluation of alternatives that are feasible considering the unique demographic, topographic, hydrologic, and institutional characteristics of the planning area. Facilities planning must support selection of the proposed alternative. The planning phase must include the following:

a. A description of the proposed project and the complete system of which it is a part. The facility plan must be prepared in accordance with Chapter 11 of the Iowa Waste-

water Facilities Design Standards, and meet the applicable provisions of this subrule.

b. Environmental review. Loan recipients shall conduct environmental review of projects using procedures in 40 CFR Part 6, July 1, 2002, as a part of facility planning. The applicant should work with the department as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from 40 CFR Part 6 requirements, or whether a finding of no significant impact or an environmental impact statement is required. In conjunction with the facility planning process as described in 40 CFR 35.2030(c), July 1, 2002, a potential applicant may request formal determination under 40 CFR Part 6. All of 40 CFR Part 6, July 1, 2002, pertaining to Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act, is hereby adopted by reference and incorporated herein. However, all references to the U.S. Environmental Protection Agency as performing acts or reviews shall be substituted with the department for the purposes of this chapter.

92.9(2) Point source project design and construction. The project design and construction phase must include the following:

a. User charge system. A system of user charges must be developed and enacted to ensure that users will pay their proportionate share of the costs of operation and maintenance (including replacement) of any wastewater treatment services provided by the recipient. A user charge system may also include methods of revenue collection for loan repayments.

b. Recipient capability. The recipient must demonstrate to the department that it has the legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance of treatment works.

c. Minority business enterprise/women's business enterprise (MBE/WBE). The recipient must comply with requirements of MBE/WBE participation as found in 40 CFR 31.36(e), July 1, 2002. The director will negotiate with the EPA regional administrator to determine the overall "fair share" objective for WPCSRF loan-assisted projects. The recipient shall take the following affirmative steps to ensure that small, minority, and women's business enterprises are utilized where possible as sources of supplies, construction, and services:

(1) Placing qualified small, minority, and women's business enterprises on solicitation lists;

(2) Ensuring that small, minority, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's business enterprises;

(4) Establishing delivery schedules, where requirements of the work permit, which encourage participation by small, minority, and women's business enterprises;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and

(6) Requiring prime contractors to take the affirmative steps listed above when awarding subcontracts.

d. Site. When it is necessary that real property be acquired as part of the project and within the project period, the recipient may be required to submit documentation of the acquisition, including the legal description, the date the property was acquired, and an appraisal report by a qualified ap-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

praiser. If required, submittal to the department is to occur prior to contract award.

e. Project changes. The recipient must submit to the department prior to final loan payment all modifications to the project including changes to the plans and specifications and changes in the contract (change orders) for approval. The recipient is responsible for any costs or actions necessary should the changes be implemented prior to departmental review and subsequently found to be unapprovable.

f. State inspections. Personnel of the department shall have the right to examine all construction aspects of the project, including materials and equipment delivered and stored on site for use on the project.

92.9(3) Qualifying requirements. Other information not identified in any particular phase of a project but which includes basic qualifying factors necessary to qualify any project for WPCSRF assistance must be provided.

a. Fundable category of project. Categories of projects are defined in rule 567—90.2(455B,17A).

b. Capital financing plans. Applicants must develop a capital financing plan which, at a minimum:

(1) Projects the future requirements for wastewater treatment facilities within the applicant's jurisdiction for a period of no less than ten years;

(2) Projects the nature, extent, timing, and costs of future expansion and reconstruction of wastewater treatment facilities which will be necessary to satisfy the applicant's projected future requirements; and

(3) Sets forth with specificity the manner in which the applicant intends to finance such future expansion and reconstruction. The recipient must submit the plan to the department for any comments deemed necessary.

c. NPDES compliance. To qualify for a WPCSRF loan, a recipient must demonstrate to the satisfaction of the department that the project receiving loan assistance is a part of the applicant's overall plan that addresses all wastewater facility needs and that describes how compliance with NPDES permit limitations will be achieved and maintained.

567—92.10(455B) Point source loan agreement and repayment.

92.10(1) Loan terms and conditions. Loan terms shall include, but not be limited to, the following:

a. Purpose of payments. The recipient shall use the proceeds of the WPCSRF loan solely for the purpose of funding the project. Timely disbursements from the loan shall be made to contractors.

b. Costs. All costs must be documented to the satisfaction of the director before proceeds may be disbursed. Records shall be maintained in accordance with 567—subrule 92.7(10).

c. Applicable interest rate. Loans made to recipients shall bear interest at a fixed rate of 3 percent per annum from the date of origination of the loan.

d. Repayment. The maximum repayment period allowed is 20 years. Principal repayments will commence not later than 1 year after project completion, generally on a level debt service schedule. Adjustments of maturities may be granted to enable a recipient to conform its loan terms to its existing debt obligations, but the average life of the principal installments to be made under the combined repayment schedules shall not be longer than it would be if the total principal amount to be outstanding was repaid on a level debt service basis over the same period. No prepayment of the loan principal may be made within the first 10 years of the loan term, other than those repayments resulting from a loan agreement adjustment based on final costs.

e. Security. The loan shall be secured by a first lien upon the dedicated source of repayment which may rank on a parity basis with other obligations. The dedicated source of repayment is expected to be the net revenues of the municipal wastewater treatment plant and the collection system of the recipient with the loan being secured by a first lien on said net revenues. Revenue-secured loans may rank on a parity basis with other outstanding obligations or, with the approval of the director and the authority, may be subordinate in right of payment to other outstanding revenue obligations of the recipient. Subordinate loans shall be approved only if the revenues of the recipient's utility system are expected to be at least 105 percent of the amount of the combined maximum annual debt service on the outstanding obligations and subordinate loan. Loans also may be secured by a general obligation of the recipient by providing for a levy of taxes to repay the loan. Recipients shall not be required to maintain any debt service reserve fund or improvement fund with respect to their loans.

f. Loan initiation fee. A fee of 1.0 percent of the amount of the loan will be payable on the date the loan agreement is entered.

g. Annual loan servicing fee. A fee of 0.25 percent of the loan principal will be due at the time of each annual loan repayment.

h. Adjustment. Provision for adjustment of the loan amount will be based on final costs at completion of construction.

i. Applicable laws. The recipient shall agree to comply with all applicable laws, rules, and regulations of the department, the authority, and other state, federal and local jurisdictions concerning the financing, construction, operation, maintenance, and use of the wastewater treatment facilities.

j. Delinquency provisions. Failure of the recipient to repay the loan in accordance with the schedule contained in the loan agreement will result in the loan being declared in default. Should a loan be declared in default, the director shall take legal action to collect amounts past due. Also, other state agencies will be notified and actions will be taken to preclude the recipient from receiving other grants or financial assistance from them until such time that all delinquent payments have been recovered.

92.10(2) Financial requirements.

a. Dedicated repayment source. The recipient shall establish sufficient revenue sources that are acceptable to the director for the repayment of the loan.

b. Project accounts. The recipient shall maintain separate financial records according to generally accepted government accounting standards for construction cost accounting, operating revenue and loan repayments.

c. Audit. The authority or an independent firm acceptable to the authority may conduct an audit on all projects assisted by WPCSRF loan funds to establish conformance with loan terms and conditions and the requirements of the Clean Water Act. Audit authority includes access to all files and documents associated with the project.

d. Revenue pledge. To ensure repayment of obligations according to the terms of the loan agreement, the recipient shall agree to impose, collect, and increase, if necessary, user charges, taxes, or other dedicated revenue sources identified for the loan repayment in order to maintain annual net revenues at a level equal to 110 percent of the amount necessary to pay debt service on all revenue obligations during the next fiscal year. In case of loan default, the state shall have authority to require revenue adjustment to collect delinquent loan payments.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

567—92.11(455B) Livestock water quality facilities requirements.

92.11(1) Livestock water quality facilities assistance. Assistance under the WPCSRF shall be in the form of low-interest loans made by participating lending institutions or in other manners as specified in an agreement with a pass-through loan recipient. The following eligibility conditions and restrictions for participation apply to such assistance.

a. Location preferences. Livestock water quality facilities located in watersheds with Section 303(d) waters or waters determined to be impaired in the Section 305(b) report will be given a higher priority for funding. See 567—91.9(455B).

b. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities required to provide water pollution control facilities as required by the department.

c. Applicant eligibility. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.

NOTE: Current federal laws and rules as of December 2002 do not allow assistance for concentrated animal feeding operations or assistance for animal feeding operations that will become concentrated animal feeding operations as a result of the project.

Loans will be made only to livestock producers who are operators of record and have legal control of the property containing the animal feeding operation for the duration of the loan.

d. Project eligibility. The water pollution control facilities considered eligible for assistance include: lagoons, waste treatment and equipment, including but not limited to land used as part of the waste treatment system, storage or holding structures, composters, pipes, pumps, agitation equipment, fencing around lagoons, water systems used to flush water in waste treatment systems, irrigation systems, tank wagons, manure spreaders, waste collection and processing equipment (including without limitation tank trucks, loaders, skid loaders, and waste irrigation equipment), recycle pumps, portions of feeding floors and loafing areas used for waste collection, tractor blades used for scraping waste, vegetative filters, filter strips, water and sediment control basins, contour buffer strips, diversions, fencing and cross fencing along with any associated watering facilities, and other similar structures, equipment or water pollution abatement activities as may be found in approved manure management plans or comprehensive nutrient management plans, provided that portions of the foregoing (except water systems used for flush water in waste treatment systems and composters) located within a poultry house, milk parlor or hog confinement facility (such as a slated floor) shall be excluded. Assistance for development of comprehensive nutrient management plans, as defined by the USDA Natural Resource Conservation Service, is eligible. Assistance shall not be available for water pollution control facilities for new animal feeding operations or any animal feeding operation that initiated construction on or after December 31, 2001. Assistance may be available for replacement animal feeding operations which will eliminate an existing animal feeding operation that is identified as impacting a Section 303(d) listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake.

e. Assessed valuation of property. Assistance for livestock water quality facilities at an animal feeding operation may be limited based on the assessed or appraised valuation of the property where the facilities are to be located or to be assigned as collateral, or the revenue source to be used to repay or secure the loan.

92.11(2) Applying for assistance.

a. Application for loan assistance may be made at any participating lending institution (or directly with the pass-through loan recipient). A list of participating lending institutions will be made available by the department, financial agent or other person or authority the department may use to administer this program. Application shall be made on forms provided by the department or its agent. The application shall include the letter of project approval or construction permit from the department.

b. State review and approval. Prior to receiving assistance, a livestock producer shall submit to the department complete plans and specifications of the facilities to be constructed and a complete list of all waste or nutrient management documents to be developed. The department will review the plans and specifications for compliance with design standards. Once the plans and specifications are determined to meet the design requirements and manure and waste control needs of the animal feeding operation, the department will issue a letter of project approval or construction permit (whichever is applicable) to the livestock producer.

92.11(3) Duration of the project. The project is to be maintained, kept in place or operated as proposed for the life of the loan.

92.11(4) Lender requirements for applicants. The livestock producer shall submit to the participating lending institution an application form as prescribed by the department or deemed acceptable by the department's agent. The livestock producer shall include a copy of the department's letter of project approval or construction permit (whichever is applicable). The livestock producer is responsible to provide any other specific information the lender may deem necessary.

92.11(5) Loan application processing and disbursement of funds. The process for awarding and managing loans shall be in full accordance with the terms established by the department or its agent(s) and the provisions of this chapter.

a. Loan approval/disapproval. The lending institution shall notify the livestock producer of loan conditions and limitations at the time of initial application. Before acting on the loan application, the lending institution shall ensure that adequate funds are available in the WPCSRF livestock water quality facilities set-aside. If the loan is approved, the lending institution shall notify the loan applicant in writing that the loan is approved and notify the department's agent within two working days of approval of the loan application in order to reserve funds in that amount to ensure that adequate funds are available at the time of disbursement. If the loan is denied, the lending institution shall notify the loan applicant in writing, clearly stating the reasons for loan denial. Reasons for denial may include that funds are not available or that the applicant presents an unacceptable level of loan risk.

b. Disbursement of funds. Disbursement of funds shall be done in accordance with the loan agreement. The livestock producer shall furnish the lending institution with copies of bills or invoices relating to the cost of the water pollution control facilities and certification from a professional engineer that the facilities have been constructed according to the department's letter of project approval or construction permit. If the actual costs are less than the amount initially requested on the loan application, then the actual loan will

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

equal those costs. The lending institution is authorized to execute a loan for a principal of up to 5 percent above the amount of the loan application if costs exceed the application amount. In this case, the livestock producer shall provide the lending institution with a written explanation for any cost overruns. The loan shall be subject to the conditions and limitations provided in 567—subrule 92.11(6).

92.11(6) Loan conditions and limitations.

a. Loan amount and period. The minimum loan allowed for livestock water quality facilities shall be \$10,000. The maximum loan allowed for a single animal feeding operation shall not exceed 50 percent of the WPCSRF livestock water quality facilities set-aside in the intended use plan. The loan period shall not exceed the expected life of the facilities constructed and in no case shall it be more than 20 years. If the loan is made only for preparation of a comprehensive nutrient management plan, the loan period shall not exceed 5 years. Loans shall be made contingent on the availability of funds in the WPCSRF livestock water quality facilities set-aside.

b. Comprehensive nutrient management plan required. The livestock producer shall have a comprehensive nutrient management plan prepared by a certified planner or, as part of the loan, develop a comprehensive nutrient management plan to be eligible for the loan.

c. Number of loans. There is no limit to the number of loans a livestock producer can receive, except that a livestock producer shall be eligible for no more than 50 percent of the WPCSRF livestock water quality facilities set-aside in the intended use plan. Each application will be handled as a new loan.

d. Loan execution. The loan agreements to be executed by the livestock producer and the lending institution shall (1) be binding obligations under Iowa law, (2) include conditions and terms to be effective for the loan period, and (3) be accompanied by satisfactory evidence of security, legality and enforceability.

e. Eligible costs. All costs directly related to the design, permitting, construction and financing of the water pollution control facilities are eligible costs. Costs for development of a comprehensive nutrient management plan are eligible costs.

f. Ineligible costs. Costs for development of new animal feeding operations or any animal feeding operation for which construction was initiated on or after December 31, 2001, are not eligible costs. Assistance may be available for replacement animal feeding operations which will eliminate an existing animal feeding operation that is identified as impacting a Section 303(d) listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake. Costs for water pollution control facilities, including the design, permitting, construction or financing, that allow for the animal feeding operation to expand and become a concentrated animal feeding operation are not eligible costs. Costs for the purchase of land to be used for application of wastewater or manure are not eligible costs. Costs for operation and maintenance or updating a comprehensive nutrient management plan are not eligible costs. Refinancing of water pollution control facilities constructed prior to the implementation of this program are not eligible costs.

g. Recipient record keeping. The livestock producer shall maintain records that document all costs associated with the project. The livestock producer shall agree to provide access to these records to the department, the state audi-

tor, the EPA SRF project manager, and the Office of Inspector General at the Environmental Protection Agency. The livestock producer shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

h. Site access. The livestock producer shall agree to provide the department and the department's agent access to the construction site to verify that the loan was used for the purpose intended and that the construction work meets the applicable state and federal requirements for animal feeding operations. The livestock producer also shall agree to provide the department periodic access to the animal feeding operation for the duration of the loan to ensure it is being operated and maintained as designed.

i. Loan termination. The department or its agent shall have the right to terminate any loan when terms of the agreement have been violated.

j. Repayment. Loans shall be repaid in accordance with the terms and conditions of the executed loan agreement. Repayment of the loan must begin no later than 30 days after the project is completed or by the date specified in the loan agreement.

k. Interest rate. The loan interest rate shall be established annually in the IUP. The loan interest rate is not to exceed the prevalent interest rate and will take into account the administration cost of the livestock water quality facilities set-aside.

l. Prepayment. Prepayment of the principal in whole or in part shall be allowed without penalty.

m. Property transfer. In the event of property transfer from the livestock producer that secured the loan to another person or entity during the repayment period specified in the loan agreement, the balance of the loan shall be due in full.

n. Loan delinquency. Failure of the livestock producer to repay the loan in accordance with the schedule in the loan agreement will result in the loan being declared in default. For a loan delinquent more than 90 days, action will be taken consistent with applicable Iowa laws.

92.11(7) Rectification and disputes.

a. Failure of a water pollution control facility at an animal feeding operation to conform to approved plans and specifications or failure of a livestock producer to comply with the applicable requirements constitutes grounds for the department, the department's agent, or the lending institution to withhold loan disbursements. The livestock producer is responsible for ensuring that the identified problem(s) is rectified. Once the deficiency is corrected, the loan funds can be released.

b. A livestock producer that disagrees with the director's withholding of loan funds may request a formal review of the action. The livestock producer must submit a request in writing to the director within 30 days of the date of notification action.

92.11(8) Reserved.

92.11(9) Priority allocation of funds and intended use plan. The department shall, on an annual basis, prepare a plan describing the amount of funding available for loans for the livestock water quality facilities set-aside. To the extent that the pool of funds available for lending involves funds granted under Title VI of the federal Clean Water Act, this plan shall be incorporated into the annual intended use plan.

92.11(10) Availability of funds. Notwithstanding 567—paragraph 92.11(1)“a,” in the initial year of operation and thereafter until modified, loans will be made on a first-come, first-served basis. The department or its agent shall notify lending institutions when 90 percent of the available funds

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

for the current state fiscal year have been used and when all funds have been exhausted.

567—92.12(455B) Local water protection project requirements.

92.12(1) Local water protection project assistance. Assistance under the WPCSRF shall be in the form of low-interest loans made by participating lending institutions. The following eligibility conditions and restrictions for participation apply to such assistance.

a. Location preferences. Local water protection projects to be carried out in watersheds with Section 303(d) waters, waters determined to be impaired in the Section 305(b) report, or watersheds with approved management plans or total maximum daily load implementation plans are to be given a higher priority for funding. See 567—91.10(455B).

b. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the practices required to provide water quality improvements or protection as identified in an approved watershed management plan or in a total maximum daily load implementation plan prepared by the department.

c. Applicant eligibility. Assistance is available to any person who owns land that needs local water protection projects installed to control runoff of sediments, nutrients, pesticides or other nonpoint source pollutants into waters of the state. Loans will be made only to persons who are owners of record of the property where the local water protection projects are to be installed.

d. Eligible practices. The local water protection practices that are considered eligible include, but are not limited to, composting facility, contour buffer strips, diversion, fence, field border, field windbreak, filter strip (with trees, shrubs), filter strip (waste treatment), grade stabilization structure, grassed waterway, pasture and hayland planting, planned grazing system, pond, riparian forest buffer, sediment basin, terrace, underground outlet, waste management system, waste storage facility, waste treatment lagoon, water and sediment control basin, and other practices that are shown to improve or protect water quality.

e. Property eligibility. Assistance for local water protection projects may be limited based on the assessed valuation of the property to be used to repay or secure the loan.

92.12(2) Applying for assistance.

a. Application for loan assistance may be made at any participating lending institution. A list of participating lending institutions will be made available by the department, financial agent or other person or authority the department may use to implement this program. Application shall be made on forms provided by the department or its agent. The application shall include a memorandum of project approval provided by the county soil and water conservation district where the project is located.

b. Local review and approval. Prior to receiving assistance, the applicant shall submit to the county soil and water conservation district information on the local water protection project to be implemented with the loan. The information shall explain how water quality will be protected or restored. The application shall also include an explanation of how the project is compatible with approved watershed plans or total maximum daily load implementation plans.

92.12(3) Duration of the project. The project is to be maintained, kept in place or operated as proposed for the life span of the practice, but in no case for less than the life of the loan.

92.12(4) Lender requirements for applicants. The applicant shall submit to the participating lending institution an application form as prescribed by the department or deemed acceptable by the department's agent. The applicant shall include a copy of the local soil and water conservation district's memorandum of project approval. The applicant is responsible to provide any other specific information the lender may deem necessary.

92.12(5) Loan application processing and disbursement of funds. The process for awarding and managing loans shall be in full accordance with the terms established by the department or its agent(s) and the provisions of this chapter.

a. Loan approval/disapproval. Upon receipt of a complete loan application form, the lending institution shall either approve or deny the loan within 30 working days. The lending institution shall notify the applicant of loan conditions and limitations at the time of initial application. Before acting on the loan application, the lending institution shall ensure that adequate funds are available in the WPCSRF local water protection projects set-aside. If the loan is approved, the lending institution shall notify the loan applicant in writing that the loan is approved and notify the department's agent within two working days of approval of the loan application in order to reserve funds in that amount to ensure that adequate funds are available at the time of disbursement. If the loan is denied, the lending institution shall notify the loan applicant in writing, clearly stating the reasons for loan denial. Reasons for denial may include that funds are not available or that the applicant presents an unacceptable level of loan risk.

b. Disbursement of funds. Disbursement of funds shall be done at the completion of the project. Upon completion of the project, the applicant shall furnish the lending institution with copies of bills or invoices relating to the cost of the local water protection projects and a statement from the county soil and water conservation district that the practices have been implemented according to the memorandum of project approval. If the actual costs are less than the amount initially requested on the loan application, then the actual loan will equal those costs. The lending institution is authorized to execute a loan for a principal of up to 5 percent above the amount of the loan application if costs exceed the application amount, but in no case may a lending institution execute a loan for an amount above the maximum amount of loan allowed. The loan shall be subject to the conditions and limitations provided in 567—subrule 92.12(6).

92.12(6) Loan conditions and limitations.

a. Loan amount and period. The minimum loan allowed for local water protection projects shall be \$5,000. The maximum loan allowed for local water protection projects shall be \$50,000. The loan period shall not exceed ten years. Loans shall be made contingent on the availability of funds in the WPCSRF local water protection projects set-aside.

b. Number of loans. There is no limit to the number of loans an applicant may receive.

c. Loan execution. The loan agreements to be executed by the applicant and the lending institution shall (1) be binding obligations under Iowa law, (2) include conditions and terms to be effective for the loan period, and (3) be accompanied by satisfactory evidence of security, legality and enforceability.

d. Eligible costs. All costs directly related to the implementation of local water protection projects approved in the memorandum of project approval are eligible costs. A local water protection project for an animal feeding operation for which the loan amount is \$50,000 or less is eligible from this

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

set-aside on the condition that the applicant has a comprehensive nutrient management plan.

e. Ineligible costs. Costs for the purchase of land are not eligible costs.

f. Recipient record keeping. The recipient shall maintain records that document all costs associated with the project. The recipient shall agree to provide access to these records to the department, the state auditor, a state or EPA SRF project manager, and the Office of Inspector General at the Environmental Protection Agency. The recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

g. Site access. The applicant shall agree to provide the department or the department's agent access to the project site to verify that the loan was used for the purpose intended.

h. Loan termination. The department or its agent shall have the right to terminate any loan when terms of the agreement have been violated.

i. Repayment. Loans shall be repaid in accordance with the terms and conditions of the executed loan agreement. Repayment of the loan must begin no later than 30 days after the project is completed or by the date specified in the loan agreement, whichever is earlier.

j. Interest rate. The loan interest rate shall be established annually in the IUP. The loan interest rate is not to exceed the prevalent interest rate and will take into account the administration cost of the local water protection projects set-aside.

k. Prepayment. Prepayment of the principal in whole or in part shall be allowed without penalty.

l. Property transfer. In the event of property transfer from the applicant that secured the loan to another person or entity during the repayment period specified in the loan agreement, the balance of the loan, principal and any accrued interest shall be due in full.

m. Loan delinquency. Failure of the applicant to repay the loan in accordance with the schedule in the loan agreement will result in the loan being declared in default. For a loan delinquent more than 90 days, the interest rate shall increase immediately to the current legal usury limit, shall be applied to the entire unpaid principal, and shall be prorated for the period for which the installment is delinquent.

92.12(7) Rectification and disputes.

a. Failure of the applicant to implement the approved local water protection project or to comply with the applicable requirements constitutes grounds for the department, the department's agent, or the lending institution to withhold loan disbursements. The applicant is responsible for ensuring that the identified problem(s) is rectified. Once the deficiency is corrected, the loan funds can be released.

b. If the department withholds loan disbursements, an applicant that disagrees with the withholding of loan funds may request a formal review of the action. The applicant must submit a request in writing to the director within 30 days of the date of notification action.

92.12(8) Priority allocation of funds and intended use plan. The department shall, on an annual basis, prepare a plan describing the amount of funding available for loans for the local water protection projects set-aside. To the extent that the pool of funds available for lending involves funds granted under Title VI of the federal Clean Water Act, this plan shall be incorporated into the annual intended use plan.

92.12(9) Availability of funds. Notwithstanding 567—paragraph 92.12(1)“a,” in the initial year of operation and thereafter until modified, loans will be made on a first-come, first-served basis. The department or its agent shall notify

lending institutions when 90 percent of the available funds for the current state fiscal year have been used and when all funds have been exhausted.

567—92.13(455B) General nonpoint source project requirements.

92.13(1) General nonpoint source assistance. Assistance under the WPCSRF general nonpoint source (GNS) set-aside shall be in the form of a linked deposit through participating lending institutions. The following eligibility conditions and restrictions for participation apply to such assistance.

a. Location preferences. General nonpoint source water pollution control projects will be rated according to rule 567—91.11(455B).

b. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities or practices required to provide water quality improvements, restoration or protection. Participation in nontraditional projects where the primary purpose is not water quality protection or improvement will be limited to the portion of the project that is directly related to water quality improvement, restoration or protection.

c. Applicant eligibility. Assistance is available to projects where facilities are needed to protect, restore or improve water quality from nonpoint source pollution. Only applicants that are owners of record of the property or have long-term control of the property where the project is to be implemented are eligible. In applications where the water pollution control project is a plan or document that will direct water quality protection or improvement efforts, loans will be made to applicants that have the capacity and capability of implementing the plan and repaying the loan.

d. Project eligibility. The general nonpoint source projects that are considered eligible include, but are not limited to, agricultural well sealing, urban sedimentation basins, constructing wetlands and riparian lands, restoration of habitat, stream bank restoration and stabilization, remediation of underground storage tanks, remediation of aboveground storage tanks, urban storm water runoff best management practices and management facilities, sediment traps, wetland flood prevention areas, water conservation and reuse, and development of environmental management systems. Non-traditional nonpoint source project examples that may have a water quality protection or improvement component include, but are not limited to, bird sanctuaries and wildlife enhancement projects, brownfield remediation, vegetative plants, street sweepers and leaf removal equipment, closure of municipal landfills, salt storage sheds, sediment removal, wetland mitigation bank and education programs.

e. Property eligibility. Assistance for general nonpoint source projects may be limited based on the assessed or appraised valuation of the property to be used to repay or secure the loan.

92.13(2) Applying for assistance.

a. Applications. Applications for assistance from the GNS set-aside are to be submitted to the department at Environmental Services, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034. Application forms will be provided by the department. Applications shall include an explanation of how the water quality will be protected, improved or restored by the proposed project. Applications shall be submitted by April 1 to be considered for funding in the subsequent fiscal year IUP.

b. Rating and ranking. Using information included in the application, the department will rate and rank the proj-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ects. The department will identify the highest rated projects and provide the applicant a memorandum of approval for the proposed water pollution control project. The department will earmark the set-aside funds for the water pollution control projects to be funded. These funds will be available for six months after the IUP is approved in order for the applicant to complete the loan with a lending institution. The department shall notify the applicant of loan conditions and limitations at the time the memorandum of approval is provided.

92.13(3) Lending institution application process. Participating lending institutions will be used to process loan applications for general nonpoint source projects. The applicant shall submit an application form as prescribed by the department or deemed acceptable by the department's agent. The applicant shall include a copy of the memorandum of approval. The applicant is responsible for providing all other information the lender may deem necessary to make the loan. The minimum loan amount that will be considered is \$10,000.

92.13(4) Loan application processing and disbursement of funds by participating lending institutions. The process for awarding and managing loans shall be in full accordance with the terms established by the department or its agent(s) and the provisions of this chapter.

a. Loan approval/disapproval. Upon receipt of a complete loan application form, the participating lending institution shall have the responsibility to approve or deny the loan application. Before approving a loan application, the participating lending institution shall ensure that adequate funds are available in the WPCSRF GNS set-aside. If the loan is approved, the lending institution shall notify the loan applicant in writing that the loan is approved and notify the department's financial agent within two working days of approval of the loan application to reserve funds in that amount to ensure that adequate funds are available at the time of disbursement. If the loan is denied, the lending institution shall notify the loan applicant in writing, clearly stating the reasons for loan denial. Reasons for denial may include that funds are not available or that the applicant presents an unacceptable level of loan risk.

b. Disbursement of funds. Disbursement of funds shall be done at the completion of the project. Upon completion of the project, the applicant shall furnish the participating lending institution with copies of bills or invoices relating to the cost of the project and a statement from the department's environmental services field office that the practices have been implemented according to the application and memorandum of approval. If the actual costs are less than the amount initially requested on the loan application, then the actual loan will equal those costs. The lending institution is authorized to execute a loan for a principal of up to 5 percent above the amount of the loan application if costs exceed the application amount, but in no case may a lending institution execute a loan for an amount above the maximum amount of loan allowed. The loan shall be subject to the conditions and limitations provided in subrule 567—92.13(5).

92.13(5) Loan conditions and limitations.

a. Loan amount and period provided by a participating lending institution. The minimum loan amount that will be considered is \$10,000. The loan period shall not exceed ten years. Loans shall be made contingent on the availability of funds in the WPCSRF GNS set-aside.

b. Number of loans. There is no limit to the number of loans an applicant may receive.

c. Loan execution. The loan agreements to be executed by the applicant and the participating lending institution shall (1) be binding obligations under Iowa law, (2) include conditions and terms to be effective for the loan period, and (3) be accompanied by satisfactory evidence of security, legality and enforceability.

d. Eligible costs. All costs directly related to the implementation of the project approved in the memorandum of approval are eligible costs.

e. Ineligible costs. Costs for livestock water quality facilities are not eligible under this set-aside and are provided for in rule 567—92.11(455B). Costs for the purchase of land are not eligible costs.

f. Recipient record keeping. The recipient shall maintain records that document all costs associated with the project. The producer shall agree to provide access to these records to the department, the state auditor, the state or EPA SRF project manager, and the Office of Inspector General at the Environmental Protection Agency. The recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

g. Site access. The recipient shall agree to provide the department and the department's agent access to the project site to verify that the loan was used for the purpose intended.

h. Loan termination. The department or its agent shall have the right to terminate any loan when terms of the agreement have been violated.

i. Repayment. Loans shall be repaid in accordance with the terms and conditions of the executed loan agreement. Repayment of the loan must begin no later than 30 days after the project is completed or by the date specified in the loan agreement.

j. Interest rate. The loan interest rate shall be established annually in the IUP. The loan interest rate is not to exceed the prevalent interest rate and will take into account the administration cost of the general nonpoint source set-aside.

k. Prepayment. Prepayment of the principal in whole or in part shall be allowed without penalty.

l. Property transfer. In the event of property transfer from the recipient that secured the loan to another person or entity during the repayment period specified in the loan agreement, the balance of the loan shall be due in full.

m. Loan delinquency. Failure of the recipient to repay the loan in accordance with the schedule in the loan agreement will result in the loan being declared in default. For a loan delinquent more than 90 days, the interest rate shall increase immediately to the current legal usury limit, shall be applied to the entire unpaid principal, and shall be prorated for the period for which the installment is delinquent.

92.13(6) Rectification and disputes.

a. Failure of the recipient to implement the approved project or to comply with the applicable requirements constitutes grounds for the department, the department's agent, or the participating lending institution to withhold loan disbursements. The recipient is responsible for ensuring that the identified problem(s) is rectified. Once the deficiency is corrected, the loan funds can be released.

b. A recipient that disagrees with the director's withholding of loan funds may request a formal review of the action. The applicant must submit a request in writing to the director within 30 days of the date of notification action.

92.13(7) Reserved.

92.13(8) Priority allocation of funds and intended use plan. The department shall, on an annual basis, prepare a plan describing the amount of funding available for loans for

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the GNS set-aside. To the extent that the pool of funds available for lending involves funds granted under Title VI of the federal Clean Water Act, this plan shall be incorporated into the annual intended use plan.

92.13(9) Availability of funds. Notwithstanding 567—paragraph 92.13(1)“a,” in the initial year of operation and thereafter until modified, loans will be made on a first-come, first-served basis. The department or its agent shall notify participating lending institutions when 90 percent of the available funds for the current state fiscal year have been used and when all funds have been exhausted.

These rules are intended to implement Iowa Code sections 455B.291 to 455B.298 as amended by 2002 Iowa Acts, chapter 1019.

ITEM 5. Amend rule 567—93.1(455B,79GA,SF479) as follows:

567—93.1(455B,79GA,SF479) Purpose. The department of natural resources administers the state revolving *loan* fund for wastewater projects as provided by Iowa Code sections 455B.291 to 455B.98 as amended by 2002 Iowa Acts, chapter 1019, and section 455B.299. The primary purpose of the wastewater *water pollution control* state revolving fund (WPCSRF) is to provide loans at a below-market rate to municipalities for the construction of wastewater treatment facilities *loans to eligible entities to protect and improve the state's water quality and the health of citizens.* The rules governing such loans are provided in 567—Chapter Chapters 90, 91 and 92. Grants provided under Title VI of the federal Clean Water Act are used to capitalize the fund.

In addition to direct loans to municipalities, Section 603(c) of Title VI of the Clean Water Act allows states to use Title VI capitalization grant revolving loan funds to assist the state in its implementation of a nonpoint source management plan as provided for in Section 319 of the Clean Water Act. Iowa's nonpoint source management plan identifies the rehabilitation and improvement of onsite wastewater treatment systems as an area of need. It is the intent of the environmental protection commission that a portion of the Title VI capitalization grant funds WPCSRF be used to establish a program for the purpose of making low-interest loans available for rural homeowners who need to rehabilitate or improve existing onsite wastewater treatment systems.

This chapter establishes an onsite wastewater treatment system assistance program intended to encourage and assist homeowners in improving or rehabilitating existing onsite wastewater treatment systems by providing for low-interest loans. This chapter is intended to implement 2001 Iowa Acts, Senate File 479 Iowa Code sections 466.8 and 466.9.

ITEM 6. Amend rule 567—93.3(455B,79GA,SF479) as follows:

567—93.3(455B,79GA,SF479) Onsite wastewater assistance fund. The onsite wastewater assistance fund (OSWAF) is a separate fund within the state treasury. The OSWAF is a revolving loan fund used to provide low-interest loans to homeowners for improving and rehabilitating onsite wastewater treatment systems and consists of two accounts: a financing account and an administration account. Funds deposited in the OSWAF consist of state-appropriated funds, annual capitalization grants provided under Title VI of the federal Clean Water Act, *equity fund moneys*, loan repayments, interest accrued on funds, and all other moneys specifically designated for use in the OSWAF. The portion of annual Title VI grants to be used amount to be set aside for the OSWAF is identified in the annual intended use plan as pro-

vided in 567—paragraph 92.6(2)“c.” *subrule 92.4(2) and 567—paragraph 92.6(2)“b.”* Of all moneys deposited in the OSWAF annually, no more than 4 percent shall be credited to the administration account.

ITEM 7. Amend subrule 93.4(2), paragraph “c,” as follows:

c. Enforcement of existing monitoring requirements, according to rule 567—69.2(455B), for existing, permitted onsite systems with secondary treatment which discharge aboveground, such as those authorized by NPDES General Permit No. 4 in rule 567—64.6(455B).

ITEM 8. Amend rule 567—93.10(455B,79GA,SF479) as follows:

567—93.10(455B,79GA,SF479) Priority allocation of funds and intended use plan. The department shall, on an annual basis, prepare a plan describing the amount of funding available for loans under the program for the coming state fiscal year. The plan shall also identify those counties qualified to participate in the program and provide an estimate of the loan funds needed in those counties within the coming year. To the extent that the pool of funds available for lending involves funds granted under controlled by Title VI of the federal Clean Water Act, this plan shall be incorporated into the annual intended use plan authorized in 567—Chapter 92.

ITEM 9. Amend rule 567—93.12(455B,79GA,SF479) as follows:

567—93.12(455B,79GA,SF479) Targeted assistance. Notwithstanding rule 93.11(455B,79GA,SF479), the department may reserve up to 50 percent of the annual available funds for use set aside a portion of the annual available funds identified in the IUP for financing onsite wastewater treatment systems in targeted areas. Such targeted areas may include impaired watersheds, high-density housing areas, agricultural drainage areas, or other environmentally sensitive or degraded areas where the repair and rehabilitation of onsite wastewater treatment systems are needed to preserve and protect water quality. The annual intended use plan shall specify the need for targeted assistance, the areas covered, and the estimate of funds needed to address the water quality problems.

ARC 2605B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendments permit a permanent organization that makes a one-time contribution in excess of \$750 to a campaign committee the choice of filing a one-page form that registers the organization as a “political committee” and discloses the contribution in lieu of filing a statement of orga-

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

nization, disclosure reports, and a notice of dissolution. By using the form, the permanent organization is able to disclose the contribution using a one-page form instead of the current process that requires the filing of five pages. The form was successfully tested during a recent ballot issue election.

The proposed amendments do not contain a waiver provision as the underlying disclosure requirement is mandated by statute.

Any interested person may make written comments on the proposed amendments on or before July 29, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code sections 56.2(15) and 56.6(6).

The following amendments are proposed.

ITEM 1. Rescind subrule **4.1(1)**, paragraph “c,” and adopt the following **new** paragraph “c” in lieu thereof:

c. Permanent organizations temporarily engaging in political activity. The requirement to file the statement of organization applies to an entity that comes under the definition of a “political committee” (PAC) in Iowa Code section 56.2(15) by receiving contributions, making expenditures, or incurring debts in excess of \$750 in any one calendar year for the purpose of expressly advocating the election or defeat of a candidate for public office, or for the purpose of expressly advocating the passage or defeat of a ballot issue. A permanent organization that makes a one-time contribution in excess of \$750 may in lieu of filing a statement of organization follow the procedure in rule 351—4.35(56).

ITEM 2. Rescind rule 351—4.35(56,68B) and adopt the following **new** rule in lieu thereof:

351—4.35(56) Permanent organizations forming temporary political committees; one-time contributor filing Form DR-OTC. Pursuant to Iowa Code section 56.6(6), a permanent organization temporarily engaging in activity that exceeds the \$750 financial filing threshold described in rule 351—4.1(56,68B) is required to organize and register a political committee (PAC), file disclosure reports, and, upon completion of activity, file a notice of dissolution. A permanent organization that is temporarily a political committee shall comply with all of the campaign laws in Iowa Code chapter 56 and this chapter.

4.35(1) Form DR-OTC. A permanent organization that makes a one-time contribution in excess of \$750 to a committee may, in lieu of filing a statement of organization, disclosure reports, and a notice of dissolution, file Form DR-OTC. The following information shall be disclosed on Form DR-OTC:

- a. The name and address of the organization making the contribution.
- b. The name and address of a contact person for the organization making the contribution.
- c. The name and address of the campaign committee receiving the contribution.
- d. The date and amount of the contribution. If the contribution is an in-kind contribution, a description of the provided goods or services must be included.
- e. The date of election and the county in which the recipient committee is located if the committee is a county or local committee.
- f. The signature and date of the individual filing Form DR-OTC.

A permanent organization that makes more than one contribution is not eligible to file Form DR-OTC and is required to file a statement of organization, file disclosure reports, and file a notice of dissolution.

4.35(2) Place of filing. Form DR-OTC shall be filed with the board at 514 E. Locust, Suite 104, Des Moines, Iowa 50309, or by fax at (515)281-3701.

4.35(3) Time of filing. Form DR-OTC shall be filed with the board within ten days after the one-time contribution in excess of \$750 is made. The form must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. A faxed Form DR-OTC must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

4.35(4) Failure to register. If the board discovers that a permanent organization has become subject to the provisions of Iowa Code chapter 56 but did not timely file a statement of organization or file Form DR-OTC, as applicable, the permanent organization is subject to the possible imposition of board sanctions.

4.35(5) Partial refund of contribution. A committee that receives a contribution from a permanent organization that causes the organization to become subject to the provisions of Iowa Code chapter 56 may refund all or part of a contribution to the organization so as to reduce the contribution to \$750 or less and remove the organization’s filing obligations.

This rule is intended to implement Iowa Code sections 56.2(15) and 56.6(6).

ARC 2604B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendments reflect the current Board procedures concerning a campaign committee’s generating disclosure reports that are different from paper reports generated by the Board. The proposed amendments also provide that a statement of organization or a disclosure report filed using the Board’s electronic filing system is deemed to be a valid electronic signature. Finally, the proposed amendments bring the rules into compliance with the appropriate statutes.

The proposed amendments do not contain a waiver provision as the underlying obligations are mandated by statute.

Any interested person may make written comments on the proposed amendments on or before July 29, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104,

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code sections 56.5, 56.7, and 68B.32A(2).

The following amendments are proposed.

ITEM 1. Rescind subrule 4.4(3) and adopt the following **new** subrule in lieu thereof:

4.4(3) Signatures. The candidate and treasurer shall sign the statement of organization filed by a candidate's committee. The chairperson and treasurer shall sign a statement of organization filed by any other type of committee. A statement of organization filed electronically using the board's Web site is deemed signed when filed.

ITEM 2. Rescind subrules 4.13(2) and 4.13(5) and adopt the following **new** subrules in lieu thereof:

4.13(2) Computer-generated reports. Committees may generate a disclosure report in lieu of using a board-approved paper report or the board's electronic filing system so long as the generated report contains the same information and is in the same basic format as a board-approved paper report. Committees generating their own reports must submit the reports for prior board approval before use.

4.13(5) Signature on DR-2 Report Summary Page. A disclosure report shall be signed by the individual filing the report. A disclosure report filed electronically using the board's Web site is deemed signed when filed.

ARC 2606B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The proposed amendment permits the Board to electronically provide copies of campaign reports filed by county and local campaign committees to the appropriate county commissioner of elections. The proposed amendment also permits county commissioners of elections to be able to retain copies of these reports electronically by creating an Internet link to the Board's Web site.

The proposed amendment does not contain a waiver provision as no obligation is being imposed.

Any interested person may make written comments on the proposed amendment on or before July 29, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 56.4(2).

The following amendment is proposed.

Adopt **new** subrule 4.8(3) as follows:

4.8(3) The board shall make the reports in subrule 4.8(2) available to the appropriate county commissioner of elections electronically via the board's Web site at www.iowa.gov/ethics. A county commissioner of elections who establishes an Internet link between a public computer in the commissioner's office and the board's Web site shall be deemed in compliance with the requirement in Iowa Code section 56.4(2) to retain the reports.

ARC 2603B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The proposed amendment reflects the current Board procedures concerning the filing of campaign information by an out-of-state committee. The proposed amendment also brings the rule into compliance with the appropriate statute.

The proposed amendment does not contain a waiver provision as the underlying obligations are mandated by statute.

Any interested person may make written comments on the proposed amendment on or before July 29, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 56.5(5).

The following amendment is proposed.

Rescind rule 351—4.32(56,68B) and adopt the following **new** rule in lieu thereof:

351—4.32(56) Contributions from political committees not organized in Iowa. Iowa committees may receive contributions from committees outside Iowa, and committees outside Iowa may contribute to Iowa committees provided the out-of-state committee complies with either subrule 4.32(1) or subrule 4.32(2).

4.32(1) Regular filings. Out-of-state committees may choose to comply with the regular disclosure filing requirements in Iowa Code sections 56.5 and 56.6 by filing a statement of organization and periodic disclosure reports.

4.32(2) Verified statement of registration. In lieu of filing a statement of organization and regular disclosure reports as required by Iowa Code sections 56.5 and 56.6, the out-of-state committee shall send a verified statement registration form (VSR) with each contribution in excess of \$50, and shall also file a copy with the board. The VSR shall contain the following information:

- The complete name, address and telephone number of the out-of-state committee;
- The state or federal agency with which the out-of-state committee is registered;

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

- c. All parent entities or other affiliates or sponsors of the out-of-state committee;
- d. The purpose of the out-of-state committee;
- e. The name, address and telephone number of an Iowa resident authorized to receive service on behalf of the out-of-state committee;
- f. The name and address of the Iowa recipient committee;
- g. The date and amount of the contribution, including description if the contribution is in kind; and
- h. An attested statement that the jurisdiction with which the out-of-state committee is registered has reporting requirements substantially similar to those of Iowa Code chapter 56. The statement shall include confirmation that the contribution is made from an account that does not accept contributions prohibited by Iowa Code section 56.15 unless the contribution from the out-of-state committee is made to an Iowa ballot issue committee.

4.32(3) Signature. The VSR shall be signed by the individual filing the VSR on behalf of the out-of-state committee.

4.32(4) Copy filed with the board. A copy of every VSR filed with a contribution in excess of \$50 shall be filed with the board at 514 E. Locust, Suite 104, Des Moines, Iowa 50309, or by fax at (515)281-3701.

4.32(5) When filed. The VSR shall be filed with the board on or before the fifteenth day after the date of the contribution, or mailed bearing a United States Postal Service postmark dated on or before the fifteenth day after the date of the contribution. For purposes of this subrule, "date of the contribution" means the day, month, and year the contribution check is dated. If the board deems it necessary, a copy of any contribution check may be required to be filed with the board. When a copy of a check is required to be filed with the board, the copy shall be filed within ten days after notice by the board.

4.32(6) Enhanced filing. An out-of-state committee determining that the jurisdiction under which the committee is registered does not have reporting requirements substantially similar to those of Iowa Code chapter 56 may choose to comply by enhancing the committee's filing in the other jurisdiction. The enhanced filing shall meet the reporting requirements of Iowa Code chapter 56 for the reporting period during which contributions to Iowa committees are made. The report shall cover a period of at least one month. An out-of-state committee choosing this option shall comply with the VSR procedures in subrule 4.32(2) and attach a signed statement that the report has been enhanced to satisfy the Iowa reporting requirements.

This rule is intended to implement Iowa Code section 56.5(5).

ARC 2607B**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 sections 17A.3 and 514I.5, subsection 8, the Department of Human Services proposes to amend Chapter 1, "Departmental Organization and Procedures," Iowa Administrative Code.

This amendment:

- Changes the meeting schedule for the HAWK-I Board to conform to changes made by 2003 Iowa Acts, House File 565.

- Updates organizational references to the Department division providing staff support to the Board.

This amendment does not provide for waivers in specified situations because these are technical changes.

Any interested person may make written comments on the proposed amendment on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This Amendment was also Adopted and Filed Emergency and is published herein as **ARC 2612B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

This amendment is intended to implement Iowa Code section 514I.5, subsection 1, as amended by 2003 Iowa Acts, House File 565, section 2.

ARC 2609B**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 218.4, the Department of Human Services proposes to amend Chapter 28, "Policies for All Institutions," Iowa Administrative Code.

This amendment clarifies the fiscal procedure used in applying credits due to counties from a state institution or institutional program. The current rule allows a credit from one institution to be applied to a debit at another institution. Most Department institutions are funded from the state general fund, and federal and county payments for institutional care are credited to the general fund. However, a few institutions (the state resource centers and the "dual diagnosis" unit at

HUMAN SERVICES DEPARTMENT[441](cont'd)

Mt. Pleasant) are funded through a separate institutional fund. The institutional fund includes the county and federal payments for care at the institution and a minimal state appropriation for costs that are not covered by the institution's Medicaid reimbursement. These are termed "net budgeting" institutions.

When a county has credit from an institution not under net budgeting and an outstanding balance at an institution that is under net budgeting, the current rule allows the transfer of funds from the state general fund to an institutional fund. That rule appears to violate the Iowa Constitution, Article III, Section 24, which does not allow such transfers from the state general fund by a state agency unless the legislature has made a specific appropriation for that purpose. Under this amendment, counties will have the option of using the credit at other non-net budgeting institutions or filing a claim to the State Appeal Board to obtain a refund.

This amendment does not provide for waivers in specified situations because the Department does not have the authority to waive this provision.

Any interested person may make written comments on the proposed amendment on or before August 13, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 218.78.

The following amendment is proposed.

Amend subrule **28.13(2)**, paragraph "c," as follows:

c. Any remaining credit, after application to the patient's or resident's account and to the same institution that generated the credit, shall be applied to an outstanding balance at another state institution.

(1) If a credit generated by an institution or institutional program under net budgeting is to be applied to an institution or institutional program not under net budgeting, then a transfer of funds shall be made from the applicable institutional fund or institutional program under net budgeting to the state general fund.

(2) If a credit generated by an institution that is not under net budgeting is to be applied to an institution or institutional program under net budgeting, ~~then a transfer will be made from the state general fund to the applicable net budgeting institutional fund~~ *the county may seek a refund by filing a claim to the state appeal board pursuant to 543—Chapter 3, or the county may allow the credit to remain outstanding until the county has an additional debt at a state institution or institutional program that is not under net budgeting.*

(3) If a credit generated by an institution or institutional program under net budgeting is to be applied to another institution or institutional program under net budgeting, then the transfer of funds between the applicable net budgeting funds or programs shall be made through an accounting journal entry.

ARC 2564B

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 and 2003 Iowa Acts, House File 560, section 4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These amendments change requirements for the Medicaid home- and community-based services (HCBS) waiver for persons with mental retardation by:

- Adding provisions for approval for facilities previously licensed as residential care facilities for mentally retarded persons to convert to HCBS supported community living units. Similar provisions were removed from the rules in previous rule making published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2161B**, based on changes made by 2002 Iowa Acts, chapter 1120. New legislation in 2003 Iowa Acts, House File 387, reinstates the waiver of licensure for these facilities.
- Adding provisions for approval of five-bed supported community living units, also in conformity with 2003 Iowa Acts, House File 387.
- Adding transportation, adult day care, and prevocational services as available services under the waiver, as mandated by 2003 Iowa Acts, House File 560. The provider qualifications and scope of these services are based on those under the brain injury waiver, which already covers these services, and discussions with the Iowa State Association of Counties and the Iowa Association of Community Providers. For adult day care, providers are eligible to participate if they hold a current certificate for adult day services from the Department of Inspections and Appeals, as required by 2003 Iowa Acts, House File 672, section 3.

These amendments do not provide for waivers in specified situations since state legislation did not provide for any exceptions and the changes confer a benefit.

Any interested person may make written comments on the proposed amendments on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2575B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 249A.12 as amended by 2003 Iowa Acts, House File 560, section 1; Iowa Code section 135C.6 as amended by

HUMAN SERVICES DEPARTMENT[441](cont'd)

2003 Iowa Acts, House File 387, section 2; and 2003 Iowa Acts, House File 672, section 3, subsection 4.

ARC 2565B

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," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments change Medicaid reimbursement to hospitals and hospital-based nursing facilities for services to recipients who are "dually eligible," meaning they have health care coverage under both the federal Medicare program and the state Medicaid program. Claims for these services are known as "crossover claims."

Currently, reimbursement policies for dual eligibles require Medicaid payment for the full Medicare coinsurance and deductible. In most cases, these amounts plus the Medicare payment exceed the total Medicaid reimbursement that is calculated for the service. Under these amendments, Medicaid will reimburse for Medicare coinsurance and deductible amounts only to the extent that actual payments from Medicare are less than the Medicaid reimbursement for the service.

Medicare policy generally permits Medicare coinsurance, copayment, and deductible amounts that are not collected to be treated as a "Medicare bad debt." Medicare reimburses hospitals 70 percent of their Medicare bad debt. These amendments provide for Medicaid to pay the remaining 30 percent of the bad debt resulting from the reduction of Medicaid crossover payments.

These amendments are parallel to those adopted for non-hospital-based nursing facilities, as published in the Iowa Administrative Bulletin on March 5, 2003, as **ARC 2235B**, except for the provision of additional payments for unreimbursed bad debt due to Medicare payment limits for hospitals. Hospital-based Medicare-certified nursing facilities were exempted from that rule making due to those limits. These amendments make the crossover claim reimbursement policies for hospital-based Medicare-certified nursing facilities identical to those for hospital inpatient and outpatient care.

The Department is in communication with the federal Centers for Medicare and Medicaid Services regarding the Medicare treatment of Medicaid payments, i.e., whether they would be used to offset allowable Medicare bad debt costs. If there is a change in Medicare policy on bad debts, the Department is committed to amending these rules to address any shortfalls in facility payments. This policy is not intended to reduce facility reimbursement.

The Iowa Hospital Association has expressed concerns about potential cash-flow problems due to delayed reim-

bursement for Medicare bad debts. The Department has contacted the Medicare intermediaries, CAHABA and Mutual of Omaha, regarding the potential for hospitals to receive interim payments rather than an annual payment for bad debt amounts. Both have indicated that interim payments can be made for inpatient and outpatient hospital services and hospital-based nursing facility services.

These amendments will have no effect on crossover payments made for services rendered by critical access hospitals. The Medicaid and Medicare reimbursement rates for services rendered by critical access hospitals are the same. Therefore, Medicaid will continue to reimburse in full for any Medicare coinsurance or deductible amounts for services rendered by critical access hospitals.

These amendments do not provide for waivers because all hospitals and hospital-based nursing facilities should be subject to the same reimbursement criteria. Anticipated savings will not be achieved if waivers are provided.

Any interested person may make written comments on the proposed amendments on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2576B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 249A.4 and 2003 Iowa Acts, House File 667, section 11, subsection 13.

ARC 2566B

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 and 2003 Iowa Acts, House File 619, section 11, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments create a supplemental payment adjustment applicable to physician services provided to Medicaid recipients at publicly owned acute care teaching hospitals, as mandated by 2003 Iowa Acts, House File 619, section 11, which took effect on May 1, 2003.

Under these amendments, the Department will make supplemental payments for services provided by participating physicians at qualifying hospitals equal to the difference between the physicians' usual and customary charges (the applicable maximum payment for federal financial participation) and the amount otherwise paid pursuant to the fee schedule for physician services under the Iowa Medicaid program.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Participating physicians are those employed by a qualifying hospital, or who have assigned Iowa Medicaid payments to a qualifying hospital or an organized health care delivery system affiliated with a qualifying hospital so that payment can be made to the hospital or the organized health care delivery system.

Qualifying hospitals are publicly owned acute care teaching hospitals eligible to receive payments under the graduate medical education and disproportionate share fund that enter into an agreement with the Department to make intergovernmental transfers to the Department in amounts equal to all supplemental payments made for physician services provided by participating physicians at the qualifying hospital.

As required by 2003 Iowa Acts, House File 619, the Department will deposit the returned payments in the Department's medical assistance account.

These amendments do not provide for waivers in specified situations because the legislation does not allow for any exceptions.

Any interested person may make written comments on the proposed amendments on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2577B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement 2003 Iowa Acts, House File 619, section 11.

- Require reporting by pharmacies to gather information necessary to monitor and revise drug reimbursement rates. The Department must keep this information confidential in compliance with Iowa Code chapter 550. Similar reporting provisions were originally part of the state maximum allowable cost rules that took effect on November 1, 2002, but were rescinded in rule making published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2163B** (Adopted and Filed Emergency), and on March 5, 2003, as **ARC 2332B** (Adopted and Filed).

These amendments do not provide for waivers in specified situations because the legislation does not provide for waivers and because all providers should be paid on the same basis as a matter of fairness. Also, cost savings needed from the drug reimbursement changes would not be realized if waivers were provided. Individual providers may request a waiver of these rules under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2578B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement 2003 Iowa Acts, House File 619, section 7.

ARC 2567B**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 and 2003 Iowa Acts, House File 619, section 7, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments affect the Medicaid reimbursement policies for prescription drugs. 2003 Iowa Acts, House File 619, section 7, directs the Department to:

- Lower the pharmacy dispensing fee from \$5.17 to \$4.26.
- Lower the estimated acquisition cost (ingredient reimbursement) from the average published wholesale price less 10 percent to the average wholesale price less 12 percent.
- Set the multiplier used to calculate the state maximum allowable cost for drugs at 1.4. This factor, which is multiplied by the average wholesale acquisition cost for a group of equivalent products to set the maximum reimbursement for those drugs, is currently 2.1.

ARC 2568B**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 and 2003 Iowa Acts, House File 619, section 7, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments make the following changes to the rule for recipient copayment for Medicaid services, as directed by 2003 Iowa Acts, House File 619, section 7:

- Change the amount of copayment required for prescription drugs from \$1 to amounts varying from \$0.50 to \$3, depending on the cost of the drug and whether the drug is brand name or generic.
- Impose a copayment of \$3 for each physician office visit.

These copayments are subject to existing Iowa Medicaid rules providing that no copayments apply to services furnished to recipients who:

- Are under the age of 21, or
- Are pregnant women, or

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Are required to spend all but a minimal amount of their income for the costs of care in a nursing facility or other medical institution.

Copayments also do not apply to emergency services or to family planning services or supplies. Providers collect the copayment from the recipient at the time of services. Although recipients are liable for the copayment, providers are forbidden to deny care or services to a Medicaid-eligible person because of the person's inability to pay a copayment.

These amendments are cost-saving measures. They do not provide for waivers in specified situations because the legislation did not provide for waivers and because necessary savings would not be achieved if waivers were provided.

Any interested person may make written comments on the proposed amendments on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2579B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement 2003 Iowa Acts, House File 619, section 7.

ARC 2608B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

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

These amendments eliminate the six-month waiting period under the HAWK-I program for children who previously had employer-sponsored health care coverage, as mandated by 2003 Iowa Acts, House File 565. The amendments rescind the paragraph specifying circumstances when a child could qualify as "uninsured" during the waiting period and the paragraph requiring the third-party administrator to track waiting periods for applicants. These changes allow families to transition from employer-sponsored health care coverage to the HAWK-I program without a break in coverage.

Currently, families who voluntarily drop employer-sponsored health care coverage that costs less than 5 percent of their gross annual income are subject to a six-month waiting period. The waiting period was implemented as a "crowd out" provision, to deter families from dropping employer-sponsored health care to obtain government-sponsored health care. There have been no indications that "crowd out" is occurring in Iowa. Only two appeals have been filed on this issue in the four years that the program has operated. Federal regulations do not require a "crowd out" provision

for states that cover families with income up to 200 percent of the federal poverty guidelines.

These amendments do not provide for waivers in specified situations because they confer a benefit on affected families. The legislation requires the Department to track and report to the General Assembly any increases in program costs attributable to these amendments during state fiscal years 2004 and 2005.

Any interested person may make written comments on the proposed amendments on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2611B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code sections 514I.5(8) and 514I.8(2) as amended by 2003 Iowa Acts, House File 565, sections 7 and 11.

ARC 2572B**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.12, the Department of Human Services proposes to amend Chapter 88, "Managed Health Care Providers," Iowa Administrative Code.

These amendments change the rules for the Medicaid managed health care option known as MediPASS (Medicaid Patient Access to Service System). The amendments allow advanced registered nurse practitioners to serve as MediPASS patient managers, in compliance with 2003 Iowa Acts, House File 479, which was signed by the Governor on April 19, 2003.

Certain Medicaid recipients are required to enroll in MediPASS. These recipients select or are assigned to a primary care provider who serves as their patient manager. Physicians, rural health clinics, and federally qualified health centers are currently eligible to become patient managers. An agreement to serve as a patient manager is required in addition to the regular Medicaid provider agreement. The patient manager is responsible for:

- Providing the recipient's primary health care.
- Referring the recipient appropriately for care not provided directly.
- Authorizing payment for all other Medicaid managed services.
- Coordinating and monitoring other managed services.

These amendments specify that, as with physicians, only independently practicing nurse practitioners certified in designated specialties are allowed to be patient managers. This

HUMAN SERVICES DEPARTMENT[441](cont'd)

is due to the requirement that the patient manager be able to provide the recipient's primary health care. All references to the patient manager as "physician" are changed to "provider."

These amendments do not provide for waivers in specified situations because the legislation did not authorize any exceptions and because the amendments confer a benefit by making more practitioners available to MediPASS enrollees as primary care patient managers.

Any interested person may make written comments on the proposed amendments on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2583B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 249A.4(7) as amended by 2003 Iowa Acts, House File 479.

ARC 2610B**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 17A.3 and 2003 Iowa Acts, House File 667, the Department of Human Services proposes to amend Chapter 100, "Child Support Parental Obligation Pilot Projects," Iowa Administrative Code.

These amendments extend until October 1, 2006, the expiration date of rules for parental obligation pilots and incentives for parents involved with those pilots. 2003 Iowa Acts, House File 667, signed on May 23, 2003, directs that the requirements in the 2001 session law for these pilot projects "shall remain applicable." The current rules for the pilot projects are set to expire on October 1, 2003.

The pilot program provides opportunities for local communities to offer incentives that are helpful in engaging fathers in programs that address barriers to the payment of support. The current rules include four child support-related incentives that pilot projects may offer parents to encourage participation. Those incentives are: limited deviation from child support guidelines, expedited modification of child support orders, temporary lowering of income withholding, and satisfaction or forgiveness of child support due the state.

Program participants have paid over \$400,000 in support for families in two years. In state fiscal year 2004, there will be approximately ten funded and unfunded local community programs working with fathers and mothers who are to pay support. These amendments will extend the rules under which these programs are working. Building an awareness of ways to recruit and involve fathers is still very new, and

additional experience with community initiatives is necessary.

These amendments do not provide for waivers in specified situations because parents volunteer to participate in the pilot projects, so waiver provisions are inapplicable.

Any interested person may make written comments on the proposed amendments on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement 2003 Iowa Acts, House File 667, section 8, subsection 4, paragraph "b," subparagraph (3).

The following amendments are proposed.

ITEM 1. Amend the parenthetical implementation for all rules in **441—Chapter 100** as follows:
(78GA,SF2435 17A,80GA,HF667)

ITEM 2. Amend subrule **100.3(2)**, paragraph "i," as follows:

i. Project duration, not to exceed three years from extend beyond October 1, 2003 2006.

ITEM 3. Amend rule 441—100.8(78GA,SF2435) as follows:

441—100.8(78GA,SF2435 17A,80GA,HF667) Continued application of rules and sunset provisions. Except as provided in subrule 100.8(2), these rules shall terminate the earlier of October 1, 2003 2006, or when legislative authority is discontinued.

ITEM 4. Amend **441—Chapter 100**, implementation clause, as follows:

These rules are intended to implement 2000 2003 Iowa Acts, Senate House File 2435 667, section 4 8, subsection 4d(3) 4b(3).

ARC 2571B**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 237A.12, the Department of Human Services proposes to amend Chapter 109, "Child Care Centers," and Chapter 110, "Child Development Homes," Iowa Administrative Code.

These amendments change the child care licensing and registration requirements on criminal and child abuse record checks to conform with statutory changes made by 2003 Iowa Acts, Senate File 351. This legislation defines "transgressions" that may prohibit a person's involvement with child care. Certain transgressions automatically prohibit involvement temporarily or permanently, while others require an evaluation by the Department to determine whether the

HUMAN SERVICES DEPARTMENT[441](cont'd)

transgression merits prohibition. As an outcome of the evaluation, the Department may require a plan of correction before approval and may specify periodic reevaluation of a prohibition.

The Department may also prohibit a person's involvement with child care when a license or registration is denied or revoked due to the person's continued or repeated failure to operate in compliance with the laws and rules governing the facility.

These amendments do not provide for waivers in specified situations because the Department does not have authority to waive statutory provisions.

Any interested person may make written comments on the proposed amendments on or before August 13, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2582B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 237A as amended by 2003 Iowa Acts, Senate File 351.

ARC 2569B**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 sections 217.6 and 234.6 and 2003 Iowa Acts, House File 667, section 31, the Department of Human Services proposes to amend Chapter 150, "Purchase of Service," and Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments:

- Continue reimbursement rates for purchase of service providers (for adoption, shelter care, family planning, and independent living services) effectively at their June 30, 2001, level as directed by 2003 Iowa Acts, House File 667, section 31, subsections 6 and 9.

- Continue reimbursement rates for rehabilitative treatment and supportive services (family preservation, family-centered services, foster family services, and group care services) effectively at their June 30, 2001, level as directed by 2003 Iowa Acts, House File 667, section 31, subsection 8.

- Continue to suspend the ability of Department administrators to renegotiate rates for rehabilitative treatment and supportive services.

These amendments do not provide for waivers in specified situations because the legislation does not provide for waivers.

Any interested person may make written comments on the proposed amendments on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis,

Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2580B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement 2003 Iowa Acts, House File 667, section 31, subsections 6, 8, and 9, and section 44.

ARC 2570B**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 170, "Child Care Services," Iowa Administrative Code.

These amendments change eligibility requirements for child care assistance in conformity with 2003 Iowa Acts, Senate File 351, to provide that:

- Families with medically incapacitated parents may be eligible for assistance. Currently, the parent has to be hospitalized or out of the home for the family to be eligible, and only certain medical conditions qualify.

- Families receiving a state adoption subsidy are exempt from waiting list provisions in order to coordinate benefits under these two programs, as is done for families receiving assistance under the Family Investment Program.

These amendments do not provide for waivers in specified situations because they confer a benefit on the families affected.

Any interested person may make written comments on the proposed amendments on or before July 30, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2581B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 237A.13 as amended by 2003 Iowa Acts, Senate File 351, sections 7 and 8.

ARC 2562B**LAW ENFORCEMENT
ACADEMY[501]****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 80B.11, the Iowa Law Enforcement Academy, with approval of the Iowa Law Enforcement Academy Council, hereby gives Notice of Intended Action to amend Chapter 3, "Certification of Law Enforcement Officers," Iowa Administrative Code.

2003 Iowa Acts, Senate File 352, and Senate File 453, were passed during first Session of the 80th Iowa General Assembly and signed into law by Governor Vilsack on April 25 and May 30, 2003, respectively. The new Iowa Code sections 80B.11D and 80B.11E created by 2003 Iowa Acts, Senate Files 352 and 453, allow persons who are not certified as law enforcement officers to apply for attendance at a short course of study at an approved law enforcement training program or at the Iowa Law Enforcement Academy if such persons are sponsored by a law enforcement agency. The new law is effective July 1, 2003.

This proposed administrative rule was presented to the Iowa Law Enforcement Academy Council for review and approval on June 5, 2003. The Council approved the proposed rule. The proposed rule outlines the requirements for an individual to submit an application to attend either the short course or Iowa Law Enforcement Academy.

Any interested person may make written suggestions or comments on this proposed amendment to Chapter 3 on or before July 29, 2003. Such written materials should be directed to the Iowa Law Enforcement Academy, P.O. Box 130, Camp Dodge, Johnston, Iowa 50131; fax (515)242-5471.

There will be a public hearing on July 29, 2003, at 10 a.m. in the conference room at Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, 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 new rule.

Any person who plans to attend a public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Iowa Law Enforcement Academy at (515)242-5357 and advise of specific needs.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 2561B**. The content of that submission is incorporated by reference.

This amendment is intended to implement 2003 Iowa Acts, Senate Files 352 and 453.

ARC 2587B**MANAGEMENT DEPARTMENT[541]****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 2003 Iowa Acts, Senate File 438, the Department of Management hereby gives Notice of Intended Action to adopt Chapter 11, "Grants Enterprise Management System," Iowa Administrative Code.

These rules establish the procedures necessary to implement an enterprise-wide system of identifying, tracking, and coordinating funding opportunities. This system is known as the Grants Enterprise Management System (GEMS).

Consideration will be given to all written suggestions or comments on the proposed rules received on or before August 7, 2003. Such written materials should be sent to the Iowa Grants Management Coordinator, Iowa Department of Management, State Capitol Building, Des Moines, Iowa 50319, by facsimile to (515)242-5897, or by electronic mail to kathy.mabie@idom.state.ia.us.

A public hearing will be held on August 7, 2003, at 10 a.m. in Room G14, State Capitol Building, at which time comments may be submitted orally or in writing. Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact Kathy Mabie at (515)281-8834 to advise of any specific needs.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 2602B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2003 Iowa Acts, Senate File 438.

ARC 2598B**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 61, "State Parks and Recreation Areas," Iowa Administrative Code.

The amendment adds Clear Lake State Park, Ritz Unit, Cerro Gordo County, to the after-hours fishing list.

Any interested person may make written suggestions or comments on the proposed amendment on or before July 29, 2003. Such written materials should be directed to the State Parks Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views

NATURAL RESOURCE COMMISSION[571](cont'd)

orally should contact the Bureau at (515)242-6233 or TDD (515)242-5967 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on July 29, 2003, at 10 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code sections 461A.3, 461A.46 and 461A.57.

The following amendment is proposed.

Amend rule 571—61.9(461A) by renumbering subrules **61.9(4)** to **61.9(20)** as **61.9(5)** to **61.9(21)** and adopting the following **new** subrule 61.9(4):

61.9(4) Clear Lake State Park, Ritz Unit, Cerro Gordo County. The boat ramp, courtesy dock, fishing dock and parking lots.

ARC 2599B**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 106, "Deer Hunting by Residents," Iowa Administrative Code.

These amendments clarify the rules for block deer hunts that are held to reduce deer depredation on private property.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 31, 2003. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on July 31, 2003, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

The following amendments are proposed.

ITEM 1. Amend subrule **106.11(4)**, paragraph "a," subparagraph (7), as follows:

(7) Depredation licenses will be valid only on the land where damage is occurring and the immediately adjacent property unless the land is within a designated block hunt area as described in subparagraph (8). Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

ITEM 2. Amend subrule **106.11(4)**, paragraph "a," by adopting the following **new** subparagraph (8):

(8) Block hunt areas are areas designated and delineated by wildlife biologists of the wildlife bureau to facilitate herd reduction in a given area where all producers may not qualify for the depredation program or in areas of persistent deer depredation. Depredation permits issued to producers within the block hunt zone are valid on all properties within the delineated boundaries. Individual landowner permission is required for hunters utilizing depredation licenses within the block hunt boundaries. Creation of a given block hunt area does not authorize trespass.

ARC 2601B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 131, "Signing on Primary Roads," Iowa Administrative Code.

Subrule 131.8(1) applies to signing on primary roads for county conservation parks. The subrule is amended to eliminate requirements that a county conservation park must have an approved drinking water supply, sanitary toilet facilities, picnic facilities and camping facilities in order to qualify for signing. Instead, new language requires a park to have as its primary purposes outdoor recreation and nature appreciation. The effect of the amendment is that more county conservation parks will qualify for the "arrowhead" logo type of sign. The number of signs installed is not anticipated to change. Currently, if a county conservation area does not qualify for "arrowhead" signs, traditional brown and white destination signs are installed.

The Iowa Association of County Conservation Directors requested the amendment. The reasons for its request are to provide consistency with the requirements used to install similar signs on county roads and its belief that the traveling public does not associate "arrowhead" signs with any specific criteria other than being a conservation area managed by a county government. Signs on primary roads for county conservation parks are furnished by the counties.

This amendment does not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written re-

TRANSPORTATION DEPARTMENT[761](cont'd)

quest to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed amendment, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: julie.fitzgerald@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than July 29, 2003.

A meeting to hear requested oral presentations is scheduled for Thursday, July 31, 2003, at 10 a.m. in the Administration Building, First Floor South Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code sections 321.252 and 321.253.

Proposed rule-making action:

Amend subrule 131.8(1) as follows:

131.8(1) Requirements. The park shall have ~~an approved drinking water supply, sanitary toilet facilities, picnic facilities and camping facilities~~ *as its primary purposes outdoor recreation and nature appreciation.*

ARC 2612B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3 and 514I.5, subsection 8, the Department of Human Services amends Chapter 1, "Departmental Organization and Procedures," Iowa Administrative Code.

This amendment:

- Changes the meeting schedule for the HAWK-I Board to conform to changes made by 2003 Iowa Acts, House File 565.
- Updates organizational references to the Department division providing staff support to the Board.

This amendment does not provide for waivers in specified situations because these are technical changes.

The Department of Human Services finds that notice and public participation are unnecessary and impracticable because the amendment implements legislation that became effective on July 1, 2003. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit on the public by removing conflicts between the rules and the authorizing statute and the current Department table of organization. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date is waived.

The HAWK-I Board adopted this amendment on June 16, 2003.

This amendment is also published herein under Notice of Intended Action as **ARC 2607B** to allow for public comment.

This amendment is intended to implement Iowa Code section 514I.5, subsection 1, as amended by 2003 Iowa Acts, House File 565, section 2.

This amendment became effective July 1, 2003.

The following amendment is adopted.

Amend rule 441—1.10(17A) as follows:

Amend the introductory paragraph as follows:

441—1.10(17A,514I) HAWK-I board. The director of the department has, by statute, the advice and counsel of the HAWK-I board on the healthy and well children kids in Iowa program. This seven-member board consists of the commissioner of insurance or the commissioner's designee, the director of the department of education or the director's designee, the director of the department of public health or the director's designee, and four public members appointed by the governor, subject to confirmation by two-thirds of the members of the senate. The board shall also include two members of the senate and two members of the house of representatives, serving as ex officio members.

Amend subrule 1.10(2), introductory paragraph, as follows:

1.10(2) Duties and powers of the board. The board's powers and duties are to make policy and to provide direction for the administration of all aspects of the healthy and well kids in Iowa program which is administered by the division of ~~medical services financial, health and work supports~~. In carrying out these duties, the board shall do all of the following:

Amend subrule **1.10(4)**, paragraph "**b**," as follows:

b. Copies of the minutes are kept on file in the office of the administrator of the division of ~~medical services financial, health and work supports~~.

Amend subrule **1.10(5)**, paragraphs "**a**" and "**b**," as follows:

a. The board shall meet at regular intervals at least ~~ten~~ six times each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members, *but no more than twelve times per year*.

b. Any person wishing to make a presentation at a board meeting shall notify the Administrator, Division of ~~Medical Services Financial, Health and Work Supports~~, Department of Human Services, ~~Hoover State Office Building, 1305 E. Walnut Street~~, Des Moines, Iowa 50309-0114, telephone (515)281-8794 6080, at least 15 days ~~prior to~~ before the board meeting.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code ~~paragraph sections 17A.3(1)"a" and 1998 Iowa Acts, chapter 1196, section 6 514I.5~~.

[Filed Emergency 6/20/03, effective 7/1/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2575B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, House File 560, section 4, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These amendments change requirements for the Medicaid home- and community-based services (HCBS) waiver for persons with mental retardation by:

- Adding provisions for approval for facilities previously licensed as residential care facilities for mentally retarded persons to convert to HCBS supported community living units. Similar provisions were removed from the rules in previous rule making published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2161B**, based on changes made by 2002 Iowa Acts, chapter 1120. New legislation in 2003 Iowa Acts, House File 387, reinstates the waiver of licensure for these facilities.

- Adding provisions for approval of five-bed supported community living units, also in conformity with 2003 Iowa Acts, House File 387.

- Adding transportation, adult day care, and prevocational services as available services under the waiver, as mandated by 2003 Iowa Acts, House File 560. The provider qualifications and scope of these services are based on those under the brain injury waiver, which already covers these services, and discussions with the Iowa State Association of Counties and the Iowa Association of Community Providers. For adult day care, providers are eligible to participate if they

HUMAN SERVICES DEPARTMENT[441](cont'd)

hold a current certificate for adult day services from the Department of Inspections and Appeals, as required by 2003 Iowa Acts, House File 672, section 3.

These amendments do not provide for waivers in specified situations since state legislation did not provide for any exceptions and the changes confer a benefit.

The Department of Human Services finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. 2003 Iowa Acts, House File 387, exempting mental retardation waiver supported community living programs from licensure, was effective May 1, 2003. Public notice of the corresponding rules regarding living units for mental retardation waiver supported community living programs is unnecessary because the rules implement the legislative intent, and is impracticable and contrary to the public interest because it would delay implementation of the legislative intent.

2003 Iowa Acts, House File 560, requires the Department to implement the changes in covered services on July 1, 2003, and authorizes emergency rule making. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective July 1, 2003. The changes in approval of living units benefit waiver providers and consumers by restoring authorization for the operation of converted facilities and allowing approval of new five-bed facilities, giving consumers more choice of living situations. The changes in covered services benefit consumers by giving them a wider choice of services that can be used to meet their needs. Emergency implementation of the changes in waiver services is also authorized by 2003 Iowa Acts, House File 560, section 4.

The Council on Human Services adopted these amendments on June 11, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2564B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.12 as amended by 2003 Iowa Acts, House File 560, section 1; Iowa Code section 135C.6 as amended by 2003 Iowa Acts, House File 387, section 2; and 2003 Iowa Acts, House File 672, section 3, subsection 4.

These amendments became effective July 1, 2003.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.37(249A) as follows:

Amend subrule **77.37(14)**, paragraph "e," as follows:

Rescind subparagraph (2) and adopt the following **new** subparagraph in lieu thereof:

(2) The department may approve conversion of a total of 40 living units for five persons or fewer formerly licensed as residential care facilities for persons with mental retardation to living units designed to serve supported community living consumers. Upon approval, the living unit shall surrender the facility license and continue to operate under the medical assistance home- and community-based services waiver for persons with mental retardation.

Approvals of living units for five persons or fewer formerly licensed as residential care facilities for persons with mental retardation granted before July 1, 2002, shall remain in effect.

Applications for approval to be granted under this subparagraph after July 1, 2003, shall be submitted to the Department of Human Services, Bureau of Long-Term Care, 1305 E. Walnut Street, Fifth Floor, Des Moines, Iowa 50319-

0114. The application shall include a letter of support from the county in which the living unit is located. The letter shall verify that the county will request sufficient waiver slots for the consumers to be served and provide necessary county funding.

The bureau of long-term care shall approve the application based on the letter of support from the county and the requirement to maintain the geographical distribution of supported community living programs to avoid an overconcentration of programs in an area.

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

(4) The department shall approve a living unit for five persons subject to all of the following conditions:

1. Approval will not result in an overconcentration of such living units in an area.

2. The county in which the living unit is located submits a letter of support for approval to the bureau of long-term care.

3. The county in which the living unit is located provides to the bureau of long-term care verification in writing that the approval is needed to address one or more of the following:

- The quantity of services currently available in the county is insufficient to meet the need.

- The quantity of affordable rental housing in the county is insufficient.

- Approval will result in a reduction in the size or quantity of larger congregate settings.

Adopt **new** subrules 77.37(24), 77.37(25), and 77.37(26) as follows:

77.37(24) Transportation service providers. The following providers may provide transportation:

a. Accredited providers of home- and community-based services.

b. Regional transit agencies as recognized by the Iowa department of transportation.

c. Transportation providers that contract with county governments.

d. Community action agencies as designated in Iowa Code section 216A.93.

e. Nursing facilities licensed under Iowa Code chapter 135C.

f. Area agencies on aging as designated in rule 321—4.4(231), subcontractors of area agencies on aging, or organizations with letters of approval from the area agencies on aging stating that the organization is qualified to provide transportation services.

77.37(25) Adult day care providers. Adult day care providers shall hold a current certificate for adult day services issued by the department of inspections and appeals and shall meet all current requirements for certification under 2003 Iowa Acts, House File 672.

77.37(26) Prevocational services providers. Providers of prevocational services must be accredited by one of the following:

a. The Commission on Accreditation of Rehabilitation Facilities as a work adjustment service provider or an organizational employment service provider.

b. The Council on Quality and Leadership.

ITEM 2. Amend rule 441—78.41(249A) by adopting **new** subrules 78.41(11), 78.41(12), and 78.41(13) as follows:

78.41(11) Transportation. Transportation services may be provided for consumers to conduct business errands and essential shopping, to receive medical services when not reimbursed through medical transportation, to travel to and from work or day programs, and to reduce social isolation. A

HUMAN SERVICES DEPARTMENT[441](cont'd)

unit of service is either per mile, per trip, or the unit established by an area agency on aging. Transportation may not be reimbursed simultaneously with HCBS MR waiver supported community living service.

78.41(12) Adult day care services. Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis. A unit of service is a full day (4 to 8 hours) or a half-day (1 to 4 hours) or an extended day (8 to 12 hours).

78.41(13) Prevocational services. Prevocational services are services that are aimed at preparing a consumer eligible for the HCBS MR waiver for paid or unpaid employment, but are not job-task oriented. These services include teaching the consumer concepts necessary as job readiness skills, such as following directions, attending to tasks, task completion, problem solving, and safety and mobility training.

a. Prevocational services are intended to have a more generalized result as opposed to vocational training for a specific job or supported employment. Services include activities that are not primarily directed at teaching specific job skills but at more generalized habitative goals, and are reflected in a habitative plan that focuses on general habitative rather than specific employment objectives.

b. Prevocational services do not include:

(1) Services defined in Section 4(a)(4) of the 1975 amendments to the Education of the Handicapped Act (20 U.S.C. 1404(16) and (17)) that are otherwise available to the consumer through a state or local education agency.

(2) Vocational rehabilitation services that are otherwise available to the consumer through a program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

ITEM 3. Amend subrule **79.1(2)**, provider category "HCBS MR waiver service providers," by adopting **new** numbered paragraphs "**11**," "**12**," and "**13**" as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
11. Transportation	Fee schedule	County contract rate or, in the absence of a contract rate, the state per mile rate (for individual providers), or rate set by area agency on aging
12. Adult day care	Fee schedule	County contract rate or, in the absence of a contract rate, \$27.50 per half day, \$55 per full day, or \$70 per extended day
13. Prevocational services	Fee schedule	County contract rate or, in the absence of a contract rate, \$45 per day

ITEM 4. Amend rule 441—83.66(249A) as follows:

441—83.66(249A) Allowable services. Services allowable under the HCBS MR waiver are supported community living, respite, personal emergency response system, nursing, home health aide, home and vehicle modifications, supported employment, consumer-directed attendant care services, and

interim medical monitoring and treatment services, *transportation, adult day care, and prevocational services* as set forth in rule 441—78.41(249A).

[Filed Emergency 6/12/03, effective 7/1/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2576B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, House File 667, section 31, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments change Medicaid reimbursement to hospitals and hospital-based nursing facilities for services to recipients that are "dually eligible," meaning they have health care coverage under both the federal Medicare program and the state Medicaid program. Claims for these services are known as "crossover claims."

Currently, reimbursement policies for dual eligibles require Medicaid payment for the full Medicare coinsurance and deductible. In most cases, these amounts plus the Medicare payment exceed the total Medicaid reimbursement that is calculated for the service. Under these amendments, Medicaid will reimburse for Medicare coinsurance and deductible amounts only to the extent that actual payments from Medicare are less than the Medicaid reimbursement for the service.

Medicare policy generally permits Medicare coinsurance, copayment, and deductible amounts that are not collected to be treated as a "Medicare bad debt." Medicare reimburses hospitals 70 percent of their Medicare bad debt. These amendments provide for Medicaid to pay the remaining 30 percent of the bad debt resulting from the reduction of Medicaid crossover payments.

These amendments are parallel to those adopted for non-hospital-based nursing facilities, as published in the Iowa Administrative Bulletin on March 5, 2003, as **ARC 2235B**, except for the provision of additional payments for unreimbursed bad debt due to the Medicare limit on bad debt reimbursement for hospitals. Hospital-based Medicare-certified nursing facilities were exempted from that rule making due to that limit, which does not apply to freestanding nursing facilities. These amendments make the crossover claim reimbursement policies for hospital-based Medicare-certified nursing facilities identical to those for hospital inpatient and outpatient care.

The Department is in communication with the federal Centers for Medicare and Medicaid Services regarding the Medicare treatment of Medicaid payments for bad debt, i.e., whether they would be used to offset allowable Medicare bad debt costs. If there is a change in Medicare policy on bad debts, the Department is committed to amending these rules to address any shortfalls in facility payments. This policy is

HUMAN SERVICES DEPARTMENT[441](cont'd)

not intended to reduce the total received by hospitals from all sources.

The Iowa Hospital Association has expressed concerns about potential cash-flow problems due to delayed reimbursement for Medicare bad debts. The Department has contacted the Medicare intermediaries, CAHABA and Mutual of Omaha, regarding the potential for hospitals to receive interim payments rather than an annual payment for bad debt amounts. Both have indicated that interim payments can be made for inpatient and outpatient hospital services and hospital-based nursing facility services.

These amendments will have no effect on crossover payments made for services rendered by critical access hospitals. The Medicaid and Medicare reimbursement rates for services rendered by critical access hospitals are the same. Therefore, Medicaid will continue to reimburse in full for any Medicare coinsurance or deductible amounts for services rendered by critical access hospitals.

These amendments do not provide for waivers because all hospitals and hospital-based nursing facilities should be subject to the same reimbursement criteria. Anticipated savings will not be achieved if waivers are provided.

The Department finds that notice and public participation are impracticable because the Iowa General Assembly has set appropriations for the Medicaid program on the expectation that costs associated with crossover claims for hospital-based services will be shifted as of July 1, 2003. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2). Further, 2003 Iowa Acts, House File 667, section 31, subsection 13, and section 44, authorize adoption of administrative rules under Iowa Code section 17A.4(2) to implement the hospital crossover claim process.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective July 1, 2003, as authorized by 2003 Iowa Acts, House File 667, section 31, subsection 13, and section 44.

The Council on Human Services adopted these amendments June 11, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2565B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4 and 2003 Iowa Acts, House File 667, section 11, subsection 13.

These amendments became effective July 1, 2003.

The following amendments are adopted.

ITEM 1. Amend rule **441—78.3(249A)**, second unnumbered paragraph, as follows:

If the recipient is eligible for inpatient or outpatient hospital care through the Medicare program, payment will be made for deductibles and coinsurance applicable in that program as set out in 441—subrule 79.1(22).

ITEM 2. Adopt **new** subrule 79.1(22) as follows:

79.1(22) Medicare crossover claims for inpatient and outpatient hospital services.

a. Definitions. For purposes of this subrule:

"Crossover claim" means a claim for Medicaid payment for Medicare-covered inpatient or outpatient hospital services rendered to a Medicare beneficiary who is also eligible for Medicaid. Crossover claims include claims for services rendered to beneficiaries who are eligible for Medicaid in any category, including, but not limited to, qualified Medicare beneficiaries and beneficiaries who are eligible for full Medicaid coverage.

"Medicaid-allowed amount" means the Medicaid prospective reimbursement for the services rendered (including any portion to be paid by the Medicaid beneficiary as copayment or spenddown), as determined under state and federal law and policies.

"Medicaid reimbursement" means any amount to be paid by the Medicaid beneficiary as a Medicaid copayment or spenddown and any amount to be paid by the department after application of any applicable Medicaid copayment or spenddown.

"Medicare payment amount" means the Medicare reimbursement rate for the services rendered in a crossover claim, excluding any Medicare coinsurance or deductible amounts to be paid by the Medicare beneficiary.

b. Reimbursement of crossover claims. Crossover claims for inpatient or outpatient hospital services covered under Medicare and Medicaid shall be reimbursed as follows:

(1) If the Medicare payment amount for a crossover claim exceeds or equals the Medicaid-allowed amount for that claim, Medicaid reimbursement for the crossover claim shall be zero.

(2) If the Medicaid-allowed amount for a crossover claim exceeds the Medicare payment amount for that claim, Medicaid reimbursement for the crossover claim shall be the lesser of:

1. The Medicaid-allowed amount minus the Medicare payment amount; or

2. The Medicare coinsurance and deductible amounts applicable to the claim.

c. Additional Medicaid payment for crossover claims uncollectible from Medicare. Medicaid shall reimburse hospitals for the portion of crossover claims not covered by Medicaid reimbursement pursuant to paragraph "b" and not reimbursable by Medicare as an allowable bad debt pursuant to 42 CFR 413.80, as amended June 13, 2001, up to a limit of 30 percent of the amount not paid by Medicaid pursuant to paragraph "b." The department shall calculate these amounts for each provider on a calendar-year basis and make payment for these amounts by March 31 of each year for the preceding calendar year.

d. Application of savings. Savings in Medicaid reimbursements attributable to the limits on inpatient and outpatient crossover claims established by this subrule shall be used to pay costs associated with development and implementation of this subrule before reversion to Medicaid.

ITEM 3. Amend subrule **81.6(20)** as follows:

Amend paragraph "**a**" by adopting the following **new** definition:

"Medicaid reimbursement" includes any amount to be paid by the Medicaid beneficiary as Medicaid client participation and any amount to be paid by the department after application of any applicable Medicaid client participation.

Rescind paragraph "**c**" and adopt the following **new** paragraph in lieu thereof:

c. Additional Medicaid payment for crossover claims uncollectible from Medicare. Medicaid shall reimburse nursing facilities for the portion of crossover claims not covered by Medicaid reimbursement pursuant to paragraph "b" and not reimbursable by Medicare as an allowable bad debt pursuant to 42 CFR 413.80, as amended June 13, 2001, up to a limit of 30 percent of the amount not paid by Medicaid pursuant to paragraph "b." The department shall calculate these amounts for each provider on a calendar-year basis and make

HUMAN SERVICES DEPARTMENT[441](cont'd)

payment for these amounts by March 31 of each year for the preceding calendar year.

[Filed Emergency 6/12/03, effective 7/1/03]
[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2577B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, House File 619, section 11, the Department of Human Services hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments create a supplemental payment adjustment applicable to physician services provided to Medicaid recipients at publicly owned acute care teaching hospitals, as mandated by 2003 Iowa Acts, House File 619, section 11, which took effect on May 1, 2003.

Under these amendments, the Department will make supplemental payments for services provided by participating physicians at qualifying hospitals equal to the difference between the physicians' usual and customary charges (the applicable maximum payment for federal financial participation) and the amount otherwise paid pursuant to the fee schedule for physician services under the Iowa Medicaid program.

Participating physicians are those employed by a qualifying hospital, or who have assigned Iowa Medicaid payments to a qualifying hospital or an organized health care delivery system affiliated with a qualifying hospital so that payment can be made to the hospital or the organized health care delivery system.

Qualifying hospitals are publicly owned acute care teaching hospitals eligible to receive payments under the graduate medical education and disproportionate share fund that enter into an agreement with the Department to make intergovernmental transfers to the Department in amounts equal to all supplemental payments made for physician services provided by participating physicians at the qualifying hospital.

As required by 2003 Iowa Acts, House File 619, the Department will deposit the returned payments in the Department's medical assistance account.

These amendments do not provide for waivers in specified situations because the legislation does not allow for any exceptions.

The Department finds that notice and public participation are unnecessary because emergency rule making is authorized by 2003 Iowa Acts, House File 619, section 11, and is impracticable because the legislation requires the changes to be in effect by July 1, 2003. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective July 1, 2003, as authorized by 2003 Iowa Acts, House File 619, section 11.

The Council on Human Services adopted these amend-

ments on June 11, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2566B** to allow for public comment.

These amendments are intended to implement 2003 Iowa Acts, House File 619, section 11.

These amendments became effective July 1, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)**, provider category "physicians (doctors of medicine or osteopathy)," as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7)"a."	Fee schedule in effect 6/30/01 less 3%.
	<i>Supplemental payments for services at qualifying hospitals. See 79.1(7)"b."</i>	<i>Supplemental payments as provided in 79.1(7)"b."</i>

ITEM 2. Amend subrule 79.1(7) as follows:

79.1(7) Physicians.

a. *Fee schedule.* The fee schedule is based on the definitions of medical and surgical procedures given in the most recent edition of Physician's Current Procedural Terminology (CPT). Refer to 441—paragraph 78.1(2)"e" for the guidelines for immunization replacement.

b. *Supplemental payments.*

(1) *Definitions. For purposes of this subrule:*

"Participating physician" means a physician who is employed by a qualifying hospital or who has assigned Iowa Medicaid payments to a qualifying hospital or to an organized health care delivery system (as defined in 42 CFR 447.10(b) as amended to July 24, 1996) affiliated with a qualifying hospital so that payment can be made to the hospital or the organized health care delivery system in conformance with subrule 79.1(10) and 42 CFR 447.10(g) as amended to July 24, 1996.

"Qualifying hospital" means a publicly owned acute care teaching hospital eligible to receive payments under paragraph 79.1(5)"y" that enters into an agreement with the department to make intergovernmental transfers to the department, as allowed by 42 CFR 433.51 as amended to January 26, 1993, in amounts equal to all supplemental payments received by the hospital.

"Supplemental payments" means payments equal to the difference between the physician's usual and customary charges (the applicable maximum payment for federal financial participation under 42 CFR 447 as amended to October 1, 2002) and the amount otherwise paid pursuant to the fee schedule for physician services.

(2) *Payments.* Beginning July 1, 2003, the department shall make supplemental payments for physician services provided by participating physicians at qualifying hospitals. Supplemental payments shall be directly remitted to the qualifying hospital or to the organized health care delivery system to which participating physicians have assigned Iowa Medicaid payments. Supplemental payments shall be paid no less than annually and no more frequently than quarterly.

[Filed Emergency 6/12/03, effective 7/1/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2578B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, House File 619, section 7, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments affect the Medicaid reimbursement policies for prescription drugs. 2003 Iowa Acts, House File 619, section 7, directs the Department to:

- Lower the pharmacy dispensing fee from \$5.17 to \$4.26.
- Lower the estimated acquisition cost (ingredient reimbursement) from the average published wholesale price less 10 percent to the average wholesale price less 12 percent.
- Set the multiplier used to calculate the state maximum allowable cost for drugs at 1.4. This factor, which is multiplied by the average wholesale acquisition cost for a group of equivalent products to set the maximum reimbursement for those drugs, is currently 2.1.

- Require reporting by pharmacies to gather information necessary to monitor and revise drug reimbursement rates. The Department must keep this information confidential in compliance with Iowa Code chapter 550. Similar reporting provisions were originally part of the state maximum allowable cost rules that took effect on November 1, 2002, but were rescinded in rule making published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2163B** (Adopted and Filed Emergency), and on March 5, 2003, as **ARC 2332B** (Adopted and Filed).

These amendments do not provide for waivers in specified situations because the legislation does not provide for waivers and because all providers should be paid on the same basis as a matter of fairness. Also, cost savings needed from the drug reimbursement changes would not be realized if waivers were provided. Individual providers may request a waiver of these rules under the Department's general rule on exceptions at rule 441—1.8(17A,217).

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because these amendments implement 2003 Iowa Acts, House File 619, section 7, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective July 1, 2003, as authorized by 2003 Iowa Acts, House File 619, section 7.

The Council on Human Services adopted these amendments on June 11, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2567B** to allow for public comment.

These amendments are intended to implement 2003 Iowa Acts, House File 619, section 7.

These amendments became effective July 1, 2003.

The following amendments are adopted.

Amend subrule **79.1(8)** as follows:

Amend paragraph "**a**," subparagraphs (1) and (3), as follows:

(1) The estimated acquisition cost, defined as the average wholesale price as published by First Data Bank less 10 12 percent, plus the professional dispensing fee specified in paragraph "g."

(3) The state maximum allowable cost (SMAC), defined as the average wholesale acquisition cost for a drug and all equivalent products (*the average price pharmacies pay to obtain drugs as evidenced by purchase records*) adjusted by a factor ~~determined appropriate by the department, in consultation with the Medicaid Pharmacy Advisory Committee of the Iowa Pharmacy Association multiplier of 1.4,~~ plus the professional dispensing fee specified in paragraph "g." ~~The department shall set the adjustment factor and adjust the SMAC as often as it deems necessary to ensure adequate product availability at minimum cost.~~

Amend paragraph "**g**" as follows:

g. For services rendered after June 30, 2002 2003, the professional dispensing fee is equal to \$5.17 \$4.26.

Amend paragraph "**i**" as follows:

i. Pharmacies and providers that are enrolled in the Iowa Medicaid program ~~may submit shall make available~~ drug acquisition cost information, ~~or~~ product availability information, *and other information deemed necessary by the department* to assist the department in monitoring and revising reimbursement rates subject to 79.1(8)"a"(3) and 79.1(8)"c" and for the efficient operation of the pharmacy benefit.

(1) *Pharmacies and providers shall produce and submit the requested information in the manner and format requested by the department or its designee at no cost to the department or its designee.*

(2) *Pharmacies and providers shall submit information to the department or its designee within 30 days following receipt of a request for information unless the department or its designee grants an extension upon written request of the pharmacy or provider.*

[Filed Emergency 6/12/03, effective 7/1/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2579B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2003 Iowa Acts, House File 619, section 7, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments make the following changes to the rule for recipient copayment for Medicaid services, as directed by 2003 Iowa Acts, House File 619, section 7:

- Change the amount of copayment required for prescription drugs from \$1 to amounts varying from \$0.50 to \$3, depending on the cost of the drug and whether the drug is brand name or generic.
- Impose a copayment of \$3 for each physician office visit.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These copayments are subject to existing Iowa Medicaid rules providing that no copayments apply to services furnished to recipients who:

- Are under the age of 21, or
- Are pregnant women, or
- Are required to spend all but a minimal amount of their income for the costs of care in a nursing facility or other medical institution.

Copayments also do not apply to emergency services or to family planning services or supplies. Providers collect the copayment from the recipient at the time of services. Although recipients are liable for the copayment, providers are forbidden to deny care or services to a Medicaid-eligible person because of the person's inability to pay a copayment.

These amendments are cost-saving measures. They do not provide for waivers in specified situations because the legislation did not provide for waivers and because necessary savings would not be achieved if waivers were provided.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because these amendments implement 2003 Iowa Acts, House File 619, section 7, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived and these amendments made effective July 1, 2003, as authorized by 2003 Iowa Acts, House File 619, section 7.

The Council on Human Services adopted these amendments June 11, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2568B** to allow for public comment.

These amendments are intended to implement 2003 Iowa Acts, House File 619, section 7.

These amendments became effective July 1, 2003.

The following amendments are adopted.

Amend subrule **79.1(13)** as follows:

Adopt **new** paragraph “**a**” as follows:

a. The recipient shall pay a copayment for prescription drugs as follows:

(1) The recipient shall pay \$1 for each covered generic drug prescription, including each refill.

(2) The recipient shall pay \$0.50 for each covered brand-name drug prescription, including each refill, for which the cost to the state is \$10 or less.

(3) The recipient shall pay \$1 for each brand-name drug prescription, including each refill, for which the cost to the state is \$10.01 to \$25.

(4) The recipient shall pay \$2 for each brand-name drug prescription, including each refill, for which the cost to the state is \$25.01 to \$50.

(5) The recipient shall pay \$3 for each brand-name drug prescription, including each refill, for which the cost to the state is \$50.01 or more.

(6) For the purpose of this paragraph, the cost to the state is determined without regard to federal financial participation in the Medicaid program.

Amend paragraphs “**b**” and “**d**” as follows:

b. The recipient shall pay \$1 copayment ~~on each covered drug prescription, including each refill, and for total covered service rendered on a given date for podiatrists' services, chiropractors' services, and services of independently practicing physical therapists.~~

d. The recipient shall pay \$3 copayment for:

(1) ~~total~~ Total covered service rendered on a given date for dental services and hearing aids.

(2) All covered services rendered in a physician office visit on a given date. For the purposes of this subparagraph, “physician” means either a doctor of allopathic medicine (M.D.) or a doctor of osteopathic medicine (D.O.), as defined under rule 441—77.1(249A).

[Filed Emergency 6/12/03, effective 7/1/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2574B**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 83, “Medicaid Waiver Services,” Iowa Administrative Code.

This amendment lowers the age for eligibility for supported employment services under the Medicaid home- and community-based mental retardation waiver from 18 to 16. Under existing rules applicable to all age groups, supported employment services are payable only if the consumer is not eligible for supported employment services from other funding sources. Area education agencies normally provide needed vocational services to 16- and 17-year-olds.

This amendment will allow the Medicaid waiver program to pay for services such as work-related behavior management, job coaching, or on-the-job crisis intervention if a 16- or 17-year-old consumer is not eligible for supported employment services from the local area education agency or other funding source.

Currently, waiver recipients who need such services but are 16 or 17 years old have been approved through an exception to policy. This amendment would allow supported employment services to be included in the service plan for any mental retardation waiver recipient who is 16 or 17 years old if the services are judged necessary by the interdisciplinary team that develops the plan. The total cost of all of the youth's waiver services must remain under the maximum set for the waiver.

This amendment does not provide for waivers in specified situations because it confers a benefit on the people affected and because it is mandated by state legislation. Any consumer may request an exception to HCBS waiver policies under the Department's general rule at 441—1.8(17A,217).

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on April 30, 2003, as **ARC 2455B**. 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 June 11, 2003.

This amendment is intended to implement 2002 Iowa Acts, chapter 1120, section 7, subsection 2.

The Department finds that this amendment confers a benefit by allowing affected recipients to access more services. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date is waived.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment became effective on June 15, 2003.
The following amendment is adopted.

Amend subrule **83.61(1)**, paragraph “g,” subparagraph (1), as follows:

(1) Be at least age 18 1/6.

[Filed Emergency After Notice 6/12/03, effective 6/15/03]
[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2611B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

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

These amendments eliminate the six-month waiting period under the HAWK-I program for children who previously had employer-sponsored health care coverage, as mandated by 2003 Iowa Acts, House File 565. The amendments rescind the paragraph specifying circumstances when a child could qualify as “uninsured” during the waiting period and the paragraph requiring the third-party administrator to track waiting periods for applicants. These changes allow families to transition from employer-sponsored health care coverage to the HAWK-I program without a break in coverage.

Currently, families who voluntarily drop employer-sponsored health care coverage that costs less than 5 percent of their gross annual income are subject to a six-month waiting period. The waiting period was implemented as a “crowd out” provision, to deter families from dropping employer-sponsored health care to obtain government-sponsored health care. There have been no indications that “crowd out” is occurring in Iowa. Only two appeals have been filed on this issue in the four years that the program has operated. Federal regulations do not require a “crowd out” provision for states that cover families with income up to 200 percent of the federal poverty guidelines.

These amendments do not provide for waivers in specified situations because they confer a benefit on affected families. The legislation requires the Department to track and report to the General Assembly any increases in program costs attributable to these amendments during state fiscal years 2004 and 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because these amendments implement 2003 Iowa Acts, House File 565, which is effective July 1, 2003.

The Department finds that these amendments confer a benefit by removing the waiting period before a previously insured child can qualify for coverage. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date is waived.

The HAWK-I Board adopted these amendments June 16, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2608B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 514I.5(8) and 514I.8(2) as amended by 2003 Iowa Acts, House File 565, sections 7 and 11.

These amendments became effective July 1, 2003.
The following amendments are adopted.

ITEM 1. Amend subrule **86.2(4)** by rescinding and reserving paragraph “b.”

ITEM 2. Amend subrule **86.13(6)** by rescinding and reserving paragraph “e.”

[Filed Emergency 6/20/03, effective 7/1/03]
[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2583B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.12, the Department of Human Services amends Chapter 88, “Managed Health Care Providers,” Iowa Administrative Code.

These amendments change the rules for the Medicaid managed health care option known as MediPASS (Medicaid Patient Access to Service System). The amendments allow advanced registered nurse practitioners to serve as MediPASS patient managers, in compliance with 2003 Iowa Acts, House File 479, which was signed by the Governor on April 19, 2003.

Certain Medicaid recipients are required to enroll in MediPASS. These recipients select or are assigned to a primary care provider who serves as their patient manager. Physicians, rural health clinics, and federally qualified health centers are currently eligible to become patient managers. An agreement to serve as a patient manager is required in addition to the regular Medicaid provider agreement. The patient manager is responsible for:

- Providing the recipient's primary health care.
- Referring the recipient appropriately for care not provided directly.
- Authorizing payment for all other Medicaid managed services.
- Coordinating and monitoring other managed services.

These amendments specify that, as with physicians, only independently practicing advanced registered nurse practitioners certified in designated specialties are allowed to be patient managers. This is due to the requirement that the patient manager be able to provide the recipient's primary health care. All references to the patient manager as “physician” are changed to “provider.”

These amendments do not provide for waivers in specified situations because the legislation did not authorize any exceptions and because the amendments confer a benefit by making more practitioners available to MediPASS enrollees as primary care patient managers.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department of Human Services finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The legislation these amendments implement became effective on July 1, 2003, and delaying the rules to allow for public participation would delay implementation. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit by making more practitioners available to MediPASS enrollees as primary care patient managers. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date is waived.

The Council on Human Services adopted these amendments June 11, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2572B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4(7) as amended by 2003 Iowa Acts, House File 479.

These amendments became effective July 1, 2003.

The following amendments are adopted.

ITEM 1. Amend rule **441—88.41(249A)**, definition of "contract," as follows:

"Contract" shall mean a contract between the department and a Medicaid-participating *physician provider* or clinic as specified in rule 441—88.44(249A) and subrule 88.45(1) for the purpose of providing patient management to enrolled recipients.

ITEM 2. Amend rule 441—88.44(249A) as follows:

Amend subrules 88.44(1) and 88.44(2) as follows:

88.44(1) Specialties allowed. ~~The following physician types~~ *Providers* shall be allowed to contract with the department to provide patient management to enrolled recipients as long as the *physician provider*:

a. ~~is~~ *Is* a licensed doctor of medicine or osteopathy; ~~or an advanced registered nurse practitioner licensed pursuant to Iowa Code chapter 152 and possessing evidence of certification pursuant to board of nursing rules under 655—Chapter 7 in a specialty area listed in paragraph "d."~~

b. ~~Is otherwise eligible to enroll as an independent Iowa Medicaid provider.~~

c. ~~practices in the medical service area, and is~~ *Is* a provider in good standing with the Medicaid agency as defined in subrule 88.45(1).

d. ~~Is practicing in one of the following specialties in the medical services area:~~

a. ~~(1) Family practitioners practice.~~

b. ~~(2) General practitioners practice.~~

c. ~~(3) Pediatricians Pediatrics.~~

d. ~~(4) Internists Internal medicine.~~

e. ~~(5) Obstetricians Obstetrics and gynecologists gynecology.~~

88.44(2) Clinic or group practice participation. ~~Physicians~~ *A provider* may participate as ~~an individual practitioners practitioner~~ or as a partner or employee of a clinic or group practice. The clinic or group shall be the contractor. Federally qualified health centers and rural health clinics ~~which that~~ employ *physicians providers* in the specialties specified in subrule 88.44(1) may contract. However, each *physician provider* participating within the clinic, group, federally qualified health center, or rural health clinic shall sign and be bound by the terms of the clinic or group contract as if the *physician provider* was in individual practice.

Amend subrule **88.44(3)**, introductory paragraph and paragraph "a," as follows:

88.44(3) Exceptions. ~~Other physician specialists providers~~ licensed as doctors of medicine or osteopathy ~~or as advanced registered nurse practitioners~~ may request exception to subrule 88.44(1) for specific individual patients in accordance with the procedures set forth in this subrule.

a. If the request is being made in order to allow a different type of *physician specialist* to be a patient manager, or to allow a *physician provider* practicing outside the recipient's medical service area to serve the recipient, the *physician provider* shall make a written request to the ~~division of medical services department~~.

(1) The request shall identify the *physician provider* by name, address, telephone number, specialty, and Medicaid provider number or date of application to be a Medicaid provider. The ~~letter request~~ shall specify the recipients in question and state agreement to provide primary care and patient management as specified in subrule 88.45(2) to the specific recipients in question.

(2) If the request comes initially from the recipients as specified in ~~subrule paragraph~~ 88.46(2)"c," the ~~division of medical services department~~ shall contact the *physician provider* in question to offer the *physician provider* the opportunity to request the exception.

ITEM 3. Amend rule 441—88.45(249A) as follows:

Amend subrule 88.45(1) as follows:

88.45(1) Eligibility to contract. Only Medicaid-participating *physicians providers* and clinics in good standing shall be eligible to contract with the department to provide patient management.

Amend subrule **88.45(2)**, paragraphs "b" and "f," as follows:

b. The patient manager shall provide or arrange for 24-hour-per-day, seven-day-per-week *physician provider* availability to enrolled recipients.

f. The department shall specify the manner in which *physicians providers* shall be notified of the recipients enrolled with them.

Amend subrule **88.45(5)**, paragraph "a," as follows:

a. The patient manager may terminate the contract or a clinic may remove a *physician provider* from a clinic contract by providing the department with written notice of the desire to terminate the contract 60 days in advance of the desired date of termination in order to allow the department or its designee time to disenroll and reenroll the MediPASS patients with other patient managers.

(1) In no situation shall the *physician provider* stop providing patient management or primary care to the patient until the patient can be reenrolled with another *physician provider* except as specified in subrule 88.48(4).

(2) Failure to provide the specified period of notice or failure to continue providing patient management or primary care ~~prior to before~~ the reenrollment shall result in forfeiture of all remaining patient management fees ~~which that~~ would otherwise have been due the patient manager.

ITEM 4. Amend subrule 88.46(6) as follows:

88.46(6) Enrollment limits.

a. Unless one or more of the following special situations exist, enrollment shall be limited to 1500 enrollees per full-time patient manager with an additional 300 enrollees allowed for each full-time nurse practitioner or physician's assistant employed by the *physician MediPASS provider* or clinic:

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. (1) The ~~physician provider~~ treats a disproportionate share of Medicaid patients in the ~~physician's provider's~~ current practice.

b. (2) A special group practice arrangement exists with a demonstrated ability to manage a large number of enrollees.

(3) Other exceptional situations may be considered as special demonstration projects on a case-by-case basis.

b. Patient managers wishing to receive consideration for one of these special situations must make a request for consideration in writing to the ~~division of medical services department~~ and provide sufficient documentation that they fit one or more of the special situations.

c. A ~~physician provider~~ *Providers* or *clinic clinics* may set a lower self-imposed maximum number of enrollees at the time they sign the initial contract and may revise that number by notifying the ~~division of medical services department~~ or its designee in writing.

(1) If the patient manager decreases the patient manager's own maximum to a number below which the patient manager currently has enrolled, the patient manager must continue to serve those recipients until normal disenrollments put the ~~physician provider~~ below the ~~physician's provider's~~ new maximum.

(2) No minimum number of enrollees shall be required.

ITEM 5. Amend subrule **88.47(1)**, paragraph "**b**," as follows:

b. The patient manager may request that an enrolled recipient be disenrolled by completing Form 470-2169, Managed Health Care Provider Request for Recipient Disenrollment.

(1) Disenrollment may be approved for good cause reasons, such as, but not limited to, inability after reasonable effort to establish or maintain a satisfactory ~~physician provider~~-patient relationship with the recipient. Documentation of the ~~good cause~~ reason for disenrollment ~~will~~ *shall* be included with or attached to the disenrollment request.

(2) The ~~division department~~ shall respond *within 30 days* as to whether the disenrollment request is approved ~~within 30 days~~.

(3) If the request is approved, the patient manager shall continue to serve a mandatory recipient until the recipient can be enrolled with another patient manager or another managed health care option. In no case shall that time exceed 60 days from the date of receipt of the form.

ITEM 6. Amend subrule **88.48(1)**, paragraph "**h**," as follows:

h. Other practitioners (physical therapy, audiology, rehabilitation agency, ~~nurse midwife, certified registered nurse anesthetists, and independently practicing advanced registered nurse practitioners otherwise able to enroll~~).

ITEM 7. Amend subrule 88.50(3) as follows:

88.50(3) Mode of payment. The ~~physician provider~~ shall be paid individually unless a clinic or group practice elects to receive payment for all ~~physicians providers~~ participating under the clinic or group contract. The same mode of payment must be used for both patient management and regular Medicaid claims.

[Filed Emergency 6/12/03, effective 7/1/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2582B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services amends Chapter 109, "Child Care Centers," and Chapter 110, "Child Development Homes," Iowa Administrative Code.

These amendments change the child care licensing and registration requirements on criminal and child abuse record checks to conform with statutory changes made by 2003 Iowa Acts, Senate File 351. This legislation defines "transgressions" that may prohibit a person's involvement with child care. Certain transgressions automatically prohibit involvement temporarily or permanently, while others require an evaluation by the Department to determine whether the transgression merits prohibition. As an outcome of the evaluation, the Department may require a plan of correction before approval and may specify periodic reevaluation of a prohibition.

The Department may also prohibit a person's involvement with child care when a license or registration is denied or revoked due to the person's continued or repeated failure to operate in compliance with the laws and rules governing the facility.

These amendments do not provide for waivers in specified situations because the Department does not have authority to waive statutory provisions.

The Department finds that notice and public participation are impracticable and contrary to the public interest because these statutory changes became effective on July 1, 2003. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that these amendments confer a benefit on the public by removing contradictions between the rules and the authorizing statute. Therefore, the normal effective date of these amendments should be waived.

The Council on Human Services adopted these amendments June 11, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2571B** to allow for public comment.

These amendments are intended to implement Iowa Code chapter 237A as amended by 2003 Iowa Acts, Senate File 351.

These amendments became effective July 1, 2003.

The following amendments are adopted.

ITEM 1. Amend rule **441—109.1(237A)** by adopting the following **new** definitions in alphabetical order:

"Child care facility" or "facility" means a child care center, a preschool, or a registered child development home.

"Involvement with child care" means licensed or registered as a child care facility, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, providing child care as a child care home provider, or residing in a child care home.

"Person subject to an evaluation" means a person who has committed a transgression and who is described by any of the following:

1. The person is being considered for licensure or is licensed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.

3. The person will reside or resides in a child care facility.

4. The person has applied for or receives public funding for providing child care.

“Transgression” means the existence of any of the following in a person’s record:

1. Conviction of a crime.

2. A record of having committed founded child or dependent adult abuse.

3. Listing in the sex offender registry established under Iowa Code chapter 692A.

4. A record of having committed a public or civil offense.

5. Department revocation or denial of a child care facility registration or license due to the person’s continued or repeated failure to operate the child care facility in compliance with licensing and registration laws and rules.

ITEM 2. Amend rule 441—109.2(237A) as follows:

Amend subrule **109.2(1)** by adopting **new** paragraph “**f**” as follows:

f. When the department has denied or revoked a license, the applicant or person shall be prohibited from involvement with child care unless the department specifically permits involvement through a record check decision.

Rescind subrule **109.2(4)**, paragraph “**c**,” and adopt the following **new** paragraph in lieu thereof:

c. A person subject to an evaluation has transgressions that merit prohibition of involvement with child care and of licensure, as determined by the department.

Rescind subrule **109.2(5)**, paragraph “**c**,” and adopt the following **new** paragraph in lieu thereof:

c. A person subject to an evaluation has transgressions that merit prohibition of involvement with child care and of licensure, as determined by the department.

ITEM 3. Rescind subrule 109.6(6) and adopt the following **new** subrule in lieu thereof:

109.6(6) Record checks. The department shall conduct criminal and child abuse record checks in Iowa for each owner, director, staff member, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone and for anyone living in the child care facility who is 14 years of age or older. The department may use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check Form B, or any other form required for criminal and child abuse record checks. The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa or in other states.

a. Mandatory prohibition. A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) Founded child or dependent adult abuse that was determined to be sexual abuse.

(2) Placement on the sex offender registry.

(3) Felony child endangerment or neglect or abandonment of a dependent person.

(4) Felony domestic abuse.

(5) Felony crime against a child including, but not limited to, sexual exploitation of a minor.

(6) Forcible felony.

b. Mandatory time-limited prohibition.

(1) A person with the following convictions or founded abuse reports is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

1. Conviction of a controlled substance offense under Iowa Code chapter 124.

2. Founded child abuse that was determined to be physical abuse.

(2) After the five-year prohibition period from the date of the conviction or the founded abuse report as defined in subparagraph 109.6(6)“b”(1), the person may request the department to perform an evaluation under paragraph 109.6(6)“c” to determine whether prohibition of the person’s involvement with child care continues to be warranted.

c. Evaluation required. For all other transgressions, and as requested under subparagraph 109.6(6)“b”(2), the department shall notify the affected person and the licensee that an evaluation shall be conducted to determine whether prohibition of the person’s involvement with child care is warranted.

(1) The person with the transgression shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and return this form by the specified date shall result in denial or revocation of the license or denial of employment.

(2) The department may use information from the department’s case records in performing the evaluation.

(3) In an evaluation, the department shall consider all of the following factors:

1. The nature and seriousness of the transgression in relation to the position sought or held.

2. The time elapsed since the commission of the transgression.

3. The circumstances under which the transgression was committed.

4. The degree of rehabilitation.

5. The likelihood that the person will commit the transgression again.

6. The number of transgressions committed by the person.

d. Evaluation decision. Within 30 days of receipt of a completed Form 470-2310, Record Check Evaluation, the department shall make a decision on the person’s involvement with child care. The department has final authority in determining whether prohibition of the person’s involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

(1) The department shall mail to the individual on whom the evaluation was completed Form 470-2386, Record Check Decision, that explains the decision reached regarding the evaluation of the transgression and Form 470-0602, Notice of Decision.

(2) If the department determines through an evaluation of a person’s transgressions that the person’s prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed.

(3) The department may permit a person who is evaluated to maintain involvement with child care if the person com-

HUMAN SERVICES DEPARTMENT[441](cont'd)

plies with the department's conditions and corrective action plan relating to the person's involvement with child care.

(4) The department shall send a letter to the employer that informs the employer whether the person subject to an evaluation has been approved or denied involvement with child care. If the person has been approved, the letter shall inform the employer of any conditions and corrective action plan relating to the person's involvement with child care.

e. Notice to parents. The department shall notify the parent, guardian, or legal custodian of each child for whom the person provides child care if there has been a founded child abuse record against an owner, director, or staff member of the child care center. The center shall cooperate with the department in providing the names and addresses of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

f. Repeat of record checks. The child abuse and criminal record checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any transgressions. Any new transgressions discovered shall be handled in accordance with this subrule.

ITEM 4. Amend rule 441—110.1(237A) by adopting the following **new** definitions in alphabetical order:

"Child care facility" or "facility" means a child care center, a preschool, or a registered child development home.

"Child care home" means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under Iowa Code section 237A.3.

"Involvement with child care" means licensed or registered as a child care facility, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, providing child care as a child care home provider, or residing in a child care home.

"Person subject to an evaluation" means a person who has committed a transgression and who is described by any of the following:

1. The person is being considered for registration or is registered.
2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.
3. The person will reside or resides in a child care facility.
4. The person has applied for or receives public funding for providing child care.
5. The person will reside or resides in a child care home that is not registered but that receives public funding for providing child care.

"Transgression" means the existence of any of the following in a person's record:

1. Conviction of a crime.
2. A record of having committed founded child or dependent adult abuse.
3. Listing in the sex offender registry established under Iowa Code chapter 692A.
4. A record of having committed a public or civil offense.
5. Department revocation or denial of a child care facility registration or license due to the person's continued or repeated failure to operate the child care facility in compliance with licensing and registration laws and rules.

ITEM 5. Amend rule 441—110.7(237A) as follows:
Amend subrule 110.7(3) as follows:

Amend the introductory paragraph and paragraph "a" as follows:

110.7(3) Record checks. The department shall submit record checks in Iowa for each registrant, substitute, and staff member, and for anyone living in the home who is 14 years of age or older and anyone having access to a child when the child is alone. The purpose of these record checks is to determine whether the person has ~~any founded child abuse reports or criminal convictions or has been placed on the sex offender registry committed a transgression.~~ The department shall ~~may~~ use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check ~~for this purpose Form B, or any other form required for criminal and child abuse record checks.~~ The department ~~may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or in other states.~~

a. *Mandatory prohibition.* A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) *Founded child or dependent adult abuse that was determined to be sexual abuse.*
- (2) *Placement on the sex offender registry.*
- (3) *Felony child endangerment or neglect or abandonment of a dependent person.*
- (4) *Felony domestic abuse.*
- (5) *Felony crime against a child including, but not limited to, sexual exploitation of a minor.*
- (6) *Forcible felony.*

b. *Mandatory time-limited prohibition.*

(1) *A person with the following convictions or founded abuse reports is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:*

1. *Conviction of a controlled substance offense under Iowa Code chapter 124.*
2. *Founded child abuse that was determined to be physical abuse.*

(2) *After the five-year prohibition period from the date of the conviction or the founded abuse report as defined in subparagraph 110.7(3)"b"(1), the person may request the department to perform an evaluation under paragraph 110.7(3)"c" to determine whether prohibition of the person's involvement with child care continues to be warranted.*

c. *Evaluation required.* ~~If a person who has been checked has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry~~ For all other transgressions, the department shall deny or revoke the registration, unless an evaluation of the ~~abuse or crime transgression~~ determines that the ~~abuse or criminal conviction transgression~~ does not warrant prohibition of ~~registration involvement with child care.~~

(1) In an evaluation, the department shall consider *all of the following factors:*

1. The nature and seriousness of the ~~abuse or crime, transgression.~~
2. The time elapsed since the ~~commission of the abuse or crime, transgression.~~
3. The circumstances under which the ~~crime or abuse transgression~~ was committed, .
4. The degree of rehabilitation, .
5. The likelihood that the person will commit the ~~abuse or crime transgression again, and~~ .
6. The number of ~~crimes or abuses transgressions~~ committed by the person.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) The person with the ~~criminal conviction or founded child abuse report~~ *transgression* shall complete and return Form 470-2310, Record Check Evaluation, to be used to assist in the evaluation. Failure of the person to complete and return the form within ten calendar days of the date on the form shall result in denial or revocation of the registration certificate.

(3) *The department may use information from the department's case records in performing the evaluation.*

Rescind paragraph "b."

Reletter paragraph "c" as "d" and amend relettered paragraph "d" as follows:

e d. Evaluation decision. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements and a corrective action plan. The evaluation and decision shall be made by the service area manager or designee.

(1) Within 30 days of receipt of the completed Form 470-2310, the service area manager or designee shall mail to the ~~individual on whom the evaluation was completed~~ *person subject to an evaluation* and to the registrant for an employee of the registrant Form 470-2386, Record Check Decision, that explains the decision reached regarding the evaluation of ~~an abuse or a crime~~ *the transgression*. The service area manager or designee shall also issue Form 470-2386 when ~~an applicant~~ *the person subject to an evaluation* fails to complete the evaluation form within the ten-calendar-day time frame.

(2) *If the department determines, through the record check evaluation, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care.*

(3) *The department may permit a person who is evaluated to be involved with child care if the person complies with the department's conditions relating to the person's involvement with child care, which may include completion of additional training. For an employee of a registrant, these conditional requirements shall be developed with the registrant.*

Amend subrule 110.7(5) as follows:

110.7(5) If the department has denied or revoked a registration because the provider has continually or repeatedly failed to operate in compliance with Iowa Code chapter 237A and 441—Chapter 110, the person shall not own or operate a registered facility for a period of 12 months from the date of denial or revocation. The department shall not act on an application for registration submitted by the applicant or provider during the 12-month period. *The applicant shall be prohibited from involvement with child care unless the department specifically permits the involvement.*

ITEM 6. Adopt **new** rule 441—110.14(237A) as follows:

441—110.14(237A) Prohibition from involvement with child care. If the department has prohibited a person or program from involvement with child care, that person or program shall not provide child care as a nonregistered child care home provider.

[Filed Emergency 6/12/03, effective 7/1/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2580B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 217.6 and 234.6 and 2003 Iowa Acts, House File 667, section 31, the Department of Human Services amends Chapter 150, "Purchase of Service," and Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments:

- Continue reimbursement rates for purchase of service providers (for adoption, shelter care, family planning, and independent living services) effectively at their June 30, 2001, level as directed by 2003 Iowa Acts, House File 667, section 31, subsections 6 and 9.
- Continue reimbursement rates for rehabilitative treatment and supportive services (family preservation, family-centered services, foster family services, and group care services) effectively at their June 30, 2001, level as directed by 2003 Iowa Acts, House File 667, section 31, subsection 8.
- Continue to suspend the ability of Department administrators to renegotiate rates for rehabilitative treatment and supportive services.

These amendments do not provide for waivers in specified situations because the legislation does not provide for waivers.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because 2003 Iowa Acts, House File 667, section 31, requires an immediate effective date and authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective July 1, 2003, as authorized by 2003 Iowa Acts, House File 667, section 31.

The Council on Human Services adopted these amendments June 11, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2569B** to allow for public comment.

These amendments are intended to implement 2003 Iowa Acts, House File 667, section 31, subsections 6, 8, and 9, and section 44.

These amendments became effective July 1, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule **150.3(5)**, paragraph "p," subparagraph (2), introductory paragraph and numbered paragraphs "3" and "4," as follows:

(2) For the fiscal year beginning July 1, ~~2002~~ *2003*, the maximum reimbursement rates for services provided under a purchase of social service agency contract (adoption, shelter care, family planning, and independent living) shall be the same as the rates in effect on June 30, ~~2001~~ *2003*, except under any of the following circumstances:

3. For the fiscal year beginning July 1, ~~2002~~ *2003*, the combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the financial and statistical report submitted to the department. The maximum reimbursement rate shall be \$83.69 per day. If the department reimburses the provider at less than the maximum rate, but the provider's cost report justifies a rate of at least \$83.69,

HUMAN SERVICES DEPARTMENT[441](cont'd)

the department shall readjust the provider's reimbursement rate to the actual and allowable cost plus the inflation factor or \$83.69, whichever is less.

4. For the fiscal year beginning July 1, ~~2002~~ 2003, the purchase of service reimbursement rate for a shelter care provider's actual and allowable cost plus inflation shall be increased by \$3.99. For state fiscal year ~~2003~~ 2004, beginning July 1, ~~2002~~ 2003, the established statewide average actual and allowable cost shall be increased by \$3.99.

ITEM 2. Amend subrule **185.112(1)**, paragraph "k," as follows:

k. Once a negotiated rate is established based on the provisions of this subrule, it shall not be changed or renegotiated during the time period of this rule except in the following circumstances:

(1) By mutual consent of the provider and the service area manager of the host area based upon the factors delineated at paragraph 185.112(1)"f," except that rates shall not be changed or renegotiated for the period of July 1, 2000, through June 30, ~~2003~~ 2004.

(2) In accordance with paragraph 185.112(6)"b," except that rates shall not be changed or renegotiated for services not assumed by a new provider for the period of July 1, 2000, through June 30, ~~2003~~ 2004.

(3) Rates may be changed when funds are appropriated for an across-the-board increase.

[Filed Emergency 6/12/03, effective 7/1/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2581B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

These amendments change eligibility requirements for child care assistance in conformity with 2003 Iowa Acts, Senate File 351, to provide that:

- Families with medically incapacitated parents may be eligible for assistance. Currently, the parent has to be hospitalized or out of the home for the family to be eligible, and only certain medical conditions qualify.

- Families receiving a state adoption subsidy are exempt from waiting list provisions in order to coordinate benefits under these two programs, as is done for families receiving assistance under the Family Investment Program.

These amendments do not provide for waivers in specified situations because they confer a benefit on the families affected.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are contrary to the public interest because these amendments are needed to conform the rules to statutory changes enacted in 2003 Iowa Acts, Senate File 351, sections 7 and 8.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that because these amendments confer a

benefit on affected families by allowing them to become eligible for child care assistance, the normal effective date of these amendments should be waived and these amendments made effective July 1, 2003, concurrent with 2003 Iowa Acts, Senate File 351.

The Council on Human Services adopted these amendments June 11, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2570B** to allow for public comment.

These amendments are intended to implement Iowa Code section 237A.13 as amended by 2003 Iowa Acts, Senate File 351, sections 7 and 8.

These amendments became effective July 1, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule **170.2(2)**, paragraph "b," subparagraph (4), as follows:

(4) The person who normally cares for the child is absent from the home due to inpatient hospitalization or outpatient treatment for ~~chemotherapy, radiation or dialysis~~ because of physical illness, or mental illness, or ~~death is present but is unable to care for the child, as verified by a physician.~~ Care under this paragraph is limited to a maximum of one month, unless extenuating circumstances are justified and approved after case review by the ~~regional administrator service area manager or designee.~~

ITEM 2. Amend subrule 170.2(3), introductory paragraph, as follows:

170.2(3) Priority for ~~service assistance.~~ Funds available for child care ~~services assistance~~ shall first be used to continue ~~services assistance~~ to families currently receiving child care ~~services assistance~~ and to families with protective child care needs. As funds are determined available, families shall be served on a statewide basis from a ~~region service-area-wide~~ waiting list based on the following schedule in descending order of prioritization. Recipients of the family investment program, ~~or those whose earned income was taken into account in determining the needs of family investment program recipients, and families that receive a state adoption subsidy for a child~~ are eligible for child care ~~assistance~~ notwithstanding waiting lists for ~~child care services assistance.~~ Applications for child care ~~services assistance~~ shall be taken only for the priority groupings for which funds have been determined available.

[Filed Emergency 6/12/03, effective 7/1/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2561B**LAW ENFORCEMENT
ACADEMY[501]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy, with approval of the Iowa Law Enforcement Academy Council, hereby amends Chapter 3, "Certification of Law Enforcement Officers," Iowa Administrative Code.

2003 Iowa Acts, Senate File 352, and Senate File 453, were passed during the first Session of the 80th Iowa General

LAW ENFORCEMENT ACADEMY[501](cont'd)

Assembly and signed into law by Governor Vilsack on April 25 and May 30, 2003, respectively. The new Iowa Code sections 80B.11D and 80B.11E created by 2003 Iowa Acts, Senate Files 352 and 453, allow persons who are not certified as law enforcement officers to apply for attendance at a short course of study at an approved law enforcement training program or at the Iowa Law Enforcement Academy if such persons are sponsored by a law enforcement agency. The new law became effective July 1, 2003.

This proposed administrative rule was presented to the Iowa Law Enforcement Academy Council for review and approval on June 5, 2003. The Council approved the proposed rule. The proposed rule requires that an individual submit an application to attend either the short course or Iowa Law Enforcement Academy two months in advance of the training to provide adequate time to ensure that all minimum hiring standards have been met. The two approved law enforcement training providers who conduct the short course have programs scheduled to begin September 8, 2003. The next Iowa Law Enforcement Academy class also begins September 8, 2003. The Iowa Law Enforcement Academy Council requests that this rule be Adopted and Filed Emergency to allow individuals the required time to file for admission to a training program as provided in 2003 Iowa Acts, Senate Files 352 and 453 [Iowa Code sections 80B.11D and 80B.11E].

Pursuant to Iowa Code subsection 17A.4(2), the Academy finds that notice and public participation prior to the adoption of this new rule in 501—Chapter 3 is impractical as it is desirable that individuals be able to apply for admission to a training program prior to the scheduled start dates.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Academy further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2003, after filing with the Administrative Rules Coordinator. This amendment confers a benefit upon the public by facilitating the application of an individual sponsored by a law enforcement agency to attend training.

Notice of Intended Action for this amendment is published herein as **ARC 2562B**. The Notice of Intended Action provides a period of public comment and participation, including a public hearing. This process will culminate in these amendments being adopted through the normal rule-making process with any public input received during the comment period having been taken into account.

This amendment is intended to implement 2003 Iowa Acts, Senate Files 352 and 453.

This amendment became effective July 1, 2003.

The following amendment is adopted.

Amend 501—Chapter 3 by adopting the following **new** rule:

501—3.12(80B) Training of an individual who intends to become certified as a law enforcement officer.

3.12(1) An individual who has not yet been hired or started employment as an Iowa sworn peace officer may apply for attendance at the Iowa law enforcement academy (ILEA) or, if qualified as provided for in 501—subrule 3.4(1), at a short course of study at an approved law enforcement training program if such individual is sponsored by an Iowa law enforcement agency.

a. The individual must submit an application packet approved and provided by the Iowa law enforcement academy at least two months (60 days) in advance of the course of study that the person applies to attend. An administrative fee,

to be established by the academy, shall accompany the application packet.

b. The sponsoring Iowa law enforcement agency must certify that the agency intends to hire within the next 18 months or has hired the individual as a law enforcement officer.

c. The fees to attend the Iowa law enforcement academy will be collected as follows:

(1) 25 percent at the time position in class is reserved. (This fee is nonrefundable.)

(2) 25 percent on first day of the academy class.

(3) The remaining amount to reach full payment of all ILEA training fees must be received by the end of the fourth week or the individual will be dismissed from the academy.

3.12(2) Hiring standards. An individual who files an application under subrule 3.12(1) must meet all hiring standards as established by the academy in rules 501—2.1(80B) and 501—2.2(80B).

a. The sponsoring law enforcement agency may conduct required testing including medical/psychological/cognitive examinations, background investigations and other matters as required by rules 501—2.1(80B) and 501—2.2(80B). The sponsoring law enforcement agency that conducts the required testing must certify that all hiring standards have been met and submit proof of the same as required by Iowa law enforcement academy administrative rules and on forms provided by the academy. A background investigation shall include at a minimum a search of local, state, and national law enforcement records/files; local, state, and national fingerprint files; sex offender registry; child and dependent adult abuse registries; and a credit history.

b. The academy shall conduct the required testing including medical/psychological/cognitive examinations, background investigation and other matters as required by rules 501—2.1(80B) and 501—2.2(80B) if the sponsoring agency has not done so. The academy will establish fees for conducting the hiring standards requirements, including the background check, to be paid by the individual filing the application. The fees must be paid before the testing occurs.

3.12(3) Application for a short course of study at an approved law enforcement training program. An individual applying for attendance at a short course of study at an approved law enforcement training program shall submit proof of successful completion of a two-year or four-year police science or criminal justice program at an accredited educational institution in this state as approved by the academy. The proof must include a copy of the graduation certificate and a certified transcript of courses taken and grades received. The proof must be submitted along with the application forms provided by the academy at least two months (60 days) in advance of the course of study that the person applies to attend.

3.12(4) Permission to attend. An individual shall not be granted permission to attend an approved law enforcement training program if such acceptance would result in the non-acceptance of another qualifying applicant who is a law enforcement officer.

3.12(5) Certification. The academy will not grant certification until an individual is employed by an Iowa law enforcement agency and has met required hiring standards and successfully completed certification testing.

a. The following hiring standards must be reverified if the individual is not hired by an Iowa law enforcement agency during the first 12 months following completion of the course of study.

(1) The Iowa law enforcement academy evaluations of the Minnesota Multiphasic Personality Inventory (MMPI)

LAW ENFORCEMENT ACADEMY[501](cont'd)

may be utilized for only 12 months to comply with this rule. Any individual who has not been hired during the first 12 months following completion of the course of study must retake the MMPI and, before the individual is certified, the results of the MMPI must be approved by the academy and hiring authority.

(2) Standard & Associates' National Police Officer Selection Test (POST) test scores shall be valid for a period of 12 months from the date of completion of the course of study. An individual who has not been hired within 12 months must retake and successfully pass the examination before being certified.

(3) The individual must be examined by a licensed physician or surgeon and meet the physical requirements necessary to fulfill the responsibilities of a law enforcement officer.

(4) The individual must successfully pass a physical test adopted by the Iowa law enforcement academy.

b. An individual may be certified in the following areas only after being employed by an Iowa law enforcement agency:

- (1) Iowa Law Enforcement Emergency Care Provider.
- (2) Implied consent.
- (3) Standardized field sobriety testing.
- (4) Firearms qualification with the hiring agency's weapon and ammunition.

The individual, once employed, must undergo testing in the above areas at the Iowa law enforcement academy. Administrative fees will be established by the academy for conducting these tests. The individual will be certified upon successful completion of the testing process and payment of the administrative fees.

3.12(6) Employment within 18 months. The individual must be employed by an Iowa law enforcement agency within 18 months of completion of the course of study in order to receive certification. An individual shall not be certified under rule 501—3.12(80B) if the individual is not employed by an Iowa law enforcement agency within 18 months of completion of the course of study.

This rule is intended to implement 2003 Iowa Acts, Senate Files 352 and 453.

[Filed Emergency 6/16/03, effective 7/1/03]
[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2602B

MANAGEMENT DEPARTMENT[541]

Adopted and Filed Emergency

Pursuant to the authority of 2003 Iowa Acts, Senate File 438, the Department of Management hereby adopts Chapter 11, "Grants Enterprise Management System," Iowa Administrative Code.

These rules establish the procedures necessary to implement an enterprise-wide system of identifying, tracking, and coordinating funding opportunities. This system is known as the Grants Enterprise Management System (GEMS).

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of these rules is impracticable because the procedures set out in these rules are necessary to implement the requirements of

2003 Iowa Acts, Senate File 438. The Act has a July 1, 2003, effective date and any delay in the implementation of these rules will delay the implementation of the statute itself.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these rules, 35 days after publication, should be waived and the rules made effective July 1, 2003, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by providing for the prompt implementation of 2003 Iowa Acts, Senate File 438.

These rules are also published herein under Notice of Intended Action as **ARC 2587B** to allow for public comment.

These rules are intended to implement 2003 Iowa Acts, Senate File 438.

These rules became effective July 1, 2003.

The following **new** chapter is adopted.

CHAPTER 11

GRANTS ENTERPRISE MANAGEMENT SYSTEM

541—11.1(80GA,SF438) Purpose. These rules are intended to implement 2003 Iowa Acts, Senate File 438, and are designed to establish a grants enterprise management system. The primary goals of the grants enterprise management system (GEMS) include:

1. Securing additional nonstate funding;
2. Fostering cooperation and coordination between state agencies;
3. Discouraging duplication of competitive grant application efforts;
4. Providing a mechanism for the timely exchange of information among state agencies on proposals potentially affecting the agencies; and
5. Providing policy makers, legislators and the citizens of Iowa with information on grant funds received and state agencies' competitive grant applications.

541—11.2(80GA,SF438) Definitions. As used in this chapter:

"Applicant agency" means the agency intending to apply, or applying for, a competitive grant.

"Competitive grant application" means a grant application that is in competition with other applications for limited funds.

"Federal Executive Order 12372" means the federal executive order that provides for the establishment of a process for the coordination and review of proposed federal financial assistance. In the Order, states are encouraged to develop their own processes, and federal agencies shall, to the extent permitted by law, utilize the state process.

"GEMS coordinator" means the person appointed by the director of the department of management to coordinate the grants enterprise management system.

"1/3 grant tracking module" means Integrated Information for Iowa (I/3) and the portion of the 1/3 cost accounting module designed to collect data on all nonstate funds received by state government agencies.

"Single point of contact" means the GEMS coordinator.

"State agency" means any department or agency of state government except the board of regents.

541—11.3(80GA,SF438) GEMS coordinator. The GEMS coordinator shall coordinate all aspects of the grants enterprise management system. The GEMS coordinator shall:

1. Identify and execute strategies to secure nonstate funds;

MANAGEMENT DEPARTMENT[541](cont'd)

2. Ensure that all agencies utilize the Iowa grants database to track all competitive grant applications;
3. Ensure that all agencies utilize the I/3 grant tracking module for all grants received;
4. Operate as the state's single point of contact, pursuant to Federal Executive Order 12372;
5. Establish a grants network, representing all state agencies, to operate in an advisory capacity;
6. Assign a state application identifier (SAI) number at each stage of the application process: notification of intent, application submitted, and final status;
7. Review competitive grant applications of special significance, at the coordinator's discretion;
8. Serve as liaison with the state single point of contact in contiguous states;
9. In cooperation with other state agencies, monitor and refine the GEMS competitive grants review procedures;
10. Maintain a list of state agency grants coordinators;
11. Ensure, to the greatest degree practicable, that all GEMS competitive grants reviews are conducted in accordance with these rules;
12. Provide training and policy guidance; and
13. Provide status and results reports to appropriate contacts on an as-needed basis.

541—11.4(80GA,SF438) Grants network. The grants network shall include representation from all state agencies. Agency representatives shall serve as agency grants coordinators. All agency grants coordinators shall work with the GEMS coordinator to:

1. Serve the grants enterprise management office in an advisory capacity;
2. Communicate relevant information to the GEMS coordinator;
3. Utilize the Iowa grants database to track all competitive grant applications;
4. Utilize the I/3 grant tracking module for all grants received;
5. Inform the Iowa office for state-federal relations of initiatives for which the agency is seeking federal funds; and
6. Participate in issue-specific, federal legislation work groups.

541—11.5(80GA,SF438) GEMS competitive grants review system. The purpose of the GEMS competitive grants review system is to allow state government coordination and review of all competitive grant applications in order to avoid duplication and conflicts.

11.5(1) Agency competitive grants review coordinator. Agency grants coordinators shall:

- a. Serve as the agency's competitive grants review coordinator and as liaison between the agency and the GEMS coordinator for the GEMS competitive grants review process.

- b. Assist in the evaluation of the GEMS competitive grants review process.

11.5(2) GEMS competitive grants review process. The following is a generalized summary of the GEMS competitive grants review process that shall be followed by state agencies with respect to review of applications for competitive grants.

- a. Step 1—Intent to apply.

(1) The applicant agency shall complete the intent to apply section of the Iowa grants database when the applicant agency identifies a competitive grant opportunity.

(2) Upon submission of the intent to apply, a notification will be sent to all state agencies.

(3) Any state agency, or the GEMS coordinator, may request a GEMS competitive grants review meeting to explore the project in greater detail, identify opportunities for collaboration and resolve possible conflicts.

(4) The applicant agency and the GEMS office must receive the agency request for a GEMS competitive grants review meeting within two working days of submission of the intent to apply notification.

(5) The GEMS review meeting shall be held within 12 working days of submission of the intent to apply notification. The applicant agency shall work with the GEMS office to schedule the meeting.

- b. Step 2—Application submitted.

(1) Upon completion of the GEMS competitive grants review process, but prior to submission of the grant application, the applicant agency shall enter the grant application information in the application section of the Iowa grants database.

(2) When all required fields are completed, the Iowa grants database will automatically generate written confirmation of completion of the GEMS competitive grants review to the applicant agency.

(3) The applicant agency shall keep a file copy of the confirmation. The applicant agency shall include the written confirmation with all federal competitive grant applications pursuant to Federal Executive Order 12372.

- c. Step 3—Status.

(1) The applicant agency shall enter the grant's status in the Iowa competitive grants database upon withdrawal of the application or notification of the receipt or denial of the grant.

(2) The GEMS office and the legislative services agency shall be notified of the final grant status.

These rules are intended to implement 2003 Iowa Acts, Senate File 438.

[Filed Emergency 6/18/03, effective 7/1/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2589B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development amends Chapter 1, "Organization," and Chapter 21, "Division Responsibilities"; rescinds Chapter 38, "Iowa Intergovernmental Review System," Chapter 42, "Rural Resource Coordination Programs for Fire Services," Chapter 43, "Main Street Linked Investments Loan Program," and Chapter 45, "Housing Assessment and Action Planning Program"; amends Chapter 50, "Division Responsibilities"; rescinds Chapter 52, "Self-Employment Business Assistance," Chapter 101, "Division Responsibilities," and Chapter 131, "Division Responsibilities"; and amends Chapter 163, "Division Responsibilities," Iowa Administrative Code.

Item 1 amends Chapter 1 to update the description of the Department's organizational structure and its mission statement.

Items 2, 4 and 10 update the descriptions of the Department's divisions.

Items 3, 5, 7 and 9 rescind seven chapters. Explanations for rescission of five of the chapters are as follows:

Chapter 38, Iowa Intergovernmental Review System. Federal Executive Order 12372 allows each state to establish a system to review applications for federal funding of projects within the state. The purpose of the review process is to avoid duplication of or conflict with existing programs. Iowa's process is designed so that the State Clearinghouse reviews applications from state agencies and the Area-wide Clearinghouses review applications from other entities for projects in each of the clearinghouses' regions. The responsibilities for this review system were transferred to the Department of Management on July 1, 2003, when 2003 Iowa Acts, Senate File 438, became effective.

Chapter 42, Rural Resource Coordination Programs for Fire Services. No additional funds were allocated in FY02 or FY03 for this program. The Department of Public Health, Bureau of EMS, has a program which can fund the types of activities previously funded through this IDED program.

Chapter 43, Main Street Linked Investments Loan Program. This program was repealed by 1996 Iowa Acts, chapter 1058, sections 10 to 12.

Chapter 45, Housing Assessment and Action Planning Program. This chapter should have been rescinded when the Community Development Fund (CDF) rules, 261—Chapter 41, were adopted several years ago. These activities can be funded through the CDF.

Chapter 52, Self-Employment Business Assistance. Case management services are available through the Community Economic Betterment Account (CEBA) program, so separate administrative rules are no longer necessary.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on May 14, 2003, as **ARC 2461B**.

A public hearing to receive comments about the proposed amendments was held on June 3, 2003. No comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code section 17A.3 and Executive Order Number 8.

These amendments will become effective on August 13, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amend Chs 1, 21, 50, 163; rescind Chs 38, 42, 43, 45, 52, 101, 131] is being omitted. These amendments are identical to those published under Notice as **ARC 2461B**, IAB 5/14/03.

[Filed 6/20/03, effective 8/13/03]
[Published 7/9/03]

[For replacement pages for IAC, see IAC Supplement 7/9/03.]

ARC 2590B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development amends Chapter 53, "Community Economic Betterment Program," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin as **ARC 2403B** on April 16, 2003.

The IDED Board adopted the amendments on June 19, 2003.

The amendments establish a new modernization project component as authorized by 2002 Iowa Acts, chapter 1041, section (2g). The amendments describe the eligibility requirements, application process and rating system for projects that assist in retooling or upgrading production equipment to meet contemporary technology standards.

A public hearing was held on May 6, 2003. No comments from the public were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 15.313(2)"g."

These amendments will become effective on August 13, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [53.2, 53.11 to 53.17] is being omitted. These amendments are identical to those published under Notice as **ARC 2403B**, IAB 4/16/03.

[Filed 6/20/03, effective 8/13/03]
[Published 7/9/03]

[For replacement pages for IAC, see IAC Supplement 7/9/03.]

ARC 2588B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby rescinds Chapter 169, "Public Records and Fair Information Practices," Iowa Administrative Code, and adopts a new Chapter 169 with the same title.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2404B** on April 16, 2003.

The IDED Board adopted the amendment on June 19, 2003.

To implement Executive Order Number 8, signed by Governor Vilsack in 1999, the Department evaluated its administrative rules to determine if there were rules that needed to be amended or rescinded. In IDED's Rules Assessment Report, Chapter 169 was identified as a chapter that needed to be amended. The existing chapter incorporates by reference the Uniform Rules on Agency Procedure concerning Public Records and Fair Information Practices and notes the Department's exceptions to the standard rules. The existing chapter is difficult to understand in its current form because only the exceptions and amendments are included. The final rules combine the Uniform Rules on Agency Procedure that are currently incorporated by reference with the Department's rules which identify the exceptions and amendments to these rules. The intended result is one chapter that implements applicable statutory requirements regarding public records procedures and fair information practices. In addition, the chapter has been updated to reflect the description of the categories of records maintained by the Department, to revise procedures by which the public may access public records (both paper files and electronic records), and to identify applicable fees such as those charged for searching, supervising, and copying records.

A public hearing to receive comments about the proposed amendment was held on May 6, 2003. No comments were received. The adopted amendment is identical to that published under Notice of Intended Action.

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

These rules will become effective on August 13, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 169] is being omitted. These rules are identical to those published under Notice as **ARC 2404B**, IAB 4/16/03.

[Filed 6/20/03, effective 8/13/03]
[Published 7/9/03]

[For replacement pages for IAC, see IAC Supplement 7/9/03.]

ARC 2596B**ENERGY AND GEOLOGICAL
RESOURCES DIVISION[565]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 473.7(8), the Department of Natural Resources hereby rescinds Chapter 4, "Permanent Assignment of Petroleum Products," Chapter 7, "Energy Measures and Energy Audits Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions," Chapter 8, "Technical Assistance and Energy Conservation: Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions," Chapter 16, "Solar Energy and Energy Conservation Bank," and Chapter 17, "Building Energy Management for State and Local Government"; amends Chapter 18, "State Energy Conservation Program and Energy Extension Service"; and rescinds Chapter 19, "Grants to Nonprofit and Local Government Housing Organizations," Iowa Administrative Code.

The rules amended describe limitations and programs designed to promote energy efficiency and renewable energy applications in schools, local government, and buildings owned by nonprofit organizations and public care institutions. These amendments are intended to bring the Department's rules into conformity with the current requirements of the U.S. Department of Energy. The chapters which are rescinded are either no longer authorized or no longer funded by the federal Department of Energy. Some subrules from these chapters have been retained through their incorporation into previously amended Chapters 5 and 6.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 30, 2003, as **ARC 2453B**. Written comments were due on May 20, 2003, and a public hearing was held on May 23, 2003. The Department did not receive any written or verbal comments. These amendments are identical to those published under Notice of Intended Action.

These amendments shall become effective August 13, 2003.

These amendments are intended to implement Iowa Code chapter 473.

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 [rescission of Chs 4, 7, 8, 16, 17, 19; amendments to Ch 18] is being omitted. These amendments are identical to those published under Notice as **ARC 2453B**, IAB 4/30/03.

[Filed 6/20/03, effective 8/13/03]
[Published 7/9/03]

[For replacement pages for IAC, see IAC Supplement 7/9/03.]

ARC 2585B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby rescinds Chapter 1, "Iowa Ethics and Campaign Disclosure Board," and adopts a new chapter with the same title, and rescinds Chapter 12, "Codes of Conduct," Iowa Administrative Code.

The amendments combine two chapters of the Board's rules concerning the Board's establishment, organization, and duties. The amendments rescind the current executive branch code of ethics, as the Board will adopt comprehensive rules on executive branch ethics in a future rule making.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on May 14, 2003, as **ARC 2462B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on June 18, 2003.

These amendments are intended to implement Iowa Code chapter 68B.

These amendments will become effective on August 13, 2003.

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 [adopt Ch 1; rescind Ch 12] is being omitted. These amendments are identical to those published under Notice as **ARC 2462B**, IAB 5/14/03.

[Filed 6/19/03, effective 8/13/03]
[Published 7/9/03]

[For replacement pages for IAC, see IAC Supplement 7/9/03.]

ARC 2586B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby rescinds Chapter 7, "Contested Case Procedures," and adopts new Chapter 7, "Personal Financial Disclosure," and rescinds Chapter 11, "Personal Financial Disclosure," and adopts new Chapter 11, "Contested Case Procedures," Iowa Administrative Code.

The amendments renumber current Chapter 7 as Chapter 11 and renumber current Chapter 11 as Chapter 7. The Board is beginning the process of placing similar subject matters together by chapter in the Board's rules. The amendments also reflect current Board policies and procedures.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on May 14, 2003, as **ARC 2478B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on June 18, 2003.

These amendments are intended to implement Iowa Code chapter 17A and Iowa Code sections 68B.2A, 68B.4, 68B.32, 68B.32A, 68B.32C, 68B.33, 68B.35, and 68B.35A.

These amendments will become effective on August 13, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 7, 11] is being omitted. These rules are identical to those published under Notice as **ARC 2478B**, IAB 5/14/03.

[Filed 6/19/03, effective 8/13/03]
[Published 7/9/03]

[For replacement pages for IAC, see IAC Supplement 7/9/03.]

ARC 2573B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services adopts Chapter 15, "Disputed County Billings," Iowa Administrative Code.

This amendment provides a process to relieve counties' obligations to pay for certain mental health, mental retardation or developmental disability services rendered before July 1, 1997, as directed by 2001 Iowa Acts, chapter 155. That legislation directs the Department, to the extent possible under federal law and regulation, to relieve counties of the obligation to pay for services if:

- The county has not been billed for the service or has disputed the bill before May 21, 2001; or
- The state has fully charged off the cost of the service to an appropriation made in a prior fiscal year or has not provided information to appropriately document the basis for the billing.

Services affected by this chapter include:

- Care for adults and children at state mental health institutes and state resource centers.
- Medicaid-covered enhanced services, care in an intermediate care facility for mentally retarded persons, and some home- and community-based waiver services.

Under this amendment, the Department will be required to reconcile county accounts for billings occurring within the specified time period and notify counties of the amount of outstanding debt being written off, as well as any obligations or credits that remain. Counties will have the opportunity to respond to the notification through an administrative review process. After the administrative review process, the regular Department appeal process will be available to counties.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on April 16, 2003, as **ARC 2415B**. The Department also held a public hearing for the purpose of receiving comments on this amendment on May 8, 2003. The Department received two comments requesting more than 30 days for the county to respond to old bills after notification by the Department. The Department believes that 30 days is adequate for this purpose.

This amendment does not provide for waivers in specified situations because it provides a process for counties to

HUMAN SERVICES DEPARTMENT[441](cont'd)

dispute billings. All counties should be subject to the same process.

The Council on Human Services adopted this amendment on June 11, 2003. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement 2001 Iowa Acts, chapter 155, section 12.

This amendment shall become effective on September 1, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 15] is being omitted. These rules are identical to those published under Notice as **ARC 2415B**, IAB 4/16/03.

[Filed 6/12/03, effective 9/1/03]
[Published 7/9/03]

[For replacement pages for IAC, see IAC Supplement 7/9/03.]

ARC 2600B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

These amendments change rules regarding eligibility for licenses and procedures for obtaining licenses.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 5, 2003, as **ARC 2342B**. A public hearing on the amendments was held April 10, 2003. The following changes were made from the Notice of Intended Action:

1. Changes were made in subrule 106.5(2) to allow the taking of deer in all counties during the special late antlerless season.

2. The number of antlerless-only licenses available per person was increased from two to three in subrules 106.6(1), 106.6(2) and 106.6(6).

3. Subrule 106.6(2) was changed to allow hunters purchasing a first regular gun license to also purchase one additional antlerless-only license for the first regular gun season.

4. Antlerless-only license quotas per county were established in subrule 106.6(5). An additional 30,150 antlerless-only licenses will be available.

5. In subrule 106.7(1) language restrictions for archery equipment was removed due to legislative action.

6. Language was changed in subrules 106.8(1) and 106.8(2) to allow licenses to be purchased until the last day of the season for all deer seasons.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

These amendments shall become effective August 13, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule 106.1(5) as follows:

106.1(5) Free licenses for landowners and tenants. Free licenses for eligible landowners and tenants shall be avail-

able for the youth/disabled hunter season, *bow season*, early or late muzzleloader season, or first and second regular gun seasons. These licenses shall be valid for hunting any deer in the season(s) designated on the license and only on the farm unit of the landowner/tenant. For purposes of obtaining a free deer hunting license, all the land under the lawful control of a landowner and eligible family members or a tenant and eligible family members shall be considered as one farm unit, regardless of how that land is subdivided for agricultural or business purposes. A second free license valid for taking only antlerless deer in the special late season may be issued to landowners and tenants who have a portion of their farm unit in a county open during that season. The second free license shall be valid only in that portion of the farm unit located in a county open during the special late season. Landowners and tenants or their eligible family members who receive a free any deer license may also purchase up to two antlerless-only deer licenses for \$10 each. These antlerless-only licenses shall also be valid only on the farm unit.

ITEM 2. Amend subrule **106.5(2)**, paragraphs "a" and "b," as follows:

a. Paid antlerless-only deer licenses for the ~~bow season, second regular gun season and late muzzleloader season~~ shall be valid only for antlerless deer *and only in the season and county designated on the license*. *Paid antlerless-only deer licenses shall be available* in all Iowa counties. An antlerless deer is defined as a deer without a visible antler or with no antler longer than 7 inches.

b. Paid antlerless-only deer licenses for the special late season shall be valid only for antlerless deer and only in the following counties: ~~Adair, Appanoose, Clarke, Davis, Decatur, Des Moines, Henry, Jefferson, Lee, Lucas, Mills, Monroe, Wapello, Wayne, Van Buren, Ringgold, Taylor, Adams, Union, Fremont, Page and Montgomery~~ *season and county designated on the license*. *Paid antlerless-only deer licenses for the special late season shall be available in all counties*. An antlerless deer is defined as a deer without a visible antler or with no antler longer than 7 inches.

ITEM 3. Amend rule 571—106.6(481A) as follows:

571—106.6(481A) License quotas and restrictions. Certain types of deer licenses will be restricted in the number issued or in the types of other deer licenses which may be purchased.

106.6(1) Bow season. An unlimited number of statewide bow licenses may be issued. A person who purchases a bow license may purchase the following additional licenses: one statewide gun license; up to ~~two~~ *three* antlerless-only licenses for the bow, second regular gun or late muzzleloader season; and up to ~~two~~ *three* antlerless-only licenses for the special late season.

106.6(2) Regular gun seasons. An unlimited number of statewide licenses will be available for both the first and second regular gun seasons.

a. A person obtaining a paid license for the first regular gun season shall be eligible to purchase the following additional licenses: a statewide bow license; *one antlerless-only license for the first regular gun season*; up to ~~two~~ *three* antlerless-only licenses for the bow and late muzzleloader seasons; and up to ~~two~~ *three* antlerless-only licenses for the special late season. No person obtaining a paid license for the first regular gun season shall be eligible to obtain a paid license for the second regular gun season.

b. A person obtaining a paid license for the second regular gun season shall be eligible to purchase the following

NATURAL RESOURCE COMMISSION[571](cont'd)

additional licenses: a statewide bow license; up to ~~two~~ *three* antlerless-*only* licenses for the bow, second regular gun or late muzzleloader season; and up to ~~two~~ *three* antlerless-*only* licenses for the special late season.

106.6(3) Muzzleloader seasons.

a. Early muzzleloader season. No more than 7,500 paid statewide licenses will be sold. Fifty additional licenses will be issued through and will be valid only for the Iowa Army Ammunition Plant. No one may purchase more than one paid *any deer* license for the early muzzleloader season. A hunter obtaining a paid ~~early muzzleloader season~~ *any deer* license *for the early muzzleloader season* shall not be eligible to purchase any other statewide *any deer* gun season license or antlerless-*only* licenses for the second gun or late muzzleloader season. ~~but~~ A *hunter* may purchase the following additional licenses: a statewide bow license; up to ~~two~~ *three* antlerless-*only* bow licenses; *one antlerless-*only* license for the early muzzleloader season* and up to ~~two~~ *three* antlerless-*only* licenses for the special late season.

Adair 400 800
 Adams 500 800
 Allamakee 550 1400
 Appanoose 600 1000
 Audubon 400 200
 Benton 200 600
 Black Hawk 50 100
 Boone 400 450
 Bremer 50 100
 Buchanan 50 100
 Buena Vista 50 100
 Butler 200 600
 Calhoun 50 100
 Carroll 50 150
 Cass 150 250
 Cedar 200 600
 Cerro Gordo 50 150
 Cherokee 50 100
 Chickasaw 200 550
 Clarke 200 500
 Clay 50 100
 Clayton 850 2000
 Clinton 200 650
 Crawford 400 150
 Dallas 200 500
 Davis 1000 1650
 Decatur 800 1200
 Delaware 250 800
 Des Moines 450 750
 Dickinson 50 100
 Dubuque 300 1050
 Emmet 50 100
 Fayette 350 1050

Floyd 150 450
 Franklin 50 300
 Fremont 200 500
 Greene 400 200
 Grundy 50 100
 Guthrie 350 800
 Hamilton 50 150
 Hancock 50 100
 Hardin 400 500
 Harrison 150 400
 Henry 400 800
 Howard 200 550
 Humboldt 100
 Ida 50 100
 Iowa 300 800
 Jackson 300 1000
 Jasper 150 450
 Jefferson 400 750
 Johnson 400 1100
 Jones 350 850
 Keokuk 300 750
 Kossuth 200 300
 Lee 500 1200
 Linn 350 950
 Louisa 350 800
 Lucas 200 450
 Lyon 50 100
 Madison 250 650
 Mahaska 200 600
 Marion 250 650
 Marshall 400 350
 Mills 400 400
 Mitchell 150 350

Monona 150 350
 Monroe 400 850
 Montgomery 200 400
 Muscatine 350 800
 O'Brien 50 100
 Osceola 50 100
 Page 200 500
 Palo Alto 50 100
 Plymouth 50 100
 Pocahontas 50 100
 Polk 200 350
 Pottawattamie 250 650
 Poweshiek 150 400
 Ringgold 800 1200
 Sac 50 100
 Scott 200 650
 Shelby 400 150
 Sioux 50 100
 Story 400 250
 Tama 200 700
 Taylor 800 1200
 Union 400 800
 Van Buren 1000 1900
 Wapello 500 750
 Warren 400 500
 Washington 500 1100
 Wayne 300 1000
 Webster 400 200
 Winnebago 50 100
 Winneshiek 300 900
 Woodbury 150 450
 Worth 400 250
 Wright 50 100

106.6(6) Special late season licenses. Paid antlerless-*only* licenses for the special late season will be available in counties designated in subrule 106.5(2) and are included in the quotas established in subrule 106.6(5). A person may obtain up to ~~two~~ *three* paid antlerless-*only* licenses for the special late season regardless of any other paid or free gun or bow licenses the person may have obtained.

ITEM 4. Rescind subrule 106.7(1) and adopt the following **new** subrule:

106.7(1) Bow seasons. Except for crossbows for persons with certain afflictions of the upper body, as provided in 571—15.5(481A), only longbow, compound or recurve bows shooting broadhead arrows are permitted. No explo-

b. Late muzzleloader season. An unlimited number of statewide licenses may be issued for the late muzzleloader season. A person obtaining a paid late muzzleloader season license may purchase the following additional licenses: a statewide bow license; up to ~~two~~ *three* antlerless-*only* licenses for the bow, second regular gun or late muzzleloader season; and up to ~~two~~ *three* antlerless-*only* licenses for the special late season.

106.6(4) Free landowner/tenant licenses. A person obtaining a free landowner/tenant license may purchase any combination of paid bow and gun licenses available to persons who are not eligible for landowner/tenant licenses as explained in 571—106.12(481A).

106.6(5) Antlerless-*only* licenses. Paid antlerless-*only* licenses will be available to eligible persons by county as follows:

sive or chemical devices may be attached to the arrow or broadhead.

ITEM 5. Amend subrules 106.8(1) and 106.8(2) as follows:

106.8(1) Licenses with quotas. All paid deer hunting licenses for which a quota is established may be obtained from ELSI agents on a first-come, first-served basis beginning the ~~first Saturday in August 15~~ until the quota fills, or through the last day of the hunting period for which the license is valid, ~~or until December 14, whichever occurs first.~~ After December 14, persons may purchase any available antlerless-*only* licenses for the special late season and special area hunts on a first-come, first-served basis until the county quotas or spe-

NATURAL RESOURCE COMMISSION[571](cont'd)

cial area hunt quotas for antlerless-only licenses fill, or until the last day of the season, whichever occurs first. A person may purchase as many antlerless-only licenses as are available, regardless of other licenses that the individual may have purchased.

106.8(2) Licenses without quotas. All paid and free deer hunting licenses that have no quota may be obtained from ELSI agents beginning ~~the first Saturday in August 15~~ through the last day of the hunting period for which a license is valid ~~or until December 14, whichever occurs first.~~

ITEM 6. Amend subrule **106.10(1)**, paragraph “b,” as follows:

b. Severely disabled hunt. Any severely disabled Iowa resident meeting the requirements of Iowa Code section 321L.1(8) may be issued one *statewide any deer* license to hunt deer during the youth season. A person applying for this license must either possess a disabilities parking permit or provide a completed form from the department of natural resources. The form must be signed by a physician verifying that the person’s disability meets the criteria defined in Iowa Code section 321L.1(8). A person between 16 and 65 years of age must also possess a regular hunting license and have paid the habitat fee to obtain a license (if normally required to have a hunting license and to pay the habitat fee to hunt). A severely disabled person obtaining this license may obtain one additional statewide bow license *and one antlerless-only license for the youth season.*

ITEM 7. Amend subrule 106.10(6) as follows:

106.10(6) Procedures for obtaining licenses. Paid and free youth *season* licenses and licenses for severely disabled hunters may be obtained through ELSI beginning ~~the second Saturday after the close of the initial application period for other deer licenses August 15~~ through the last day of the youth season.

[Filed 6/20/03, effective 8/13/03]

[Published 7/9/03]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2584B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetic Examiners hereby amends Chapter 80, “Administrative and Regulatory Authority for the Board of Dietetic Examiners”; amends Chapter 81, “Licensure of Dietitians”; and rescinds Chapter 83, “Discipline for Dietitians,” Iowa Administrative Code, and adopts new Chapter 83 with the same title.

The amendments simplify the procedure for notifying the Board of a change of the licensee’s name and address, adopt new subrules covering the conduct of persons who attend public meetings, and reformat rule 645—81.6(152A) for clarification. A new discipline chapter, which contains standard language consistent with other boards’ requirements, is adopted.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2370B**. A public hearing was held on April 23, 2003, from 9 to 11 a.m.

in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No public comments were received at the hearing.

The following changes have been made to the Notice of Intended Action:

- Subrules 80.4(2) and 80.4(3) are amended to simplify the procedure for notifying the Board of a change of the licensee’s name and address.
- The definition of “licensee discipline” is replaced with the definition of “discipline” for consistency with other discipline chapters.
- Subrule 83.2(1) is reformatted for clarification, but the intent of the language has not changed.
- The words “of this state” are added to subrule 83.2(13) for clarification.
- Numbered paragraph “1” of rule 645—83.4(272C) is reworded for clarification.

These amendments were adopted by the Board of Dietetic Examiners on June 6, 2003.

These amendments will become effective August 13, 2003.

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

The following amendments are adopted.

ITEM 1. Amend subrules 80.4(2) and 80.4(3) as follows:

80.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee’s current mailing address within 30 days after the change of address occurs.

80.4(3) Notice of change of name. Each licensee shall notify the board ~~in writing of any~~ a change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Adopt **new** subrules 80.6(3) and 80.6(4) as follows:

80.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

80.6(4) Cameras and recording devices may be used at open meetings, provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 3. Amend the implementation clause for **645—Chapter 80** as follows:

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

ITEM 4. Rescind rule 645—81.6(152A) and adopt **new** rule 645—81.6(152A) in lieu thereof:

645—81.6(152A) Supervised experience. The applicant shall:

81.6(1) Complete a documented supervised practice experience component in a dietetic practice of not less than 900 hours under the supervision of:

- a. A registered dietitian;
- b. A licensed dietitian; or
- c. An individual with a doctoral degree conferred by a U.S. regionally accredited college or university with a major course of study in human nutrition, nutrition education, food and nutrition, dietetics or food systems management; and

81.6(2) Have a supervised practice experience that was completed:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- a. In the United States or its territories; or
- b. Under the supervision of a person who obtained a doctoral degree outside the United States or its territories, which has been validated as equivalent to the doctoral degree conferred by a U.S. regionally accredited college or university.

ITEM 5. Rescind 645—Chapter 83 and adopt the following **new** chapter in lieu thereof:

CHAPTER 83
DISCIPLINE FOR DIETITIANS

645—83.1(152A) Definitions.

“Board” means the board of dietetic examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as a dietitian in Iowa.

645—83.2(152A,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—83.3(152A,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

83.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to:

- a. An intentional perversion of the truth in making application for a license to practice in this state;
- b. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or
- c. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

83.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other dietitians in the state of Iowa acting in the same or similar circumstances.
- c. A failure to exercise the degree of care which is ordinarily exercised by the average dietitian acting in the same or similar circumstances.
- d. Failure to conform to the minimal standard of acceptable and prevailing practice of licensed dietitians in this state.

83.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of dietetics or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

83.2(4) Practice outside the scope of the profession.

83.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

83.2(6) Habitual intoxication or addiction to the use of drugs.

- a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.
- b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

83.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

83.2(8) Falsification of client or patient records.

83.2(9) Acceptance of any fee by fraud or misrepresentation.

83.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the licensee's ability to safely and skillfully practice the profession.

83.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice dietetics. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

83.2(12) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of dietetics.

83.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

83.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of dietetics in another state, district, territory or country.

83.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

83.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

83.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

83.2(18) Failure to respond within 30 days to a communication of the board which was sent by registered or certified mail.

83.2(19) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

83.2(20) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

83.2(21) Failure to pay costs assessed in any disciplinary action.

83.2(22) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

83.2(23) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

83.2(24) Knowingly aiding, assisting, or advising a person to unlawfully practice dietetics.

83.2(25) Failure to report a change of name or address within 30 days after it occurs.

83.2(26) Representing oneself as a licensed dietitian when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

83.2(27) Permitting another person to use the licensee's license for any purpose.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

83.2(28) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

83.2(29) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

- a. Verbally or physically abusing a patient or client.
- b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.
- c. Betrayal of a professional confidence.
- d. Engaging in a professional conflict of interest.
- e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
- f. Being adjudged mentally incompetent by a court of competent jurisdiction.

83.2(30) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

645—83.3(152A,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—83.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care for the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

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

[Filed 6/19/03, effective 8/13/03]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

ARC 2563B**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 16, "State of Iowa Building Code," Iowa Administrative Code.

Iowa Code section 103A.7, subsection 5, provides that the State of Iowa Building Code should include provisions for "The accessibility and use by persons with disabilities and elderly persons, of buildings, structures and facilities which are constructed and intended for use by the general public. The rules shall be consistent with federal standards for building accessibility and shall only apply to those buildings, structures, and facilities subject to chapter 104A." Iowa Code section 104A.2 specifies that the accessibility provisions of the building code "shall apply to all public and private buildings and facilities, temporary and permanent, used by the general public," with the following exception: "This chapter shall not apply to a building, or to structures or facilities within the building, if the primary use of the building is to serve as a place of worship." These amendments replace most of Iowa's current rules regarding accessibility of buildings with provisions from the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG). This approach is consistent with the intent expressed in Iowa Code section 103A.7, subsection 5.

The areas in which these rules differ from ADAAG include requirements for accessibility of apartments, which are not covered by ADAAG, but by the federal Fair Housing Act. Current Iowa administrative rule 661—16.706(103A), which covers accessibility of apartments, is retained, although it is renumbered as 661—16.720(103A,104A). Current requirements in force in Iowa that all patient rooms and toilets in health care facilities and hospitals be accessible are retained in new rule 661—16.706(103A,104A).

These amendments were proposed in a Notice of Intended Action, which was published in the Iowa Administrative Bulletin on November 27, 2002, as **ARC 2142B**. A public hearing regarding these amendments was held on December 17, 2002, in Des Moines; remote access to the hearing was available over the Iowa Communications Network from Cedar Rapids and Council Bluffs. A second public hearing was held in Des Moines on June 11, 2003, before the Building Code Advisory Council's consideration of approval of these amendments.

Extensive public comment was received at the hearings and otherwise. With the exception of representatives of one organization, all comments received were favorable to proceeding with adoption of the proposed rules. Among those commenting favorably on the proposed rules were advocates for persons with disabilities, including the Iowa Commission of Persons with Disabilities, the Iowa Chapter of the American Institute of Architects, and specialists in disability law from the University of Iowa Law, Health Policy, and Disability Center.

Opposition to the proposed rules was expressed by representatives of the Iowa Association of Building Officials and, in cooperation with the Iowa Association of Building Officials, the International Code Council. They objected to the style of the federal language proposed to be adopted by refer-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ence, in that it is not consistent with the style used in building codes generally, questioned the enforceability of these rules and indicated a preference for adoption of the chapter of the International Building Code which deals with requirements for accessibility. While the Building Code Commissioner and the Building Code Advisory Council acknowledge the concerns expressed by local building officials, they have concluded that, on balance, the rules adopted herein represent an advance over Iowa's current accessibility rules. Adoption of a single chapter of the International Building Code, in the absence of adoption of the whole Code, is not feasible. However, the Commissioner and Council intend to consider the possible adoption of a unified building code, of which the International Building Code is a leading example, in the near future. In addition, pending developments concerning accessibility requirements promoted by federal agencies, the International Code Council, which is the publisher of the International Building Code, and the American National Standards Institute (ANSI) may lead to new codification of accessibility requirements which are widely, if not universally, accepted. If this convergence occurs, it is the intent of the Building Code Commissioner and the Building Code Advisory Council to consider adoption of the resulting consensus standards.

These amendments differ from those proposed in the Notice of Intended Action as follows:

- Language has been added which clarifies that enforcement activities of building officials reviewing plans are limited to those aspects of ADAAG which are reflected in building plans, although operators of buildings and facilities remain responsible for compliance with all applicable elements of ADAAG.

- Language has been added which states that, although adoption of ADAAG by reference is intended to increase the consistency of state and federal accessibility requirements, state and local building officials enforcing these requirements are unable to warrant that federal agencies and courts will accept the officials' interpretations of ADAAG language.

- A note which alerts those affected by these rules that additional laws and regulations may also affect accessibility requirements for their construction projects has been added to rule 661—16.700(103A,104A).

- Proposed language amending the ADAAG language on stairways and doorways which appeared in rule 661—16.704(103A,104A) in the Notice of Intended Action was not adopted. The proposed language would have retained current Iowa requirements for accessibility of stairways and doorways. The Building Code Advisory Council wants the new Iowa rules to parallel the federal language as nearly as feasible.

- For the same reason, in rule 661—16.705(103A, 104A), proposed language amending the ADAAG provision for the minimum width of access aisles in restaurants and cafeterias was not adopted.

The Building Code Advisory Council, in its resolution approving these amendments to the State of Iowa Building Code, specified that the amendments should not be effective until January 1, 2004, in order to allow for persons affected by the rules and those charged with enforcement of the rules to have adequate time to prepare and to comply with the new rules when they become effective.

These amendments are intended to implement Iowa Code section 103A.7, subsection 5, and Iowa Code chapter 104A.

These amendments shall become effective January 1, 2004.

The following amendments are adopted.

ITEM 1. Amend rule 661—16.700(103A) as follows:

661—16.700(103A,104A) Accessibility rules and regulations for the physically handicapped Purpose and scope.

16.700(1) Purpose. These rules and regulations ~~Rules 661—16.700(103A,104A) through 661—16.720(103A, 104A) are intended to make all~~ *ensure that* buildings and facilities used by the public *are* accessible to, and functional for, ~~the physically handicapped persons with disabilities, to, through, and within their doors, without loss of function, space, or facility where the general public is concerned.~~ These rules and regulations shall constitute obligatory provisions within any governmental subdivision in Iowa, as mandated by Iowa Code chapter 104A, and specifically section 103A.19 which prescribes the responsibility of governmental subdivisions for the enforcement of these accessibility standards. *Rules 661—16.700(103A,104A) through 661—16.710(103A,104A) apply statewide to new construction and to renovation and rehabilitation projects on existing buildings and facilities when local or state building codes require compliance with standards for new construction.*

Some requirements contained in rules 661—16.700(103A,104A) through 661—16.710(103A,104A) are not readily enforceable through the plan review process and may not be enforced through this means. Any of the requirements may be enforced during inspections in jurisdictions which inspect construction projects for compliance with building code requirements. Owners and operators of buildings and facilities subject to the provisions of rules 661—16.700(103A,104A) through 661—16.710(103A,104A) are responsible for compliance with any applicable requirements contained within these rules regardless of whether those requirements are enforced through plan reviews or inspections.

Rules 661—16.701(103A,104A) through 661—16.710(103A,104A) are based upon the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) and in many instances adopt the language of ADAAG by reference. However, state and local building officials charged with enforcement of these rules are unable to warrant the acceptance of any interpretation of ADAAG language by federal agencies or any other state. A state or local official's decision to approve a building plan under these rules does not prevent the federal government or another state from making a different decision under ADAAG or other applicable law, notwithstanding any similarities among such laws.

16.700(2) Scope. These rules and regulations are applicable to all buildings and facilities, temporary or permanent, and their site facilities, including streets used by the general public. These provisions shall apply to multiple-dwelling unit buildings containing four or more individual dwelling units. Rehabilitation and renovation projects shall be made to comply with these rules whenever the projects are required by local building code or the state building code to meet requirements of new construction. All public and private buildings and facilities, temporary and permanent, used by the general public, whether new or existing, shall provide parking spaces for the handicapped as provided in subrule 16.704(5).

NOTE A: See 661—16.706(103A) rule 661—16.720 (103A,104A) for specific requirements within the individual dwelling units and public and common use spaces of multiple-dwelling unit buildings.

NOTE B: Other federal and state laws address requirements for accessibility for persons with disabilities and may be applicable to buildings and facilities subject to rules

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—16.700(103A,104A) through 661—16.720(103A,104A). Nothing in these rules should be interpreted as limiting the applicability of these other provisions of state or federal law. These provisions include, but are not limited to, the following:

1. Iowa Code chapter 216, the Iowa Civil Rights Act of 1965.
2. Iowa Code chapter 216C, which enumerates the rights of persons who are blind or partially blind and persons with physical disabilities.
3. Iowa Code chapter 321L and 661—Chapter 18, which relate to requirements for parking for persons with disabilities.
4. The federal Architectural Barriers Act of 1968 (Public Law 90-480).
5. The federal Rehabilitation Act of 1973 (Public Law 93-112).
6. The federal Fair Housing Act of 1968 (Public Law 90-284), the federal Fair Housing Amendments Act of 1988 (Public Law 100-430), and related regulations, including 24 CFR 100, Subpart D.

ITEM 2. Rescind rule 661—16.701(103A) and adopt in lieu thereof the following **new** rule:

661—16.701(103A,104A) Definitions. The following definitions are adopted for purposes of rules 661—16.700(103A,104A) through 661—16.720(103A,104A).

NOTE: Many of these definitions have been taken from or adapted from ADAAG.

“Access aisle” means an accessible pedestrian space between elements, such as parking spaces, seating, and desks, which provides clearances appropriate for use of the elements.

“Accessible” describes a site, building, facility, or portion thereof that complies with rules 661—16.700(103A,104A) through 661—16.720(103A,104A).

“Accessible element” means an element specified by and which complies with rules 661—16.700(103A,104A) through 661—16.720(103A,104A).

“Accessible route” means a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

“Accessible space” means space that complies with rules 661—16.700(103A,104A) through 661—16.720(103A,104A).

“ADA” means the federal Americans with Disabilities Act, Public Law 101-336.

“ADAAG” means Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, 28 CFR Part 36, Appendix A, as revised through July 1, 1994. Persons wishing to obtain copies of ADAAG may contact the building code bureau, fire marshal division, Iowa department of public safety, for advice on obtaining a copy, or may access the department’s Web site (www.state.ia.us/government/dps) for a downloadable copy.

“Adaptability” means the ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of individuals with or without disabilities or to accommodate the needs of persons with different types or degrees of disability.

“Addition” means an expansion, extension, or increase in the gross floor area of a building or facility.

“Administrative authority” means the governmental agency that adopts or enforces regulations and guidelines for the design, construction, or alteration of buildings and facilities.

“Alteration” means a change to a building or facility that affects or could affect the useability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes in or rearrangement of the structural parts of elements, and changes in or rearrangement of the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems, are not alterations unless they affect the useability of the building or facility.

“Area of rescue assistance” means an area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.

“Assembly area” means a room or space accommodating a group of individuals for recreational, educational, political, social, civic, or amusement purposes, or for the consumption of food and drink.

“Automatic door” means a door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch. See “power-assisted door.”

“Building” means any structure used and intended for supporting or sheltering any use or occupancy.

“Circulation path” means an exterior or interior way of passage from one place to another for pedestrians including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

“Clear” means unobstructed.

“Clear floor space” means the minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.

“Closed circuit telephone” means a telephone with dedicated line(s) such as a house telephone, courtesy telephone or telephone that must be used to gain entrance to a facility.

“Common use” refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants).

“Cross slope” means the slope that is perpendicular to the direction of travel. See “running slope.”

“Curb ramp” means a short ramp cutting through a curb or built up to it.

“Detectable warning” means a standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circular path.

“Educational occupancy” means any building primarily used to deliver instruction in a classroom setting to students enrolled in primary or secondary schools or postsecondary institutions.

“Egress, means of” refers to a continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balco-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

nies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards. An accessible means of egress is one that complies with rules 661—16.700(103A,104A) through 661—16.720(103A,104A) and does not include stairs, steps, or escalators. Areas of rescue assistance or evacuation elevators may be included as part of accessible means of egress.

“Element” means an architectural or mechanical component of a building, facility, space, or site. Examples of elements include, but are not limited to, telephones, curb ramps, doors, drinking fountains, seating, or water closets.

“Entrance” means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

“Equivalent facilitation” means the use of alternative designs and technologies which provide for substantially greater or equivalent access to and useability of a facility than is provided by technologies and designs which comply with the requirements of rules 661—16.700(103A,104A) through 661—16.720(103A,104A). Departures from particular technical and scoping requirements of rules 661—16.700(103A,104A) through 661—16.720(103A,104A) are permitted where the alternative designs and technologies used will provide equivalent facilitation.

“Facility” means all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

“Government facility” means a structure accessible to the public which is owned or used by the state of Iowa or a political subdivision.

“Ground floor” means any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided or where a building is built into a hillside.

“Marked crossing” means a crosswalk or other identified path intended for use by pedestrians in crossing a vehicular way.

“Mezzanine” or “mezzanine floor” means that portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.

“Multifamily dwelling” means any building containing four or more dwelling units. Rule 661—16.720(103A,104A) establishes accessibility requirements for multifamily dwellings of four or more units.

“Occupiable” describes a room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.

“Operable part” means a part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, push button, handle).

“Power-assisted door” means a door used for human passage with a mechanism that helps to open the door, or relieves the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

“Private facility” means a place of public accommodation or commercial facility which is not owned or used by the state of Iowa or a political subdivision and which is subject to Title III of the ADA and 28 CFR Part 36 or which is a trans-

portation facility subject to Title III of the ADA and 49 CFR 37.45.

“Public facility” means a facility or portion of a facility constructed by, on behalf of, or for the use of a public entity subject to Title II of the ADA and 28 CFR Part 35 or to Title II of the ADA and to either 49 CFR 37.41 or 49 CFR 37.43.

“Public use” describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

“Ramp” means a walking surface which has a running slope greater than 1:20.

“Running slope” means the slope that is parallel to the direction of travel. See “cross slope.”

“Service entrance” means an entrance intended primarily for delivery of goods or services.

“Signage” means displayed verbal, symbolic, tactile, and pictorial information.

“Site” means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

“Site improvement” means landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

“Sleeping accommodations” means rooms whose primary use is for people to sleep including, but not limited to, dormitory and hotel or motel guest rooms or suites.

“Space” means an identifiable area. Examples of spaces include, but are not limited to, rooms, toilet rooms, halls, assembly areas, entrances, storage rooms, alcoves, courtyards, and lobbies.

“Story” means that portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of rules 661—16.700(103A,104A) through 661—16.720(103A,104A). There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.

“Structural frame” means columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

“Tactile” describes an object that can be perceived using the sense of touch.

“TDD” means a telecommunication device for the deaf. See “text telephone (TTT).”

“Technically infeasible” means, with respect to an alteration of a building or a facility, that the alteration has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

“Text telephone (TTT)” means machinery or equipment that employs interactive text-based communications through the transmission of coded signals across the standard telephone network. Text telephones include devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. Text telephones are also called TTYs, an abbreviation for teletypewriter.

“Transient lodging” means a building, facility, or portion thereof, excluding inpatient medical care facilities and residential facilities, that contains sleeping accommodations.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.

“Vehicular way” means a route intended for vehicular traffic, such as a street, driveway, or parking lot.

“Walk” means an exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

ITEM 3. Rescind rule 661—16.702(103A) and adopt in lieu thereof the following **new** rule:

661—16.702(103A,104A) Plan review procedures. Prior to the commencement of construction of a facility which is required to comply with rules 661—16.700(103A,104A) through 661—16.720(103A,104A), the owner of the property, or a contractor or architect acting on behalf of the owner of the property, shall submit an application for approval of the construction plans. The application shall be of a form required by the building code commissioner and shall be submitted to the local building authority, if there is one. If there is no local building authority, the application shall be submitted to the building code bureau. The application shall be accompanied by a copy of the construction plans and payment of the applicable fee.

ITEM 4. Rescind rule **661—16.703(103A)**.

ITEM 5. Amend rule 661—16.704(103A) as follows:

661—16.704(103A) 661—16.703(103A,104A) Site development.

16.704(1) 16.703(1) Development. Proper attention to site development in the early stages in design is the most practical and economical way of making a site accessible and providing accessible entrances to buildings. The siting of facilities, grading, parking, and the routes of walks shall provide convenience, safety and unrestricted circulation of ~~handicapped people~~ *persons with disabilities* and their vehicles.

16.704(2) 16.703(2) Grading. The site shall be graded, even contrary to existing topography, so that it attains a level with all primary entrance/entrances as defined in 16.701(15), making the building or facility accessible to persons with physical disabilities.

16.704(3) Exterior circulation routes. At least one path of travel from each site access point to the principal entrances of buildings shall have no steps. This route should be the most direct route. If it is not the most direct route, this path should be no more than 100 feet of horizontal distance longer than the most direct route. Level routes or those with lower than the maximum allowable slope are preferable to more direct routes at maximum allowable slope or with ramps.

The most direct exterior path of travel between parking spaces planned for disabled drivers and the nearest accessible entrances to a building served by those spaces should be no longer than 200 feet of horizontal distance when walks have a slope less than 1:30 along their entire distance and no greater than 100 feet of horizontal distance when any part of the route has a slope greater than 1:30 or includes a ramp. Where applicable, protection against collection of snow and ice should be provided along such routes. The only accessible path of travel shall not lead to a service entry of a building or facility.

NOTE: Moving walkways in the path of travel shall not be counted in calculating length of travel.

16.704(4) Walks. Walks shall be designed to allow free passage to site facilities and adjacent streets, to allow passing of individuals using the walk and to eliminate hazards.

The minimum clear width of a walk shall be 48 inches if a person in a wheelchair must make a turn around an obstruc-

tion, the minimum clear width of the accessible route shall be as shown in Figure 1. If a walk has two-way flow, there shall be places at least 60 inches by 60 inches to allow for two wheelchairs to pass at appropriate intervals. The interval used shall be based on the slope of the walk, overall length of the walk, visibility ahead, the nature of adjacent ground surfaces and the purpose for which the walk is used. All permanent street furniture serving walks shall be located along the sides of the walk, allowing a consistent edge and clear travel area for pedestrians.

Gratings should not be located in walks. If absolutely necessary, gratings in walks shall have spaces no greater than 1/2 inch wide. Surfaces shall be stable, firm and relatively slip resistant. The maximum height of surface changes shall be 1/4 inch.

Walks shall have a maximum slope of 1:50 for at least 48 inches in front of accessible entrances. Walks outside of street rights-of-way which are part of an accessible route shall have a slope no greater than 1:20 along their entire distance. Any portion of a walk having a slope greater than 1:20 is a ramp and such portion shall be constructed as required by 661—subrule 5.705(1). Where they serve accessible building entrances, walks shall not be crowned. The cross slope of walks shall be no greater than 1:50.

Any sloped surface which is part of an accessible route shall have landings with no slope in the direction of travel at intervals no greater than 125 feet or when a rise of 30 inches has been attained whichever is first. (Surface may be crowned for water drainage.)

Wherever walks are intersected by other walks, drive-ways, parking lots or streets, at least some portion of the walk shall be at or blend to a common level. Methods used to accomplish this shall not restrict storm drainage along street edges nor interfere with snow removal.

16.703(3) Accessible routes. ADAAG, section 4.3, is adopted as the requirements for accessible routes in and around facilities required to comply with rules 661—16.700(103A,104A) through 661—16.720(103A,104A).

16.704(5) 16.703(4) Parking and passenger loading zones. Parking spaces, parking lots and passenger loading zones shall be in compliance comply with 661—Chapter 18.

ITEM 6. Adopt the following **new** rule:

661—16.704(103A,104A) Building elements and spaces accessible to the physically handicapped. ADAAG, chapter 4, is adopted as the requirements for accessible building elements and spaces for buildings and facilities required to comply with rules 661—16.700(103A,104A) through 661—16.720(103A,104A), with the following amendments:

Delete section 4.3.

NOTE: ADAAG, section 4.3, is adopted in subrule 16.703(3).

Delete section 4.34.

ITEM 7. Rescind rule 661—16.705(103A) and adopt in lieu thereof the following **new** rule:

661—16.705(103A,104A) Restaurants and cafeterias. ADAAG, chapter 5, is adopted as the accessibility requirements for restaurants and cafeterias.

ITEM 8. Renumber rule **661—16.706(103A)** as rule **661—16.720(103A,104A)** and adopt the following **new** rule 661—16.706(103A,104A):

661—16.706(103A,104A) Medical care facilities. ADAAG, chapter 6, is adopted as the accessibility requirements for medical care facilities which are required to comply

PUBLIC SAFETY DEPARTMENT[661](cont'd)

with rules 661—16.700(103A,104A) through 661—16.720(103A,104A) with the following amendments:

Delete section 6.1, subsection (1), and insert in lieu thereof the following new subsection (1):

(1) Hospitals—general purpose hospitals, psychiatric facilities, detoxification facilities—All patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

Delete section 6.1, subsection (3), and insert in lieu thereof the following new subsection (3):

(3) Long term care facilities, nursing homes—All patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

ITEM 9. Adopt the following **new** rules:

661—16.707(103A,104A) Business and mercantile facilities. ADAAG, chapter 7, is adopted as the accessibility requirements for business and mercantile facilities which are required to comply with rules 661—16.700(103A,104A) through 661—16.720(103A,104A).

661—16.708(103A,104A) Libraries. ADAAG, chapter 8, is adopted as the accessibility requirements for libraries

which are required to comply with rules 661—16.700(103A, 104A) through 661—16.720(103A,104A).

661—16.709(103A,104A) Transient lodging facilities. ADAAG, chapter 9, is adopted as the requirements for accessible transient lodging in facilities which are required to comply with rules 661—16.700(103A,104A) through 661—16.720(103A,104A).

661—16.710(103A,104A) Transportation facilities. ADAAG, chapter 10, is adopted as the accessibility requirements for transportation facilities which are required to comply with rules 661—16.700(103A,104A) through 661—16.720(103A,104A).

ITEM 10. Reserve rules **661—16.711** through **661—16.719**.

[Filed 6/13/03, effective 1/1/04]

[Published 7/9/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/9/03.

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of General Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

PRSR STD
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195
