



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

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

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STEPHANIE A. HOFF, Deputy Editor		(515)281-8157
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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2010

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
17	Friday, January 22, 2010	February 10, 2010
18	Friday, February 5, 2010	February 24, 2010
19	Friday, February 19, 2010	March 10, 2010

PLEASE NOTE:

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

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

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

EDUCATIONAL EXAMINERS BOARD[282]

Extension of teacher intern license, 13.9(8) IAB 1/13/10 ARC 8436B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 3, 2010 1 p.m.
Renewal requirements for professional service license, 27.4, 27.5 IAB 12/30/09 ARC 8410B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 20, 2010 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Cross-media electronic reporting, ch 15 IAB 1/13/10 ARC 8467B	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	February 15, 2010 10 a.m.
Water quality standards—lake criteria, 61.3(4) IAB 12/16/09 ARC 8397B	Public Library 200 N. 4th St. Clear Lake, Iowa	January 13, 2010 1 p.m.
	Conference Room Atlantic Municipal Utilities 15 W. 3rd St. Atlantic, Iowa	January 14, 2010 10 a.m.
	Waitt Building Iowa Lakeside Laboratory 1838 Highway 86 Milford, Iowa	January 14, 2010 6 p.m.
	Falcon Civic Center 1305 5th Ave. NE Independence, Iowa	January 21, 2010 10 a.m.
	Meeting Room B, Public Library 115 W. Washington St. Washington, Iowa	January 21, 2010 4 p.m.
Animal feeding operations, amendments to ch 65 IAB 12/16/09 ARC 8398B	NICC Dairy Center, Room 115 Highway 150 (south of Calmar) Calmar, Iowa	January 13, 2010 1:30 p.m.
	Wallace State Office Bldg. Auditorium 502 E. 9th St. Des Moines, Iowa	January 15, 2010 11 a.m.
	Cass County Community Center 805 W. 10th St. Atlantic, Iowa	January 15, 2010 4:30 p.m.
	Marr Park Conservation Center 2943 Highway 92 Ainsworth, Iowa	January 20, 2010 1:30 p.m.
Cathode ray tube device recycling, amendments to ch 122 IAB 1/13/10 ARC 8468B	NIACC Muse-Norris Conference Center 500 College Dr. Mason City, Iowa	February 1, 2010 1:30 p.m.
	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 2, 2010 2 to 3 p.m.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Contribution rates, tax treatment of distributions, amendments to chs 4, 7, 11, 12, 14, 16 IAB 1/13/10 ARC 8477B	7401 Register Dr. Des Moines, Iowa	February 2, 2010 9 a.m.
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Consultative services, ch 8 IAB 1/13/10 ARC 8472B	Capitol View Room Iowa Workforce Development 1000 E. Grand Ave. Des Moines, Iowa	February 3, 2010 9 a.m.
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Sustainable design standards—data centers, 310.5(4) IAB 1/13/10 ARC 8442B (See also ARC 8441B herein)	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	February 9, 2010 10 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

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ARC 8436B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

The proposed amendment is in response to requests to extend the teacher intern license. Proposed subrule 13.9(8) allows an applicant to extend the teacher intern license and provides the parameters for this option.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, February 3, 2010, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, February 5, 2010. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** subrule 13.9(8):

13.9(8) *Requirements to extend the teacher intern license if the teacher intern does not complete all of the education coursework during the term of the teacher intern license.*

a. A one-year extension of the teacher intern license may be issued upon application provided that the teacher intern has met all of the following requirements:

- (1) Successful completion of 160 days of teaching experience during the teacher internship.
- (2) Verification by the recommending official at the approved teacher intern program that the teacher intern has not completed all of the coursework required for the initial license.

b. Only one year of experience during the term of the teacher intern license or the extension of a teacher intern license may be used to convert the teacher intern license to a standard teaching license.

ARC 8467B**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.105 and chapter 554D, the Environmental Protection Commission hereby gives Notice of Intended Action to adopt new Chapter 15, “Cross-Media Electronic Reporting,” Iowa Administrative Code.

The purpose of proposed new Chapter 15 is to adopt the U.S. Environmental Protection Agency’s (EPA) electronic reporting requirements for programs under Title 40 of the Code of Federal Regulations. EPA’s Cross-Media Electronic Reporting Rule (CROMERR) was born out of EPA’s goal to make electronic reporting and electronic record keeping available under authorized programs. EPA expects that CROMERR will (1) reduce the cost and burden of data transfer and maintenance for all parties to the data exchanges; (2) improve the data and the various business processes associated with its use; and (3) maintain the level of corporate and individual responsibility and accountability for electronic reports and records that currently exist in the paper environment.

CROMERR applies to states, tribes, and local programs that administer or seek to administer authorized programs under Title 40 and establishes standards for acceptable electronic document receiving systems against which EPA will assess authorized program electronic reporting elements. These standards address six function-specific categories: (1) system security; (2) electronic signature method; (3) submitter registration; (4) signature/certification scenario; (5) transaction record; and (6) system archives.

CROMERR impacts 40 CFR Parts 3, 9, 51, 60, 61, 63, 64, 69, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763. This rule making impacts electronic data currently received or planned to be received in federally mandated programs in the Environmental Services Division of the Department. Programs already receiving electronic information must modify the system(s) or create new systems to be compliant with CROMERR standards.

CROMERR does not require regulated entities to submit electronic data or require programs to accept electronic data; however, it requires that any Title 40-authorized program that chooses to use electronic submission rather than paper for reporting purposes must receive EPA approval of program revisions or modifications that address any Title 40-authorized program’s electronic reporting implementations. As a result, programs accepting or planning on accepting submission of electronic documents must submit an application as required by 40 CFR Part 3 for EPA review and approval. Adoption of this rule is required for the CROMERR application to EPA.

A public hearing will be held on February 15, 2010, at 10 a.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. At the public hearing, comments on the proposed new chapter may be submitted orally or in writing. All comments must be received no later than February 16, 2010.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Wendy Rains at (515)281-6061 to advise of any specific needs.

This rule is intended to implement Iowa Code section 455B.105 and chapter 554D.

The following amendment is proposed.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Adopt the following new 567—Chapter 15:

CHAPTER 15
CROSS-MEDIA ELECTRONIC REPORTING

567—15.1(455B,554D) Purpose. This rule implements the cross-media electronic reporting rule (also known as CROMERR) as defined by 40 CFR Part 3.

15.1(1) Applicability. The provisions of this subrule shall apply to persons and signatories who submit electronic reports or other documents to satisfy requirements of Title 40 of the Code of Federal Regulations for authorized programs for which the department is accepting specified electronic documents and other media used for electronic reporting, except for the following:

- a. Documents submitted via facsimile;
- b. Electronic documents submitted via magnetic or optical media such as diskette, compact disc, digital video disc, or tape;
- c. Electronic documents submitted through an electronic document receiving system pursuant to a non-federal state-only program; or
- d. Data transfers between the department and the U.S. Environmental Protection Agency, local governments, or tribes as part of an authorized program or administrative arrangement.

15.1(2) Definitions. For the purpose of this rule, the following terms shall have the meanings indicated below:

“Authorized program” means a federal program that the U.S. Environmental Protection Agency (EPA) has delegated to, authorized, or approved the department, on behalf of the state of Iowa, to administer, or a program that the EPA has delegated to, authorized, or approved the department to administer in lieu of a federal program, under provisions of 40 CFR and for which the delegation, authorization or approval has not been withdrawn or expired.

“Copy of record” means a true and correct copy of an electronic document received by an electronic document receiving system, which can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information. A “copy of record” includes:

1. Any electronic signature contained in or logically associated with the document;
2. The date and time of receipt; and
3. Any other information used to record the meaning of the document or the circumstances of its receipt.

“Electronic document” means any information that is submitted to one of the department’s electronic document receiving systems in digital form to satisfy requirements of an authorized program and may include data, text, sounds, codes, computer programs, software, or databases.

“Electronic document receiving system” means the apparatus, procedures, software, or records established and used by the department to receive electronic documents in lieu of paper.

“Electronic signature” means any information in digital form attached to or logically associated with a record submitted to one of the department’s electronic document receiving systems and executed or adopted by a person with the intent of expressing the same meaning as would a handwritten signature if affixed to an equivalent paper document with the same content.

“Electronic signature agreement” means a written agreement prepared by the department and signed by an individual with respect to an electronic signature device that the individual will use to create the individual’s electronic signature.

“Electronic signature device” means a code or other mechanism, assigned to an individual who is uniquely entitled to use it and that is then used to create the individual’s electronic signature.

“Federal program” means any program administered by EPA under any provision of 40 CFR.

“Handwritten signature” means the scripted name or legal mark of an individual made by that individual with the present intention to authenticate a signature in a permanent form.

“Signatory” means an individual authorized to sign and who signs a document submitted to one of the department’s electronic document receiving systems pursuant to an electronic signature agreement.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

“*State program*” means any program other than an authorized program that is implemented by the department under the laws of the state of Iowa.

“*Valid electronic signature*” means an electronic signature on an electronic document created by using an electronic signature device that the identified signatory is uniquely entitled to use for signing the electronic document, provided the device has not been compromised and provided the signatory is an individual authorized to sign the document by virtue of legal status or relationship to the entity on whose behalf the signature is created.

15.1(3) *Use of electronic document receiving systems.*

a. Announcement on public Web site. When the director has announced on the department’s public Web site that the department is accepting specified electronic documents in lieu of paper to satisfy requirements under each authorized program, individuals who submit such electronic documents must use the department’s CROMERR-compliant electronic document receiving systems.

b. Submittals requiring signature. Any electronic document submitted to the department must bear a valid electronic signature of a signatory, if that signatory would be required under the authorized program to sign the paper document for which the electronic document substitutes.

c. Submittals not requiring signature. If no signature is required under the authorized program, individuals may submit electronic documents in lieu of paper to satisfy requirements of such programs through the department’s CROMERR-compliant electronic document receiving system without an electronic signature or an electronic signature agreement.

15.1(4) *Electronic signature agreement.*

a. Agreement to be executed. In the case of an electronic document that must bear the electronic signature of a signatory under an authorized program, each signatory must execute an electronic signature agreement.

b. Form and content of agreement. All agreements shall be in writing and filed with the electronic document receiving system administrator via a mail delivery service or by hand delivery. The agreement shall include the information and follow the format as defined by the department. The agreement form may be downloaded and printed for execution from the department’s public Web site.

c. Verification. The identity and authority of each individual submitting an electronic signature agreement shall be verified by the state of Iowa. After the state of Iowa has satisfactorily completed the verification, the department shall notify the individual electronically that the electronic signature device has been activated and access to the database has been granted.

d. Certification. Each submission authorized by an electronic signature shall contain the following statement: “I certify under penalty of law that I have had the opportunity to review, in human-readable format, the content of the electronic document to which I here certify and attest, and I further certify under penalty of law that, based on the information and belief formed after reasonable inquiry, the statements and information contained in this submission are true, accurate, and complete. I understand that making any false statement, representation, or certification of this submission may result in criminal penalties.”

15.1(5) *Valid electronic signature.*

a. Signatory. An authorized signatory may not allow another individual to use the electronic signature device unique to the authorized signatory’s electronic signature.

b. Unique signature device. When the electronic signature device is used to create an individual’s electronic signature, the code or mechanism must be unique to that individual at the time the signature is created and the individual must be uniquely entitled to use it. The signatory shall:

- (1) Protect the electronic signature device from compromise; and
- (2) Report to the department and to the state of Iowa, within one business day of discovery, any evidence that the security of the device has been compromised.

15.1(6) *Effect of electronic signature.*

a. Electronic signature establishes intent. The presence of an electronic signature on an electronic document submitted to the department establishes that the signatory intended to sign the electronic document and to submit it to the department to fulfill the purpose of the electronic document.

b. Electronic signature legally binding. Where an electronic document submitted to satisfy a reporting requirement of an authorized program bears an electronic signature, the electronic signature

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

legally binds, obligates, and makes the signatory responsible to the same extent as the signatory's handwritten signature on a paper document submitted to satisfy the same reporting requirement. If an applicable law or rule requires a handwritten signature on a document, an electronic signature satisfies that requirement.

15.1(7) Enforcement.

a. Penalties and other remedies. If the submitter or signatory fails to comply with a reporting requirement by failing to comply with the provisions of this chapter, the electronic signature agreement, or other applicable reporting requirements, the submitter or signatory is subject to any appropriate civil or criminal penalties or other remedies under Iowa law.

b. Electronic document as evidence. Nothing in this chapter or the authorized program limits the use of an electronic document, copy of record, or other information derived from an electronic document as evidence in enforcement proceedings.

ARC 8468B**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 chapters 455B and 455D, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 122, “Cathode Ray Tube Device Recycling,” Iowa Administrative Code.

These amendments are being proposed in an effort to promote convenient cathode ray tube (CRT) recycling for consumers without compromising protection of the environment. This will be accomplished by:

- Removing the requirements for short-term collections.
- Replacing the permit requirement for facilities that collect CRTs with a registration requirement.
- Providing collection and storage requirements for registered collection points including limiting the number of CRTs on site to 2,000, limiting the storage time to one year, and requiring a training program for collection site employees.
- Increasing the length of the CRT recycling permit from three years to five years.
- Removing the requirement for DNR-approved training for staff of CRT recycling facilities.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4:30 p.m. on February 2, 2010. Such written materials should be directed to Theresa Stiner, Land Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895; or E-mail Theresa.Stiner@dnr.iowa.gov. Persons wishing to convey their views orally should contact Ms. Stiner at (515)281-8646.

When submitting comments, stakeholders are encouraged by the Department to utilize the following guidelines. These guidelines aid the Department in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business or organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

5. Provide specific examples to illustrate your concerns.
6. Offer alternative language to improve the specific rule(s) and explain why.

A public hearing will be held on February 2, 2010, from 2 to 3 p.m. in the Fifth Floor West Conference Room, Wallace State Office Building, 502 East Ninth Street, Des Moines, 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 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 to advise of specific needs.

These amendments are intended to implement Iowa Code chapters 455B and 455D.

The following amendments are proposed.

- ITEM 1. Rescind subrule **122.2(5)**.
- ITEM 2. Rescind the definition of "Short-term CRT collection" in rule **567—122.3(455B,455D)**.
- ITEM 3. Rescind rules **567—122.4(455B,455D)** and **567—122.5(455B,455D)**.
- ITEM 4. Renumber rule **567—122.6(455B,455D)** as **567—122.4(455B,455D)**.
- ITEM 5. Amend renumbered rule 567—122.4(455B,455D) as follows:

567—122.4(455B,455D) CRT recycling permits.

122.4(1) Permit required. A CRT recycling facility ~~or CRT collection facility~~ shall not be constructed or operated without a permit from the department.

122.4(2) CRT recycling permit exemption. If a CRT recycling facility ~~or CRT collection facility~~ is located at a permitted ~~recycling or composting facility~~ or sanitary disposal project, it shall not require its own permit; instead, the CRT recycling activities shall be amended into the host facility's permit.

122.4(3) Construction and operation. CRT recycling facilities ~~and CRT collection facilities~~ shall be constructed and operated according to the plans and specifications approved by the department and the conditions of the permit. The approved plans and specifications shall constitute a condition of the permit.

122.4(4) Transfer of title and permit. If title to a CRT recycling facility ~~or CRT collection facility~~ is transferred, then the department shall transfer the permit within 60 days if the department has found that the following requirements have been met:

a. and *b.* No change.

122.4(5) to 122.4(7) No change.

122.4(8) Duration and renewal of permits. A permit shall be issued and may be renewed for a period of ~~three~~ five years, unless otherwise authorized by the department.

122.4(9) and 122.4(10) No change.

ITEM 6. Adopt the following new rule 567—122.5(455B,455D):

567—122.5(455B,455D) Registration for CRT collection facilities. A CRT collection facility shall register with the department using Form 542-0060.

ITEM 7. Adopt the following new rule 567—122.6(455B,455D):

567—122.6(455B,455D) CRT collection and storage requirements for registered collection points.

122.6(1) CRT storage at a registered collection site shall be limited to 48 Gaylord boxes or the equivalent containing no more than 2,000 CRTs.

122.6(2) A CRT shall not be stored at a registered collection point for more than one year.

122.6(3) All CRTs shall be stored in a building, shipping container, or enclosed vehicle that provides protection from the elements.

122.6(4) Access to the CRT storage area shall be secured during nonbusiness hours.

122.6(5) The CRT storage area shall be free of other solid waste, other than in designated storage areas, except for incidental amounts of solid waste that are not discarded CRTs.

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122.6(6) Containers or packages shall be labeled and transported in compliance with state and federal Department of Transportation (DOT) rules.

122.6(7) Any container holding CRTs shall be clearly labeled with the contents of the container and the date the first CRT was placed in the container.

122.6(8) The CRT collection facility shall maintain the following records on site for a minimum of three years.

- a. The total amount of CRTs received in a calendar year.
- b. The total amount of CRTs shipped for recycling or reuse in a calendar year.
- c. All shipping papers, manifests, and bills of lading for CRTs shipped from the facility.

122.6(9) The registrant must annually provide information to all employees who handle or have responsibility for managing discarded CRTs. The information shall describe proper handling, safety, and emergency procedures appropriate for discarded CRTs. A training log shall be maintained on site by the registrant and shall contain the following information:

- a. A copy of the information provided to the employees;
- b. The names of the employees who received the information; and
- c. The date the training was provided to the employee.

ITEM 8. Rescind rules **567—122.8(455B,455D)** and **567—122.9(455B,455D)**.

ITEM 9. Renumber rules **567—122.10(455B,455D)** to **567—122.28(455B,455D)** as **567—122.7(455B,455D)** to **567—122.25(455B,455D)**.

ITEM 10. Amend renumbered subrule 122.8(1) as follows:

122.8(1) A CRT recycling facility permit applicant shall submit the following permit application information to the department:

- a. and b. No change.
- c. A map or aerial photograph locating the boundaries of the site and identifying:
 - (1) to (4) No change.
 - (5) The 100-year flood plain pursuant to ~~rule 122.12(455B,455D)~~ rule 567—122.9(455B,455D).
 - d. to i. No change.
 - j. Site plans detailing how the site will comply with ~~rule 122.13(455B,455D)~~ rule 567—122.10(455B,455D), including floor plans of buildings where discarded CRTs will be handled and the location within each building for specific recycling activities.
 - k. A plan of operations detailing how the site will comply with ~~rules 122.14(455B,455D)~~ rules 567—122.11(455B,455D) to 122.22(455B,455D) 567—122.19(455B,455D).
 - l. An emergency response and remedial action plan (ERRAP) pursuant to ~~rule 122.23(455B,455D)~~ rule 567—122.20(455B,455D).
 - m. A reporting plan detailing how the site will comply with ~~rule 122.25(455B,455D)~~ rule 567—122.22(455B,455D).
 - n. A closure plan detailing how the site will comply with ~~rule 122.27(455B,455D)~~ rule 567—122.24(455B,455D).

ITEM 11. Amend renumbered subrule 122.17(3) as follows:

122.17(3) Any hazardous condition shall be immediately contained and remedied with proper equipment and procedures pursuant to 567—Chapter 131 and the emergency response and remedial action plan (ERRAP) pursuant to ~~rule 122.23(455B,455D)~~ rule 567—122.20(455B,455D). Within six hours of the release, the department field office with jurisdiction over the spill or release location shall be notified.

ITEM 12. Amend renumbered subrule 122.19(2) as follows:

122.19(2) Discarded CRTs and materials derived from discarded CRTs shall not be speculatively accumulated at a permitted CRT recycling facility without the permit holder obtaining and maintaining financial assurance for the additional CRTs in accordance with rule 567—122.25(455B,455D). Speculative accumulation occurs when a facility cannot demonstrate that the amount of discarded CRTs and materials derived from discarded CRTs leaving the facility within a 12-month time period is greater

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than 75 percent, by weight or volume, of the discarded CRTs and materials derived from discarded CRTs received by the facility within a 12-month time period.

ITEM 13. Amend renumbered subrule 122.21(1), introductory paragraph, as follows:

122.21(1) *General training.* ~~Beginning July 1, 2005, all~~ All employees of a CRT recycling facility involved in activities relevant to CRT recycling shall be trained ~~on~~ in the following requirements and procedures as appropriate to the employees' specific job responsibilities:

ITEM 14. Rescind and reserve renumbered subrule **122.21(2)**.

ITEM 15. Amend renumbered subrules 122.22(3) and 122.22(4) as follows:

122.22(3) The percentage of materials covered by ~~subrules 122.25(1) and 122.25(2)~~ subrules 122.22(1) and 122.22(2) received from businesses and institutions.

122.22(4) The percentage of materials covered by ~~subrules 122.25(1) and 122.25(2)~~ subrules 122.22(1) and 122.22(2) received from households.

ITEM 16. Amend renumbered rule 567—122.23(455B,455D) as follows:

567—122.23(455B,455D) Record-keeping requirements for CRT recycling facilities. All CRT recycling facilities shall maintain the following records, on a calendar-year basis, for three years:

122.23(1) No change.

122.23(2) The name, address and contact information for shipments reported in ~~subrule 122.26(1)~~ subrule 122.23(1).

122.23(3) to 122.23(6) No change.

122.23(7) Information related to the management of spills and releases pursuant to ~~rule 122.20(455B,455D)~~ rule 567—122.17(455B,455D).

122.23(8) Information related to the management of CRT fluff pursuant to ~~rule 122.21(455B,455D)~~ rule 567—122.18(455B,455D).

122.23(9) Information related to training requirements ~~and a list of individuals who have received DNR-approved training pursuant to subrule 122.24(2)~~ pursuant to subrule 122.21(1).

ITEM 17. Amend renumbered rule 567—122.25(455B,455D), introductory paragraph, as follows:

567—122.25(455B,455D) Financial assurance requirements for cathode ray tube (CRT) collection and recycling facilities. Permitted CRT ~~collection and~~ recycling facilities must obtain and submit a financial assurance instrument to the department for the storage of solid waste, discarded CRTs and materials derived from discarded CRTs at the site in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of solid waste, discarded CRTs and materials derived from discarded CRTs that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

ITEM 18. Amend renumbered subrule 122.25(1) as follows:

122.25(1) No permit without financial assurance. The department shall not issue or renew a permit to an owner or operator of a CRT ~~collection or~~ recycling facility until a financial assurance instrument has been submitted to and approved by the department.

ITEM 19. Amend renumbered subrule 122.25(2) as follows:

122.25(2) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department ~~by July 1, 2008, or~~ at the time of application for a permit for a new CRT ~~collection or~~ recycling facility. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

ITEM 20. Amend renumbered subrule 122.25(3) as follows:

122.25(3) Use of one financial assurance instrument for multiple permitted activities. CRT ~~collection or~~ recycling facilities required to maintain financial assurance pursuant to any other

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provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

ITEM 21. Amend renumbered subrule 122.25(4) as follows:

~~122.25(4) The estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 122.27(455B,455D):~~ CRT recycling facilities shall have financial assurance coverage equal to one dollar per pound of CRTs determined to be speculatively accumulated in accordance with subrule 122.19(2).

~~a.—CRT collection facilities shall have financial assurance coverage equal to one dollar per pound stored above the permitted storage capacity of 48 Gaylord boxes or the equivalent containing no more than 2,000 CRTs, in accordance with subrule 122.8(1).~~

~~b.—CRT recycling facilities shall have financial assurance coverage equal to one dollar per pound of CRTs determined to be speculatively accumulated in accordance with subrule 122.8(7).~~

ITEM 22. Amend renumbered subrule **122.25(5)**, introductory paragraph, as follows:

122.25(5) Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with ~~subrule 122.28(4)~~ subrule 122.25(4) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

ITEM 23. Amend renumbered paragraph **122.25(5)“a”** as follows:

a. Secured trust fund. The owner or operator of a CRT ~~collection or~~ recycling facility or an entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) to (6) No change.

ITEM 24. Amend renumbered paragraph **122.25(5)“b”** as follows:

b. Local government dedicated fund. The owner or operator of a publicly owned CRT ~~collection or~~ recycling facility or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) to (3) No change.

ITEM 25. Amend renumbered paragraph **122.25(5)“d”** as follows:

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) and (2) No change.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph ~~122.28(5)“a.”~~ 122.25(5)“a.” If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. ~~The state shall not be considered a party to this credit transaction.~~

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ITEM 26. Amend renumbered subparagraph **122.25(5)“e”(1)** as follows:

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. No change.
2. Establish a fully funded secured trust fund as specified in paragraph ~~122.28(5)“a”~~ 122.25(5)“a” in the name of the owner or operator (payment guarantee); or
3. No change.

ITEM 27. Amend renumbered subparagraph **122.25(5)“e”(5)** as follows:

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. No change.
2. A letter signed by a certified public accountant and based upon a certified audit that:
 - Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by ~~subrule 122.28(4)~~ subrule 122.25(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
 - Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs ~~122.28(5)“e”(2), (3) and (4)~~ 122.25(5)“e”(2), (3) and (4).
3. No change.

ITEM 28. Amend renumbered subparagraph **122.25(5)“f”(1)** as follows:

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. No change.
2. Establish a fully funded secured trust fund as specified in paragraph ~~122.28(5)“a”~~ 122.25(5)“a” in the name of the owner or operator (payment guarantee); or
3. No change.

ITEM 29. Amend renumbered subparagraph **122.25(5)“f”(6)** as follows:

(6) The local government owner or operator must submit to the department the following items:

1. No change.
2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph ~~122.28(5)“f”(2)“2,”~~ 122.25(5)“f”(2)“2,” if applicable, and the requirements of subparagraphs ~~122.28(5)“f”(3) and (4)~~ 122.25(5)“f”(3) and (4).
3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in ~~subrule 122.28(4)~~ subrule 122.25(4); and that provides evidence and certifies that the local government meets the conditions of subparagraphs ~~122.28(5)“f”(2), (3), (4) and (5)~~ 122.25(5)“f”(2), (3), (4) and (5).

ITEM 30. Amend renumbered paragraph **122.25(6)“d”** as follows:

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, “proper closure” means completion of all items pursuant to ~~rule 122.27(455B,455D)~~ rule 567—122.24(455B,455D) and ~~subrule 122.28(4)~~ subrule 122.25(4).

ARC 8460B**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(6), the Department of Human Services proposes to amend Chapter 58, “Emergency Assistance,” Iowa Administrative Code.

The proposed amendment would rescind rules on Family Investment Program (FIP) Emergency Assistance. The FIP Emergency Assistance Program has not been funded since state fiscal year 2003, with the last funds allotted to the Program expended in November 2002. Funding for the Program ended due to budgetary constraints.

This amendment does not provide for waivers in specified situations because no funds are appropriated to deliver these benefits.

Any interested person may make written comments on the proposed amendment on or before February 2, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 234.6.

The following amendment is proposed.

Rescind and reserve **441—Chapter 58, Division II.**

ARC 8461B**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 2009 Iowa Acts, Senate File 389, section 38, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” and Chapter 76, “Application and Investigation,” Iowa Administrative Code.

The proposed amendments will implement Medicaid “express lane” eligibility for children. Express lane eligibility is a process by which the Medicaid program can rely on a finding made under another program with similar eligibility requirements to determine that a child meets Medicaid eligibility requirements. The Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA) authorized, as a state option, the reliance on a finding from an express lane agency in determining whether a child satisfies one or more components of Medicaid eligibility. 2009 Iowa Acts, Senate File 389, requires the Department to implement CHIPRA’s express lane option in order to qualify for federal performance bonus funding.

Under these amendments, children under the age of 19 who have already been determined eligible for Food Assistance based on the family’s income and circumstances will be allowed to enroll in Medicaid under the Mothers and Children (MAC) coverage group without filing a separate application.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Approximately one-tenth of the children now eligible for Food Assistance are not receiving medical assistance.

The family must affirmatively request the child's Medicaid enrollment within a reasonable period of time and must still meet the specific Medicaid requirements of attestation and verification of alien or citizen status. Medicaid enrollment through the express lane process will be for an initial period of eligibility (up to 12 months), after which all redeterminations of eligibility will be made based on standard Medicaid eligibility requirements and procedures.

Implementation of the express lane option requires separate error rate sampling, monitoring, and reporting. Error rates exceeding 3 percent will require corrective action planning and federal repayment of error cases.

The proposed amendments also make technical changes to update form names and numbers.

These amendments do not provide for waivers in specified situations because they benefit the families affected by streamlining eligibility procedures and making more children eligible for Medicaid benefits. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before February 2, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.3.

The following amendments are proposed.

ITEM 1. Amend paragraphs **75.2(1)“a”** and **“b”** as follows:

a. Persons who have been approved by the Social Security Administration for ~~supplemental security income~~ Supplemental Security Income shall complete Form ~~470-2304, 470-2304(S), 470-0364, or 470-0364(S), 470-0364(M), or 470-2304(MS)~~, SSI Medicaid Information, and return it to the department.

b. Persons eligible for Part B of the Medicare program shall make assignment to the department on Form ~~470-2304, 470-2304(S), 470-0364, or 470-0364(S), 470-0364(M), or 470-2304(MS)~~, SSI Medicaid Information.

ITEM 2. Amend paragraph **75.11(2)“b”** as follows:

b. As a condition of eligibility, each member shall complete and sign Form 470-2549, Statement of Citizenship Status, attesting to the member's citizenship or alien status. When the member is incompetent or deceased, the form shall be signed by someone acting responsibly on the member's behalf. An adult shall sign the form for dependent children.

(1) As a condition of eligibility, all applicants for Medicaid shall attest to their citizenship or alien status by signing the application form which contains the same declaration.

(2) As a condition of continued eligibility, SSI-related Medicaid members not actually receiving SSI who have been continuous members since August 1, 1988, shall attest to their citizenship or alien status by signing the application form which contains a similar declaration at time of review.

(3) An attestation of citizenship or alien status completed on any one of the following forms shall meet the requirements of subrule 75.11(2) for children under the age of 19 who are otherwise eligible pursuant to 441—subrule 76.1(8):

1. Application for Food Assistance, Form 470-0306 or 470-0307 (Spanish);
2. Health and Financial Support Application, Form 470-0462 or 470-0466 (Spanish);
3. Review/Recertification Eligibility Document, Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS);

ITEM 3. Amend paragraphs **76.1(1)“a,” “c”** and **“e”** as follows:

a. An application for family medical assistance-related Medicaid programs shall be submitted on the Health and Financial Support Application, Form 470-0462 or Form 470-0466 (Spanish); the Health Services Application, Form 470-2927 or Form 470-2927(S); the HAWK-I Application, Comm. 156;

HUMAN SERVICES DEPARTMENT[441](cont'd)

or the HAWK-I Electronic Application Summary and Signature Page, Form 470-4016. However, no application form is required for express lane eligibility under subrule 76.1(8), based on a determination of eligibility for food assistance.

c. A person who is a recipient of ~~supplemental security income~~ Supplemental Security Income (SSI) benefits shall not be required to complete a separate Medicaid application. If the department does not have all information necessary to establish that an SSI recipient meets all Medicaid eligibility requirements, the SSI recipient may be required to complete Form ~~470-2304, 470-2304(S), 470-0364, or 470-0364(S), 470-0364(M), or 470-2304(MS)~~, SSI Medicaid Information, and may be required to attend an interview to clarify information on this form.

e. The department shall initiate a medical assistance application for a person whose application data is received from the federal Social Security Administration pursuant to 42 U.S.C. 1320b-14(c)(3).

(1) No change.

(2) The department shall mail Form 470-4846, ~~Medicare Savings Program and Food Assistance Application Programs~~ Additional Information Request, to the person whose data was transmitted to gather the rest of the information needed to determine eligibility.

ITEM 4. Adopt the following **new** subrule 76.1(8):

76.1(8) Express lane eligibility. For purposes of an initial determination of medical assistance eligibility, the department will use express lane procedures as allowed by 42 U.S.C. § 1396a(e)(13) and as described in this subrule.

a. The department shall rely on a determination of eligibility for food assistance pursuant to 441—Chapter 65 as evidence that a child under the age of 19 meets all eligibility requirements established in 441—subrule 75.1(28) except for citizenship or alienage requirements, unless:

(1) The child's household already includes other persons receiving FMAP-related Medicaid, or

(2) The child was previously granted express lane eligibility and the household has not had at least a two-month break in food assistance eligibility since that time.

b. To obtain express lane eligibility, the child or family must affirmatively request medical assistance for the child on Form 470-4851, Express Lane Medicaid for Children. The department will mail Form 470-4851 to the child or family when a child eligible for the express lane option who is not already a Medicaid member is approved for food assistance pursuant to 441—Chapter 65. The child or family must sign Form 470-4851 and return it to the department within 30 calendar days of issuance.

c. As a condition of express lane eligibility, the child must meet citizenship or alienage requirements of rule 441—75.11(249A).

d. The month of application for express lane eligibility is the month of the child's food assistance effective date. Express lane eligibility begins on the first day of the month of the child's food assistance effective date.

e. Retroactive eligibility is available for any of the three months before the effective date of the child's express lane eligibility when the child:

(1) Has medical bills for covered services that were received in that period, and

(2) Would have been eligible for medical assistance benefits in the month services were received if application for medical assistance had been made in that month, determined without regard to food assistance eligibility.

f. After the initial express lane determination of medical assistance eligibility, all redeterminations of medical assistance eligibility shall be made without reliance on any food assistance eligibility determination.

ITEM 5. Amend paragraph **76.5(1)“d”** as follows:

d. Persons receiving only ~~supplemental security income~~ Supplemental Security Income benefits who wish to make application for Medicaid benefits for three months preceding the month of application shall complete Form ~~470-2304, 470-2304(S), 470-0364, or 470-0364(S), 470-0364(M), or 470-2304(MS)~~, SSI Medicaid Information.

ARC 8479B**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, the Department of Human Services proposes to amend Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Iowa Administrative Code.

The proposed amendments:

- Allow coverage under the HAWK-I Program to be approved for children claiming to be U.S. citizens who meet all other eligibility criteria except for proof of citizenship, and
- Extend the reasonable period for obtaining verification of citizenship from 60 days to 90 days.

Currently, the application is pended until verification is submitted or the reasonable period expires, but when citizenship is verified, benefits are approved based on the application date. Under these amendments, HAWK-I eligibility shall be granted and then canceled if verification is not received within 90 days. If a case has been canceled for this reason and the family reapplies for HAWK-I benefits, a second reasonable period for obtaining verification will not be allowed.

Contemporaneous with these changes, the Department expects to implement an alternative method of verifying citizenship through a data match with the Social Security Administration. This should markedly reduce the number of cases for which a birth certificate or other documentation verifying citizenship is required. Federal requirements for using this method extend the reasonable period for obtaining verification to 90 days.

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

Any interested person may make written comments on or before February 2, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

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

The following amendments are proposed.

Amend paragraphs **86.2(7)“d,” “e” and “f”** as follows:

d. An applicant or enrollee shall have a reasonable period to obtain and provide proof of citizenship and nationality. For the purposes of this requirement, the “reasonable period” begins on the date a written request to obtain and provide proof is issued to an applicant or enrollee and continues to the date the proof is provided or to the ~~sixtieth~~ ninetieth calendar day from the date the written request was issued.

e. Eligibility for HAWK-I shall ~~not~~ be approved for applicants for one reasonable period as described in paragraph 86.2(7)“d.”

(1) The reasonable period shall begin no earlier than the first day of the month following the month in which a valid application is received and shall continue until the end of the month in which the ninetieth day occurs or until acceptable documentary evidence is provided, whichever is earlier. However, coverage may be canceled before the end of the reasonable period when another eligibility requirement is not met.

(2) For the purposes of HAWK-I eligibility, an applicant who received coverage during a reasonable period as a Medicaid applicant shall not be granted coverage pursuant to this paragraph for a second reasonable period.

HUMAN SERVICES DEPARTMENT[441](cont'd)

f. Failure to provide acceptable documentary evidence by the ~~sixtieth~~ ninetieth calendar day from the date the written request was issued pursuant to paragraph 86.2(7)“d” shall be the basis for ~~denial~~ cancellation of coverage under HAWK-I for the child.

ARC 8448B

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 217.6, the Department of Human Services proposes to amend Chapter 150, “Purchase of Service,” Iowa Administrative Code.

This amendment:

- Implements a decrease in the reimbursement rate for supervised apartment living services provided from January 1, 2010, to June 30, 2010. During this period, the maximum reimbursement shall be the rates in effect on December 1, 2009, reduced by 5 percent. This reduction is necessary to achieve the savings required by Executive Order Number 19, which mandated a 10 percent across-the-board cut in expenditures.

- Clarifies that rates will not be adjusted if a provider adds a new service. The initial reimbursement rate for any new service shall be based upon actual and allowable costs.

This amendment does not provide for waivers in specified situations. Needed savings will not be realized if waivers are granted. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 8447B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before February 2, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 234.6 and Executive Order Number 19.

ARC 8450B

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 217.6, the Department of Human Services proposes to amend Chapter 152, “Foster Group Care Contracting,” Iowa Administrative Code.

This amendment implements a decrease in the reimbursement rates for foster group care provided from January 1, 2010, to June 30, 2010. During this period, the maximum reimbursement shall be the rate in effect on December 31, 2009, reduced by 5 percent. This reduction is necessary to achieve the

HUMAN SERVICES DEPARTMENT[441](cont'd)

savings required by Executive Order Number 19, which mandated a 10 percent across-the-board cut in expenditures.

This amendment does not provide for waivers in specified situations. Needed savings will not be realized if waivers are granted. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 8449B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before February 2, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 234.6 and Executive Order Number 19.

ARC 8438B**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 217.6, the Department of Human Services proposes to amend Chapter 153, “Funding for Local Services,” Iowa Administrative Code.

The proposed amendments:

- Provide for disenrollment of members from the State Payment Program when available funds are insufficient to meet the costs of services for all of the members enrolled.
- Require the county central points of coordination for mental health, mental retardation, and developmental disability services (CPCs) to provide for evidence of receipt of an application for State Payment Program funding.
- Clarify the assignment to a waiting list for application approval and remove the exemption for persons awaiting community placement from an involuntary inpatient setting.
- Prohibit reimbursement for case management costs eligible for Medicaid reimbursement, appointments and consultations for which the member did not appear, and other specified administrative and service costs.

These amendments are necessary to reduce State Payment Program expenses due to Executive Order Number 19, which mandates a 10 percent reduction in all state appropriations. Iowa Code section 8.38 states “No state department, institution, or agency . . . shall expend funds or approve claims in excess of the appropriations made thereto, nor expend funds for any purpose other than that for which the money was appropriated.”

To implement the disenrollment provisions, each member will be assigned a payment slot number based on the member's application date and commitment status. The lowest numbers will be assigned to members in involuntary commitment status. When the person is released from the commitment order, a new payment slot will be assigned according to the procedures for all other applicants.

When disenrollment is necessary, members will be disenrolled in reverse order of their payment slot numbers, i.e., with the highest number (most recent approval) first. The Department will give members timely and adequate notice of the funding decision. This action will be subject to appeal according to the Department's procedures, which provide for continuation of assistance until the final appeal decision is reached, with recoupment of excess assistance if the final decision upholds the Department.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations other than the preference accorded to funding for involuntary services provided under court commitment. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8486B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before February 2, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 331.440.

ARC 8452B**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 156, “Payments for Foster Care,” Chapter 187, “Aftercare Services and Supports,” and Chapter 201, “Subsidized Adoptions,” Iowa Administrative Code.

These amendments reduce the reimbursement rate for foster family care and adoption and guardianship subsidies to achieve the savings required by Executive Order Number 19, which mandated a 10 percent across-the-board cut in state expenditures. Specifically, these amendments:

- Implement a 5 percent reduction in the basic reimbursement rate and the additional payments for special behavioral needs for foster family care provided through the end of state fiscal year 2010. Since the maximum maintenance payments for adoption and guardianship subsidies are based on the foster family care payment rates, those payments will also be reduced.
- Implement a 5 percent reduction in the clothing allowance payments for children in foster care.
- Substitute a specific reimbursement amount for the maximum maintenance payment in the supervised apartment living program and for the maximum stipend payment in the preparation for adult living (PAL) program. These rates have been based on the foster family care payment rates, but changes in these rates are not part of the Department's approved spending reduction plan.
- Limit payment for nonrecurring adoption expenses and, by reference, guardianship expenses. A maximum of \$500 will be reimbursed for attorney fees, court costs, and other related legal expenses.
- Suspend payment of special services payments negotiated as part of an adoption subsidy agreement between January 1, 2010, and June 30, 2010. Special services may be included in the agreement with the understanding that no payments will be made during this fiscal year. The suspension precludes the need to renegotiate the subsidy agreement if funds become available for special services in the future. Special services provisions in agreements that are already in effect on January 1, 2010, will not be affected.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8451B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Any interested person may make written comments on the proposed amendments on or before February 2, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 234.35, 234.38, 234.46, and 600.17 to 600.23 and Executive Order Number 19.

ARC 8459B**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 rescind Chapter 159, “Child Care Resource and Referral Grants Program,” and adopt Chapter 159, “Child Care Resource and Referral Services,” Iowa Administrative Code.

The proposed amendment rescinds and replaces the chapter on grants for the operation of regional resource and referral agencies to support child care services. The new chapter reflects current state contracting procedures. The current contractors have been operating under “sole source” contracts, a practice which is no longer allowed. The Department plans to issue a request for proposals early in 2010 to reprocur these services. The proposed rules support those requirements. They do not alter the current scope of services provided to parents, providers and communities by the child care resource and referral agencies.

These rules do not provide for waivers in specified situations because the rules must conform to state contracting requirements in Iowa Code chapter 8A and Department of Administrative Services rules at 11—Chapters 106 and 107.

Any interested person may make written comments on the proposed amendment on or before February 2, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 237A.26.

The following amendment is proposed.

Rescind 441—Chapter 159 and adopt the following **new** chapter in lieu thereof:

CHAPTER 159

CHILD CARE RESOURCE AND REFERRAL SERVICES

PREAMBLE

These rules define the process for awarding grants for the delivery of child care resource and referral services.

441—159.1(237A) Definitions.

“*Applicant*” means an agency that applies for a contract as a regional child care resource and referral agency.

“*Child care facility*” means a child care center, preschool, or child development home.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*Child care resource and referral agency*” means a community-based nonprofit incorporated agency or public agency that is under a contract with the department to provide resource and referral services as defined in subrule 159.3(1).

“*Director*” means the director of the department of human services.

“*Region*” means the service area of the child care resource and referral agency as determined in the contract with the department.

441—159.2(237A) Availability of funds. In any year in which funds are available for child care resource and referral services, the department shall award grants for child care resource and referral services pursuant to a request for proposals.

159.2(1) The total amount of grant moneys awarded shall be contingent upon the funds available.

159.2(2) Grants shall be issued on a regional basis. The department shall determine the amount of grant money available for each region based upon the factors set forth in the request for proposals.

441—159.3(237A) Participation requirements.

159.3(1) Resource and referral services. Grants will be awarded to community-based nonprofit incorporated agencies and public agencies that have the capacity to provide all of the following types of services:

a. Parent services.

(1) The agency shall assist families in selecting quality child care and shall provide referrals to child care facilities.

(2) The agency may provide referrals to child care homes and may provide specialized referral services to employers.

b. Provider services. The agency shall:

(1) Assist child care providers in adopting developmentally appropriate programs and sustainable business practices to provide quality child care services through the delivery of consultation, training, and other resources and materials.

(2) Support the development of new child care facilities and the expansion of existing child care facilities in response to identified needs.

(3) Encourage participation of eligible child care facilities in the federal Child and Adult Care Food Program (CACFP).

c. Community services. The agency shall:

(1) Provide information to the public regarding the availability and quality of child care services within the agency’s region.

(2) Coordinate with other public and private entities and services within the region. Activities shall include coordinating with community-level efforts to improve the consistency and quality of data collection, consultation and other supports to child care homes and child development homes, particularly the efforts of home consultants funded by a community empowerment area board.

d. Other. The agency shall offer such other services as set forth in the request for proposals issued by the department.

159.3(2) Matching funds. The agency must provide a financial match of the grant award as set forth in the request for proposals. Eligible match includes in-kind contributions, private donations and public funding.

441—159.4(237A) Request for proposals for project grants. The department shall announce the request for proposals through public notice.

159.4(1) Proposal submittal. All applicants shall submit proposals to Iowa Department of Human Services, Bureau of Child Care and Community Services, Hoover State Office Building, Fifth Floor, 1305 E. Walnut, Des Moines, Iowa 50319-0114.

159.4(2) Proposal requirements. To be eligible for review, a proposal shall:

a. Be received by the due date specified in the request for proposals;

b. Be in the form prescribed by the department in the request for proposals; and

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. Meet the requirements set forth in the request for proposals.

441—159.5(237A) Selection of proposals. The selection criteria for the grants shall be set forth in the request for proposals.

159.5(1) The director shall make the final decision regarding grants awarded to applicants. Only one grant shall be awarded in each specified region to the agency that best meets the criteria set forth in the request for proposals.

159.5(2) The department reserves the right to award grants for less than the amount of appropriated funds if there is an insufficient number of acceptable proposals submitted to adequately achieve the purpose of child care resource and referral services statewide.

These rules are intended to implement Iowa Code section 237A.26.

ARC 8484B

INSPECTIONS AND APPEALS DEPARTMENT[481]

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 10A.104 and 10A.401 to 10A.403, the Department of Inspections and Appeals hereby gives Notice of Intended Action to rescind Chapter 71, “Overpayment Recovery Unit,” and to adopt new Chapter 90, “Public Assistance Debt Recovery Unit,” Iowa Administrative Code.

Chapter 71 is being rescinded and replaced with Chapter 90. Chapter 90 has been updated to conform with current practices, laws, regulations, and rules.

Any interested person may make written suggestions or comments on these proposed amendments on or before February 2, 2010. Such written materials should be sent to Steven Mandernach, Administrative Rules Coordinator, Department of Inspections and Appeals, 321 E. 12th Street, Third Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6863 or by E-mail to steven.mandernach@dia.iowa.gov.

These amendments are intended to implement Iowa Code chapter 10A.

The following amendments are proposed.

ITEM 1. Rescind and reserve **481—Chapter 71**.

ITEM 2. Adopt the following **new** 481—Chapter 90:

CHAPTER 90

PUBLIC ASSISTANCE DEBT RECOVERY UNIT

PREAMBLE

These rules define the department’s policies regarding the recovery of public assistance debts. See also Iowa Administrative Code 441—Chapter 11, “Collection of Public Assistance Debts.”

481—90.1(10A) Definitions. For the purposes of this chapter, the following definitions apply:

“*Active case*” means a household that is receiving public assistance.

“*Allotment reduction*” means an amount withheld from a financial or food assistance benefit. More specifically, “grant reduction” refers to the family investment program (FIP) and to refugee cash assistance (RCA), and “benefit reduction” refers to the food assistance (FA) program.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

“Debt” means the dollar amount of public assistance, by program, received by or on behalf of a person or provider in excess of that allowed by law, rules, or regulations for any given month(s); or the dollar amount of public assistance unlawfully transferred or obtained in violation of program rules; or the dollar amount of unpaid IowaCare personal financial responsibility obligations.

“Debtor” means any person who has been determined by DHS or by the department to be responsible for the repayment of a particular public assistance debt.

“Department” means the department of inspections and appeals.

“DHS” means the department of human services.

“Economic assistance fraud bureau” means the economic assistance fraud bureau of the department of inspections and appeals.

“FA” means the food assistance program as defined in rule 441—65.1(234).

“FIP” means the family investment program described in 441—Chapters 40 to 46.

“Notice of debt” means a notice that informs the debtor that a debt in a public assistance program has occurred. The notice identifies the debt amount, the dates on which the debt was incurred, the cause of the debt, and the options the debtor has to repay the debt. (See 441—Chapter 11.)

“Offsetting” means the repayment of a debt by setoff of a state warrant or setoff of state income tax refunds or federal tax refunds and federal payments.

“Public assistance” means any program that DHS administers that confers a financial, medical, or food assistance benefit.

“RCA” means refugee cash assistance described in 441—Chapter 60.

“Recovery” means the repayment of a debt by direct cash payment from the debtor, by allotment reduction, by offsetting, or by garnishment of wages or assets.

“Repayment agreement” means an agreement entered into voluntarily between the department and the debtor for the repayment of a debt. Agreements are made on Form 470-0495, Agreement to Pay a Debt, or on a notice of debt listed in 441—subrule 11.2(2). The repayment agreement, whether Form 470-0495 or a notice of debt, tells the amount and program(s) overpaid and gives the debtor a choice of repayment methods. Failure to return the repayment agreement may result in further collection actions.

“Title XIX divestiture” means a debt against a person who receives transferred assets from a Medicaid applicant or recipient within five years prior to an application for medical assistance if the applicant is approved for medical assistance (Medicaid) or a transfer impacting the recovery or payment of a medical assistance (Medicaid) debt.

481—90.2(10A) Recovery process. The recovery process begins when data is successfully entered on the DHS overpayment recovery system and a notice of debt is issued to the debtor. The data specifies which public assistance program(s) is owed a debt.

481—90.3(10A) Records. The recovery unit maintains an account for each debt that has occurred for a debtor. The account is filed under the debtor’s name and includes information maintained pursuant to rule 441—11.2(217).

481—90.4(10A) Review. The recovery unit reviews the record and additional information provided in the DHS overpayment recovery system to determine whether a referral for suspected fraud will be made to the economic assistance fraud bureau. The referral criteria include client errors that are over \$1,000 per claim.

481—90.5(10A) Debt repayment. A notice of debt or Form 470-0495, Agreement to Pay a Debt, is used to initiate payments of a debt. The minimum rate of payment is determined by each program (unless set by a court order) and is negotiated by the debtor and recovery unit. All recoveries are transmitted to the DHS cashier. Payments are made directly in cash by the debtor except as otherwise provided in this rule. The amount of allotment reduction for an agency error shall be different from the amount of allotment reduction for a client error.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

90.5(1) *Active cases—PROMISE JOBS program.* For payment reduction for the PROMISE JOBS program, the debtor must provide written permission to effectuate a FIP reduction.

90.5(2) *Active cases—FIP, RCA, FA.* Allotment reduction shall be used, except that cash payment pursuant to a repayment agreement may be used when the repayment amount exceeds the amount that may be collected by allotment reduction. For the food assistance program, debt repayment may also be made in accordance with subrule 90.5(3).

90.5(3) *Food assistance program with electronic benefit balances.* Food assistance payments may be made by returning electronic benefits to pay the debt.

481—90.6(10A) Further collection action. If complete repayment has not been received by the methods described in rule 481—90.5(10A), further collection action may be taken. This action includes, but is not limited to, the following:

90.6(1) *For all debts.*

- a. Debts of \$5,000 or less, small claims court action.
- b. Debts of more than \$5,000, referral to the attorney general for district court action.
- c. State income tax refund offset in accordance with 441—Chapter 11 and Iowa Code section 8A.504.
- d. The filing of a claim in a debtor's estate or bankruptcy proceedings.
- e. Garnishment of wages or assets.
- f. Setoff of a state warrant.
- g. Distress warrants.
- h. Liens.

90.6(2) *For food assistance debts.* In addition to the above actions, federal offsets (taxes, federal payments) may be used for the collection of food assistance debts in accordance with rule 441—11.5(234).

481—90.7(10A) Appeal rights. If a notice of debt or other notice of adverse action is received by the debtor and the debtor wishes to contest the debt, an appeal is submitted to the recovery unit or to DHS. If an appeal is submitted, the recovery process is suspended until conclusion of the appeal process outlined in 481—Chapter 10 and 441—Chapter 7.

481—90.8(10A) Data processing systems matches. The recovery unit compares information with other data processing systems to identify the location, resources, or income of a debtor. Part or all of a data processing system is used. The recovery unit uses, but is not limited to using, the data processing systems of the following entities:

1. Social Security Administration,
2. Department of workforce development,
3. Department of revenue,
4. Department of administrative services,
5. Department of transportation (driver's license and motor vehicle registration), and
6. Department of human services.

481—90.9(10A) Confidentiality. The confidentiality of records is in accordance with 441—Chapter 9, "Public Records and Fair Information Practices."

These rules are intended to implement Iowa Code sections 10A.108 and 10A.402.

ARC 8454B**IOWA FINANCE AUTHORITY[265]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12, the Iowa Finance Authority proposes to amend Chapter 32, “Iowa Jobs Program,” Iowa Administrative Code.

The purpose of these amendments is to implement 2009 Iowa Acts, Senate File 376, sections 5 to 12, by amending rule 265—32.8(16,83GA,SF376), relating to grant awards, and rule 265—32.9(16,83GA,SF376), relating to the administration of awards.

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

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on February 2, 2010. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov.

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

The amendments were also Adopted and Filed Emergency and are published herein as **ARC 8455B**. The purpose of the 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 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

ARC 8477B**IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]****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 97B.4 and 97B.15, the Iowa Public Employees’ Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 4, “Employers,” Chapter 7, “Service Credit and Vesting Status,” Chapter 11, “Application for, Modification of, and Termination of Benefits,” Chapter 12, “Calculation of Monthly Retirement Benefits,” Chapter 14, “Death Benefits and Beneficiaries,” and Chapter 16, “Qualified Domestic Relations Orders and Other Assignments,” Iowa Administrative Code.

IPERS proposes the following amendments to implement the new contribution rates for special service members effective July 1, 2010; to amend a provision overlooked in a previous rule making (see **ARC 6514B**, IAB 1/2/08) that raised the amount of wages from \$300 to \$1,000 for a member on unpaid leave of absence who performs services for the same employer during the leave of absence; to amend demographic reporting requirements for employers; to amend the provisions for voluntary suspension of payments to retired reemployed members who exceed the yearly earnings limit and the collection

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

of related overpayments; to add provisions for the administration of marital property orders involving same gender spouses and same gender former spouses; and to add provisions for the tax treatment of distributions to same gender spouses and same gender former spouses.

There are no waiver provisions included in the proposed amendments.

Any person may make written suggestions or comments on the proposed amendments on or before February 2, 2010. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045 or by E-mail to adminrule@ipers.org.

A public hearing will be held on February 2, 2010, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be required to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These amendments were prepared after consultation with IPERS administration, the Benefits Advisory Committee, and Investment, Legal, Operations and Benefits Divisions.

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15.

The following amendments are proposed.

ITEM 1. Amend paragraph **4.2(2)“a”** as follows:

a. Employee's name, address, gender, and social security account number, and other demographic information that may be required;

ITEM 2. Amend subrule 4.6(2) as follows:

4.6(2) Contribution rates for sheriffs and deputy sheriffs.

	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009	Effective July 1, 2010
Combined rate	15.40%	15.04%	15.24%	<u>17.88%</u>
Employer	7.70%	7.52%	7.62%	<u>8.94%</u>
Employee	7.70%	7.52%	7.62%	<u>8.94%</u>

ITEM 3. Amend subrule 4.6(3) as follows:

4.6(3) Contribution rates for protection occupation.

	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009	Effective July 1, 2010
Combined rate	14.11%	14.08%	15.34%	<u>16.59%</u>
Employer	8.47%	8.45%	9.20%	<u>9.95%</u>
Employee	5.64%	5.63%	6.14%	<u>6.64%</u>

ITEM 4. Amend paragraph **7.1(1)“c”** as follows:

c. Notwithstanding paragraph “*b*” above, a member who is on an unpaid leave of absence and who during the period covered by the unpaid leave performs services for the covered employer granting the unpaid leave shall not receive service credit for such services until the employer has reported ~~\$300~~ \$1,000 in two consecutive quarters included in the unpaid leave period, and such service credit shall be granted only with respect to quarters beginning after said two consecutive quarters.

ITEM 5. Amend subparagraph **11.1(1)“b”(2)** as follows:

(2) If Option 4 or 6 is selected, the contingent annuitant's name, gender, social security number, proof of date of birth, and relationship to member.

ITEM 6. Adopt the following new subrules 11.1(3) and 11.1(4):

11.1(3) *Benefits estimates.* Prior to submitting an application for benefits, a member may request IPERS to prepare estimates of projected benefits under the various options as described under Iowa Code

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

section 97B.51. A benefit estimate shall not bind IPERS to payment of the projected benefits under the various options specified in Iowa Code chapter 97B. A member cannot rely on the benefit estimate in making any retirement-related decision or taking any action with respect to the member's account, nor shall IPERS assume any liability for such actions. A member's actual benefit can only be known and officially calculated when an eligible member applies for benefits.

11.1(4) *Revocation of application.* If IPERS determines an application for benefits is invalid for any reason, IPERS shall revoke, in whole or in pertinent part, the application for benefits and the recipient shall repay all payments made under the revoked application or all payments made pursuant to the revoked part of the application. The terms of repayment shall be subject to the provisions of 495—11.7(97B).

ITEM 7. Amend subrule 11.2(4) as follows:

11.2(4) *Required beginning date.*

a. Notwithstanding the foregoing, IPERS shall commence payment of a member's retirement benefit under Iowa Code sections 97B.49A to 97B.49I (under Option 2) no later than the "required beginning date" specified under Internal Revenue Code Section 401(a)(9), even if the member has not submitted the application for benefits. If the lump sum actuarial equivalent could have been elected by the member, payments shall be made in such a lump sum rather than as a monthly allowance. The "required beginning date" is defined as the later of: (1) April 1 of the year following the year that the member attains the age of 70½, or (2) April 1 of the year following the year that the member actually terminates all employment with employers covered under Iowa Code chapter 97B.

b. If IPERS distributes a member's benefits without the member's consent in order to begin benefits on or before the required beginning date, the member may elect to receive benefits under an option other than the default option described above, or as a refund, if the member contacts IPERS in writing within 60 days of the first mandatory distribution. IPERS shall inform the member which adjustments or repayments are required in order to make the change.

c. If a member cannot be located to commence payment on or before the required beginning date described above, the member's benefit shall be forfeited. However, if a member later contacts IPERS and wishes to file an application for retirement benefits, the member's benefits shall be reinstated.

d. For purposes of determining benefits, the life expectancy of a member, a member's spouse, or a member's beneficiary shall not be recalculated after benefits commence.

e. If an IPERS member has a qualified domestic relations order (QDRO) or an administrable domestic relations order (ADRO) on file when a mandatory distribution is required, and the QDRO or ADRO requires the member to choose a specific retirement option, IPERS shall pay benefits under the option required by the order.

ITEM 8. Adopt the following **new** subrule 11.2(6):

11.2(6) *Federal tax code limitation for selection of survivor percentages for same gender spouses.* Benefits payable to members who name a same gender spouse or same gender former spouse as contingent annuitant under Option 4 or 6 shall be subject to the incidental death benefit limitations of Internal Revenue Code Section 401(a)(9)(G).

ITEM 9. Amend paragraph **11.7(5)“c”** as follows:

c. *Overpayments that result in a judgment.* If the overpayment results in a judgment against the recipient, In addition to other remedies, IPERS may file a civil action to recover overpayments, and the interest rate may be set by the court.

ITEM 10. Amend subrule 12.1(1) as follows:

12.1(1) *Formula benefit versus money purchase benefit.* If a member has four or more complete years of service credit in IPERS, a monthly payment allowance will be paid in accordance with the formulas set forth in Iowa Code sections 97B.49A through 97B.49I, the applicable paragraphs of this chapter, and the option the member elects pursuant to Iowa Code section 97B.51(1). IPERS shall determine on the applicable forms which designated fractions of a member's monthly retirement allowance payable to contingent annuitants shall be provided as options under Iowa Code section

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

97B.51(1). Any option elected by a member under Iowa Code section 97B.51(1) must comply with the requirements of the Internal Revenue Code that apply to governmental pension plans, including but not limited to Internal Revenue Code Section 401(a)(9) and federal laws governing the tax treatment of distributions from a tax-qualified retirement plan to same gender spouses and same gender former spouses. If a member has less than four complete years of service credit, the benefit receivable will be computed on a money purchase basis, with reference to annuity tables used by IPERS in accordance with the member's age and option choice.

ITEM 11. Amend subrule 12.8(2) as follows:

12.8(2) Beginning on or after July 1, 1996, the retirement allowance of a member subject to reduction pursuant to subrule 12.8(1) shall be reduced as follows:

a. A member's monthly retirement allowance in the following calendar year shall be reduced by the ~~excess amounts earned~~ benefit paid in the preceding year ~~divided by the number of months remaining in the following calendar year~~ after the excess benefit payment amount has been determined. ~~A member may elect to make repayment of the overpayments received in lieu of having the member's monthly benefit reduced. Elections to make installment payments must be accompanied by a repayment agreement signed by the member and IPERS. If the monthly amount to be deducted exceeds a member's monthly retirement allowance, the member's monthly allowance shall be withheld in its entirety until the overpayment is recovered. If a member dies and the full amount of overpayments determined under this subrule has not been repaid, the remaining amounts shall be deducted from the payments to be made, if any, to the member's designated beneficiary or contingent annuitant. If the member has selected an option under which there are no remaining amounts to be paid, or the remaining amounts are insufficient, the unrecovered amounts shall be a charge on the member's estate.~~

b. No change.

c. ~~A member may elect in writing to have the member's monthly retirement allowance suspended in the month in which the member's remuneration exceeds the amount of remuneration permitted under this rule in lieu of receiving a reduced retirement allowance under paragraph "a" of this subrule. If the member's retirement allowance is not suspended timely, the overpayment will be recovered pursuant to paragraph "a" of this subrule. The member's retirement allowance shall remain suspended until the earlier of January of the following calendar year or the member's termination of covered employment. The member's election shall remain binding until revoked in writing. Effective July 1, 2007, "remuneration" shall include those amounts as described in 495—subrule 6.3(13). The member's overpayment shall be collected as follows:~~

(1) If the overpayment can be repaid by deducting up to 30 percent of each net monthly payment in three installments or less, IPERS shall adjust the member's monthly benefit accordingly. If the adjustment cannot be repaid in three payments, a repayment agreement must be signed by the member and IPERS; or

(2) A member may elect to make repayments of the overpayment amounts out of pocket in lieu of having the member's monthly benefit reduced. An out-of-pocket repayment may be made in one check or in installments. However, an election to make repayment in installments must be accompanied by a repayment agreement signed by the member and IPERS.

(3) If a member dies and the full amount of overpayment determined under this subrule has not been repaid, the remaining amounts shall be deducted from the payments to be made, if any, to the member's designated beneficiary or contingent annuitant. If the member has selected an option under which there are no remaining amounts to be paid, or the remaining amounts are insufficient, the unrecovered amounts shall be a charge on the member's estate.

(4) A member may elect in writing to have the member's monthly retirement allowance suspended in the month in which the member's remuneration exceeds the amount of remuneration permitted under this subrule in lieu of receiving a reduced retirement allowance under subparagraph (1). In order to become effective, the member's written election must be delivered to IPERS in person, by regular mail, E-mail, facsimile or by private carrier. Oral elections shall not be accepted. The member's election to suspend benefit payments in the month when the member's remuneration exceeds the amount of

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

reimbursement permitted under this subrule shall remain in effect for all subsequent calendar years until revoked by the member in writing. If the member's written election is not received in time to avoid overpayment, the overpayment must be recovered, to the extent possible, from monthly amounts beginning in January of the next calendar year or under one of the alternate arrangements permitted under this rule. Effective July 1, 2007, remuneration shall include those amounts as described in 495—subrule 6.3(13).

ITEM 12. Amend rule 495—14.1(97B) as follows:

495—14.1(97B) Internal Revenue Code limitations. The maximum claims period shall not exceed the period required under Internal Revenue Code Section 401(a)(9), which may be less than five years for death benefits payable under benefit options described in Iowa Code section 97B.51 and for members who die after their required beginning date. The claims period for all cases in which the member's death occurs during the same calendar year in which a claim must be filed under this rule shall end April 1 of the year following the year of the member's death. A death benefit payable under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed the maximum amount possible under the Internal Revenue Code. The death benefits payable under Iowa Code sections 97B.51 and 97B.52 shall not exceed the maximum amount possible under Internal Revenue Code Section 401(a)(9).

To ensure that the limit is not exceeded, a member's combined lump sum death benefit under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed 100 times the Option 2 amount that would have been payable to the member at the member's earliest normal retirement age. If a beneficiary of a special service member is eligible for an in-the-line-of-duty death benefit, any reduction required under this rule shall be taken first from a death benefit payable under Iowa Code section 97B.52(1). The "100 times" limit shall apply to active and inactive members. The death benefits payable under this chapter for a period of reemployment for a retired reemployed member who dies during the period of reemployment shall also be subject to the limits described in this rule.

The maximum claims period for IPERS lump sum death benefits shall not exceed the period required under Internal Revenue Code Section 401(a)(9), which may be less than five years for a member who dies after the member's required beginning date, unless the beneficiary is an opposite gender spouse. The claims period for all cases in which the member's death occurs during the same calendar year in which a claim must be filed under this rule shall end April 1 of the year following the year of the member's death.

A member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest, if any, for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. Interest for periods following the quarter of forfeiture will accrue beginning with the quarter that the claim for reinstatement is received by IPERS. For death benefits required to be forfeited in order to satisfy Section 401(a)(9) of the federal Internal Revenue Code, in no event will the forfeiture date precede January 1, 1988. IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

Effective January 14, 2004, all claims for a previously forfeited death benefit shall be processed under the procedure set forth at rule 495—14.13(97B).

The system recognizes the validity of same gender marriages consummated in Iowa on or after April 27, 2009. The Iowa Supreme Court decision recognizing same gender marriages in Iowa specifically states that this recognition does not extend to same gender marriages of other states. The following special rules apply to same gender marriages in Iowa. IPERS shall administer marital property and support orders of same gender spouses married in Iowa on or after April 27, 2009, if the orders otherwise meet the system's minimum requirements for such orders, but shall modify the tax treatment of distributions under such orders as required by the federal laws governing such distributions. IPERS shall adopt such rules and procedures as are deemed necessary to fully implement the provisions of this subrule.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

ITEM 13. Adopt the following new rule 495—14.17(97B):

495—14.17(97B) Special rules for tax treatment of distributions to same gender spouse and same gender former spouse alternate payees.

14.17(1) A beneficiary who is a same gender spouse or a same gender former spouse alternate payee shall be permitted to request direct rollovers of such beneficiary death benefit payments in the same manner as provided for a nonspouse beneficiary.

14.17(2) Effective April 27, 2009, the term “eligible person” under Iowa Code section 97B.53B includes a same gender surviving spouse or same gender former spouse alternate payee, both of whom are subject to the limits specified in Iowa Code section 97B.53B(1) “b”(4).

14.17(3) The term “eligible rollover distribution” does not include any lump sum distribution of benefits to a same gender spouse or same gender former spouse alternate payee, excluding death benefit distributions.

14.17(4) The system shall have the authority to do whatever is necessary in its sole discretion to ensure that federal taxation of benefits paid to same gender spouses and same gender former spouses meets the requirements of the federal laws governing such distributions.

ITEM 14. Amend **495—Chapter 16**, title, as follows:

~~QUALIFIED DOMESTIC RELATIONS ORDERS AND OTHER ASSIGNMENTS~~

ITEM 15. Amend rule 495—16.2(97B) as follows:

495—16.2(97B) Qualified domestic Domestic relations orders. This rule shall apply only to marital property orders. All support orders shall continue to be administered under rule 495—16.1(97B).

16.2(1) Definitions.

“Administrable domestic relations order” or “ADRO” means a domestic relations order that divides the marital property of same gender spouses, assigns to same gender alternate payees the right to receive all or a portion of the benefits payable with respect to a member under IPERS, and meets the requirements of this rule.

“Alternate payee” means a spouse or former spouse, regardless of gender, of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by IPERS with respect to such member. “Alternate payee” also refers to persons who are entitled pursuant to a qualified domestic relations order to receive benefits after the death of the original alternate payee.

“Benefits” means, for purposes of this rule and depending on the context, a refund, monthly allowance (including monthly allowance paid as an actuarial equivalent (AE)), or death benefit payable with respect to a member covered under IPERS. “Benefits” does not include dividends payable under Iowa Code section 97B.49 or other cost-of-living increases unless specifically provided for in a qualified domestic relations order QDRO or an ADRO.

“Domestic relations order” means any judgment, decree, or order which relates to the provision of marital property rights to a spouse or former spouse, regardless of gender, of a member and is made pursuant to the domestic relations laws of a state.

“Member” means, for purposes of this rule, IPERS members, beneficiaries, and contingent annuitants.

“Qualified domestic relations order” or “QDRO” means a domestic relations order which that divides the marital property of opposite gender spouses and assigns to an opposite gender alternate payee the right to receive all or a portion of the benefits payable with respect to a member under IPERS and meets the requirements of this rule.

“Same gender spouse” or “same gender former spouse” means a spouse or former spouse who is the same sex as the member.

“Successor alternate payee” means a person or persons named in a domestic relations order to receive the amounts payable to the alternate payee under the QDRO or ADRO if the alternate payee dies

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

before the member. Successor alternate payees must be named individuals, not a class of individuals, a trust or an estate.

"Trigger event" means a distribution or series of distributions of benefits made with respect to a member.

16.2(2) Requirements.

a. Mandatory provisions. A domestic relations order is a ~~qualified domestic relations order~~ QDRO or an ADRO if such order:

(1) to (6) No change.

b. Prohibited provisions. A domestic relations order is not a ~~qualified domestic relations order~~ QDRO or an ADRO if such order:

(1) and (2) No change.

(3) Requires the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined by IPERS to be a ~~qualified domestic relations order~~ QDRO or an ADRO;

(4) to (6) No change.

c. Permitted provisions. A ~~qualified domestic relations order~~ QDRO or an ADRO may also:

(1) to (4) No change.

(5) Name a successor alternate payee to receive the amounts that would have been payable to the member's spouse or former spouse under the order, if the alternate payee dies before the member. The designation of a successor alternate payee in an order shall be void and be given no effect if IPERS does not receive confirmation of the successor's name, social security number, and last-known mailing address in a cover letter or in a copy of the court's confidential information form. A QDRO or an ADRO that lists a series of default successor alternate payees by class or permits a successor alternate payee to designate additional successor alternate payees is not permitted and will be rejected. Once a QDRO or an ADRO is ~~qualified and~~ accepted by IPERS for administration, in order to change the designation of successor alternate payees, an amended order is required.

16.2(3) Administrative provisions.

a. No change.

b. The alternate payee shall not be entitled to any share of the member's death benefits except to the extent such entitlement is recognized in a ~~qualified domestic relations order~~ QDRO or an ADRO or in a beneficiary designation filed subsequent to the dissolution.

c. If a ~~qualified domestic relations order~~ QDRO or an ADRO directs the member to name the alternate payee under the order as a designated beneficiary, and the member fails to do so, the provisions of the ~~qualified domestic relations order~~ QDRO or ADRO awarding the alternate payee a share of the member's death benefit shall be deemed, except as revoked or modified in a subsequent ~~qualified domestic relations order~~ QDRO or ADRO, to operate as a beneficiary designation, and shall be given first priority by IPERS in the determination and payment of such member's death benefits. Death benefits remaining after payments required by the ~~qualified domestic relations order~~ QDRO or ADRO, to the extent possible, shall then be made according to the terms of the member's most recent beneficiary designation.

d. No change.

e. An alternate payee shall not receive a share of dividends or other cost-of-living increases, unless so provided in a ~~qualified domestic relations order~~ QDRO or an ADRO.

f. The CEO, or CEO's designee, shall have exclusive authority to determine whether a domestic relations order is a ~~qualified domestic relations order~~ QDRO or an ADRO. A final determination by the CEO, or CEO's designee, may be appealed in the same manner as any other final agency determination under Iowa Code chapter 97B.

g. No change.

h. A domestic relations order shall not become effective until it is approved by IPERS. If a member is receiving a retirement allowance at the time a domestic relations order is received by the system, the order shall be effective only with respect to payments made after the order is determined to be a ~~qualified domestic relations order~~ QDRO or an ADRO. ~~If the order is determined to be qualified~~

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

~~after the current month's benefit is certified for payment, the alternate payee's portion of the member's benefit shall begin with the next month's benefit paid to the member without credit for the prior month's payment. If distributions have already begun at the time that an order is determined by IPERS to be a QDRO or an ADRO, the order shall be deemed to be the alternate payee's application to begin receiving payments under the QDRO or ADRO. Payment to the alternate payee will be paid for the month the order is accepted by IPERS. If the member is not receiving a retirement allowance at the time a domestic relations order is approved by IPERS and the member applies for a refund or monthly allowance, or dies, no distributions shall be made until the respective rights of the parties under the domestic relations order are determined by IPERS. If IPERS has placed a hold on the member's account following written or verbal notification from the member, member's spouse, or legal representative of either party of a pending dissolution of marriage, and no further contacts are received from either party or their representatives within the following one-year period, IPERS shall release the hold.~~

i. No change.

j. ~~IPERS has no duty or responsibility to search for alternate payees. Alternate payees must notify IPERS of any change in their mailing addresses. IPERS shall contact the alternate payee in writing at the last known mailing address on file with IPERS, notifying the alternate payee that an application for a distribution has been received with respect to requested by the member and providing. IPERS shall send the alternate payee with an application to be completed and returned by the alternate payee to IPERS. The written notice shall provide inform the alternate payee that if the alternate payee does not return said the application to IPERS within 60 days after such written the materials are mailed by IPERS, the amounts otherwise payable to the alternate payee shall be paid to the member or the member's beneficiary(ies) until a valid application is received, and accepted by IPERS. IPERS shall have no liability to the alternate payee with respect to payment of such amounts. IPERS has no duty or responsibility to search for alternate payees. If distributions have already begun at the time that an order is determined by IPERS to be a qualified domestic relations order, the qualified domestic relations order shall be deemed to be the alternate payee's application to begin receiving payments under the QDRO.~~

k. ~~If an alternate payee's application is received after the member's first or current month's benefit is certified for payment, the alternate payee's portion of the member's benefit shall begin with the next month's benefit paid to the member without credit for the prior month's payment. If a QDRO or an ADRO requires the member to select an option with joint and survivor provisions (Option 4 or 6) and name the alternate payee as contingent annuitant, acceptable birth proof for the contingent annuitant pursuant to 495—subrule 11.1(2) shall be provided to IPERS prior to the order being approved by IPERS.~~

l. ~~For both lump sum and monthly payments, the alternate payee's tax withholding and rollover (if eligible) elections, if eligible, must be received before the first or current month's benefit is certified for payment or IPERS will use the applicable default tax withholding elections.~~

m. ~~If an order that is determined to be a qualified domestic relations order QDRO or an ADRO divides a member's account using a service factor formula and the member's IPERS benefits are based on a number of quarters less than the member's total covered quarters, notwithstanding any terms of the order to the contrary, IPERS shall limit the number of quarters used in the numerator and the denominator of the service fraction to the number of quarters actually used in the calculation of IPERS benefits.~~

n. ~~The parties or their attorneys in a dissolution action involving an IPERS member shall decide between themselves which attorney will submit a proposed domestic relations order to IPERS for review. IPERS shall not review a proposed order that has not been approved as to form by both parties or their counsel. A rejection under this paragraph shall not preclude IPERS from placing a hold on a member's account until the qualified status of a proposed order as a QDRO or an ADRO is resolved.~~

o. ~~If a domestic relations order has been determined by the system to be an ADRO, before the system will accept the ADRO for current or deferred administration, the alternate payee under that final order shall be required to complete any forms required by IPERS for purposes of determining the proper tax treatment of current or future distributions to that alternate payee in accordance with federal laws governing such distributions.~~

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

p. If a member with an IPERS-approved QDRO or ADRO is receiving a distribution according to a qualified benefits arrangement (QBA), the alternate payee shall share in the distribution to the member unless the order specifically states otherwise.

ARC 8472B**LABOR SERVICES DIVISION[875]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby gives Notice of Intended Action to rescind Chapter 8, “Consultative Services,” Iowa Administrative Code, and to adopt a new chapter with the same title.

The Occupational Safety and Health Consultation and Education Bureau of the Iowa Division of Labor Services provides services upon request to employers without charge. The purpose of the services is to help employers provide safe and healthy workplaces.

The proposed amendment updates the rules for the Bureau to reflect current federal requirements; updates the rules to reflect the confidentiality provision of Iowa Code subsection 88.16(4); makes changes to the definitions; makes editorial and technical changes; changes the rules governing the relationship between the Bureau and the Iowa OSHA Enforcement Bureau of the Iowa Division of Labor Services; allows recognition and exemption programs; adopts changes concerning preparation by a consultant for an on-site consultation visit; adopts changes concerning an opening conference, an initial walk-through of a work site, employee interviews, and a closing conference; requires an employer to share certain information about the consultation visit with employees; and changes provisions governing the right of an employer to expand or narrow the scope of consultation activity.

The principal reasons for adoption of this amendment are to implement Iowa Code chapter 88, to protect employee safety and health, and to make Iowa’s occupational safety and health regulations more current and consistent with federal regulations.

Written data, views, or arguments to be considered in adoption shall be submitted no later than February 3, 2010, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

A public hearing will be held on February 3, 2010, at 9 a.m. in the Capitol View Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)281-5915 in advance to arrange access or other needed services.

These rules are intended to implement Iowa Code chapter 88.

The following amendment is proposed.

Rescind 875—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
CONSULTATIVE SERVICES

875—8.1(88) Purpose and scope. This chapter contains procedures for the division of labor services, bureau of consultation and education, to provide consultation services to private and public employers. Employers seeking information regarding consultative services should visit <http://www.iowaworkforce.org/labor/iosh/consultation/index.htm> or telephone (515)281-7629.

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8.1(1) Services are available at no cost to employers to assist employers in establishing effective occupational safety and health programs in order to provide employment and a place of employment that are safe and healthful. The goal is to prevent injuries and illnesses that may result from exposure to hazardous work practices and conditions. The principal assistance will be provided at the employer's work site, but off-site assistance may also be provided. Within the scope of the employer's request, the consultant will evaluate the employer's program for providing employment and a place of employment that are safe and healthful; identify specific hazards in the workplace; and provide appropriate advice and assistance in establishing or improving the employer's safety and health program and in correcting any hazardous conditions identified. Assistance may include education and training of the employer, the employer's supervisors, and the employer's other employees to make the employer self-sufficient in ensuring safe and healthful work and working conditions.

8.1(2) Consultation is independent of Iowa OSHA Enforcement, and the discovery of hazards shall not mandate citations or penalties. However, the employer has a statutory obligation to protect employees, and, in certain instances, the employer shall be required to take necessary protective action. An employer that corrects the hazards identified by the consultant during a comprehensive workplace survey, implements certain core elements of an effective safety and health program, and commits to complete other core elements of an effective safety and health program may qualify for exemption from certain enforcement activities.

875—8.2(88) Definitions. Unless the context clearly requires otherwise, the definitions contained in Iowa Code section 88.3 shall be applicable wherever this chapter uses those terms. Unless the context clearly requires otherwise, the following additional definitions apply to this chapter.

"Act" means the Iowa occupational safety and health Act, Iowa Code chapter 88.

"Compliance officer" means a compliance safety and health officer employed by Iowa OSHA Enforcement.

"Consultant" means an employee of the bureau of consultation and education of the division of labor services.

"Consultation" means all activities related to the provision of consultative assistance under this chapter, including off-site consultation and on-site consultation.

"Division" means the division of labor services of the department of workforce development.

"Education" means planned and organized activity by a consultant to impart information to employers and employees to enable them to establish and maintain employment and a place of employment that are safe and healthful.

"Employee representative" means the authorized representative of employees at a site where there is a recognized labor organization representing employees.

"Hazard correction" means the elimination or control of a workplace hazard in accordance with the requirements of the Act and rules.

"Imminent danger" means a condition or practice in a place of employment that could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated through the procedures set forth in rule 875—8.6(88).

"Iowa OSHA Enforcement" means the unit of the division that enforces the occupational safety and health Act.

"List of Hazards" means a list of all serious hazards that are identified by the consultant and the correction due dates agreed upon by the employer and the consultant.

"Off-site consultation" means consultation provided away from an employer's work site by means such as training, education, telephone, and correspondence.

"On-site consultation" means consultation provided during a visit to an employer's work site. "On-site consultation" includes a written report to the employer on the findings and recommendations resulting from the visit, and may include training and education needed to address hazards or potential hazards at the work site.

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“*Other-than-serious hazard*” means any condition or practice that would be classified as an other-than-serious violation of applicable standards based on criteria contained in the current Iowa Field Operations Manual.

“*Programmed inspection*” means an inspection scheduled based on objective or neutral criteria as set forth in the Iowa Field Operations Manual.

“*Recognition and exemption program*” means an achievement recognition program to recognize an employer that operates an exemplary program that results in the immediate and long-term prevention of job-related injuries and illnesses at a workplace.

“*Serious hazard*” means a condition or practice that would be classified as a serious violation of applicable standards based on criteria contained in the current Iowa Field Operations Manual, except that the element of employer knowledge shall not be considered.

“*Training*” means the planned and organized activity of a consultant to impart skills, techniques and methodologies to employers and their employees to assist them in establishing and maintaining employment and a place of employment that are safe and healthful.

875—8.3(88) Requesting and scheduling of on-site consultation visit.

8.3(1) *Employer requests.* On-site consultation shall be provided only upon the request of the employer and shall not result from the enforcement of any right of entry under law. An employer in a small, high-hazard establishment is encouraged to include within the scope of the request all working conditions at the work site and the employer’s entire safety and health program. Any employer may specify a more limited scope for the visit by indicating working conditions, hazards, or situations on which on-site consultation will be focused. When limited requests are made, the consultant shall limit review and provide assistance only with respect to the specified working conditions, hazards, or situations. However, if in the course of the on-site visit the consultant observes hazards that are outside the scope of the request, the consultant shall treat the hazards as though they were within the scope of the request.

8.3(2) *Relationship to enforcement.* An employer may request on-site consultation to assist in the abatement of hazards cited during an enforcement inspection. However, on-site consultation may not take place after an enforcement inspection until the conditions set forth in 8.7(2) “c” have been met.

8.3(3) *Scheduling priority.* Scheduling priorities shall be in accordance with the federal Consultation Policy and Procedures Manual.

875—8.4 and 8.5 Reserved.

875—8.6(88) Conducting a visit.**8.6(1) *Preparation.***

a. The consultant shall conduct an on-site consultation visit only after appropriate preparation. Prior to the visit, the consultant shall become familiar with as many factors concerning the establishment’s operation as possible. The consultant shall review all applicable codes and standards. In addition, the consultant shall ensure that all necessary technical and personal protective equipment is available and functioning properly.

b. If a request is made during a promotional visit and the conditions of 8.6(1) “a” are met, a consultant may perform on-site consultation activities immediately.

8.6(2) *Structured format.*

a. An initial on-site consultation visit shall consist of an opening conference where the employer shall be advised of the responsibilities under state law, an examination of those aspects of the employer’s safety and health program that relate to the scope of the visit, a walk-through of the workplace, and a closing conference. An initial visit may include training and education for employers and employees, if the employer requests the assistance and if the need for the training and education is revealed by the walk-through of the workplace and the examination of the employer’s safety and health program. The consultant shall provide a written report to the employer after the consultation.

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b. Additional visits may be conducted as the employer requests to provide needed education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards. Additional visits may also be conducted if necessary to verify the correction of serious hazards identified during previous visits.

8.6(3) Employee participation.

a. The consultant retains the right to confer with individual employees privately during the course of the visit in order to identify and judge the nature and extent of particular hazards within the scope of the employer's request, and to evaluate the employer's safety and health program. The consultant shall explain the necessity for this contact to the employer during the opening conference, and the employer must agree to this contact before a visit can proceed.

b. Employees, their representatives, and members of a workplace joint safety and health committee may participate in the on-site consultation to the extent desired by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

c. An employee representative of affected employees must be afforded an opportunity to accompany the consultant and the employer's representative during the physical inspection of the workplace. The consultant may permit additional employees such as representatives of a joint safety and health committee to participate in the walk-through of the work site if the consultant determines that additional employees will aid the visit.

d. If there is no employee representative, if the consultant is unable with reasonable certainty to identify an employee representative, or if the employee representative declines the offer to participate, the consultant must confer with a reasonable number of employees concerning matters of occupational safety and health.

e. The consultant is authorized to deny the right to participate to any person whose conduct interferes with the orderly conduct of the visit.

8.6(4) Opening and closing conferences.

a. In the opening conference, the consultant shall explain the relationship between on-site consultation and OSHA enforcement activity, shall explain the obligation to protect employees in the event that certain hazardous conditions are identified, and shall emphasize the employer's obligation to post the List of Hazards.

b. The consultant will encourage a joint opening conference with the employer and employee representatives. If there is an objection to a joint conference, the consultant will conduct separate conferences with the employer and employee representatives. The consultant must inform employees at the opening conference of the purpose of the consultation visit.

c. At the conclusion of the consultation visit, the consultant will conduct a closing conference with the employer and employee representatives, jointly or separately. The consultant will describe hazards identified during the visit and other pertinent issues related to employee safety and health.

8.6(5) On-site activity.

a. During the on-site consultation, the consultant will focus primarily on conditions, hazards, or situations for which the employer requested assistance. An employer may expand or reduce the scope of the request at any time during the on-site consultation. If the employer requests an expansion of the scope, the consultant shall expand the scope immediately if scheduling priorities permit and the consultant is prepared. If the employer's request for expansion necessitates further preparation by the consultant or the expertise of another consultant, or if other employer requests may merit higher priority, the consultant shall refer the request to the consultation manager for scheduling. If the scope of the visit is reduced, the employer shall correct serious hazards that were already identified and provide appropriate proof of correction.

b. The consultant shall advise the employer of the employer's obligations and responsibilities under applicable law.

c. Within the scope of the employer's request, the consultant shall review the employer's safety and health program and provide advice on modifications or additions to make the program more effective.

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d. Consultants shall identify and provide advice on the correction of hazards included in the employer's request and any other safety or health hazards observed in the workplace during the course of the on-site consultation. This advice may include a general description of a solution. The consultant shall conduct necessary sampling, testing, and analysis to confirm the existence of a safety or health hazard.

e. Advice and technical assistance on the correction of identified safety and health hazards may be provided to employers during and after the on-site consultation. The consultant may provide materials on approaches, means, techniques, and items commonly utilized for the elimination or control of hazards. The consultant shall advise the employer of additional sources of assistance, if known.

f. When a hazard is identified in the workplace, the consultant shall indicate to the employer the consultant's best judgment as to whether the hazard would be classified as serious hazard or other-than-serious hazard.

g. If the consultant determines that an identified serious hazard exists, the consultant shall assist the employer to develop a specific plan to correct the hazard, affording the employer a reasonable period of time to complete the necessary action. The chief of the bureau of consultation and education shall provide an expeditious informal discussion regarding the period of time established for the correction of a hazard or any other substantive findings of the consultant if the employer requests the informal discussion within 15 working days from receipt of the consultant's report.

h. As a condition for receiving the consultation service, the employer must agree to post the List of Hazards accompanying the consultant's written report and to notify affected employees when hazards are corrected. The employer must, upon receipt, post the unedited List of Hazards in a prominent place where it is readily observable by all affected employees for 3 working days or until the hazards are corrected, whichever is later. A copy of the List of Hazards shall be made available to the employee representative who participated in the visit. In addition, the employer must agree to make available at the work site for review by affected employees or the employee representative information on the corrective actions proposed by the consultant and other-than-serious hazards identified. Iowa OSHA Enforcement will not schedule a compliance inspection in response to a complaint based upon a posted List of Hazards unless the employer fails to correct the hazards or fails to provide interim protection for exposed employees.

8.6(6) *Employer's obligations.*

a. An employer must take immediate action to eliminate employee exposure to a hazard that, in the judgment of the consultant, presents an imminent danger to employees. If the employer fails to take the necessary action, the chief of the bureau of consultation and education shall immediately notify the affected employees and the chief of Iowa OSHA Enforcement and provide relevant information.

b. An employer must also take the necessary action to eliminate or control employee exposure to any identified serious hazard and meet the employee notice requirements of 8.6(5) "h." In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a follow-up visit, or take similar action.

c. The chief of the bureau of consultation and education may grant an extension of time for the correction of a serious hazard when:

- (1) The employer files a request for extension;
- (2) The employer demonstrates it made a good-faith effort to correct the hazard within the established time frame;
- (3) The employer provides evidence that correction is not complete because of factors beyond the employer's reasonable control; and
- (4) The employer provides evidence that the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period.

d. If the employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions thereof, the chief of the bureau of consultation and education shall immediately notify and provide relevant information to the chief of Iowa OSHA Enforcement. The chief of Iowa OSHA Enforcement shall review the facts and determine whether enforcement activity is warranted.

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e. The employer shall confirm in writing to the chief of the bureau of consultation and education that the hazards have been corrected, unless the consultant observed correction of the hazards.

8.6(7) *Written report.* For each visit that results in substantive findings or recommendations, a written report shall be prepared and sent to the employer. The report shall include the following elements as applicable:

- a.* A restatement of the employer's request;
- b.* A description of the working conditions examined by the consultant;
- c.* An evaluation of the employer's safety and health program;
- d.* Recommendations for making the safety and health program more effective;
- e.* Identification, description, and classification of each hazard;
- f.* Reference to applicable standards and regulations;
- g.* Correction date for each serious hazard;
- h.* Suggested means or approaches to correct hazards; and
- i.* Recommendations for additional assistance such as medical or engineering advice.

8.6(8) *Confidentiality.* Pursuant to Iowa Code subsection 88.16(4), consultation records that relate to specific employers or specific workplaces shall be kept confidential. The bureau of consultation and education shall provide, when requested, program information to the U.S. Occupational Safety and Health Administration, including information that identifies employers that have requested consultation services. The U.S. Occupational Safety and Health Administration may use such information to administer the consultation program and to evaluate performance, but shall treat information that identifies specific employers as exempt from public disclosure to the extent allowed by law.

875—8.7(88) Relationship to enforcement.

8.7(1) *Separation of functions.* Consultation shall be conducted independently of Iowa OSHA Enforcement and shall have separate management staff. Except as noted in subrule 8.7(3), neither the identity of an employer requesting on-site consultation nor the file or report from the consultation activity shall be provided to Iowa OSHA Enforcement unless the employer fails to take the necessary action to protect employees from a serious hazard or imminent danger.

8.7(2) *Effect upon scheduling.*

a. An on-site consultation already in progress shall have priority over compliance inspections by Iowa OSHA Enforcement except as provided in 8.7(2) "b." The consultant and the employer shall notify the compliance officer that an on-site consultation is in progress and shall request delay of the inspection until after the on-site consultation is completed. An on-site consultation shall be considered in progress in relation to the working conditions, hazards, or situations covered by the request from the beginning of the opening conference through the end of the correction due dates and any extensions thereof. In exercising its authority to schedule compliance inspection, Iowa OSHA Enforcement may assign a lower priority to work sites where consultation visits are scheduled.

b. The consultant shall terminate an on-site consultation if one of the following compliance inspections by Iowa OSHA Enforcement is about to take place:

- (1) Imminent danger investigation.
- (2) Fatality/catastrophe investigation.
- (3) Complaint investigation.
- (4) Other critical inspection as determined by the commissioner.

c. An on-site consultation shall not take place while an enforcement inspection is in progress at the establishment. An enforcement inspection shall be deemed "in progress" from the time a compliance officer initially seeks entry to the workplace to the end of the closing conference. If the employer denied the compliance officer entry to the work site, an enforcement inspection is "in progress" until the inspection is concluded, the commissioner determines that a warrant to enter will not be sought, or the commissioner determines that allowing a consultative visit to proceed is in the best interest of employee safety and health. An on-site consultation shall not take place subsequent to an enforcement inspection until the employer has been notified that no citations will be issued, or if a citation is issued, on-site consultation shall take place only with regard to those citation items that have become final orders.

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d. The recognition and exemption program operated by the bureau of consultation and education provides incentives and support to high-hazard employers to work with employees to develop, implement, and continuously improve the effectiveness of safety and health programs.

(1) Programmed enforcement inspections at a work site may be deferred while the employer is working to achieve recognition status if the following conditions are met:

1. An employer requested participation in a recognition and exemption program;

2. A consultant has conducted an on-site consultation covering all conditions and operations related to occupational safety and health;

3. An employer corrected all hazards identified during the consultation visit within established time frames;

4. An employer has begun to implement all of the elements of an effective safety and health program; and

5. An employer agrees to request an on-site consultation if major changes in working conditions or work processes occur that may introduce new hazards.

(2) Employers that meet all the requirements for recognition and exemption will be removed from the Iowa OSHA Enforcement programmed inspection schedules for at least one year from the date of the certificate of recognition.

(3) Iowa OSHA Enforcement will continue to make the inspections listed below at sites that achieved recognition and exemption status and at sites that have received deferrals under 8.7(2)“d”(1):

1. Imminent danger;
2. Fatality/catastrophe; and
3. Formal complaint.

8.7(3) *Effect upon enforcement.*

a. The advice of the consultant and the consultant’s written report shall not be binding upon a compliance officer in a subsequent enforcement inspection. In a subsequent enforcement inspection, a compliance officer is not precluded from issuing citations and proposing penalties for hazardous conditions or violations.

b. The hazard identification and correction assistance given by the consultant, the failure of the consultant to point out a specific hazard, and errors or omissions by the consultant shall not:

- (1) Be binding upon a compliance officer;
- (2) Affect the regular conduct of a compliance inspection;
- (3) Preclude the finding of alleged violations and the issuance of citations; or
- (4) Act as a defense to any enforcement action.

c. In the event of a subsequent enforcement inspection, the employer is not required to inform the compliance officer of the prior consultation visit. The employer is not required to provide a copy of the consultant’s written report to the compliance officer, except to the extent that disclosure of information contained in the report is required by 29 CFR 1910.1020. During a subsequent enforcement action, if Iowa OSHA Enforcement independently determines there is reason to believe that the employer failed to correct serious hazards identified during the consultation visit, created the same hazards again, or made false statements to the bureau of consultation and education in connection with the consultation program, Iowa OSHA Enforcement may exercise its authority to obtain the consultation report.

d. If the employer chooses to provide a copy of the consultant’s report to the compliance officer, the report may be used to determine the extent to which an inspection is required and as a factor in determining proposed penalties. Iowa OSHA Enforcement may impose minimal penalties if a consultant previously identified a hazard and the employer is complying with the consultant’s recommendations in good faith.

These rules are intended to implement Iowa Code chapter 88.

ARC 8471B**LABOR SERVICES DIVISION[875]****Notice of Termination**

Pursuant to the authority of Iowa Code section 88A.3, the Labor Commissioner terminates the rule making initiated by Notice of Intended Action published in the Iowa Administrative Bulletin on November 18, 2009, as **ARC 8301B**. The Notice of Intended Action proposed changes to Chapter 61, "Administration of Iowa Code Chapter 88A," and Chapter 62, "Safety Rules for Amusement Rides, Amusement Devices, and Concession Booths," Iowa Administrative Code, to end regulation of inflatable rides. As a result of this Notice of Termination, the Division of Labor Services will continue to inspect and regulate inflatable amusement devices.

ARC 8463B**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 sections 321G.23, 321I.25, 462A.1 and 483A.27(4), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 12, "Conservation Education," Iowa Administrative Code.

These amendments clarify the general requirements of the Department's boating, snowmobiling, all-terrain vehicle, snow groomer operation, fur harvester, and bow hunting education programs, as well as further delineate each program's instructor certification criteria.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 2, 2010. Such written comments should be directed to Rhonda Fowler, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-6794; or by E-mail at rhonda.fowler@dnr.iowa.gov. Persons who wish to convey their views orally should contact Ms. Fowler at (515)281-3208, or at the Bureau offices on the fourth floor of the Wallace State Office Building.

These amendments are intended to implement Iowa Code sections 321G.23, 321I.25, 462A.1, and 483A.27(4).

The following amendments are proposed.

ITEM 1. Amend **571—Chapter 12** by adopting the following **new** division title:

DIVISION II

RECREATIONAL EDUCATION COURSES

ITEM 2. Amend **571—Chapter 12** by adopting the following **new** Part I title:

PART I

VOLUNTEER INSTRUCTOR CERTIFICATION AND DECERTIFICATION PROCEDURES

ITEM 3. Adopt the following **new** rules 571—12.20(321G,321I,462A,483A) to 571—12.29(321G,321I,462A,483A):

571—12.20(321G,321I,462A,483A) Purpose. Pursuant to Iowa Code sections 321G.23, 321I.25, 462A.1 and 483A.27(4), these rules set forth curriculum and course standards for the department's recreational education courses and provisions for certification of volunteer instructors to teach the courses.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—12.21(321G,321I,462A,483A) Definitions. For the purpose of this division:

“*Certified instructor*” means a person who meets all the criteria in rule 571—12.23(321G,321I,462A,483A) and the specifics contained in each education program’s Instructor Policies and Procedures Manual and who wishes to voluntarily teach an education course.

“*Department*” means the department of natural resources.

“*DNR online training registration and tracking system*” means the Web-based application that tracks student data, allows students to register for courses, allows certified instructors to list their course offerings and to track volunteer hours and program details, and displays downloadable PDF files.

“*Education course*” means the department’s bow hunter, fur harvester, snowmobile, all-terrain vehicle (ATV), boating, snow groomer operator, and hunter safety and ethics courses.

“*Instructor applicant*” means a person who has applied to become a certified volunteer instructor for one of the department’s education courses.

“*Managed Internet course*” means a course offered via the Internet which contains a protocol that ensures that the person registering for the course is the person taking the test and includes a progressive sequence for the presentation of course material.

“*Student*” means a person who wishes to enroll or has enrolled in an education course.

“*Workshop*” means the education course for the fur harvester education program.

571—12.22(321G,321I,462A,483A) Certified instructor application process.

12.22(1) Application procedures.

a. The instructor applicant must request an application by contacting a program coordinator, a recreation safety officer, or the recreational safety programs supervisor.

b. The instructor applicant must provide all information requested on the application or the department may reject the application.

c. The application will remain on file until the instructor applicant meets all the requirements in rule 571—12.23(321G,321I,462A,483A).

d. Once the instructor applicant successfully completes all required training and meets all required qualifications, the program coordinator, recreation safety officer, or recreational safety programs supervisor shall document that all certification requirements have been met and shall issue a certified instructor identification card to the instructor.

12.22(2) Acceptance of certified instructor applications. If the number of existing certified instructors meets the demand for courses based on student enrollment, the department may choose not to accept new applications.

571—12.23(321G,321I,462A,483A) Requirements for instructor certification.

12.23(1) Minimum requirements. The following requirements must be satisfied before an instructor applicant may become a certified instructor. Failure to meet these requirements shall result in the denial of the application. The instructor applicant will be notified of the denial by the program coordinator or recreational safety programs supervisor. The instructor applicant must:

a. Submit an application as provided by the department.

b. Be at least 18 years of age.

c. Attend and pass an instructor training and certification course described below and administered by the department.

(1) ATV education program. The instructor training and certification course for the ATV education program reviews the policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, the education course material, teaching techniques, and the criteria for evaluating the performance of student skills and requires completion of the education course and apprenticeship.

(2) Boating education program. The instructor training and certification course for the boating education program reviews the policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, the education course material,

NATURAL RESOURCE COMMISSION[571](cont'd)

teaching techniques, and the criteria for evaluating the performance of student skills and requires completion of the education course and apprenticeship.

(3) Hunter safety and ethics education program. The instructor training and certification course for the hunter safety and ethics education program reviews the policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, the education course material, teaching techniques, and the criteria for evaluating the performance of student skills and requires completion of the education course and apprenticeship.

(4) Bow hunter education program. The instructor training and certification course for the bow hunter education program reviews the policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, the education course material, teaching techniques, and the criteria for evaluating the performance of student skills and requires completion of the education course and apprenticeship.

(5) Fur harvester education program. The instructor training and certification course for the fur harvester education program reviews the policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, the workshop material, teaching techniques, and the criteria for evaluating the performance of student skills and requires completion of the workshop and apprenticeship.

(6) Snowmobile education program. The instructor training and certification course for the snowmobile education program reviews the policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, the education course material, skills that pertain to administering the student examination, and teaching techniques.

(7) Snow groomer operator education program. The training for the snow groomer operator program teaches the basics of snow science, best practices of equipment operation, documentation requirements, liability issues, insurance coverage, and the requirements of the equipment agreement that is in place between the individual club and the department.

12.23(2) Apprenticeship. The instructor applicant must complete an apprenticeship for the specific education program.

a. ATV education program. The apprenticeship requirement for the ATV education program is completed as part of the instructor training and certification course.

b. Boating education program. The apprenticeship requirement for the boating education program is completed as part of the instructor training and certification course.

c. Hunter safety and ethics education program. The apprenticeship requirement for the hunter safety and ethics education program may be completed as part of the instructor training and certification course. If the apprenticeship requirement is not covered during the instructor training and certification course, a recreation safety officer will assign the instructor applicant to an upcoming course to fulfill the apprenticeship requirement. The instructor applicant must complete the apprenticeship within one year of attending an instructor training and certification course.

d. Bow hunter education program. The apprenticeship requirement for the bow hunter education program is completed as part of the instructor training and certification course.

e. Fur harvester education program. The apprenticeship requirement for the fur harvester education program is completed as part of the instructor training and certification course.

f. Snowmobile education program. The instructor applicant shall fulfill the apprenticeship requirement for the snowmobile education program by assisting a certified instructor with preparing and presenting an education course to students.

g. Snow groomer operator education program. The apprentice must operate the equipment under the direct supervision of a certified operator until the apprentice is capable of operating the equipment without supervision.

12.23(3) Background check. The instructor applicant must authorize a background check that includes, but may not be limited to, a criminal history check. A record of a felony conviction will disqualify the instructor applicant. A record of a serious or aggravated misdemeanor within the last three years will disqualify the instructor applicant.

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12.23(4) *Fish and wildlife violation check (hunting, fishing, and trapping)*. The instructor applicant must authorize a fish and wildlife violation check. The instructor applicant may be disqualified if the instructor applicant has accumulated any habitual offender points pursuant to rule 571—15.6(483A) within the last five years or has had a license suspended by a court of law or the department.

571—12.24(321G,321I,462A,483A) Certified instructor responsibilities and requirements.

12.24(1) A certified instructor has the following responsibilities:

- a. To follow all policies and procedures as set forth by the department for the specified education program.
- b. To sign an acknowledgment form confirming receipt of the department's policies and procedures. The certified instructor is ineligible to begin teaching an education course until the acknowledgment form is signed and filed with the department. Any updates to the policies and procedures shall be provided in writing to the certified instructor, and an additional acknowledgment form must be signed and filed with the department. Failure to file a subsequent acknowledgment form with the department invalidates the instructor's certification.
- c. To assist in the recruitment and training of additional certified instructors.
- d. To recruit students for and train students in the education course.
- e. To actively promote the education program in the instructor's county and to publicize each new education course.
- f. To maintain order and discipline in the classroom and outdoor classroom at all times.
- g. To accurately fill out forms and reports required by the department for the accurate input and upkeep of the DNR online training registration and tracking system's records.
- h. To teach the education course as prescribed by the department.

12.24(2) A certified instructor must teach a minimum of one course every two years. If this requirement is not met, the instructor's certification may be revoked after notification by certified mail. If an instructor's certification is revoked due to inactivity, the instructor may reapply to become a certified instructor pursuant to rule 571—12.22(321G,321I,462A,483A). Based upon the period of inactivity, some of the requirements in rule 571—12.23(321G,321I,462A,483A) may be waived by the program coordinator or recreational safety programs supervisor.

12.24(3) A certified instructor must attend one continuing education instructor workshop every two years.

12.24(4) A certified instructor shall represent the department in a positive manner that supports the department's goals and shall avoid even the appearance of impropriety while instructing students.

12.24(5) A certified instructor must teach the education course with another adult present unless the certified instructor obtains prior approval from the department. It is the department's preference that the certified instructor is assisted by another department-certified instructor, but a noncertified assistant over 18 years of age may assist so long as the noncertified assistant does not directly teach the students substantive issues of the course. The person assisting the certified instructor must meet the same standards and expectations for character and behavior as the department has for its certified instructors. The certified instructor is responsible for the conduct of the noncertified assistant and is subject to having certification suspended or revoked based upon the actions of the noncertified assistant.

If the course is taught without another adult present, notification to the program coordinator, recreation safety officer, or recreational safety programs supervisor must be made and authorization of the course must be given by the department. A parent or legal guardian of a student in the class who is present as a direct result of the student's participation is not eligible to assist with the class.

This subrule does not apply to a conservation officer or any other department representative who is teaching an education course alone.

12.24(6) A certified instructor must use a public building or facility when teaching an education course. Certified instructors shall not use private residences for classes. An exception may be made at the discretion of the program coordinator, recreation safety officer, or recreational safety programs supervisor for outdoor classroom areas and workshops used to show the operation of equipment.

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571—12.25(321G,321I,462A,483A) Grounds for revocation or suspension of instructor certification. The department may, at any time, seek to revoke or suspend the instructor certification of any person who:

1. Fails to meet the instructor responsibilities and requirements as outlined in rule 571—12.24(321G,321I,462A,483A).
2. Fails to follow the policies and procedures of the department.
3. Falsifies any information that may be required by the department. Falsifying information is understood to mean purposefully supplying information that is inaccurate or misleading or the intentional omission of information.
4. Handles any equipment in an unsafe manner, or allows any student or other instructor to handle equipment in a reckless or unsafe manner.
5. Is convicted of or forfeits a bond for any fish and game, snowmobile, ATV, or navigation violation of this state or any other state. Anyone who has a privilege to operate a motor vehicle suspended, barred, or revoked shall not be eligible to be an instructor for the snowmobile, ATV, or snow groomer operator education program.
6. Uses profanity or inappropriate language, such as any type of sexist or racial references or generalities.
7. Engages in the physical punishment of a student, including the use of unreasonable or unnecessary physical force or physical contact made with the intent to cause pain, or any type of indecent contact with a child as defined by the Iowa Code.
8. Participates in a course while under the influence of alcohol or any illegal drug or while ingesting prescription medication in a manner contrary to the dosing directions given by the prescribing physician.
9. Has substantiated complaints filed against the instructor by the public, department personnel, or other certified instructor.
10. Fails to meet the requirements in subrule 12.24(2) or 12.24(3).
11. Is under investigation for committing, is in the process of a judicial proceeding based on the allegation of committing, or is convicted of committing a felony or an aggravated or serious misdemeanor as defined in the statutes of this state or another state. Every certified instructor is subject to a criminal history check and conservation violation check at any time during the instructor's tenure as an instructor.
12. Receives compensation directly or indirectly from students for time spent preparing for or participating in an education course.
13. Teaches an education course without another adult present without prior department approval.

571—12.26(321G,321I,462A,483A) Temporary suspensions and immediate revocations of instructor certifications.

12.26(1) Any complaint made against a department-certified instructor will be taken seriously and will be investigated by a program coordinator, a recreation safety officer, or a conservation officer. If convincing evidence exists that a certified instructor engaged in any of the activities listed in rule 571—12.25(321G,321I,462A,483A), the instructor's certification will be temporarily suspended. A letter detailing the reason(s) for the instructor's certification suspension will be sent via certified mail to the last-known address of the instructor. The letter will detail the length of the suspension and any corrective action to be taken by the instructor prior to the instructor's certification being reinstated.

12.26(2) At the conclusion of the department's investigation, any certified instructor who is found to have engaged in the activities listed in rule 571—12.25(321G,321I,462A,483A), numbered paragraph "3," "5," "7," "8," "11," or "12," shall immediately have the instructor's certification revoked. In the event that an instructor's certification is revoked, rule 571—12.29(321G,321I,462A,483A) shall apply.

12.26(3) At the conclusion of the department's investigation, if a certified instructor is found to have exercised bad judgment while teaching a class, failed to complete paperwork in a timely and proper manner, or engaged in risky or unsafe behavior or in an activity listed in rule 571—12.25(321G,321I,462A,483A), numbered paragraph "4," "6," "9," or "13," the suspension shall be exercised at the department's discretion based upon the nature and seriousness of the misconduct.

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12.26(4) For the hunter safety and ethics education program, bow hunter education program, and fur harvester education program, the results of the department's investigation shall be supplied to the Iowa Hunter Education Instructor Association (IHEIA), which shall review the results and supply a disciplinary recommendation to the department. The department shall consider IHEIA's recommendation when exercising its discretion to suspend or revoke the instructor's certification, based upon the nature and seriousness of the misconduct.

571—12.27(321G,321I,462A,483A) Termination of certification. Any certified instructor has the right, at any time, to voluntarily terminate the instructor's certification. If a certified instructor voluntarily terminates the certification or the instructor's certification is revoked by the department, the instructor must return to the department the certification card and all materials that were provided to the individual.

571—12.28(321G,321I,462A,483A) Compensation for instructors. Instructor applicants and certified instructors shall not receive any compensation for their time either directly or indirectly from students while preparing for or participating in a course. However, instructor applicants and certified instructors may require students to pay for actual, course-related expenses involving facilities, meals, or materials other than those provided by the department. All certified instructors shall keep all records, bills, receipts, etc., relating to student payments for at least one year after the course and shall submit such documents to the department upon request.

571—12.29(321G,321I,462A,483A) Hearing rights. If the department seeks to revoke an instructor certification pursuant to rule 571—12.26(321G,321I,462A,483A), the department shall provide to the certified instructor written notice of the intent to revoke the certification as provided in Iowa Code chapters 17A and 455A, and Iowa Administrative Code 561—Chapter 7. If the certified instructor requests a hearing, it shall be conducted in accordance with Iowa Administrative Code 561—Chapter 7.

ITEM 4. Amend **571—Chapter 12** by adopting the following **new** Part II title:

PART II

RECREATION EDUCATION PROGRAMS

ITEM 5. Adopt the following **new** rules 571—12.31(321I) to 571—12.37(483A):

571—12.31(321I) ATV education program.

12.31(1) For the ATV education program, the department has developed a rider-based course designed to meet the statutory requirement to provide rider education and instructor development as contained in Iowa Code section 321I.25. The department also recognizes safety courses taught by ATV Safety Institute (ASI)-certified instructors.

12.31(2) The department's ATV Education Program Skills Course is approximately four hours in length and is designed to be completed in one day. The education course is designed to teach ATV riders the principles and behaviors of safe and responsible ATV riding. The education course consists of both lectures and riding lessons.

12.31(3) The following criteria apply to the ATV education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall not become valid until the student's twelfth birthday.

b. A student successfully completes the skills portion of the education course by demonstrating proficiency in the riding skills taught in the course. Students who are not able to demonstrate safe riding skills will not earn an education certificate.

c. Students must use the DNR online training registration and tracking system to register for classes. Students under the age of 14 must have a parent establish a user account and register on their behalf.

d. The cost of the education course is \$25 per student. Payment must be made when the student registers for the course. Course fees are nonrefundable.

NATURAL RESOURCE COMMISSION[571](cont'd)

e. Students must provide their own protective riding gear and an ATV properly sized for the student. “Properly sized” means the student can comfortably reach all of the controls on the machine and can operate them. The student must wear a helmet at all times when the student is operating an ATV. The ATV must be in good working order, equipped with a proper muffler, and have current registration. Students whose ATVs do not meet the requirements of this paragraph or whose ATVs are not properly sized will not be allowed to participate in the education course.

12.31(4) The department will work with vendors to develop online offerings that will meet the department’s requirements and standards for curriculum, security protocol, and managed delivery. Only vendors that have entered into a memorandum of understanding with the department will be allowed to offer an online course that results in the issuance of a department education certificate. Vendors may charge for their courses as agreed to in the memorandum of understanding and must collect the department’s education certificate fee on behalf of the department.

571—12.32(321G) Snowmobile education program.

12.32(1) For the snowmobile education program, the department has developed an education course designed to meet the statutory requirement to provide rider education and instructor development as contained in Iowa Code section 321G.23.

12.32(2) The education course is approximately eight hours in length and is designed to be completed in one day. The course is taught by certified instructors and is classroom-based.

12.32(3) The following criteria apply to the snowmobile education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall not become valid until the student’s twelfth birthday.

b. Students will be given a written examination that they must pass with 80 percent accuracy in order to earn their education certificate.

c. A home study course may be offered at the discretion of the department. A student must pass a written examination with 80 percent accuracy in order to earn an education certificate.

d. Students must use the DNR online training registration and tracking system to register for classes. Students under the age of 14 must have a parent establish a user account and register on their behalf.

e. The cost of the education course is \$10 per student. Payment must be made when the student registers for the course. Course fees are nonrefundable.

12.32(4) The department will work with vendors to develop online offerings that will meet the department’s requirements and standards for curriculum, security protocol, and managed delivery. Only vendors that have entered into a memorandum of understanding with the department will be allowed to offer an online course which results in the issuance of a department education certificate. Vendors may charge for their courses as agreed to in the memorandum of understanding and must collect the department’s education certificate fee on behalf of the department.

571—12.33(462A) Boating education program.

12.33(1) In accordance with Iowa Code section 462A.1, the goal of the boating education program and education course is to promote safe and responsible boating practices. The department also recognizes safety courses taught by the United States Coast Guard Auxiliary- and the United States Power Squadron-certified instructors.

12.33(2) The education course for the boating education program is taught by certified instructors in a classroom setting and shall be a minimum of eight hours in length.

12.33(3) The following criteria apply to the boating education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall not become valid until the student’s twelfth birthday.

b. Students will be given a written examination that they must pass with 80 percent accuracy in order to earn an education certificate.

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c. A home study course may be offered at the discretion of the department. A student must pass a written examination with 80 percent accuracy in order to earn an education certificate.

d. Students must use the DNR online training registration and tracking system to register for classes. Students under the age of 14 must have a parent establish a user account and register on their behalf.

e. The cost of the education course is \$5. Payment must be made when the student registers for the course. Course fees are nonrefundable.

12.33(4) The department will work with vendors to develop online offerings that will meet the department's requirements and standards for curriculum, security protocol, and managed delivery. Only vendors that have the National Association of State Boating Law Administrators seal of approval and have entered into a memorandum of understanding with the department will be allowed to offer an online course which results in the issuance of a department education certificate. Vendors may charge for their courses as agreed to in the memorandum of understanding and must collect the department's education certificate fee on behalf of the department.

571—12.34(483A) Hunter safety and ethics education program.

12.34(1) The goals of the hunter education and ethics program are to educate students about hunter safety and ethics, to train certified instructors to teach hunter education, and to continue to keep hunting the safe activity it has become. The education course for the hunter safety and ethics education program is designed to teach students basic survival and first-aid skills, water safety, wildlife identification, and the basics of wildlife management, hunting laws, and firearm/archery safety. The education course also stresses the importance of individual responsibility and outdoor ethics. Satisfactory completion of the education course is mandatory pursuant Iowa Code section 483A.27 for anyone born after January 1, 1972, who wishes to purchase an Iowa hunting license.

12.34(2) The education course is taught by certified instructors and is a minimum of ten hours in length. The education course shall have both classroom and hands-on components. Where permitted, live fire exercises may be taught.

12.34(3) The hunter safety and ethics education program also offers an online course/field day. The online course is approximately six hours in length and is designed to be a managed Internet course. A field day voucher may be purchased from the online vendor for a fee determined in the memorandum of understanding with the department upon the student's successful completion of the online course. The field day voucher is valid for one year from the date of issuance and authorizes entrance into a field day course. The field day portion is approximately four hours in length and is designed to meet the additional required elements of the hunter safety and ethics education program as required in Iowa Code section 483A.27. Students must also preregister for the field day course by using the DNR online training registration and tracking system. The department recommends that the student be 16 years of age or older to take the online/field day course. Only vendors that have been approved by the International Hunter Education Association and have entered into a memorandum of understanding with the department shall be allowed to offer an online course that results in the issuance of a field day voucher.

12.34(4) The following criteria apply to the hunter safety and ethics education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall not become valid until the student's twelfth birthday. Iowa residents under the age of 12 may be issued a deer or turkey license; however, a licensed adult must accompany each youth hunter. If the certificate is lost, a replacement certificate may be obtained from any electronic licensing system for Iowa (ELSI) vendor during regular business hours for \$3.50.

b. A student successfully completes the course by completing a minimum of ten hours of training, six of which may be completed online if a student chooses to attend an online/field day course. Upon completion of the ten-hour curriculum, each student must take an individual oral or written test provided by the department. The student must pass the test with a score of 75 percent or higher. Based on the results of the test and the student's demonstration of safe handling of a firearm, the instructor shall determine if the student shall be issued a certificate of completion.

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c. Students must use the DNR online training registration and tracking system to register for classes when applicable. Students under the age of 14 must have a parent establish a user account and register on their behalf. If a student is unable to register for a class on the online system, registration instructions will be listed along with the class posting on how to register for the class.

d. There is no fee for the education course.

571—12.35(321G) Snow groomer operators.

12.35(1) The department has developed a program to educate snow groomer operators to meet the statutory requirement of Iowa Code section 321G.2.

12.35(2) Operator certification is awarded upon the applicant's completion of both the training course and apprenticeship requirements detailed in rule 571—12.23(321G,321I,462A,483A).

12.35(3) The following criteria apply to the snow groomer operator program:

a. An operator must be at least 18 years of age and possess a valid Iowa driver's license in order to be certified to operate a piece of snow grooming equipment.

b. Students must use the DNR online training registration and tracking system to register for classes.

c. The cost of the course is \$10 per student. Payment must be made when the student registers for the course. Course fees are nonrefundable.

d. In order for an operator's certification to remain active, the operator must attend a training session once every three years.

e. Operators will agree to follow all policies and procedures as set forth by the department and must sign an acknowledgment form for these policies and procedures and file it with the department. The operator is ineligible to begin operating equipment, including during the apprenticeship training, until the acknowledgment form is signed and on file with the department.

f. The department may, at any time, seek to revoke or suspend the snow groomer operator certification of any person who:

(1) Fails to follow the policies and procedures of the department.

(2) Falsifies any information that may be required by the department. Falsifying information is understood to mean purposefully supplying information that is inaccurate or misleading or the intentional omission of information that would negatively impact an applicant.

(3) Handles any equipment in a reckless or unsafe manner, or allows another person to handle equipment in a reckless or unsafe manner.

(4) Is convicted of or forfeits bond for any fish and game, snowmobile, ATV, or navigation violation of this state or any other state. Anyone who has a privilege to operate a motor vehicle suspended, barred, or revoked shall not be eligible to be a snow groomer operator.

(5) Operates snow grooming equipment while under the influence of alcohol or any illegal drug or while ingesting prescription medication in a manner contrary to the dosing directions given by the prescribing physician.

(6) Has substantiated complaints filed against the operator by the public, department personnel, or other certified instructor.

(7) Fails to meet the ongoing training requirements.

(8) Is under investigation for committing, is in the process of a judicial proceeding based on the allegation of committing, or is convicted of committing a felony or an aggravated or serious misdemeanor as defined in the statutes of this state or another state. Every snow groomer operator will be subject to a criminal history check and conservation violation check at any time during the operator's tenure as an operator.

g. Any complaint made against a department-certified snow groomer operator will be taken seriously and will be investigated by the program coordinator, recreation safety officer, or a conservation officer. If convincing evidence exists that an operator engaged in any of the activities listed in paragraph "*f*" above, the operator's certification will be temporarily suspended. A letter detailing the reason(s) for the operator's certification suspension will be sent via certified mail to the last-known address of the operator. The letter will detail the length of the suspension and any corrective action to be taken by the

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operator prior to reinstatement of the operator's certification. If the results of the investigation warrant a revocation of the operator's certification, rule 571—12.29(321G,321I,462A,483A) will apply.

h. Any certified snow groomer operator has the right, at any time, to voluntarily terminate certification. If an operator voluntarily terminates certification or certification is revoked by the department, the operator must return to the department the certification card and all materials that were provided to the individual.

i. Snow groomer operator volunteer instructors are certified by the program coordinator. Training includes review of the department's policies and procedures, course materials, operator certification requirements, paperwork requirements, and teaching techniques. Applications for instructor certification will be taken on an as-needed basis as determined by the program coordinator.

571—12.36(483A) Bow hunter education program.

12.36(1) The education course for the bow hunter education program is designed to teach bow hunters safe and ethical hunting techniques and to instill responsible attitudes toward people, wildlife, and the environment. The education course is based on the National Bowhunter Education Foundation's publications and is administered by the department. The education course covers topics such as responsibilities of a bow hunter, knowledge necessary before hunting, shot placement, tree stand safety, blood trailing, and game care. The education course is offered in both a classroom and an online setting.

12.36(2) The classroom course is taught by department-certified instructors and is approximately six hours in length. The course shall have both classroom and hands-on components. Students will be given a written examination, which they must pass with 75 percent accuracy in order to earn an education certificate.

12.36(3) The online course is a combination of an online class and a field day and is designed for students 16 years of age or older. A student must complete both the online class and field day to gain certification. Only vendors that have been approved by the International Hunter Education Association and have entered into a memorandum of understanding with the department will be allowed to offer an online course that results in the issuance of a field day voucher. The field day voucher is valid for one year and authorizes entrance into a field day course.

a. The online class is completed by the student on the student's own time. This portion of the course is in conjunction with the National Bowhunter Education Foundation, which charges a fee to students for the foundation's service.

b. The field day is offered free of charge by a certified bow hunter instructor. A student successfully completes the online course/field day by presenting to the field day instructor a copy of the Field Day Qualifier Certificate from the National Bowhunter Education Foundation online course to show that the student has successfully completed the online portion. Students then must successfully participate in practical testing at the field day and demonstrate bow and arrow safety and hunting skills under the supervision of a certified instructor. Students may be required to bring their own bow-hunting equipment to be used during the field day. Students must also preregister for the field day course by using the DNR online training registration and tracking system.

12.36(4) The following criteria apply to the bow hunter education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall not become valid until the student's twelfth birthday.

b. Students must use the DNR online training registration and tracking system to register for classes. Students under the age of 14 must have a parent establish a user account and register on their behalf.

571—12.37(483A) Fur harvester education program.

12.37(1) The workshop for the fur harvester education program is designed to teach trappers safe and ethical trapping techniques and to instill responsible attitudes toward people, wildlife, and the environment.

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12.37(2) The workshop is between six to eight hours in length, and students will receive instruction and hands-on training on the history and heritage of the fur trade, biology and management of Iowa furbearers, wildlife regulations and their purpose, ethics and responsibility, fur harvesting equipment, the basics of harvesting Iowa furbearers, marketing furbearers, public relations, and the basics of outdoor safety and survival. Students will receive a certificate of completion at the end of the workshop.

12.37(3) The following criteria apply to the fur harvester education program:

a. Any student who is 11 years of age or older may enroll in a workshop and receive a certificate if the student successfully completes the workshop; however, if the student is 11 years old, the certificate shall not become effective until the student's twelfth birthday.

b. Students must use the DNR online training registration and tracking system to register for a workshop. Students under the age of 14 must have a parent establish a user account and register on their behalf.

c. There is no fee for the workshop.

The rules in this division are intended to implement Iowa Code sections 321G.2, 321G.23, 321I.25, 462A.1, and 483A.27.

ARC 8462B**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 sections 321G.2, 321I.2, and 462A.16, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 44, “Boating, Special Events,” Iowa Administrative Code.

Currently, the statutory requirements regarding rules for snowmobile and all-terrain vehicle (ATV) special events are not addressed. Chapter 44 currently contains only special event permit requirements for boating. Therefore, the Natural Resource Commission is amending Chapter 44 to establish special event permit requirements for ATVs and snowmobiles, while also updating the boating requirements. The proposed amendments also address and support the Department's new centralized special events application system.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 2, 2010. Such written comments should be directed to Rhonda Fowler, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; fax (515)281-6794; or E-mail rhonda.fowler@dnr.iowa.gov. Persons who wish to convey their views orally should contact Rhonda Fowler at (515)281-3208, or at the Bureau offices on the fourth floor of the Wallace State Office Building.

These amendments are intended to implement Iowa Code sections 321G.2, 321I.2, and 462A.16.

The following amendments are proposed.

ITEM 1. Amend **571—Chapter 44**, title, as follows:

BOATING, LAW ENFORCEMENT BUREAU'S SPECIAL EVENTS

ITEM 2. Rescind rule 571—44.1(462A) and adopt the following **new** rule in lieu thereof:

571—44.1(321G,321I,462A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Administrative processing fee*” means the fee collected for the processing of each special event application that is required to be submitted for specific boat, snow, and ATV events.

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

“Authorization letter” means a letter issued by the department that enumerates any stipulations, requirements, and contingencies that the applicant must accept and adhere to throughout the duration of the event. Special consideration will be given to items designed to provide safety to participants and spectators and protection to natural resources. The authorization letter will serve as the permit for the event.

“Centralized special events application system” means the Web-based application processing system used by applicants to submit an application and by department staff to process an application and provide notification of approval or denial of the application. The system will publish approved applications on a calendar of events Web page to inform the general public of scheduled events on public land, ice, and water.

“Commission” means the natural resource commission.

“Demonstration” means an outward display or show; a meeting, gathering, or parade; a competitive event, tournament, or race; or a practical showing of how something is used or works, with or without the intent to sell.

“Department” means the Iowa department of natural resources.

“Exhibition” means the act or fact of exhibiting or a public show or display.

“Navigable waters” means all lakes, rivers, and streams that can support a vessel capable of carrying one or more persons during a total of six months in one out of every ten years.

“Off-road utility vehicle” means a motorized flotation-tire vehicle with not less than four and not more than eight low-pressure tires that is limited in engine displacement to less than 1,500 cubic centimeters and in total dry weight to not more than 1,800 pounds and that has a seat that is of bucket or bench design, not intended to be straddled by the operator, and a steering wheel or control lever for control.

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

“Special event” means an organized race, tournament, exhibition, or demonstration of limited duration that is conducted on public land, ice, or waters of the state under the jurisdiction of the commission according to a prearranged schedule and in which general public interest is manifested. Elements evaluated to determine if a “special event” permit is needed include: whether the event is open to the public, charges an admission fee, awards prizes, or is promoting a competition; whether attendance is solicited through advertising, invitation, or other medium; and whether the event may adversely impact the use of the area by others. Specific boating events that are considered to be special events include regattas, motorboat or other boat races, marine parades, and tournaments.

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

ITEM 3. Rescind rule 571—44.2(462A) and adopt the following **new** rule in lieu thereof:

571—44.2(321G,321I,462A) Affected public lands and waters. These rules are applicable to all fee title lands and waters under the jurisdiction of the commission; dedicated lands and waters under the jurisdiction of the commission and managed by the commission for public access to a meandered sovereign lake or meandered sovereign river; meandered sovereign lakes; meandered sovereign rivers; and sovereign islands, except those portions of the Iowa River and the Mississippi River where title has been conveyed to charter cities.

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ITEM 4. Adopt the following **new** rules 571—44.3(321G,321I,462A) to 571—44.20(321G,321I,462A):

571—44.3(321G,321I,462A) Permit required. A permit issued by the department is required in order to conduct a special event as defined in this chapter on public land, ice, or waters under the jurisdiction of the natural resource commission.

44.3(1) Any one of these criteria may determine the need for a special event permit:

- a. The event is open to the public.
- b. The event charges an admission fee.
- c. The event awards prizes.
- d. The event promotes competitive events.
- e. Attendance is solicited through advertising, invitation, or other solicitation.
- f. The event may adversely impact the use of the area by others.

44.3(2) Dealer demonstrations require a special event permit.

571—44.4(321G,321I,462A) Permit conditions. The department may impose special conditions not specifically covered herein for any special event if deemed necessary to protect the resource or to ensure public safety. Special conditions, contingencies, restrictions, and stipulations will be included in the authorization letter that the applicant or sponsoring organization receives if the application for the event is approved.

571—44.5(321G,321I,462A) Application procedures. The following procedures shall be used when applying for a special event permit:

44.5(1) Application shall be made on an electronic form accessed through the department's centralized special events application system.

44.5(2) The application shall be received electronically by the department via the centralized special events application system.

44.5(3) Applications shall be accepted beginning January 1 in a given year for requested event dates extending to March 1 of the following year, but applications shall not be accepted less than 30 days prior to the requested date for the event.

44.5(4) The number of events at any one access area during a given day may be restricted if deemed necessary to avoid congestion with the public or competing events. The commission shall consider the capacity of facilities such as boat ramps, docks, and parking lots when processing applications.

44.5(5) Permits are not transferable.

571—44.6(321G,321I,462A) Alternate dates. Because some events can be severely impacted by inclement weather, alternate dates for the event may be submitted by the applicant. The department may, at its discretion, approve alternate dates for the event to be held. The applicant must be willing to accept any of the dates that are submitted. If alternate dates are approved, the event is still approved for only one date, with the expectation that the primary date approved will be used unless the use of the primary date is not possible. If an alternate date must be used for the event, either the applicant, sponsoring organization, or event official must contact the local conservation officer and determine the best date for the event from the alternates available. The applicant, sponsoring organization, or event official must then contact the program coordinator with the new date so that the calendar of events can be updated.

571—44.7(321G,321I,462A) Insurance coverage. The event sponsor is responsible for securing event insurance and must name the department as an additional insured. Insurance information shall be available at the time the application is submitted. The event official must have a copy of this coverage available at the event location and must present it to department personnel upon request.

571—44.8(321G,321I,462A) Nonrefundable fees. The administrative fee for processing each special event application is \$25. The fee is nonrefundable.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—44.9(321I) ATV special events—inclusion of vehicles. Vehicles that may participate in an ATV special event include all-terrain vehicles and off-road motorcycles that display a current department registration. Off-road utility vehicles may be included in events that take place in locations that are open for off-road utility vehicle use. The vehicles must display a current department registration.

571—44.10(321G,321I,462A) Buildings or structures placed on ice. This rule shall govern the placement, construction, or erection of structures placed on ice during a special event.

44.10(1) Vendor information provided on application. An applicant for a special event permit shall provide on the application whether vendors will be on site during the event and the names and addresses of the vendors.

44.10(2) Disqualification of vendors. If a conservation officer, program coordinator, or other department staff are aware of information regarding a vendor which makes the vendor's inclusion in the event a safety concern for an otherwise-approved application, then the permit shall be issued contingent upon the exclusion of the identified vendor.

44.10(3) Owner information. The full name, street address, and city of the building or structure owner shall be displayed legibly in a color contrasting to the background on all sides of the building or structure in block letters at least four inches in height.

44.10(4) Accessibility. Buildings or structures shall not be locked when in use.

44.10(5) Reflectors. Buildings or structures shall have reflectors attached to all sides of the building or structure in such a manner to enable them to reflect light at all times between the hours of sunset and sunrise.

571—44.11(321G) Snowmobile special events—registration exemptions. Snowmobiles that are registered as antique snowmobiles under Iowa Code section 321G.4 shall be allowed to participate in events that are specifically designated for antique snowmobiles. An antique snowmobile is a snowmobile that is more than 30 years old.

571—44.12(462A) Boating special events—registration exemptions. Vessels entered in special events shall not be required to be registered as stated in Iowa Code sections 462A.4 and 462A.5, subject to the following regulations.

44.12(1) Vessel and participant list. Sponsors of the special event shall maintain a list of the names and addresses of all persons participating in the event and a description of each vessel in the event.

44.12(2) Vessels identified. Each vessel in the special event shall be labeled with an identifying number or letter, which shall be clearly visible and which shall be recorded with the names and addresses of vessel passengers on the list as provided for in subrule 44.12(1).

44.12(3) Exemption period. Any vessel entered into a special event may be exempted from state registration requirements for the full 24-hour period of each day covered by the permit to conduct such event and as issued under Iowa Code section 462A.16.

571—44.13(462A) Mississippi River or Missouri River. For special events that take place on the Mississippi River or Missouri River, the applicant must apply through the United States Coast Guard Office in St. Louis, Missouri. A department special event application is not needed for fireworks or boating events on the Mississippi River or Missouri River as long as Coast Guard permits have been secured.

571—44.14(321G,321I,462A) Other code provisions. The individuals or organizations sponsoring a special event are responsible for ensuring full compliance with regulations of Iowa Code chapters 321G, 321I, and 462A and any other Iowa Code chapters or sections referenced in the authorization letter.

571—44.15(321G,321I,462A) Indemnification. The applicant for a special event permit shall understand and agree that neither the state of Iowa nor the department of natural resources will be responsible for any injury to persons or damage to property arising out of or incidental to the activities which are the subject of the applicant's application. The applicant shall agree to indemnify and hold

NATURAL RESOURCE COMMISSION[571](cont'd)

harmless the state of Iowa and the department of natural resources against all liabilities, costs, and expenses which may arise as consequences of the department's granting a special event permit. The applicant must consent to these stipulations by checking an attestation box on the application.

571—44.16(321G,321I,462A) Authority to cancel or stop an event. At any time that a conservation officer, park manager, or park ranger feels that an event is not in compliance with the permit issued or that safety concerns warrant canceling or stopping the event, the conservation officer, park manager, or park ranger has the authority to do so.

571—44.17(321G,321I,462A) Other permits. Special event permits issued by the department are granted subject to the applicant's obtaining all other permits from any government agency which may have jurisdiction in the area where the event is taking place. Examples of additional permits that must be secured are local permits, Army Corps of Engineer permits, liquor permits, and fireworks permits.

571—44.18(321G,321I,462A) Future event permits. The issuance of future permits to an applicant, sponsoring organization, or event official is contingent upon the applicant's, sponsoring organization's, or event official's compliance with the stipulations, requirements, and contingencies associated with any current or past permits that have been granted.

571—44.19(321G,321I,462A) Nonexclusive use of area. Issuance of a special event permit does not imply that the permittee has exclusive use of the land, water, or ice that is the subject of the permit.

571—44.20(321G,321I,462A) Other special events. These rules do not apply to special events that are governed by the department's fisheries bureau, parks bureau, or wildlife bureau.

ITEM 5. Adopt the following **new** implementation sentence in **571—Chapter 44**:
These rules are intended to implement Iowa Code sections 321G.2, 321I.2, and 462A.16.

ARC 8442B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 310, “Sustainable Design Standards,” Iowa Administrative Code.

Iowa Code section 103A.8B authorizes the Building Code Commissioner to adopt sustainable design standards for construction projects. These standards apply when triggered by another provision of law. During its 2009 session, the Iowa General Assembly authorized tax refunds to owners of certain data centers. One requirement to receive this tax refund is that the construction of the building or portion of the building which hosts the data center meets sustainable design standards established by the Building Code Commissioner. The energy usage requirements of data centers may bar these projects from meeting the general requirements established for commercial construction projects for approval. The proposed amendments provide alternative requirements for construction projects involving buildings or portions of buildings which will house data centers to be approved as sustainably designed.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8441B**. The amendments became effective on January 1, 2010. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

A public hearing to accept comment on the proposed amendments will be held in the First Floor Public Conference Room (Room 125) at the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, at 10 a.m. on February 9, 2010. Persons wishing to speak at the public hearing should contact the Agency Rules Administrator by telephone at (515)725-6185 or E-mail to admrule@dps.state.ia.us at least one day prior to the hearing.

Comments on the proposed amendments may also be made by E-mail to admrule@dps.state.ia.us, by telephone to (515)725-6185, or by mail to the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319. Comments should be submitted by 4:30 p.m. on February 8, 2010.

Provisions of the State Building Code are not subject to the usual waiver provisions applicable to most administrative rules but instead are subject to the procedures established in Iowa Code section 103A.13 for approval of alternate materials and methods of construction.

These amendments are intended to implement Iowa Code section 103A.8B.

ARC 8482B

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 8, “Forms and Communications,” and Chapter 39, “Filing Return and Payment of Tax,” Iowa Administrative Code.

These amendments provide information regarding the electronic filing of both individual income tax and corporation income tax returns. The Department will start accepting electronically filed returns for corporations beginning with the 2009 tax year. These amendments also include changes based on a modernized electronic filing initiative that has been undertaken by the Internal Revenue Service. These amendments also include information regarding an option to use direct debit when remitting payment for Iowa individual income tax or Iowa corporation income tax.

Item 1 adopts new rule 701—8.5(422) to provide detailed information on the electronic filing of Iowa individual and Iowa corporation income tax returns.

Item 2 rescinds and reserves rule 701—39.13(422), which is the current rule for electronic filing of Iowa individual income tax returns. Updated information on the electronic filing of both Iowa individual and Iowa corporation income tax returns is reflected in Item 1.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than February 13, 2010, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

REVENUE DEPARTMENT[701](cont'd)

Any interested person may make written suggestions or comments on these proposed amendments on or before February 2, 2010. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by February 12, 2010.

These amendments are intended to implement Iowa Code sections 422.21 and 422.68.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 701—8.5(422):

701—8.5(422) Electronic filing of Iowa income tax returns. Electronic filing allows individuals and businesses that meet department criteria to file their Iowa income tax returns electronically. All information is electronically transmitted. Nothing is submitted on paper unless specifically requested by the department. A taxpayer's electronic Iowa return will include the same information as if the taxpayer had filed a paper return.

There is no statutory requirement that taxpayers file their Iowa income tax returns electronically. Taxpayers also have the option to file by paper.

8.5(1) Definitions. For the purpose of this rule, the following definitions apply, unless the context otherwise requires:

“Acknowledgment” means a report generated by the department and sent electronically to a transmitter via the IRS indicating the department's acceptance or rejection of an electronic submission.

“Declaration for e-File Return form” means a taxpayer declaration form that authenticates the electronic tax return, authorizes its transmission, and consents to the financial transaction order as designated using the financial institution information provided.

“Department” means the Iowa department of revenue.

“Direct debit” means an order for electronic withdrawal of funds from a taxpayer's financial institution account for payment to the Iowa department of revenue.

“Direct deposit” means an order for electronic transfer of a refund into a taxpayer's financial institution account.

“E-file provider” means a firm that is assigned an Electronic Filing Identification Number (EFIN) by the IRS to assume any one or more of the following IRS e-file provider roles: electronic return originator, intermediate service provider, transmitter, software developer, or reporting agent.

“Electronic filing” means a paperless filing of the Iowa income tax return, order for financial transaction, or both by way of the IRS e-file program, also known as federal/state electronic filing (ELF/MeF).

“Electronic return originator (ERO)” means an authorized IRS e-file provider that originates the electronic submission by any one of the following methods: electronically sending an electronic tax return to a Transmitter that will transmit the electronic tax return to the IRS, directly transmitting the electronic tax return to the IRS, or providing the electronic tax return to an Intermediate Service Provider for processing prior to transmission to the IRS.

“Intermediate service provider” means the firm that assists with processing submission information between the ERO (or the taxpayer in the case of online filing) and a Transmitter.

“Online filing” means the process for taxpayers to self-prepare returns by entering return data directly into commercially available software, software downloaded from an Internet site and prepared off-line, or through an online Internet site.

“Origination of an electronic return” means the action by an ERO of electronically sending the return directly to an Intermediate Service Provider, a Transmitter, or the IRS.

“Reporting agent” means a firm that originates the electronic submission of certain returns for its clients or transmits the returns to the IRS in accordance with the IRS electronic filing procedures, or both.

REVENUE DEPARTMENT[701](cont'd)

“*Self-select PIN signature alternative*” means the taxpayer electronically signs the return with a personal identification number (PIN). The PIN is any five numbers (except all zeros) that taxpayers choose to enter as their electronic signature.

“*Software developer*” means an approved IRS e-file provider that develops software according to IRS and Iowa specifications for the purposes of formatting electronic returns, transmitting electronic returns directly to the IRS, or both. A software developer may sell its software.

“*Stockpiling*” means collecting returns from taxpayers or from other e-file providers and waiting more than three calendar days after receiving the information necessary for transmission to transmit the returns to the department.

“*Transmitter*” means a firm that transmits electronic tax return information directly to the IRS and routes electronic acknowledgments from the IRS (and the states) to the firm originating the electronic return.

8.5(2) *Completion and documentation of the electronic return.*

a. All monetary amounts on the prepared return must be in whole dollars. The electronic submission must match the prepared return. The taxpayer(s) must declare the authenticity of the electronic return before it is transmitted. The department has adopted the self-select PIN signature alternative as implemented by the IRS. If the ERO elects not to use the taxpayer self-select PIN signature alternative, the Declaration for e-File Return form must be completed and signed by the preparer, ERO, and taxpayer(s). If the ERO makes changes to the electronic return after the Declaration for e-File Return form has been signed by the taxpayer(s), a new Declaration for e-File Return form must be completed and signed by the taxpayer(s) before the return is transmitted.

b. The ERO must provide the taxpayer a copy of all forms and information to be filed. The taxpayer and ERO must retain all tax documentation for three years. The Declaration for e-File Return form and accompanying schedules are to be furnished to the department only when specifically requested.

8.5(3) *Direct deposit and direct debit.*

a. Taxpayers designating direct deposit of the Iowa refund or direct debit of payment remitted to the department on electronically filed returns must provide proof of account ownership to the ERO. The department is not responsible for the misapplication of a direct deposit refund or direct debit payment caused by error, negligence, or wrongdoing on the part of the taxpayer, e-file provider, financial institution or any agent of the above.

b. Once the return has been transmitted, the financial order may not be altered. The department may, when processing procedures allow, grant a taxpayer's timely request to revoke the financial order. A direct deposit or direct debit order will be disregarded by the department if the electronic submission is rejected for any reason as indicated in the acknowledgment.

c. The department may, when processing procedures require, convert a direct deposit order to a paper check. If a refund is deposited into an incorrect bank account, the department will issue a paper refund check once the funds are returned by the financial institution.

d. Funds will be withdrawn from the account specified in the direct debit order no sooner than the date specified by the taxpayer. This date must occur no later than the due date when the due date has not yet elapsed. This date must specify immediate payment when the due date has already elapsed. This date will be superseded by the electronic postmark date when the date occurs prior to the electronic postmark date. The direct debit payment within the electronic submission accepted by the department that is postmarked on or before the payment due date is considered timely, provided that the direct debit payment is honored by the financial institution.

8.5(4) *Software approval.* Software developers that want to develop electronic submission formatting software for e-filing Iowa returns shall register their respective software products annually with the department. The department publishes specifications, test packages, and testing procedures. Software must pass transmission tests before the department will approve it for electronic filing of Iowa income tax returns. The department will define the test period annually.

8.5(5) *ERO acceptance to participate.* Once accepted by the IRS as an ERO for a specific tax type, the ERO is automatically accepted to e-file Iowa returns of that tax type, provided that the department offers the tax type for e-file.

REVENUE DEPARTMENT[701](cont'd)

8.5(6) *Suspension of an e-file provider from participation in the Iowa electronic filing program.*

a. The department may immediately suspend, without notice, an e-file provider from the Iowa electronic filing program. In most cases, a suspension is effective as of the date of the letter informing the e-file provider of the suspension. Before suspending an e-file provider, the department may issue a warning letter describing specific corrective action required to correct deviations set forth in paragraph 8.5(6) "b." An e-file provider will be automatically prohibited from participating in the Iowa electronic filing program if denied participation in, or suspended from, the federal electronic filing program.

b. An e-file provider that is eligible to participate in the federal electronic filing program may be suspended from the Iowa electronic filing program if any of the following conditions occur. The list is for illustrative purposes only and is not deemed to be all-inclusive.

- (1) Deterioration in the format of electronic returns transmitted.
- (2) Unacceptable cumulative error or rejection rate or failure to correct errors resulting from the transmission of electronic returns.
- (3) Untimely received, illegible, incomplete, missing, or unapproved substitute Declaration for e-File Return forms when requested by the department.
- (4) Stockpiling returns at any time while participating in the Iowa electronic filing program.
- (5) Failure on the part of the transmitter to retrieve acknowledgments within two working days of the department's providing them.
- (6) Failure on the part of the transmitter to initiate the communication of acknowledgments to the ERO within two working days of the department's providing them.
- (7) Significant complaints about the e-file provider.
- (8) Failure on the part of the e-file provider to cooperate with the department's efforts to monitor e-file providers, investigate electronic filing abuse, and investigate the possible filing of fraudulent returns.
- (9) Submitting the electronic return with information that is not identical to information on the Declaration for e-File Return form.
- (10) Transmitting the electronic return with software not approved by the department for use in the Iowa electronic filing program for the given tax type and tax period.
- (11) Failure on the part of the e-file provider to provide W-2s, 1099s, or out-of-state tax returns when requested by the department.

8.5(7) *Administrative procedure for denial of participation or suspension of participation.*

a. When a firm has requested participation in the Iowa electronic filing program but there is reason to deny the request, the department shall send a letter to the firm advising that entry into the program has been denied. When an e-file provider is a participant in the Iowa electronic filing program but is to be suspended from the program for any condition described in subrule 8.5(6), the department will send a letter to notify the e-file provider about its suspension from the program.

b. When the firm either disagrees with the denial of participation letter or the suspension from participation letter, the firm must file a written protest to the department within 60 days of the date of the denial letter or the suspension letter. The written protest must be filed pursuant to rule 701—7.41(17A). During the administrative review process, the denial of the firm's participation in or the suspension of the firm from the Iowa electronic filing program shall remain in effect.

This rule is intended to implement Iowa Code sections 422.21 and 422.68.

ITEM 2. Rescind and reserve rule **701—39.13(422)**.

ARC 8481B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 38, “Administration,” Chapter 40, “Determination of Net Income,” Chapter 43, “Assessments and Refunds,” Chapter 46, “Withholding,” Chapter 50, “Apportionment of Income for Resident Shareholders of S Corporations,” and Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” Iowa Administrative Code.

These amendments are proposed as a result of 2009 Iowa Acts, House File 810, and 2009 Iowa Acts, Senate Files 142, 376, 389, 457, 478 and 482.

Item 1 amends rule 701—38.19(422) to provide that the indication of dependent child health care coverage on Iowa individual income tax returns will be mandatory starting with the tax year beginning January 1, 2010.

Item 2 amends rule 701—40.1(422) to reference new rules 701—40.73(422) and 701—40.74(422).

Item 3 amends rule 701—40.3(422) to provide that Iowa Jobs Program bonds are exempt from Iowa income tax.

Item 4 amends the implementation clause for rule 701—40.3(422).

Items 5 and 6 amend rule 701—40.47(422) to provide additional examples and clarification on the partial exclusion from Iowa individual income tax of pension and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors.

Item 7 adopts new rule 701—40.73(422) relating to the exclusion for Iowa individual income tax of health care benefits of nonqualified dependents.

Item 8 adopts new rule 701—40.74(422) relating to the exclusion for Iowa individual income tax of AmeriCorps Segal Education Awards.

Item 9 adopts new subrule 43.8(5) to reflect the repeal of the livestock production credit refund for refund claims filed on or after November 1, 2008.

Item 10 amends the implementation clause for rule 701—43.8(422).

Item 11 amends subrule 46.9(2) to reflect the repeal of the alternative credit for housing assistance programs for Iowa withholding tax.

Item 12 amends the implementation clause for rule 701—46.9(422).

Item 13 amends rule 701—50.7(422) to clarify that if an Iowa resident taxpayer claims the S corporation apportionment credit, the resident taxpayer may still claim an out-of-state tax credit for taxes paid to another state or foreign country for income other than S corporation income.

Item 14 amends subrule 52.10(5) to provide that the Department of Revenue will now issue the tax credit certificates for certain sales taxes paid by a third-party developer.

Item 15 amends the implementation clause for rule 701—52.10(15).

Item 16 adopts new subrule 52.27(4) to provide that owners of small wind energy systems operating within a small wind innovation zone are eligible for the renewable energy tax credit for corporation income tax.

Item 17 amends the implementation clause for rule 701—52.27(422,476C).

Item 18 adopts new rule 701—52.42(16,422) which provides for a disaster recovery housing project tax credit for corporation income tax.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

REVENUE DEPARTMENT[701](cont'd)

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than February 13, 2010, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before February 2, 2010. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by February 12, 2010.

These amendments are intended to implement 2009 Iowa Acts, House File 810 [Iowa Code Supplement section 476.48]; Iowa Code section 15.331C as amended by 2009 Iowa Acts, Senate File 142; 2009 Iowa Acts, Senate File 376 [Iowa Code Supplement section 12.87]; Iowa Code sections 422.7 and 422.12M as amended by 2009 Iowa Acts, Senate File 389; 2009 Iowa Acts, Senate File 457 [Iowa Code Supplement section 16.191]; Iowa Code sections 15E.196, 422.120, 422.121 and 422.122 as amended by 2009 Iowa Acts, Senate File 478; and Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 482.

The following amendments are proposed.

ITEM 1. Amend rule 701—38.19(422) as follows:

701—38.19(422) Indication of dependent child health care coverage on tax return. For tax years beginning on or after January 1, 2008, but before January 1, 2010, an individual who is an Iowa resident as of December 31 of the tax year who files an Iowa individual income tax return may report on the return the presence or absence of health care coverage for each dependent child as of December 31 of the tax year for which the exemption credit described in 701—subrule 42.2(1), paragraph “c,” is claimed. ~~For tax years beginning on or after January 1, 2008, but before January 1, 2010, it is not mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent, and there is no penalty if this information is not provided on the tax return. For tax years beginning on or after January 1, 2010, it is mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent. The Iowa return will not be considered complete until the indication of the presence or absence of health care coverage for each dependent is made on the return.~~

38.19(1) No change.

38.19(2) Notification to the taxpayer. If the taxpayer indicates on the return that a dependent child does not have health care coverage and the taxpayer’s income reflected on the tax return is within the eligibility requirements for either the Medicaid program or the HAWK-I program, the department will send a letter to the taxpayer indicating that the dependent may be eligible for health care coverage under either the Medicaid or HAWK-I program. The letter will also enclose an application for health care coverage under either the Medicaid or HAWK-I program which can be completed and sent to the Iowa department of human services. The taxpayer must submit the application to the Iowa department of human services within 90 days of receipt of the enrollment information from the department of revenue. The department of human services will make the final determination on whether the taxpayer is eligible under the Medicaid or HAWK-I program. A dependent child must be under the age of 21 to

REVENUE DEPARTMENT[701](cont'd)

be eligible for the Medicaid program, and a dependent child must be under the age of 19 to be eligible for the HAWK-I program.

38.19(3) Reporting requirements. The department, in cooperation with the department of human services, must submit an annual report to the governor and the general assembly which will include the following:

a. Number of Iowa families, by income level, who claim the personal exemption credit for dependent children described in 701—subrule 42.2(1), paragraph “c.”

b. The number of Iowa families, by income level, who claim the personal exemption credit ~~who also and whether they~~ indicated the presence or absence of health care coverage for their dependent children.

c. ~~The effect of these reporting and notification requirements on the number and percentage of children in Iowa who are uninsured~~ number of Iowa families, by income level, claiming the personal exemption credit who received enrollment information from the department of revenue and who subsequently applied and were enrolled in either the Medicaid or HAWK-I program.

This rule is intended to implement ~~2008 Iowa Acts, House File 2539, section 4~~ Iowa Code section 422.12M as amended by 2009 Iowa Acts, Senate File 389, section 15.

ITEM 2. Amend rule 701—40.1(422), introductory paragraph, as follows:

701—40.1(422) Net income defined. Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 40.2(422) to 40.9(422). The remaining provisions of this rule and 40.12(422) to ~~40.72(422)~~ 40.74(422) shall also be applicable in determining net income.

ITEM 3. Amend rule ~~701—40.3(422)~~ by adopting the following new numbered paragraph “26”:

26. Iowa jobs program bonds: Bonds issued under 2009 Iowa Acts, Senate File 376, section 1.

ITEM 4. Amend rule ~~701—40.3(422)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 12.71, 261A.27, and 357A.15; ~~Iowa Code Supplement section 463C.12 as amended by 2006 Iowa Acts, chapter 1004, section 3; and Iowa Code Supplement section 422.7 as amended by 2006 Iowa Acts, chapter 1179, section 71~~ 422.7, 463C.12 and Iowa Code Supplement section 12.87.

ITEM 5. Amend rule 701—40.47(422), introductory paragraph, as follows:

701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors. For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a partial exclusion of retirement benefits received in the tax year. For tax years beginning on or after January 1, 2001, the partial exclusion of retirement benefits received in the tax year is increased up to a maximum of \$6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of \$12,000 for a husband and wife who file a joint Iowa return. For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year was increased up to a maximum of \$5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of \$10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of \$10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of \$12,000 for tax years beginning on or after January 1, 2001. The \$10,000 or \$12,000 exclusion ~~may~~ shall be allocated to the husband and wife in the proportion that each spouse’s respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses.

REVENUE DEPARTMENT[701](cont'd)

ITEM 6. Adopt the following **new** Examples 3 and 4 to follow Examples 1 and 2 in rule **701—40.47(422)**:

EXAMPLE 3. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$20,000. The other spouse was 55 years of age and received no pension income. Since the spouse receiving the pension income was not 55 years of age, no exclusion is allowed on the Iowa return.

EXAMPLE 4. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$10,000. The other spouse was 55 years of age and received a pension income of \$8,000. Since only one spouse receiving the pension income was 55 years of age, an exclusion of \$8,000 is allowed on the Iowa return. The exclusion of \$8,000 is allowed since a married couple is allowed a combined exclusion of up to \$12,000.

ITEM 7. Adopt the following **new** rule 701—40.73(422):

701—40.73(422) Exclusion for health care benefits of nonqualified tax dependents. Effective for tax years beginning on or after January 1, 2009, a taxpayer may exclude from Iowa individual income tax the income reported from including nonqualified tax dependents on the taxpayer's health care plan, to the extent this income was reported on the federal income tax return.

40.73(1) Term of coverage. Iowa Code section 509A.13B provides that group insurance, group insurance for public employees, and individual health insurance policies or contracts permit continuation of existing coverage for an unmarried child of an insured or enrollee, if the insured or enrollee so elects. If the election is made, it will be in effect through the policy anniversary date on or after the date the child marries, ceases to be a resident of Iowa, or attains the age of 25, whichever occurs first, so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education. These children can be included on the health care coverage even though they are not claimed as a dependent on the federal and Iowa income tax returns.

40.73(2) Federal treatment. Section 105(b) of the Internal Revenue Code provides that the income reported from including dependents on the taxpayer's health care coverage is exempt from federal income tax. However, income is reported for federal income tax purposes on the value of the health care coverage of children who are not claimed as dependents on the taxpayer's federal and Iowa income tax returns. The amount of income included on the federal income tax return is allowed to be excluded on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 389.

ITEM 8. Adopt the following **new** rule 701—40.74(422):

701—40.74(422) Exclusion for AmeriCorps Segal Education Award. Effective for tax years beginning on or after January 1, 2010, a taxpayer may exclude from Iowa individual income tax any amount of AmeriCorps Segal Education Award to the extent the education award was reported as income on the federal income tax return. The AmeriCorps Segal Education Award is available to individuals who complete a year of service in the AmeriCorps program. The education award can be used to pay education costs at institutions of higher learning, for educational training, or to repay qualified student loans.

This rule is intended to implement Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 482.

ITEM 9. Adopt the following **new** subrule 43.8(5):

43.8(5) Repeal of the livestock production credit refund. The livestock production credit was repealed on November 1, 2008, for refund claims filed on or after that date. Any livestock production credit refunds requested on Iowa tax returns filed on or after November 1, 2008, will not be issued.

ITEM 10. Amend rule **701—43.8(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 422.120, 422.121, and 422.122 as amended by 2009 Iowa Acts, Senate File 478, section 152.

REVENUE DEPARTMENT[701](cont'd)

ITEM 11. Amend subrule 46.9(2) as follows:

46.9(2) *Alternative credit for housing assistance programs.* As an alternative to the credit described in subrule 46.9(1) for eligible businesses in an enterprise zone, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs. A credit equal to 1.5 percent of the wages paid to employees participating in a housing assistance program may be claimed on the Iowa withholding tax return for wages paid prior to July 1, 2009. Effective July 1, 2009, the alternative credit for housing assistance programs was repealed. The administrative rules for the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapter 59.

ITEM 12. Amend rule **701—46.9(15)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 15E.196 as amended by 2009 Iowa Acts, Senate File 478, section 104, and Supplement section 15E.197.

ITEM 13. Amend rule 701—50.7(422) as follows:

701—50.7(422) Credit for taxes paid to another state. If a taxpayer elects to take advantage of the apportionment provisions for a resident shareholder of an S corporation, then the taxpayer may not take a credit against Iowa income tax for income taxes or taxes measured by income paid to another state or foreign country on the S corporation income. A taxpayer may claim a credit against Iowa income tax for income taxes or taxes measured by income paid to another state or foreign country on income other than S corporation income that may be earned in the tax year.

This rule is intended to implement Iowa Code section 422.8.

ITEM 14. Amend paragraph **52.10(5)“b”** as follows:

b. How to claim the credit. The third-party developer must provide to the Iowa department of economic development the amount of Iowa sales and use tax paid as described in paragraph “a.” Beginning on July 1, 2009, this information must be provided to the Iowa department of revenue. The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The Iowa department of economic development will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the Iowa department of economic development will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center. Beginning on July 1, 2009, the Iowa department of revenue shall issue these tax credit certificates.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be attached to the taxpayer’s income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer’s tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, enterprise zone program and new capital investment program cannot exceed \$500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

REVENUE DEPARTMENT[701](cont'd)

ITEM 15. Amend rule **701—52.10(15)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections~~ section 15.331C as amended by 2009 Iowa Acts, Senate File 142, and sections 15.333 and 15.335.

ITEM 16. Adopt the following **new** subrule 52.27(4):

52.27(4) *Small wind innovation zones.* Effective for tax years beginning on or after January 1, 2009, an owner of a small wind energy system operating within a small wind innovation zone which has been approved by the Iowa utilities board is eligible for the renewable energy tax credit. The administrative rules of the Iowa utilities board for the certification of eligibility for owners of small wind energy systems operating within a small wind innovation zone may be found in rule 199—15.22(476).

ITEM 17. Amend rule **701—52.27(422,476C)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.33 and chapter 476C as amended by 2009 Iowa Acts, Senate File 456 and House File 810.

ITEM 18. Adopt the following **new** rule 701—52.42(16,422):

701—52.42(16,422) Disaster recovery housing project tax credit. For tax years beginning on or after January 1, 2011, a disaster recovery housing project tax credit is available for corporation income tax. The credit is equal to 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project, and is administered by the Iowa finance authority. Qualifying investments are costs incurred on or after May 12, 2009, and prior to July 1, 2010, related to a disaster recovery housing project. Eligible properties must have applied for and received an allocation of federal low-income housing tax credits under Section 42 of the Internal Revenue Code to be eligible for the tax credit. The administrative rules of the Iowa finance authority for the disaster recovery housing project tax credit may be found at 265—Chapter 34.

52.42(1) *Issuance of tax credit certificates.* Upon completion of the project and verification of the amount of investment made in the disaster recovery housing project, the Iowa finance authority will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address, tax identification number, amount of credit, and the tax year for which the credit may be claimed. The tax credit certificates will be issued on a first-come, first-served basis. The tax credit cannot be transferred to any other person or entity.

52.42(2) *Limitation of tax credits.* The tax credit shall not exceed 75 percent of the taxpayer's qualifying business in a disaster recovery housing project. The maximum amount of tax credits issued by the Iowa finance authority shall not exceed \$3 million in each of the five consecutive years beginning in the 2011 calendar year. A tax credit certificate shall be issued by the Iowa finance authority for each year that the credit can be claimed.

52.42(3) *Claiming the tax credit.* The amount of the tax credit earned by the taxpayer will be divided by five and an amount equal thereto will be claimed on the Iowa corporation income tax return commencing with the tax year beginning on or after January 1, 2011. A taxpayer is not entitled to a refund of the excess tax for any tax credit in excess of the tax liability, and also is not entitled to carry forward any excess credit to a subsequent tax year.

If the taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The increase in the basis of the property that would otherwise result from the disaster recovery housing investment shall be reduced by the amount of the tax credit allowed.

EXAMPLE: A corporation whose tax year ends on December 31 incurs \$100,000 of costs related to an eligible disaster recovery housing project. The taxpayer receives a tax credit of \$75,000, and \$15,000 of credit can be claimed on each Iowa corporation income tax return for the periods ending December 31, 2011, through December 31, 2015. If the tax liability for the corporation for the period ending December 31, 2011, is \$10,000, the credit is limited to \$10,000, and the remaining \$5,000 credit cannot be used.

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If the tax liability for the corporation for the period ending December 31, 2012, is \$25,000, the credit is limited to \$15,000, and the remaining \$5,000 credit from 2011 cannot be used to reduce the tax for 2012.

52.42(4) Potential recapture of tax credits. If the taxpayer fails to comply with the eligibility requirements of the project or violates local zoning and construction ordinances, the Iowa finance authority can void the tax credit and the department of revenue shall seek recovery of the value of any tax credit claimed on a corporation income tax return.

This rule is intended to implement Iowa Code Supplement sections 16.191 and 16.192 and Iowa Code section 422.33 as amended by 2009 Iowa Acts, Senate File 457.

ARC 8480B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code chapter 17A and sections 421.14, 422.68 and 423.42, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 230, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code.

The proposed amendments add two new rules to Chapter 230 which are intended to implement 2009 Iowa Acts, Senate File 478, Division XV, “Data Centers.” The proposed rules outline the qualifications data center businesses must meet in order to obtain either a sales tax exemption or a sales tax refund.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

The Department has determined that the proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than February 13, 2010, to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 2, 2010. Such written comments should be directed to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by February 12, 2010.

These amendments are intended to implement 2009 Iowa Acts, Senate File 478, Division XV.

The following amendments are proposed.

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Adopt the following **new** rule 701—230.12(423):

701—230.12(423) Large data center business exemption. Effective on or after July 1, 2009, a data center business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the data center business.

230.12(1) Definitions. For the purpose of this rule, the following definitions apply:

“*Data center*” means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge.

“*Data center business*” means an entity whose business, among other businesses, is to operate a data center.

230.12(2) Criteria to claim exemption. The following govern whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a data center business:

a. Requirements. All of the following requirements must be met by a data center business for the purpose of this exemption:

(1) The business, among other businesses, of the purchaser or lessee shall be as a provider of a data center.

(2) The data center business shall have a physical location in Iowa that is, in the aggregate, at least 5,000 square feet in size used for the operation and maintenance of the data center.

1. A data center facility includes, but is not limited to, the centralization, storage, management and dissemination of data and information.

2. The physical location shall include the mechanical and electrical systems, redundant or backup power supplies, redundant data communications connections, environmental controls, and fire suppression systems for the data center business. The data center business’s physical location may also include a restricted access area employing advanced physical security measures such as video surveillance systems and card-based security or biometric security access systems.

(3) The data center business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the data center business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The data center business shall comply with the applicable sustainable design and construction standards in Iowa Administrative Code 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

b. Failure to meet investment qualifications. If a data center business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the data center business, the data center business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the data center business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

230.12(3) Exempt purchases. Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying data center business:

a. Computers and equipment that are necessary for the maintenance and operation of the data center business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the data center business;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “*b*”;

REVENUE DEPARTMENT[701](cont'd)

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the data center business;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the data center business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations and backup power generation systems, battery systems, and related infrastructure;

f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the data center business that is used in the backup power generation system and in all items listed in paragraphs “*a*” to “*f*.” This includes the fuel used in the backup generators that may be located outside the building and that are used if power is interrupted to ensure the data center business continues operation; and

h. Electricity purchased for use in operating the data center business.

230.12(4) *Limitation of exemption.* The purchase or lease of the items listed in subrule 230.12(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example:

a. The purchase of electricity for use in the office portion of the data center business facility would not be exempt.

b. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not exempt from Iowa sales or use tax.

230.12(5) *Initial date of exemption.* The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying data center business.

This rule is intended to implement Iowa Code section 423.3 as amended by 2009 Iowa Acts, Senate File 478, sections 197 through 202.

ITEM 2. Adopt the following **new** rule 701—230.13(423):

701—230.13(423) Data center business sales and use tax refunds. Effective on or after July 1, 2009, data center businesses in Iowa meeting certain criteria may make an annual application to the department for a refund of 50 percent of the sales or use tax paid on the sales price of certain computers, equipment, fuel, and electricity used in the operation of the data center business.

230.13(1) *Definitions.* For the purpose of this rule, the following definitions apply:

“*Data center*” means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge.

“*Data center business*” means an entity whose business, among other businesses, is to operate a data center.

“*Refund year*” means the year beginning with the date of initial site preparation of the data center facility.

“*Rehabilitation*” means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values. “Rehabilitation” includes, but is not limited to, upgrading mechanical systems, plumbing, wiring, windows, and heating and cooling systems. Although they may be a part of an overall rehabilitation project, singular actions such as the installation of a new information system or cosmetic changes to the interior or exterior appearance of a building do not, in and of themselves, constitute rehabilitation.

REVENUE DEPARTMENT[701](cont'd)

230.13(2) Basis and criteria for refunds. The amount, type, and length of refunds available to data center businesses depend upon the dollar amount of investment made, the type of construction undertaken, and the size in square feet of the facility.

a. Investment of \$136 million to \$200 million. Data center businesses which make investments in an Iowa facility of \$136 million to \$200 million in the first six years of operations and which facility contains at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first seven years of operation.

b. Investment of \$10 million to \$136 million—new construction. Data center businesses which make investments of \$10 million to \$136 million in the first six years of operations in the new construction of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

c. Investment of \$10 million to \$136 million—rehabilitation. Data center businesses which make investments of \$10 million to \$136 million in the first six years of operations in the rehabilitation of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

d. Investment of \$1 million to \$10 million—new construction. Data center businesses which make investments of \$1 million to \$10 million in the first three years of operations in the new construction of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

e. Investment of \$1 million to \$5 million—rehabilitation. Data center businesses which make investments of \$1 million to \$10 million in the first three years of operations in the rehabilitation of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

230.13(3) Purchases eligible for refunds. Sales and leases of the following are eligible for a refund of 50 percent of the sales and use tax paid when sold or leased to a qualifying data center business:

a. Computers and equipment that are necessary for the maintenance and operation of the data center business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the data center business;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “b”;

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the data center business;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the data center business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations; and backup power generation systems, battery systems, and related infrastructure;

f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the data center business that is used in the backup power generation system and in all items listed in paragraphs “a” to “f.” This includes the fuel used in the backup generators that may be located outside the building and that are used if power is interrupted to ensure the data center business continues operation; and

h. Electricity purchased for use in operating the data center business.

230.13(4) Sustainable design standards. In order to claim the refunds detailed in subrule 230.13(3), paragraphs “a” through “g,” data center businesses must comply with the sustainable design and construction standards as required by Iowa Administrative Code 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

230.13(5) Failure to meet investment qualifications. If a data center business claiming a refund of sales and use tax under this rule fails to meet at least 80 percent of the minimum investment amount

REVENUE DEPARTMENT[701](cont'd)

required within the first six years of operation beginning with the initiation of the site preparation activities by the data center business, the data center business will lose the right to claim the refund of sales and use tax. Immediately following the loss of the right to claim the refund of sales and use tax, the data center business is required to return the refund of sales and use tax paid on qualifying computers, equipment, fuel, and electricity, plus any and all applicable statutory penalty and interest due on the tax.

230.13(6) Limitation of refunds.

a. Use in operation or maintenance. The purchase or lease of the items listed in subrule 230.13(3) is only eligible for a refund of sales or use tax if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be eligible for a refund of sales or use tax if the item is to be used in the business for another purpose. For example:

(1) The purchase of electricity for use in the office portion of the data center business facility would not be eligible for a refund.

(2) The purchase of building materials that become real property would not be eligible for a refund. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be eligible for a refund of tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not eligible for a refund of Iowa sales or use tax.

b. State sales tax only. Refunds issued under this rule may not exceed 5 percent of the sales price of computers and equipment listed in subrule 230.13(3) and the fuel used to create heat, power and steam for processing or generating electrical current or from the sales price of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility. The refund will not include any local option sales and services taxes.

c. Qualifying dates for fuel and electricity refund. To qualify for the 50 percent refund, the following must be on or after the first day of the first month through the last day of the last month of the refund year:

(1) The dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity;

(2) The dates of the sale or furnishing of fuel for purposes of commercial energy; and

(3) The delivery of the fuel used for purposes of commercial energy.

230.13(7) Form and filing requirements.

a. Form. The owner of a data center business seeking a refund of sales or use tax imposed upon the sale or lease of any qualifying computers, equipment, fuel, and electricity must complete and file with the department Form IA 843, Claim for Refund. All of the information on the Claim for Refund must be completed.

b. Due date. The refund request form must be filed with the department no later than one year after the purchase of the qualifying computers, equipment, fuel, or electricity and within three months after the end of the refund year. The refund for sales and use tax begins with purchases made on and after July 1, 2009, or on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying data center business.

c. Date required. The refund request must include detailed schedules of the items being claimed including dates of purchase of tangible personal property, amount of purchase, and tax paid. The purchase of fuel and electricity must be computed and documented separately from other purchases.

d. Affidavit. In addition to completing and filing Form IA 843, Claim for Refund, the owner of a data center business seeking a refund as specified in this rule must also complete and file with the department an affidavit certifying that qualifications for the refund have been met. The affidavit must be filed prior to any refund request and must be approved by the department before a refund claim can be filed. The following format must be used for the affidavit:

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Iowa Department of Revenue
Sales Tax Refund Affidavit

NAME OF AFFIANT	}	AFFIDAVIT FOR
ADDRESS OF AFFIANT		DATA CENTER BUSINESS

The undersigned duly swears that the named data center business complies with criteria to be entitled to refund of sales tax as required in Iowa Code section 423.4 as follows:

1. The facility is a data center business as defined by Iowa Code section 423.4(8) or 423.4(9);
2. The data center business facility will be a minimum of 5,000 square feet, as applicable, located upon Iowa land; and located at _____; with total square footage of _____;
3. The data center business will make an investment of (check only one):
 - \$136 million to \$200 million within the first six years of operation (refund available for first seven years).
 - \$10 million to \$136 million for new construction within the first six years of operation (refund available for first ten years).
 - \$5 million to \$136 million for rehabilitation of an existing facility within the first six years of operation (refund available for first ten years).
 - \$1 million to \$10 million for new construction within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
 - \$1 million to \$5 million for rehabilitation of an existing facility within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
4. The data center business facility will be constructed in accordance with the sustainable design and construction standards as required by Iowa Administrative Code 661—Chapter 310 and established by the building code commissioner pursuant to Iowa Code section 103A.8B;
5. Construction of the data center business facility was commenced on or after July 1, 2009; and the date of the initial site preparation or building rehabilitation was _____; and
6. Purchases of qualifying computers, equipment, fuel or electricity were made on or after July 1, 2009.

The undersigned duly swears that he or she is the owner of the qualifying data center business or that the undersigned is the authorized representative of the qualifying data center business and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the qualifying data center business has met all of the requirements as contained herein.

_____	_____
Name of Affiant	Date

Position of Affiant	

This rule is intended to implement Iowa Code section 423.4 as amended by 2009 Iowa Acts, Senate File 478, sections 198 through 202.

USURY

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

USURY(cont'd)

January 1, 2009 — January 31, 2009	5.50%
February 1, 2009 — February 28, 2009	4.50%
March 1, 2009 — March 31, 2009	4.50%
April 1, 2009 — April 30, 2009	5.00%
May 1, 2009 — May 31, 2009	4.75%
June 1, 2009 — June 30, 2009	5.00%
July 1, 2009 — July 31, 2009	5.25%
August 1, 2009 — August 31, 2009	5.75%
September 1, 2009 — September 30, 2009	5.50%
October 1, 2009 — October 31, 2009	5.50%
November 1, 2009 — November 30, 2009	5.50%
December 1, 2009 — December 31, 2009	5.50%
January 1, 2010 — January 31, 2010	5.50%

ARC 8485B**VOTER REGISTRATION COMMISSION[821]****Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” the Voter Registration Commission hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 7884B** on July 1, 2009.

The proposed amendments to Chapters 1, 2, 3, 5, 6, 9, 10 and 11 were also Adopted and Filed Emergency and published as **ARC 7883B**. The period for comments passed without the Commission’s receiving any comments requiring changes to the rules as they appeared in the Iowa Administrative Bulletin on July 1, 2009. The Voter Registration Commission finds no further need to proceed with rule making for **ARC 7884B**.

ARC 8483B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

These amendments require the filing of executive branch lobbyist registrations, executive branch lobbyist reports, and executive branch lobbyist client reports to be filed electronically via the Board's electronic filing system.

Pursuant to Iowa Code section 17A.4(3), the Board finds that notice and public participation prior to the adoption of these amendments is impracticable, as it is desirable to have the Board's rules reflect the policy recently implemented by the General Assembly that legislative branch lobbyist registrations, reports, and client reports are to be filed electronically with the legislative branch. The next executive branch report deadline is January 31, 2010.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Board further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective January 25, 2010. These amendments confer a benefit upon the public and regulated community by ensuring that the two branches regulate the report filings by lobbyists and clients in a uniform manner.

These amendments are intended to implement Iowa Code sections 68B.36, 68B.37, and 68B.38.

These amendments will become effective on January 25, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 8.7(2) as follows:

8.7(2) Place of filing. Executive branch lobbyist registration statements shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Registration statements may also be filed by fax at (515)281-3701 or electronically through the board's Web site at www.iowa.gov/ethics.

ITEM 2. Amend subrule 8.8(2) as follows:

8.8(2) Place of filing. Executive branch periodic lobbyist reports shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Reports may also be filed by fax at (515)281-3701 or electronically through the board's Web site at www.iowa.gov/ethics.

ITEM 3. Amend subrule 8.8(3) as follows:

8.8(3) Time of filing. An executive branch periodic lobbyist report shall be filed on or before April 30, July 31, October 31, and January 31, for the preceding calendar quarter or parts thereof during which the lobbyist was engaged in executive branch lobbying. The report must be physically electronically received by the board on or before the report due date. ~~If mailed, the report must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed reports must be submitted on or before 11:59 p.m. on the due date.~~ If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.

ITEM 4. Amend subrule 8.9(2) as follows:

8.9(2) Place of filing. Executive branch lobbyist client reports shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Reports may also be filed by fax at (515)281-3701 or electronically through the board's Web site at www.iowa.gov/ethics.

ITEM 5. Amend subrule 8.9(3) as follows:

8.9(3) Time of filing. An executive branch lobbyist client report shall be filed on or before July 31. The report must be physically electronically received by the board on or before the report due date. ~~If mailed, the report must bear a United States Postal Service postmark dated on or before the report due~~

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

~~date. Faxed or electronically filed reports must be submitted on or before 11:59 p.m. on the due date. If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.~~

[Filed Emergency 12/22/09, effective 1/25/10]

[Published 1/13/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8445B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 33, the Department of Human Services amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments:

- Implement a Medicaid nursing facility "pay for performance" program in place of the nursing facility accountability measures.
- Make technical changes to reflect the current organizational structure and processes of the Iowa Medicaid Enterprise, including the elimination of the reconsideration of a level-of-care determination before the determination can be appealed.

In accordance with legislative direction in 2008 Iowa Acts, chapter 1187, section 33, the Department convened a workgroup to develop recommendations to redesign the nursing facility accountability measures program. The legislation required the workgroup to submit its recommendations for the redesign. As a result of the workgroup recommendations, 2009 Iowa Acts, House File 811, section 33, directs the Department to implement changes to the accountability measures program and the nursing facility reimbursement methodology effective July 1, 2009.

New benchmarks have been developed in four domains: quality of life, quality of care, access, and efficiency. Possible scores in each domain are: quality of life, 25 points; quality of care, 59 points; access, 8 points; and efficiency, 8 points, for a potential total of 100 points. A facility must receive at least 51 points to qualify for any additional reimbursement. Add-on payments are graduated depending on the facility's performance score as follows:

- A score of 51-60 points qualifies for an add-on of 1 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 61-70 points qualifies for an add-on of 2 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 71-80 points qualifies for an add-on of 3 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 81-90 points qualifies for an add-on of 4 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 91-100 points qualifies for an add-on of 5 percent of the direct care plus nondirect care cost component patient-day-weighted medians.

A facility will forfeit all eligibility for pay-for-performance payments if during the payment period the nursing facility is cited for a deficiency rated at a severity level of H or higher by the Department of Inspections and Appeals. A facility's payment add-on shall be reduced by 25 percent for each citation received during the year for a deficiency rated at a severity level of G and shall be eliminated if the facility fails to cure the deficiency within the time allowed by the Department of Inspections and Appeals. No add-on shall be paid for any month when the Centers for Medicare and Medicaid Services has suspended the facility's admissions.

Facilities shall be required to post their results on the performance measures and the amount of add-on payments they receive. Facilities are required to use these payments to support direct care staff through

HUMAN SERVICES DEPARTMENT[441](cont'd)

increased wages, enhanced benefits, and expanded training opportunities and to publish an accounting of how they used the funds.

These amendments do not provide for waivers in specified situations because the Department holds that all nursing facilities should be subject to the same pay-for-performance measures and scoring to determine add-on payments as a matter of fairness.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 21, 2009, as **ARC 8246B**. The Department received comments on the Notice of Intended Action from five persons.

In response to these comments, the Department has made the following changes to subparagraph 81.6(16)“g”(5) as published under Notice of Intended Action:

- Revised the standard “Consistent Staffing” to read as follows: “The facility has all direct care staff members caring for the same residents at least 70% of their shifts.”
- Eliminated the standard “Resident Advocate Committees,” since these committees are no longer supported by the Department on Aging due to reduced appropriations.
- Changed the point value of the standard “Long-Term Care Ombudsman” as follows: “5 points if resolution 70 to 74%; 7 points if resolution 75% or greater” to make up the points eliminated with resident advocate committees.

The Council on Human Services adopted these amendments on December 9, 2009.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2009 Iowa Acts, House File 811, section 33(4)“f.”

These amendments are intended to implement Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 33.

These amendments became effective on December 11, 2009.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 81] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 8246B**, IAB 10/21/09.

[Filed Emergency After Notice 12/11/09, effective 12/11/09]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8447B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 150, “Purchase of Service,” Iowa Administrative Code.

This amendment:

- Implements a decrease in the reimbursement rate for supervised apartment living services provided from January 1, 2010, to June 30, 2010. During this period, the maximum reimbursement shall be the rates in effect on December 1, 2009, reduced by 5 percent. This reduction is necessary to achieve the savings required by Executive Order Number 19, which mandated a 10 percent across-the-board cut in expenditures.
- Clarifies that rates will not be adjusted if a provider adds a new service. The initial reimbursement rate for any new service shall be based upon actual and allowable costs.

This amendment does not provide for waivers in specified situations. Needed savings will not be realized if waivers are granted. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on December 9, 2009.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department finds that notice and public participation are impracticable and contrary to the public interest. The Department is statutorily and constitutionally required to reduce spending obligations to the level of constitutionally authorized appropriations. Deeper cuts would be required if the Department were to delay taking action to allow for notice and public participation. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2) and (3), that avoidance of deficit spending confers a public benefit and that the immediate efficacy of this amendment is necessary because of the presently existing constitutional peril to the public welfare caused by spending obligations which exceed available revenues. Therefore, the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 8448B** to allow for public comment.

This amendment is intended to implement Iowa Code section 234.6 and Executive Order Number 19. This amendment became effective on January 1, 2010.

The following amendment is adopted.

Amend subparagraphs **150.3(5)“p”(2)** and **(3)** as follows:

(2) ~~For the fiscal year beginning July 1, 2008~~ Effective for the period from January 1, 2010, to June 30, 2010, the maximum reimbursement rates for services provided under a purchase of social service agency contract (shelter care and for supervised apartment living) shall be increased to 1 decreased by 5 percent over of the rates in effect on June 30, 2008, or increased to the provider's actual and allowable cost plus inflation, whichever is less December 1, 2009.

(3) ~~The rates may be adjusted if a new service is added after June 30, 2008.~~ The initial reimbursement rate for the any new service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.

1. to 3. No change.

[Filed Emergency 12/11/09, effective 1/1/10]

[Published 1/13/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8449B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 152, “Foster Group Care Contracting,” Iowa Administrative Code.

This amendment implements a decrease in the reimbursement rates for foster group care provided from January 1, 2010, to June 30, 2010. During this period, the maximum reimbursement shall be the rate in effect on December 31, 2009, reduced by 5 percent. This reduction is necessary to achieve the savings required by Executive Order Number 19, which mandated a 10 percent across-the-board cut in expenditures.

This amendment does not provide for waivers in specified situations. Needed savings will not be realized if waivers are granted. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on December 9, 2009.

The Department finds that notice and public participation are impracticable and contrary to the public interest. The Department is statutorily and constitutionally required to reduce spending obligations to the level of constitutionally authorized appropriations. Deeper cuts would be required if the Department were to delay taking action to allow for notice and public participation. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2) and (3), that avoidance of deficit spending confers a public benefit and that the immediate efficacy of this amendment is necessary because of the presently existing constitutional peril to the public welfare caused by spending obligations which exceed available revenues. Therefore, the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 8450B** to allow for public comment.

This amendment is intended to implement Iowa Code section 234.6 and Executive Order Number 19. This amendment became effective on January 1, 2010.

The following amendment is adopted.

Amend subparagraph **152.3(1)“h”(2)** as follows:

(2) Rates may be changed by mandated across-the-board decreases. Effective for the period from January 1, 2010, to June 30, 2010, the negotiated reimbursement rates for foster group care shall be decreased by 5 percent of rates in effect on December 31, 2009.

[Filed Emergency 12/11/09, effective 1/1/10]

[Published 1/13/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8486B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 153, “Funding for Local Services,” Iowa Administrative Code.

These amendments:

- Provide for disenrollment of members from the State Payment Program when available funds are insufficient to meet the costs of services for all of the members enrolled.
- Require the county central points of coordination for mental health, mental retardation, and developmental disability services (CPCs) to provide for evidence of receipt of an application for State Payment Program funding.
- Clarify the assignment to a waiting list for application approval and remove the exemption for persons awaiting community placement from an involuntary inpatient setting.
- Prohibit reimbursement for case management costs eligible for Medicaid reimbursement, appointments and consultations for which the member did not appear, and other specified administrative and service costs.

These amendments are necessary to reduce State Payment Program expenses due to Executive Order Number 19, which mandates a 10 percent reduction in all state appropriations. Iowa Code section 8.38 states “No state department, institution, or agency . . . shall expend funds or approve claims in excess of the appropriations made thereto, nor expend funds for any purpose other than that for which the money was appropriated.”

To implement the disenrollment provisions, each member will be assigned a payment slot number based on the member’s application date and commitment status. The lowest numbers will be assigned to members in involuntary commitment status. When the person is released from the commitment order, a new payment slot will be assigned according to the procedures for all other applicants.

When disenrollment is necessary, members will be disenrolled in reverse order of their payment slot numbers, i.e., with the highest number (most recent approval) first. The Department will give members timely and adequate notice of the funding decision. This action will be subject to appeal according to the Department’s procedures, which provide for continuation of assistance until the final appeal decision is reached, with recoupment of excess assistance if the final decision upholds the Department.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations other than the preference accorded to funding for involuntary services provided under court commitment. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission adopted these amendments on December 22, 2009.

The Department finds that notice and public participation are impracticable and contrary to the public interest because the need to reduce expenses in the State Payment Program is imminent. The Department is constitutionally and statutorily required to reduce spending obligations to the level of authorized appropriations. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2) and (3), that the normal effective date of these amendments should be waived because averting deficit spending is a public benefit and because of imminent peril to the public welfare that would be caused if appropriations are exhausted and all clients must be discharged from services.

These amendments are also published herein under Notice of Intended Action as **ARC 8438B** to allow for public comment.

These amendments are intended to implement Iowa Code section 331.440.

These amendments became effective on January 1, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 153.53(3) as follows:

153.53(3) Application submission. The CPC or the CPC's designee shall:

a. ~~submit~~ Submit the complete application as defined in subrule 153.53(2) to the division within 15 business days of the date the CPC or designee receives a completed and signed CPC application form containing a properly completed legal settlement worksheet.

b. Generate a delivery receipt for the application, whether sent to the division by E-mail, fax, or certified mail. The division may require the delivery receipt when it is alleged that an application was sent but the division has no record of receiving the application.

ITEM 2. Amend subrules 153.54(3) and 153.54(5) as follows:

153.54(3) Effective date of eligibility.

a. An applicant's eligibility for state payment program funding shall be effective from the ~~date~~ of application date as defined in subrule 153.53(4).

b. ~~A member shall remain eligible until:~~ Each member shall be assigned a payment slot number based on the member's application date and commitment status.

(1) ~~The member has not received services for 12 months; or~~ Members under a court-ordered involuntary commitment shall be considered the first priority for payment slot number assignment, in order of oldest commitment date first. The CPC shall notify the department within seven days of the date when the commitment order is released. When the commitment order is released, the member shall be reassigned a payment slot according to subparagraph 153.54(5)“b”(2).

(2) ~~The CPC in the county of residence notifies the state payment program manager that the member is no longer eligible.~~ Slot number assignment for members who are not under an involuntary commitment order shall be based on the application date. For a member who was on a commitment order which has been released, the application date is the date of the member's first commitment order or the member's original application date, whichever is earliest. If there are multiple members with the same application date, the members will be prioritized by the birth month and day (earliest birth date first). If there are multiple members with the same birth month and day, the last four digits of the members' social security numbers will be used, with the lowest number being considered first.

153.54(5) Waiting list. Funds available for the program shall first be used to continue assistance to persons currently receiving assistance from the program. The department shall start a waiting list when analysis of submitted expenditure reports indicates that the amount of funds needed to pay for the currently assigned payment slots exceeds the state payment program appropriation funds are fully encumbered.

a. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Placement on the waiting list. When a waiting list is in effect, all new applications shall be placed on the waiting list, with the ~~following exceptions:~~ exception of applicants who are subject to an involuntary commitment. Applicants who are subject to an involuntary commitment are exempted from waiting list placement for the services listed on the court order when the CPC includes a copy of relevant court orders directing services under Iowa Code chapter 229 for which payment is sought. If this documentation is not included, the application will be placed on the waiting list.

~~(1) Applicants who are subject to an involuntary commitment when the CPC includes a copy of the evaluation and placement court order documentation with the application packet to verify that the applicant has been involuntarily placed. If this documentation is not included, the application will be placed on the waiting list.~~

~~(2) Applicants awaiting community placement from an involuntary inpatient setting.~~

c. and d. No change.

ITEM 3. Amend subrule 153.55(2) as follows:

153.55(2) Excluded costs. The following costs are excluded from payment by the state payment program:

a. and b. No change.

c. Scheduled appointments or consultations for which the member did not appear.

d. Service management (county chart of accounts numbers beginning with 22-000) for members eligible for Medicaid targeted case management, unless the Iowa plan contractor decertifies the member for case management services.

e. Services described by the following county chart of accounts codes:

(1) 4x03, information and referral.

(2) 4x04, consultation.

(3) 4x11, direct administrative.

(4) 4x12, purchased administrative.

(5) 4x21-374, case management Medicaid match.

(6) 4x32-328, home/vehicle modification.

ITEM 4. Amend subparagraph **153.56(2)“a”(3)** as follows:

(3) Closing data system files on members as directed by the counties, or when the member has not had any payments processed for a ~~12-month~~ six-month period.

ITEM 5. Amend rule 441—153.57(331) as follows:

441—153.57(331) Reduction, denial, or termination of benefits. The member's state payment program benefits may be denied, terminated, or reduced according to the provisions of the approved county management plan of the member's county of residence.

153.57(1) Termination of eligibility. A member shall remain eligible until:

a. Reimbursement for episodic commitment costs has been made to the county if the member was enrolled for commitment costs only;

b. The CPC in the county of residence notifies the state CPC payment program manager that the member is no longer eligible;

c. No services have been reported for the member for six months; or

d. The member is disenrolled pursuant to subrule 153.57(2).

153.57(2) Disenrollment. If instituting a waiting list does not adequately address the funding shortfall, the department shall begin disenrollment of members.

a. Members who are enrolled and receiving services being reimbursed by the state and who are not under court-ordered involuntary commitment shall be disenrolled beginning with the highest payment slot number first.

b. The department shall notify the member and the CPC when a member is to be disenrolled. The department shall give the member at least ten days' notice of disenrollment pursuant to rule 441—7.7(17A). The department shall give a member receiving any residential service 30 days'

HUMAN SERVICES DEPARTMENT[441](cont'd)

notice of disenrollment from the program consistent with department of inspections and appeals' rule 481—57.36(135C).

c. Any member who is disenrolled shall be placed on the waiting list as provided in subrule 153.54(5).

ITEM 6. Amend subrule 153.58(1) as follows:

153.58(1) Decisions regarding denial or termination of state payment program eligibility of any applicant and decisions adversely affecting applicants or members who are not eligible, including disenrollment, may be appealed to the department pursuant to 441—Chapter 7. Continuation of assistance will be granted pursuant to rule 441—7.9(17A).

[Filed Emergency 12/23/09, effective 1/1/10]

[Published 1/13/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8451B

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 156, "Payments for Foster Care," Chapter 187, "Aftercare Services and Supports," and Chapter 201, "Subsidized Adoptions," Iowa Administrative Code.

These amendments reduce the reimbursement rate for foster family care and adoption and guardianship subsidies to achieve the savings required by Executive Order Number 19, which mandated a 10 percent across-the-board cut in state expenditures. Specifically, these amendments:

- Implement a 5 percent reduction in the basic reimbursement rate and the additional payments for special behavioral needs for foster family care provided from January 1, 2010, to June 30, 2010. Since the maximum maintenance payments for adoption and guardianship subsidies are based on the foster family care payment rates, these payments will also be reduced.
- Implement a 5 percent reduction in the clothing allowance payments for children in foster care.
- Substitute a specific reimbursement amount for the maximum maintenance payment in the supervised apartment living program and maximum stipend payment in the preparation for adult living (PAL) program. Currently, these rates are based on the foster family care payment rates, but reduction in these rates is not part of the Department's approved spending reduction plan.
- Limit payment for nonrecurring adoption expenses and, by reference, guardianship expenses. A maximum of \$500 will be reimbursed for attorney fees, court costs, and other related legal expenses.
- Suspend payment of special services payments negotiated as part of an adoption subsidy agreement between January 1, 2010, and June 30, 2010. Special services may be included in the agreement with the understanding that no payments will be made during this fiscal year. The suspension precludes the need to renegotiate the subsidy agreement if funds become available for special services in the future. Special services provisions in agreements that are already in effect on January 1, 2010, will not be affected.

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

The Council on Human Services adopted these amendments on December 9, 2009.

The Department finds that notice and public participation are impracticable and contrary to the public interest. The Department is statutorily and constitutionally required to reduce spending obligations to the level of constitutionally authorized appropriations. Deeper cuts would be required if the Department were to delay taking action to allow for notice and public participation. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), that avoidance of deficit spending confers a public benefit and that the immediate efficacy of these amendments is necessary

HUMAN SERVICES DEPARTMENT[441](cont'd)

because of the presently existing constitutional peril to the public welfare caused by spending obligations which exceed available revenues. Therefore, the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 8452B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 234.35, 234.38, 234.46, and 600.17 to 600.23 and Executive Order Number 19.

These amendments became effective January 1, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 156.6(1) as follows:

156.6(1) Basic rate. A monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule effective January 1, 2010, to June 30, 2010:

Age of child	Daily rate
0 through 5	\$16.36 <u>\$15.54</u>
6 through 11	\$17.04 <u>\$16.16</u>
12 through 15	\$18.62 <u>\$17.69</u>
16 or over	\$18.87 <u>\$17.93</u>

ITEM 2. Amend subparagraph **156.6(4)“f”(1)** as follows:

(1) Additional maintenance payments made under this paragraph shall begin no earlier than the first day of the month following the month in which Form 470-4401 is completed and shall be awarded as follows:

1. Behavioral needs rated at level 1 qualify for a payment of ~~\$5~~ \$4.75 per day.
2. Behavioral needs rated at level 2 qualify for a payment of ~~\$10~~ \$9.50 per day.
3. Behavioral needs rated at level 3 qualify for a payment of ~~\$15~~ \$14.25 per day.

ITEM 3. Amend subrule 156.8(1) as follows:

156.8(1) Clothing allowance. When, in the judgment of the worker, clothing is needed at the time the child is removed from the child's home and placed in foster care, an allowance may be authorized, not to exceed ~~\$250~~ \$237.50, to purchase clothing.

a. Once during each calendar year that the child remains in foster care, the department worker may authorize another clothing allowance, not to exceed ~~\$200~~ \$190 for family foster care and \$100 for all other levels, when:

- (1) and (2) No change.
- b. No change.

ITEM 4. Amend subrule 156.12(1) as follows:

156.12(1) Maintenance. When a youth at least aged 16 but under the age of 20 is living in a supervised apartment living situation, the maximum monthly maintenance payment for the youth shall be ~~made pursuant to the basic daily maintenance rate for a child aged 16 and over in subrule 156.6(1) \$573.90. The maximum monthly payment shall be computed by multiplying the daily rate in subrule 156.6(1) by 365 and dividing by 12.~~ This payment may be paid to the youth or another payee, other than a department employee, for the youth's care.

ITEM 5. Amend subrule 187.12(2) as follows:

187.12(2) Amount of monthly stipend. The maximum monthly stipend shall be ~~based on the foster family basic daily maintenance rate for a child aged 16 or older \$574. The maximum monthly stipend shall be calculated by multiplying the daily rate in 441—subrule 156.6(1) by 365 and dividing by 12.~~

a. and b. No change.

ITEM 6. Amend paragraph **201.6(1)“a”** as follows:

a. Reimbursement to the adoptive family or direct payment made to a provider is ~~limited to the following~~ suspended from January 1, 2010, to June 30, 2010, for any special services: negotiated in that period except for nonrecurring expenses as defined in subparagraph (7).

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) to (6) No change.

(7) Nonrecurring expenses. Payment for nonrecurring expenses is ~~generally~~ limited to a total of \$500 per child. An additional \$200 may be allowed for reasonable attorney fees, court costs and other related legal expenses. Nonrecurring expenses may be paid when the adoptive family has negotiated an Adoption Subsidy Agreement, Form 470-0747, or an Agreement to Future Adoption Subsidy, Form 470-0762.

(8) No change.

[Filed Emergency 12/11/09, effective 1/1/10]

[Published 1/13/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8455B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12, the Iowa Finance Authority hereby amends Chapter 32, “Iowa Jobs Program,” Iowa Administrative Code.

The purpose of these amendments is to implement 2009 Iowa Acts, Senate File 376, sections 5 to 12, by amending rule 265—32.8(16,83GA,SF376), relating to grant awards, and rule 265—32.9(16,83GA,SF376), relating to the administration of awards.

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

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that the normal notice and public participation process would result in unnecessary expense and delays in the Program, which is designed to provide disaster relief and economic stimulus. The Authority has also submitted a Notice of Intended Action for these amendments, which is published as **ARC 8454B** herein to allow for public comment.

The Authority finds that adoption of these amendments confers a benefit on the public in that these rules promote disaster recovery and economic stimulus and ease and speed the administration of the Program. The Authority finds that these amendments should be implemented as soon as feasible in order to facilitate the awarding of grants under the Program and to avoid unnecessary expense and delays. Furthermore, 2009 Iowa Acts, Senate File 376, section 12, specifically provides for emergency rule making. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(1) and (2), and the normal effective date of these amendments is waived.

The Authority adopted these amendments on December 9, 2009.

These amendments became effective December 14, 2009.

These amendments are intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

The following amendments are adopted.

ITEM 1. Amend rule 265—32.8(16,83GA,SF376) as follows:

265—32.8(16,83GA,SF376) Grant awards. The Iowa jobs board may fund a component of a proposed project if the entire project does not qualify for funding. The board shall review awards made to ensure geographic diversity. In order to promote geographic diversity, the board may defer grant decisions on applications from areas which have received previous grant awards to allow applications from other parts of the state to be considered. In the event that a competitive grant recipient, prior to execution of an Iowa jobs grant agreement, is awarded a federal grant for its project, in whole or in part, which federal grant, or the possibility thereof, was not disclosed as part of the recipient's application, the board may withdraw all or part of the Iowa jobs program grant.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 2. Amend rule 265—32.9(16,83GA,SF376) as follows:

265—32.9(16,83GA,SF376) Administration of awards.

32.9(1) A grant agreement shall be executed between successful applicants (under both the competitive and noncompetitive grant programs) and the Iowa jobs board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

32.9(2) Grant agreement.

a. Following the board's determination that a competitive grant application should be approved, authority staff shall propose a draft grant agreement to the recipient. Within 30 days of either transmission of the proposed grant agreement to the recipient or transmission of notice of how the proposed grant agreement may be accessed by the recipient via the Internet, the recipient shall notify the authority as to whether the recipient will execute the proposed agreement or whether the recipient would prefer to negotiate a different agreement. If the recipient elects to execute the proposed agreement, or if the recipient fails to make a timely election, the authority shall prepare and transmit to the recipient on behalf of the board a final contract for execution.

b. If the recipient elects to negotiate a different agreement, the recipient shall, at the time it makes such election, notify the authority of the requested changes to the proposed grant agreement. The authority shall consider the requested changes and may make such revisions to the proposed agreement as the authority determines to be prudent and in the best interests of the Iowa jobs program and the state of Iowa under the circumstances.

c. Once the authority and the recipient have reached an agreement, the authority shall prepare and transmit to the recipient on behalf of the board a final contract, subject to approval by the board.

d. If the authority and the recipient are unable to reach an agreement, the authority shall, with the board's approval, draft and transmit to the recipient on behalf of the board a final contract consisting of the Iowa jobs board's best and final offer.

32.9(2) 32.9(3) The recipient must execute and return the contract to the Iowa jobs board within 45 days of transmittal of the final contract from the Iowa jobs board. Failure to do so may be cause for the Iowa jobs board to terminate the award.

32.9(3) 32.9(4) Certain projects may require that permits or clearances be obtained from other state, local, or federal agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

32.9(4) 32.9(5) Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

32.9(5) 32.9(6) Any substantive change to a contract shall be considered an amendment. Substantive changes include time extensions, budget revisions, and significant alterations that change the scope, location, objectives or scale of an approved project. Amendments must be requested in writing by the recipient and are not considered effective until approved by the Iowa jobs board and confirmed in writing by IFA staff following the procedure specified in the contract between the recipient and the Iowa jobs board.

[Filed Emergency 12/14/09, effective 12/14/09]

[Published 1/13/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8441B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner hereby amends Chapter 310, "Sustainable Design Standards," Iowa Administrative Code.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Iowa Code section 103A.8B authorizes the Building Code Commissioner to adopt sustainable design standards for construction projects. These standards apply when triggered by another provision of law. During its 2009 session, the Iowa General Assembly authorized tax refunds to owners of certain data centers. One requirement to receive this tax refund is that the construction of the building or portion of the building which hosts the data center meets sustainable design standards established by the Building Code Commissioner. The energy usage requirements of data centers may bar these projects from meeting the general requirements established for approval of commercial construction projects. The amendments adopted herein provide alternative requirements for construction projects involving buildings or portions of buildings which will house data centers to be approved as sustainably designed.

Pursuant to Iowa Code section 17A.4(3), the Building Code Commissioner finds that notice and public participation are unnecessary because current sustainable design standards for commercial construction projects may be unattainable for data centers, and the addition of sustainable design standards specific to data centers adopted herein makes the rule less restrictive.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Building Code Commissioner further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective January 1, 2010. It is desirable that a specific sustainable design standard for data center projects be available as soon as possible. The development of such construction projects may be facilitated by the availability of these standards; the potential jobs and other economic activity which may result from such projects confers a significant benefit on the public.

These amendments are also proposed in a Notice of Intended Action and published herein as **ARC 8442B**. The Notice will provide an opportunity for public comment on the amendments, as well as for the Building Code Commissioner to consider possible refinement to them.

These amendments are intended to implement Iowa Code section 103A.8B.

These amendments became effective January 1, 2010.

The following amendments are adopted.

ITEM 1. Renumber subrule **310.5(4)** as **310.5(5)**.

ITEM 2. Adopt the following **new** subrule 310.5(4):

310.5(4) If a project involves the construction of a building or a portion of a building intended to host a data center or operations of a web portal business, it shall be approved as sustainably designed if the project receives certification from the United States Green Building Council in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, version 3.0, and complies with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, GA 30329.

EXCEPTION: If a good-faith effort has been made to obtain certification in the LEED Green Building Rating System, version 3.0, and certification has not been obtained, application may nonetheless be made to the building code commissioner for approval as a sustainably designed project. The commissioner may approve the project as sustainably designed provided that:

1. The project is in full compliance with ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, GA 30329, and

2. Demonstration is made to the satisfaction of the building code commissioner that a good-faith effort to achieve certification was made and that the project demonstrates an emphasis on energy conservation.

[Filed Emergency 12/11/09, effective 1/1/10]

[Published 1/13/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8476B**ATTORNEY GENERAL[61]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 809A.25, the Attorney General hereby amends Chapter 33, "Forfeited Property," Iowa Administrative Code.

Forfeited property may be used by the Attorney General (the Department of Justice or "the Department") in the enforcement of the criminal law. The Department may give forfeited property to any other law enforcement agency within the state if, in the opinion of the Attorney General and pursuant to Iowa Code section 809A.17, it will enhance law enforcement within the state.

These amendments increase the amount of forfeited funds retained by the Department from 10 percent to 20 percent and decrease the amount of forfeited funds given to local law enforcement agencies from 90 percent to 80 percent. The amendments also increase the fee charged by the Department for transfer of title of forfeited vehicles from \$100 to \$200. In addition, the amendments set at 20 percent the amount of proceeds from the sale of forfeited real estate retained by the Department.

The increased revenue to the Department will help the Department to execute its duty to enforce criminal law in the state of Iowa through its Criminal Appeals Division, its Area Prosecutions Division, and its Prosecuting Attorneys Training Coordinator.

The amendments also impose a requirement on law enforcement agencies to notify the Department whenever they seize property for forfeiture. A copy of the itemization provided to the county attorney in order for the county attorney to commence forfeiture proceedings is sufficient for this purpose. This change is intended to facilitate effective oversight of forfeiture proceedings throughout the state and to enable the Department to monitor the handling of these public funds.

The rules are not subject to waiver. The reporting requirement is not onerous; seeking a waiver would require more effort on the part of the local agency than complying with the rule. As to the amount remitted to the local agency, the 80 percent proposed by this rule making puts the state of Iowa in line with the United States Department of Justice's practice of returning 80 percent of federal forfeiture proceeds to local seizing law enforcement agencies.

A public hearing was held on December 8, 2009. Representatives of local law enforcement agencies stated that a successful forfeiture requires a large investment in both time and money, and reducing the amount returned to the local jurisdiction would result in fewer forfeitures. The local law enforcement representatives asserted that these amendments shift the budget shortfall to local government. While the funds in question are important to the enhancement of local law enforcement efforts, they are equally crucial to the ongoing operation of the Department's criminal law enforcement responsibilities. The reduced gift to local agencies of 80 percent remains generous and places the state of Iowa's policy at the same level as the federal policy. The federal forfeiture program, at 80 percent, provides significant incentive for forfeitures by both state and local law enforcement agencies throughout the nation, including agencies within the state of Iowa.

These amendments are identical to those published under Notice of Intended Action in the Iowa Administrative Bulletin on November 4, 2009, as **ARC 8257B**.

These amendments are intended to implement Iowa Code chapter 809A.

These amendments will become effective February 17, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [33.3 to 33.5] is being omitted. These amendments are identical to those published under Notice as **ARC 8257B**, IAB 11/4/09.

[Filed 12/22/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8474B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 47, "Endow Iowa Tax Credits," Iowa Administrative Code.

These amendments reflect the provisions of 2009 Iowa Acts, Senate File 478, by changing the amount of the Endow Iowa Tax Credit from 20 percent to 25 percent of a qualifying donation and by stipulating that any donation that receives such an Endow Iowa Tax Credit shall not be deductible in determining taxable income for state income tax purposes. The legislation also increased the base appropriation for the Endow Iowa Tax Credit program from \$2 million to \$3 million annually, which is reflected in these final amendments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8228B**. A public hearing was held on November 10, 2009, to receive comments about the proposed amendments. No comments were received at the public hearing or in writing. These amendments are identical to those published under Notice.

The Iowa Economic Development Board adopted these amendments on December 17, 2009.

These amendments will become effective on February 17, 2010.

These amendments are intended to implement Iowa Code sections 15E.301 to 15E.306 as amended by 2009 Iowa Acts, Senate File 478.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 47] is being omitted. These amendments are identical to those published under Notice as **ARC 8228B**, IAB 10/7/09.

[Filed 12/18/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8473B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of 2009 Iowa Acts, Senate File 376, section 13(5)"b," the Iowa Department of Economic Development hereby adopts new Chapter 410, "Board Structure and Procedures," Chapter 411, "Iowa Broadband Deployment Program," and Chapter 412, "Fair Information Practices, Waiver and Variance, and Petition for Rule Making," Iowa Administrative Code.

Notice of Intended Action for these rules was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8219B**. These rules were simultaneously Adopted and Filed Emergency as **ARC 8218B**.

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5). The rules establish the structure and procedures for new Part XIII, the Iowa Broadband Deployment Governance Board (BDGB), specify board duties, and establish eligibility requirements and application and evaluation procedures for the Iowa Broadband Deployment Program.

A public hearing was held on October 27, 2009, to receive comments about the proposed rules. No written or oral comments were received. These rules are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

On December 4, 2009, the Iowa Broadband Deployment Governance Board approved and recommended to the Iowa Economic Development Board the adoption of these rules.

On December 17, 2009, the Iowa Economic Development Board approved these rules.

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

These rules will become effective on February 17, 2010, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

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 410 to 412] is being omitted. These rules are identical to those published under Notice as **ARC 8219B** and Adopted and Filed Emergency as **ARC 8218B**, IAB 10/7/09.

[Filed 12/18/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8466B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 19, 2008, as **ARC 7368B**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8038B** on August 12, 2009. The Administrative Rules Review Committee requested a formal regulatory analysis on September 9, 2009, specific to **ARC 8038B**, to estimate the impact Outstanding Iowa Waters (OIW) protections would have on the growth and economies of neighboring rural communities.

Thirteen public hearings were held overall with notice of the hearings sent to various individuals, organizations, associations and interest groups and to statewide news network organizations. Comments were received from approximately 930 persons and organizations. A responsiveness summary addressing the comments may be obtained from the Department of Natural Resources.

The adopted amendments have been modified from those published in the Notices. Prior to presenting the amendments to the Environmental Protection Commission for approval, the Department made specific changes to the "Iowa Antidegradation Implementation Procedure" document. The modifications were made after all comments from the public comment process were considered.

Several nonsubstantive corrections, such as formatting, sentence restructuring, and deletion of redundant sections, were made to the final version of the "Iowa Antidegradation Implementation Procedure" to make it easier to understand, provide consistency, and clarify the original intent of certain aspects of the rule. The major substantive changes made to the Notice and the "Iowa Antidegradation Implementation Procedure" prior to presentation to the Commission are as follows:

1. Revised the Tier 2 language in Section 1.2 of the "Iowa Antidegradation Implementation Procedure" to clarify where Tier 2 protection applies.
2. Revised Tier 2½ language in Section 1.2 of the "Iowa Antidegradation Implementation Procedure" to reflect the three scenarios where degradation of an Outstanding Iowa Water may occur.
3. Revised the nomination and review criteria for Outstanding Iowa Waters and Outstanding National Resource Waters in Section 1.3 of the "Iowa Antidegradation Implementation Procedure" to provide additional clarity and detail to the Department's expectations of the nomination process and criteria that need to be met for successful nomination of a water as an Outstanding Iowa Water or Outstanding National Resource Water.
4. Deleted the combined sewer overflow language in Section 2.2 of the "Iowa Antidegradation Implementation Procedure" as the situation described did not result in degradation.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

5. Deleted the total residual chlorine language in Section 2.2 of the “Iowa Antidegradation Implementation Procedure” as an effective demonstration was not made that this activity would not significantly degrade water quality.

6. Revised the public and intergovernmental participation language in Section 4 of the “Iowa Antidegradation Implementation Procedure” to provide additional detail and clarity to the public and intergovernmental participation process.

7. Added Section 6.5 to the “Iowa Antidegradation Implementation Procedure” to address the change in the approach to Clean Water Act-regulated open lot confined animal feeding operations.

8. Revised Section 7 of the “Iowa Antidegradation Implementation Procedure” to reflect the appropriate intent for implementation.

9. Revised “Appendix B – Outstanding Iowa Waters” for lakes to remove Upper Gar Lake, Lower Gar Lake, Minnewashta Lake, and East Okoboji Lake as these lakes do not qualify as Outstanding Iowa Waters at this time.

These changes to the “Iowa Antidegradation Implementation Procedure” were initiated based upon comments received in regard to the Notice of Intended Action and Amended Notice of Intended Action. The potential for these revisions to be included in the final rule making was anticipated by impacted parties as indicated by their comments submitted in regard to these issues.

With the inclusion of the modifications described above, these amendments effect changes to the Commission’s Water Quality Standards (WQS) as summarized below:

- Incorporate by reference the document entitled “Iowa Antidegradation Implementation Procedure,” which proposes an approach to be followed in assessing and minimizing degradation of Iowa’s surface waters.
- Update antidegradation policy language with a four-tier approach.
- Remove High Quality (Class HQ) and High Quality Resource (Class HQR) designated uses, as they are being replaced by the four-tier approach.

The following changes were made to the amendments published under Notice of Intended Action:

In new paragraph 61.2(2)“d,” the word “direct” was removed from the phrase “permanent new or expanded source of pollutants” in the last sentence. The paragraph now reads as follows:

“d. Tier 3 protection—outstanding national resource waters. Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. Any proposed activity that would result in a permanent new or expanded source of pollutants in an outstanding national resource water is prohibited.”

In the Bacteria Criteria Table in Item 4, formatting of the amended row was changed, and the row now appears as follows:

[Class A2 and B(CW)] or OIW or ONRW		
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Additional information on Iowa’s Water Quality Standards and the Department’s rules can be found on the Department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

These amendments may have an impact upon small businesses as described in the regulatory analysis published as a part of this rule-making process. The regulatory analysis was published in the Iowa Administrative Bulletin on October 21, 2009.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

These amendments shall become effective February 17, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [61.2(2), 61.3] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7368B**, IAB 11/19/08, and Amended Notice as **ARC 8038B**, IAB 8/12/09.

[Filed 12/17/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8470B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsections 455A.6(6)“a,” 455B.105(3) and 455B.392(1)“c,” the Environmental Protection Commission hereby amends Chapter 133, “Rules for Determining Cleanup Actions and Responsible Parties,” Iowa Administrative Code.

Iowa Code section 455B.392(1)“c” provides that a person having control of a substance is strictly liable to the state of Iowa for damages to natural resources caused by a hazardous condition. The Commission has adopted requirements in paragraph 133.6(3)“b” setting out the methods for counting dead fish and assigning a monetary value for specific fish species. These requirements are based on the Natural Resource Commission (NRC) fish restitution rules in 571—Chapter 113. NRC rule-making authority is derived from Iowa Code section 481A.151, which authorizes use of both the American Fisheries Society methods and values and also an alternative method for assigning monetary values to game fish valued at not less than \$15 per fish. The NRC has also initiated a rule making incorporating the same changes herein.

Rule 567—133.2(455B) has been amended in the following manner: First, the adopted amendments redefine the meaning of “AFS,” the acronym used for the American Fisheries Society’s special publications on fish-counting methods and restitution valuation. The language has been updated to state that Special Publication 30, the most current AFS publication regarding fish-counting methods and restitution valuation, shall be used by the Department. Second, the amendment of subparagraph 133.6(3)“b”(3) revises the fish species to be valued at \$15 per fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8122B**. No changes have been made to the amendments published under Notice.

These amendments are intended to implement Iowa Code sections 455B.392, 456A.23, and 481A.2.

These amendments shall become effective February 17, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **567—133.2(455B,455E)**, definition of “AFS,” as follows:

“AFS” means the Special Publication 24 30, “Investigation and ~~Valuation of Fish Kills~~ Monetary Values of Fish and Freshwater Mussel Kills,” published by the American Fisheries Society.

ITEM 2. Amend subparagraph **133.6(3)“b”(3)** as follows:

(3) The monetary valuation of fish shall be the replacement values as published in AFS for all fish lost except those fish that are members of the families Ictaluridae (catfish/bullheads), Esocidae (northern pike/muskellunge), Salmonidae (trout), Percichthyidae (white bass/yellow bass/wipers), Centrarchidae (black bass/crappie/sunfish/rock bass/warmouth), and Percidae (yellow perch/walleye/sauger). the following: channel catfish, flathead catfish, blue catfish, northern pike, muskellunge, northern pike/muskellunge hybrid, rainbow trout, brown trout, brook trout, white bass, yellow bass, white bass/striped bass hybrid, largemouth bass, smallmouth bass, spotted bass, crappie, rock bass, bluegill,

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

redeer sunfish, warmouth, pumpkinseed, freshwater drum, yellow perch, walleye, sauger, and walleye/sauger hybrid. The value of these fish shall be \$15 each, unless AFS establishes a higher value. Notwithstanding the above, the value of each fish classified by the department as an endangered or threatened species shall be \$1,000.

[Filed 12/17/09, effective 2/17/10]

[Published 1/13/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8469B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission amends Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

Notice of Intended Action for this amendment on piping leak detection at unstaffed facilities was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7854B** along with other amendments. The proposed amendment on piping leak detection at unstaffed facilities was tabled for further consideration by the Environmental Protection Commission at its public meeting on August 18, 2009. The other proposed amendments in **ARC 7854B** were Adopted and Filed and published in the September 9, 2009, Iowa Administrative Bulletin as **ARC 8124B**. The amendment adopted herein addresses in-line leak detection systems for pressurized piping at unstaffed facilities.

The comments on this amendment concerned the cost of upgrades, the potential effect on reducing the availability of fueling stations in rural parts of Iowa, and the issue of whether this amendment was "more restrictive" than federal regulations and, if so, whether Iowa law prohibits such a rule. After meeting with stakeholder representatives, the Department modified this amendment.

In-line leak detection is required to detect large leaks in pressurized product lines of three gallons per hour or greater. Because the lines are pressurized, large releases of product can occur. Leak detection systems are normally designed to alert an on-site operator. When facilities are not staffed, there is no operator available to respond to an alarm and shut off the submersible pump. At an unstaffed facility, shutting down the submersible pump to stop the large leak may not occur for several hours or days.

It is difficult to estimate the number of 24-hour unstaffed facilities in operation since it is not a requirement to report that type of operation. The Department reviewed its underground storage tank database to determine the number of farm cooperatives and farm service facilities which were more likely to own or operate the unstaffed facilities and identified 217 sites.

More than one-half (62%) of the cooperative and farm service facilities have a suction delivery system which does not require leak detection monitoring. Twenty-six percent or 56 sites have pressure delivery systems with mechanical line leak detection (MLLD). Sites with MLLDs would have to convert to a leak detection system with positive shutdown of the submersible turbine pump (STP). Twelve percent (27) of the sites already have automatic tank gauging (ATG) systems, which may require only an inexpensive upgrade.

A wireless electronic line leak detector (WELLD) replacing an MLLD that meets the requirements of this amendment has an estimated cost of \$3,900 to \$4,500 for a typical three-tank system. It is estimated that WELLDs recover their cost after three or four years compared to MLLDs which need annual tightness testing and have a short operating life of six months to three years. WELLDs have an expected life of eight-plus years. Based on the estimated cost of installing a WELLD leak detector, the cost does not seem to be prohibitive.

A suggested alternative was to allow a telemetry system that notifies the owner or operator or its representative that a leak has been detected and to provide the owner or operator or its representative six hours from time of notification to be on site to shut down the submersible pump. The Department agreed

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

that notification to the off-site operator was acceptable with immediate response. In 135.4(6)“f” of the operator training rules, two hours is allowed for the Class B operator to be on site after being contacted by the public, owner or operator. This two-hour travel time has been incorporated into this amendment.

The amendment extends to January 1, 2013, the phase-in period by which owners and operators must either install an in-line leak detector system which provides for positive shutdown or a system which immediately notifies the Class B operator of a release. This transition period allows owners and operators time to budget for the upgrade. To accommodate situations when the unstaffed facility is the only reasonably available location to obtain fuel, and when there may be a need to provide fuel for emergency response or fire safety vehicles, the facility may apply for a temporary extension of time to meet these requirements as long as there is a plan for upgrading the leak detection system prior to January 1, 2013.

There was also concern from a municipality about availability of fuel from its own fuel system should the municipality’s secondary containment system shut down due to equipment malfunction. The intention of this amendment is to allow systems to operate while faulty equipment is replaced or repaired. Language has been added to address this issue.

The federal rules require in-line leak detection on pressurized piping that alerts the operator to the presence of a leak. A review of the 1988 Preamble to the Federal Register, September 23, 1988, Vol. 53, No. 185, indicates that there was no consideration of unstaffed facilities since card-controlled dispensers were not in general use. Part IV, Section D of the Preamble includes the statement, “The Agency (EPA) believes the operators must be alerted immediately to the presence of leaks in pressurized lines.” “Immediately alerting the operator” indicates the need for quick action to stop the leak.

State law requires Iowa’s UST rules to specify adequate monitoring systems to detect the presence of a leak and provide protection of groundwater resources. (See Iowa Code section 455B.474(1)“a.”) The rules adopted are also to be consistent with and not exceed the applicable federal regulations. (See Iowa Code section 455B.474(10)“j,” unnumbered paragraph.) The federal rules are silent on unstaffed facilities but provide guidance on the intent of leak detection for pressurized piping. This amendment is consistent with federal rules and provides monitoring of pressurized piping needed to adequately detect and stop a leak in a timely manner and to protect the public and Iowa’s groundwater resources.

This amendment is intended to implement Iowa Code section 455B.474.

This amendment shall become effective February 17, 2010.

The following amendment is adopted.

Adopt the following **new** paragraph **135.5(1)“e”**:

e. UST systems using pressurized piping that operate with no on-site personnel shall comply with the following requirements:

(1) Whenever an in-line leak detector is installed or replaced, it must be capable of shutting down the submersible pump.

(2) Existing sites with an in-line leak detection system in place on February 17, 2010, may continue operation provided that, by January 1, 2013, either of the following UST system modifications is made:

1. An in-line leak detector capable of shutting off the submersible pump is installed; or

2. The UST system is equipped with a device that immediately alerts the Class B operator or designee when a leak is detected. The Class B operator or designee shall be on site within two hours of notification and shut down the submersible pump. The UST system cannot be returned to service until the problem that caused the release response is resolved.

3. A temporary extension of time to meet these upgrade requirements may be granted if it can be shown that there is no reasonable alternative fueling source in the vicinity or fueling is needed to satisfy emergency or public safety considerations. The request for temporary extension must include documentation and a plan for upgrading prior to January 1, 2013.

(3) At sites with secondary containment sumps and continuous automatic sump sensors for leak detection monitoring, the continuous automatic sump sensors must shut off product flow when a leak is detected. If it is determined that a malfunction of the leak detection system is the cause of the shutdown,

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the UST system must be immediately repaired but may continue to be operated while the repairs are made.

[Filed 12/17/09, effective 2/17/10]

[Published 1/13/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8439B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2009 Iowa Acts, Senate File 389, section 38, the Department of Human Services amends Chapter 7, "Appeals and Hearings," Chapter 75, "Conditions of Eligibility," and Chapter 76, "Application and Investigation," Iowa Administrative Code.

These amendments establish presumptive Medicaid eligibility for children. Presumptive eligibility is a process that allows a child immediate access to health care services pending a formal eligibility determination for Medicaid or HAWK-I by the Department.

Qualified entities will determine the presumptive eligibility for children based on self-declared household income, family size, citizenship or alien status, residency, and age. A "qualified entity" is defined as any entity allowed by federal law that the Department determines can make the presumptive eligibility decision. Qualified entities will include providers that are currently qualified to determine presumptive eligibility for pregnant women.

Presumptive eligibility will begin the day the determination is completed and continue until the child is determined eligible or ineligible for Medicaid or HAWK-I. A child may be determined presumptively eligible only once in a 12-month period.

Even if presumptive eligibility is not approved, the presumptive eligibility application will be treated as an application for Medicaid. All applications will be forwarded to the Department for a formal eligibility determination. If the household income exceeds the limit for Medicaid eligibility, the application will be referred to the third-party administrator for the HAWK-I program. The family will not have to file a separate application. This process will help to facilitate the enrollment of eligible children in Medicaid or HAWK-I.

These amendments do not provide for waivers in specified situations because the changes are mandated by state legislation and confer a benefit to the families and providers affected.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 26, 2009, as **ARC 8083B**. The Department received one comment on the Notice of Intended Action seeking clarification regarding the application date for continuing coverage and responsibility for payment.

The date the qualified entity received a valid application will be treated as the application date for Medicaid or HAWK-I. This date may be earlier than the presumptive eligibility date, so the use of this date protects the applicant from the effects of any processing delays. An applicant determined presumptively eligible will have Medicaid coverage during the presumptive eligibility period.

The Department has added Items 3 and 4 to these amendments to specify the name and number of the application form that will be used for presumptive eligibility for children and to clarify where that application form is to be submitted.

The Council on Human Services adopted these amendments on December 9, 2009.

These amendments are intended to implement Iowa Code section 249A.3 and 2009 Iowa Acts, Senate File 389, section 38(4).

These amendments shall become effective on March 1, 2010.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subparagraphs **7.5(2)“a”(6)** and **(7)** as follows:

(6) A qualified provider or qualified entity has denied a person presumptive eligibility for Medicaid under 441—subrule 75.1(30), ~~or 75.1(40)~~, or 75.1(44).

(7) A qualified provider or qualified entity has determined a person to be presumptively eligible for Medicaid under 441—subrule 75.1(30), ~~or 75.1(40)~~, or 75.1(44), but presumptive eligibility ends due to the person's failure to file an application.

ITEM 2. Adopt the following **new** subrule 75.1(44):

75.1(44) Presumptive eligibility for children. Medical assistance shall be available to children under the age of 19 who are determined by a qualified entity to be presumptively eligible for medical assistance pursuant to this subrule.

a. *Qualified entity.* A “qualified entity” is an entity described in paragraphs (1) through (10) of the definition of the term at 42 CFR 435.1101, as amended to October 1, 2008, that:

(1) Has been determined by the department to be capable of making presumptive determinations of eligibility, and

(2) Has signed an agreement with the department as a qualified entity.

b. *Application process.* Families requesting assistance for children under this subrule shall apply with a qualified entity using the form specified in 441—paragraph 76.1(1)“f.” The qualified entity shall use the department's Web-based system to make the presumptive eligibility determination, based on the information provided in the application.

(1) All presumptive eligibility applications shall be forwarded to the department for a full Medicaid or HAWK-I eligibility determination, regardless of the child's presumptive eligibility status.

(2) The date a valid application was received by the qualified entity establishes the date of application for purposes of determining the effective date of Medicaid or HAWK-I eligibility unless the qualified entity received the application on a weekend or state holiday. Applications received by the qualified entity on a weekend or a state holiday shall be considered to be received on the first business day following the weekend or state holiday.

(3) The qualified entity shall issue Form 470-2580 or 470-2580(S), Presumptive Medicaid Eligibility Notice of Decision, to inform the applicant of the decision on the application as soon as possible but no later than within two working days after the date the determination is made.

(4) Timely and adequate notice requirements and appeal rights of the Medicaid program shall not apply to presumptive eligibility decisions made by a qualified entity.

c. *Eligibility requirements.* To be determined presumptively eligible for medical assistance, a child shall meet the following eligibility requirements.

(1) Age. The child must be under the age of 19.

(2) Household income. Household income must be less than 300 percent of the federal poverty level for a household of the same size. For this purpose, the household shall include the applicant child and any sibling (of whole or half blood, or adoptive), spouse, parent, or stepparent living with the applicant child. This determination shall be based on the household's gross income, with no deductions, diversions, or disregards.

(3) Citizenship or qualified alien status. The child must be a citizen of the United States or a qualified alien as defined in subrule 75.11(2).

(4) Iowa residency. The child must be a resident of Iowa.

(5) Prior presumptive eligibility. A child shall not be determined presumptively eligible more than once in a 12-month period. The first month of the 12-month period begins with the month the application is received by the qualified entity.

d. *Period of presumptive eligibility.* Presumptive eligibility shall begin with the date that presumptive eligibility is determined and shall continue until the earliest of the following dates:

(1) The last day of the next calendar month;

(2) The day the child is determined eligible for Medicaid;

(3) The last day of the month that the child is determined eligible for HAWK-I; or

HUMAN SERVICES DEPARTMENT[441](cont'd)

(4) The day the child is determined ineligible for Medicaid and HAWK-I. Withdrawal of the Medicaid or HAWK-I application before eligibility is determined shall not affect the child's eligibility during the presumptive period.

e. Services covered. Children determined presumptively eligible under this subrule shall be entitled to all Medicaid-covered services, including early and periodic screening, diagnosis, and treatment (EPSDT) services. Payment of claims for Medicaid services provided to a child during the presumptive eligibility period, including EPSDT services, is not dependent upon a determination of Medicaid or HAWK-I eligibility by the department.

ITEM 3. Adopt the following new paragraph **76.1(1)“f”**:

f. An application for presumptive eligibility for children shall be submitted on Form 470-4855 or 470-4855(S), Application: Presumptive Health Care Coverage for Children.

ITEM 4. Adopt the following new paragraph **76.1(2)“e”**:

e. Persons applying for presumptive eligibility for children shall submit the application to a qualified entity as described under 441–subrule 75.1(44).

[Filed 12/11/09, effective 3/1/10]

[Published 1/13/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8440B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 52, “Payment,” Iowa Administrative Code.

These amendments make the annual change to the State Supplementary Assistance personal needs allowance for persons living in a family life home or a residential care facility. Each year, an amount is calculated to represent the cost of Medicaid copayments for persons in these facilities. The Department is not allowed to exempt these persons from copayments, because they are not living in medical institutions.

The average copayment per client per month for persons in these living arrangements was \$4.83 for the period from August 2008 through July 2009. This is a decrease of \$1.20 from the previous year's average of \$6.03. Therefore, these amendments decrease the personal needs allowance for those living arrangements by \$1 per month, decreased from \$94 (\$87.78 for personal expenses plus \$6.03 average Medicaid copayment expense, rounded up) to \$93 (\$87.78 plus \$4.83 average Medicaid copayment expense equals \$92.61, rounded up). As a result, residents of these living arrangements will contribute \$1 per month more toward their cost of care.

Normally, the income limits and personal needs allowances are increased annually by the percentage of the Social Security cost-of-living increase, but this year that figure was 0 percent.

These amendments do not provide for waivers in specified situations because the personal needs allowance should be the same for every recipient as a matter of fairness. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on December 9, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation on these amendments are unnecessary because these amendments merely implement the standard methodology for annually determining the personal needs amount allowed for Medicaid copayments.

These amendments are intended to implement Iowa Code chapter 249.

These amendments shall become effective on March 1, 2010.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule 52.1(1) as follows:

52.1(1) Protective living arrangement. The following assistance standards have been established for state supplementary assistance for persons living in a family life home certified under rules in 441—Chapter 111.

\$742 <u>\$743</u>	Care allowance
\$94 <u>\$93</u>	Personal allowance
\$836	Total

ITEM 2. Amend subparagraph **52.1(3)“a”(2)** as follows:

(2) An allowance of ~~\$94~~ \$93 to meet personal expenses and Medicaid copayment expenses.

ITEM 3. Amend rule **441—52.1(249)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 249 as amended by 2004 Iowa Acts, House File 2134, sections 4 and 5.

[Filed Without Notice 12/11/09, effective 3/1/10]

[Published 1/13/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8443B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments are adopted in conjunction with amendments adopted by the Insurance Division that were published in the Iowa Administrative Bulletin on November 4, 2009, as **ARC 8271B**. The purpose of both filings is to cooperate in operating a long-term care partnership program in Iowa to provide for financing of long-term care through a combination of private insurance and medical assistance. The amendments are intended to implement Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723, and to meet the requirements set by Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171.

The long-term care partnership program provides an incentive for the purchase of qualified long-term care insurance by allowing a \$1 disregard of resources for each \$1 that a Medicaid applicant's insurance policy has paid for qualified long-term care expenses. The amendments in Item 1:

- Remove the minimum age limit of 65;
- Clarify that the benefit applies to persons who would be eligible for cash assistance or the Family Medical Assistance Program if they were not in a medical institution, persons who qualify for Medicaid under a special income standard for persons who stay in a medical institution more than 30 days, and persons eligible for Medicaid home- and community-based waiver services; and
- Extend the incentive by exempting those disregarded resources from recovery from the estate after the Medicaid member's death.

These amendments do not provide for waivers in specified situations, since they are made to conform to federal and state law. However, requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8220B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 9, 2009.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4 and Iowa Code section 249A.35 and chapter 514H as amended by 2009 Iowa Acts, House File 723, sections 1 and 14 to 21, respectively.

These amendments shall become effective on March 1, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [75.5] is being omitted. These amendments are identical to those published under Notice as **ARC 8220B**, IAB 10/7/09.

[Filed 12/11/09, effective 3/1/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8444B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments make several changes to the conditions of Medicaid eligibility for persons residing in a medical institution and persons treated as though they were in a medical institution for purposes of eligibility.

The amendments in Items 1 and 2 eliminate the previous personal needs allowance provision for recipients of a pension paid by the U.S. Department of Veterans Affairs (VA) which has been reduced to \$90 per month because Medicaid is paying for the person's care. That provision is replaced with an income exemption of \$90 which is applicable to reduced VA pensions and to VA pensions received by residents of the Iowa Veterans Home, whether reduced or not. This change reduces client participation for an estimated 150 residents of the Iowa Veterans Home. The change is made to comply with a policy clarification from the Centers for Medicare and Medicaid Services.

Item 2 allows an additional \$10 to a member's personal needs allowance to pay for the administration fees of a medical assistance income or special needs trust. The amount may be higher than \$10 if approved by a court. Current rules provide that the Department determines eligibility according to SSI policy but do not specify how this policy is applied to trust expenses in determining a member's client participation amount.

The amendments in Items 3 and 4 close a "loophole" in the penalty on transfer of assets at less than market value imposed under Section 1917(c) of the Social Security Act. When a person has transferred assets to qualify for Medicaid, the penalty is the imposition of a period of ineligibility proportionate to the amount of resources transferred. When that period has expired, the person may become eligible for Medicaid payment for long-term care expenses. If expenses that the person incurred for long-term care during the period of ineligibility are an allowable deduction from the person's income in determining the person's client participation obligation, Medicaid has effectively paid those expenses, thus nullifying a portion of the penalty.

Item 5 clarifies policy on when a penalty is not applied to transfer of assets. Although the current rules exempt the transfer of a home to an applicant's blind or disabled child, Section 1917(c)(2) of the Social Security Act prohibits the application of a penalty for the transfer of any assets to a child who is blind or disabled.

The amendments in Items 6 and 7 correct the policy on when the purchase of an annuity shall be considered a transfer of assets for less than fair market value to conform to the requirements of Sections 1917(c)(1)(F) and (G) of the Social Security Act [42 U.S.C. §1396p(c)(1)(F)-(G)]. Item 8 clarifies policy on when purchase of a life estate is considered a transfer of assets for less than fair market value.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations, since they are made to conform to federal and state law. However, requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8221B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 9, 2009.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

These amendments shall become effective on March 1, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [75.16, 75.23] is being omitted. These amendments are identical to those published under Notice as **ARC 8221B**, IAB 10/7/09.

[Filed 12/11/09, effective 3/1/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8446B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 32, the Department of Human Services amends Chapter 82, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

These amendments:

- Reflect the change to a 3 percent inflation factor for reimbursement of intermediate care facilities for the mentally retarded in state fiscal year 2010 that was mandated by 2009 Iowa Acts, House File 811, section 32(10); and
- Make technical changes to update the chapter to current Iowa Medicaid organization and terminology.

The inflation factor has historically been the percent change from December to December of the Consumer Price Index for all urban consumers, U.S. city average (CPI-U). For state fiscal year 2010, the CPI-U factor is 0.1 percent. Computing reimbursement using this factor would essentially freeze ICF/MR reimbursement rates for state fiscal year 2010. With a 3 percent inflation factor, the estimated average per diem reimbursement rate increases from \$386 per day to \$397 per day, for a total statewide increase in reimbursement of \$8.8 million for state fiscal year 2010. Costs to the state are estimated at \$0.9 million, and costs to county governments are estimated at \$1.6 million.

These amendments do not provide for waivers in specified situations, since an increase in reimbursement is a benefit to providers. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were Adopted and Filed Without Notice and were published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8207B**. Notice of Intended Action to solicit comment on these amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 8208B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Without Notice and published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 9, 2009.

These amendments are intended to implement Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 32(10).

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments will become effective on February 17, 2010, at which time the amendments that were Adopted and Filed Without Notice are rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [82.5, 82.7 to 82.12] is being omitted. These amendments are identical to those published under Notice as **ARC 8208B** and Adopted and Filed Without Notice as **ARC 8207B**, IAB 10/7/09.

[Filed 12/11/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8478B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

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

These amendments:

- Clarify that there are separate health and dental plans participating in the HAWK-I program; and
- Implement a new program to provide dental coverage to children who would be eligible for HAWK-I benefits except that they have health insurance.

Currently, children must be uninsured to obtain dental coverage through the HAWK-I program. The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) allows states the option to offer a dental-only program. The General Assembly has appropriated funding to implement a dental-only program with approval of the HAWK-I Board. The HAWK-I Board has directed the Department to offer dental-only coverage to children who would qualify for the HAWK-I program except that they have health insurance.

Under these amendments, children who have health insurance can qualify for supplemental dental-only coverage to receive medically necessary preventive and restorative dental services. Some families will be charged a premium to participate in the program, based on their income. The amendments require coverage of diagnostic and preventive services, routine and restorative services, endodontic services, periodontal services, cast restorations, and prosthetics. Payments will be made on a capitation basis.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8112B**. The Department received comments on the Notice of Intended Action from two persons. Commenters were concerned about the effect of separating the requirements for health coverage from those for dental coverage. Currently, most medical plans have had to subcontract for dental services or attempt to develop new coverage. The Department believes that allowing dental-only plans and medical-only plans to enter the HAWK-I market directly should ultimately afford a broader range of coverage options.

In response to these comments and to clarifications on the implementation of the CHIPRA legislation received from the Centers for Medicare and Medicaid Services (CMS), the Department has made the following changes to the rules as presented in the Notice of Intended Action:

- Deleted the words "in Iowa as provided in Iowa Code chapter 153" from the definition of "Dentist" in rule 441—86.1(514I). A dental plan is free to pay a dentist in another state if the dental plan determines that circumstances warrant it. The definition of "Dentist" now reads as follows:

“ ‘Dentist’ shall mean a person who is licensed to practice dentistry.”

- Deleted all proposed changes from subrule 86.7(6) except for the changes in terminology from "disenrolled" to "canceled" and from "plan" to "program." CMS has clarified that possession of other coverage is not a barrier to eligibility for the supplemental dental program. Subrule 86.7(6) now reads as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

“86.7(6) Enrolled in other health insurance coverage. The child shall be canceled from the program as of the first day of the month following the month in which the third-party administrator is notified that the child has other health insurance coverage. If there are months during which the child is covered by both another insurance plan and the HAWK-I program, the other insurance plan shall be the primary payor and HAWK-I shall be the payor of last resort.”

- Deleted proposed subrule 86.20(3) and renumbered subrule 86.20(4) accordingly. CMS has clarified that dental coverage (other than coverage offered to state employees) does not disqualify a child from the supplemental dental program. In addition, in paragraphs “c” and “d” of new subrule 86.20(3), the phrase “is equal to or” has been omitted. The paragraphs now read as follows:

“c. If the family’s gross countable income exceeds 200 percent of the federal poverty level but does not exceed 250 percent of the federal poverty level for a family of the same size, the premium is \$10 per child per month with a \$15 monthly maximum per family.”

“d. If the family’s gross countable income exceeds 250 percent of the federal poverty level but does not exceed 300 percent of the federal poverty level for a family of the same size, the premium is \$15 per child per month with a \$20 monthly maximum per family.”

- Added a new subrule 86.20(4) to clarify that, before a waiting list for HAWK-I eligibility could be imposed, all children in the supplemental dental-only program would be disenrolled. New subrule 86.20(4) reads as follows:

“86.20(4) Waiting lists. Before the provisions of subrule 86.3(10) are implemented, all children enrolled in supplemental dental-only coverage shall be disenrolled from the program.”

The HAWK-I Board adopted these amendments on December 21, 2009.

These amendments do not contain a waiver provision because an extension of eligibility and coverage benefits the children affected. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

These amendments shall become effective on March 1, 2010.

These amendments are intended to implement Iowa Code sections 514I.4 through 514I.7 as amended by 2009 Iowa Acts, Senate File 389, sections 26 and 31 through 34.

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 [86.1, 86.2, 86.6 to 86.9, 86.13 to 86.15, 86.19, 86.20] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 8112B**, IAB 9/9/09.

[Filed 12/22/09, effective 3/1/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8453B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 235A.14(1), the Department of Human Services amends Chapter 175, “Abuse of Children,” Iowa Administrative Code.

These amendments:

- Change the retention period for records of rejected child abuse intakes from six months to three years;

- Establish that records of rejected child in need of assistance intakes shall be retained for the same amount of time; and

- Add the number of the safety plan form.

Vulnerable children will have the potential of increased safety if records are retained for a longer period of time. For a caretaker who is alleged to have abused or neglected a child, retention of records

HUMAN SERVICES DEPARTMENT[441](cont'd)

when the allegation was insufficient to warrant intervention by the Department means that the caretaker has a longer window of jeopardy of being investigated for abuse or neglect. These records could be referenced to determine if there is sufficient cumulative information that meets the criteria for an intake to be accepted for a child abuse or child in need of assistance assessment.

These amendments do not provide for waivers in specified situations because retention of these records is intended to increase children's safety.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8209B**. The Department received one comment on the Notice of Intended Action, questioning the legality of keeping these records and the investment of time and money in keeping them. These records will not be accessible to the public. Advances in information technology are expected to reduce the staff time used to implement the increased retention. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 9, 2009.

These amendments are intended to implement Iowa Code chapter 235A.

These amendments shall become effective on March 1, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 441—175.24(232) as follows:

441—175.24(232) Child abuse assessment intake process. The primary purpose of intake is to obtain available and pertinent information regarding an allegation of child abuse and determine whether a report of child abuse becomes a case or a rejected intake.

175.24(1) To result in a case, the report of child abuse must include some information to indicate all of the following. ~~The alleged:~~

- ~~1. Victim of child abuse is a child.~~
- ~~2. Perpetrator of child abuse is a caretaker.~~
- ~~3. Incident falls within the definition of child abuse.~~
 - a. The alleged victim of child abuse is a child.
 - b. The alleged perpetrator of child abuse is a caretaker.
 - c. The alleged incident falls within the definition of child abuse.

175.24(2) Only mandatory reporters or the person making the report may be contacted during the intake process to expand upon or to clarify information in the report. Any contact with subjects of the report or with nonmandatory reporters, other than the original reporter, automatically causes the report of child abuse to be accepted for assessment.

175.24(3) When it is determined that the report of child abuse fails to constitute an allegation of child abuse, the report of child abuse shall become a rejected intake. Rejected intake information shall be maintained by the department for ~~six months~~ three years from the date the report was rejected and ~~shall then be destroyed.~~

175.24(4) The county attorney shall be notified of all reports of child abuse. When a report of child abuse is received which does not meet the requirements to become a case, but has information about illegal activity, the department shall notify law enforcement of the report.

175.24(5) When it is determined that a report of a child needing the assistance of the court fails to meet the definition of "child in need of assistance" in Iowa Code section 232.2(6), the report shall become a rejected child in need of assistance intake. The department shall maintain the report for three years from the date the report was rejected and shall then destroy it.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule **175.27(3)**, introductory paragraph, as follows:

175.27(3) Report of assessment. The child protection worker shall provide the county attorney and the juvenile court with a copy of Form 470-4133, Family Risk Assessment, and ~~Form~~ Forms 470-4132, Safety Assessment/~~Plan~~, Assessment, and 470-4461, Safety Plan, when any of the following occur:

[Filed 12/14/09, effective 3/1/10]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/13/10.

ARC 8458B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r,” the Iowa Finance Authority hereby amends Chapter 9, “Title Guaranty Division,” Iowa Administrative Code.

The purpose of this rule making is to make changes in rules governing administration of the Title Guaranty Division to simplify and better organize the Division by updating the rules; placing all definitions which apply to Chapter 9 in its entirety in rule 265—9.1(16); moving applications for title guaranties, audit procedures, and closing protection letter issuance under the operational control of the Title Guaranty Program; and deleting or consolidating repetitive information.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 4, 2009, as **ARC 8264B**. The Authority did not receive any public comment on the proposed amendments. The Authority made limited technical clarifications to the amendments published under Notice of Intended Action as follows:

The definition of “Certificate” in rule 265—9.1(16) has been modified and now reads as follows:

“‘*Certificate*’ means the division certificate to guarantee title, including any part or schedule thereof and any endorsements thereto.”

Paragraphs “c” and “d” of subrule 9.6(4) have been revised and now read as follows:

“c. *Issuing title guaranty.* Pursuant to a written contract with the division director, a participating abstractor may be authorized to issue a title guaranty commitment or certificate for the division when the participating attorney who prepares the opinion allows issuance by the participating abstractor. Written contractual approval by the division director for division issuance will be based upon the completion of a division request form by a participating abstractor and the attachment of all disclosures required by the division. A participating abstractor authorized to issue a title guaranty commitment or certificate must comply with the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division and in no other manner whatsoever. The rights of the participating abstractor under the preceding sentence are not exclusive and are subject to the rights of the authority, the division, and other field issuers of the division to issue commitments or certificates and are further subject to the right of the division to appoint other field issuers. A participating abstractor’s right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to the written contract with the division.

“d. *Authority of participating abstractor.* A participating abstractor is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the abstractor’s participation agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division and in no other manner whatsoever. The authority of the participating abstractor under the preceding sentence is not exclusive and is subject to the rights of the authority, the division, and other participating abstractors, agents, or representatives of the division to transact the business of abstracting, which includes but is not limited to any manner of title search or review of titles to real estate, and is further subject to the right of the division to appoint other participating abstractors.”

The Iowa Finance Authority adopted these amendments on December 9, 2009.

IOWA FINANCE AUTHORITY[265](cont'd)

These amendments are intended to implement Iowa Code sections 16.5(1)“r” and 16.91(5).
These amendments will become effective on February 17, 2010.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 9] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 8264B**, IAB 11/4/09.

[Filed 12/14/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8457B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r,” and 16.133, the Iowa Finance Authority hereby amends Chapter 26, “Water Pollution Control Works and Drinking Water Facilities Financing,” Iowa Administrative Code.

The purpose of these amendments is to update the rules for the state revolving fund (SRF) loan programs. Under an agreement with the United States Environmental Protection Agency, the Iowa SRF is administered by the Iowa Department of Natural Resources in partnership with the Iowa Finance Authority.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8193B**. The Authority did not receive any public comment on the proposed amendments. The Authority has made no changes to the amendments as published under Notice.

The Iowa Finance Authority adopted these amendments on December 9, 2009.

These amendments are intended to implement Iowa Code sections 16.5(1)“r” and 16.133.

These amendments will become effective on February 17, 2010.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 26] is being omitted. These amendments are identical to those published under Notice as **ARC 8193B**, IAB 10/7/09.

[Filed 12/14/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8456B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12, the Iowa Finance Authority hereby amends Chapter 32, “Iowa Jobs Program,” Iowa Administrative Code.

The purpose of these amendments is to implement 2009 Iowa Acts, Senate File 376, sections 5 to 12, by clarifying certain rules that regulate the operation of the Iowa Jobs Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8108B**. These amendments were also Adopted and Filed Emergency and were published as **ARC 8103B** on the same date. The Authority did not receive any public comment on the proposed amendments. The Authority has made no changes to the amendments as published under Notice.

IOWA FINANCE AUTHORITY[265](cont'd)

The Iowa Finance Authority adopted these amendments on December 9, 2009.

These amendments are intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

These amendments will become effective on February 17, 2010, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [32.4(4), 32.4(7)] is being omitted. These amendments are identical to those published under Notice as **ARC 8108B** and Adopted and Filed Emergency as **ARC 8103B**, IAB 9/9/09.

[Filed 12/14/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8465B

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 15, “General License Regulations,” Iowa Administrative Code.

The amendments clarify the definitions of severe mental disability and severe physical disability; establish a means to verify low-income persons; substitute a free lifetime fishing license with a free annual fishing license; clarify the procedure for administering a free fishing or hunting license; permit enforcement capability in revoking licenses issued in violation of this rule; and provide a mechanism through which the Department may deny, suspend or revoke licenses of persons who owe the state of Iowa money pursuant to Iowa Code chapter 272D.

Notice of Intended Action was published in the October 7, 2009, Iowa Administrative Bulletin as **ARC 8196B**. No public comments were received, and no one attended the October 27, 2009, public hearing. There have been no changes since the Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 272D, 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.

These amendments shall become effective February 17, 2010.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [15.4, 15.23, 15.24, 15.51 to 15.55] is being omitted. These amendments are identical to those published under Notice as **ARC 8196B**, IAB 10/7/09.

[Filed 12/17/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

ARC 8464B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455A.5(6) and 481A.151, the Natural Resource Commission hereby amends Chapter 113, “Restitution for Pollution Causing Injury to Wild Animals,” Iowa Administrative Code.

These amendments redefine the meaning of “AFS,” the acronym used for the American Fisheries Society’s special publications on fish counting methods and restitution valuation. The amendments

NATURAL RESOURCE COMMISSION[571](cont'd)

update the rule to state that “Special Publication 30,” the current AFS publication regarding fish and freshwater mussel counting methods and restitution valuation, shall be used by the Department. Iowa Code section 455B.151 authorizes the Department to use the AFS to conduct fish kill counts and assess restitution for damages to the state’s natural resources and wildlife. The amendments revise the fish species to be valued at \$15 per fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8107B**. No written comments were received, and no one attended the October 6, 2009, public hearing. There have been no changes to the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 456A.23, 481A.2, and 481A.151. These amendments shall become effective February 17, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **571—113.2(481A)**, definition of “AFS,” as follows:

“AFS” means the Special Publication 24, ~~“Investigation and Valuation of Fish Kills,”~~ 30, “Investigation and Monetary Values of Fish and Freshwater Mussel Kills,” published by the American Fisheries Society.

ITEM 2. Amend rule 571—113.3(481A) as follows:

571—113.3(481A) Liability to the state. Persons who cause by water pollution the destruction of or injury to wild animals of the state shall be liable to the state as provided by ~~2002 Iowa Acts, Senate File 2293, section 58 in~~ Iowa Code section 481A.151. These rules establish the methodologies and criteria for evaluating the extent and value of the destruction or injury and establish the methods of compensation. If the person and the department cannot agree to the proper resolution of a particular case, the issues of liability, damage and compensation will be established through contested case proceedings, as provided by 571—Chapter 7.

ITEM 3. Amend paragraph **113.4(2)“c”** as follows:

c. The monetary valuation of fish shall be the replacement values as published in AFS for all fish lost ~~except those fish that are members of the families Ictaluridae (catfish/bullheads), Esocidae (northern pike/muskellunge), Salmonidae (trout), Percichthyidae (white bass/yellow bass/wipers), Centrarchidae (black bass/crappie/sunfish/rock bass/warmouth), and Percidae (yellow perch/walleye/sauger)~~ the following: channel catfish, flathead catfish, blue catfish, northern pike, muskellunge, northern pike/muskellunge hybrid, rainbow trout, brown trout, brook trout, white bass, yellow bass, white bass/striped bass hybrid, largemouth bass, smallmouth bass, spotted bass, crappie, rock bass, bluegill, redear sunfish, warmouth, pumpkinseed, freshwater drum, yellow perch, walleye, sauger and walleye/sauger hybrid. The value of these fish shall be \$15 each, unless AFS establishes a higher value. Notwithstanding the above, the value of each fish classified by the department as an endangered or threatened species shall be \$1,000.

[Filed 12/17/09, effective 2/17/10]

[Published 1/13/10]

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ARC 8475B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 105.4, the Iowa Plumbing and Mechanical Systems Board hereby adopts new Chapter 30, “Continuing Education for Plumbing and Mechanical Systems Professionals,” Iowa Administrative Code.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These rules describe the continuing education requirements for licensees covered under Iowa Code chapter 105. These rules also describe the standards governing the criteria for continuing education activities; the procedures for auditing licensees' continuing education reports; the grounds for exempting continuing education requirements; and the grounds for extending the time in which a licensee may fulfill the continuing education requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 4, 2009, as **ARC 8268B**. Four comments were received on these rules. One comment recommended that contractors be exempt from continuing education requirements; Chapter 30 already exempts contractors from those requirements. The second comment asked that the Board relax the rules for the first renewal cycle since courses were not available in March when licensing began. The Board did not support the concept of relaxing the rules based on the limited number of hours of required continuing education (minimum of 8 hours and a maximum of 16 hours for multiple license holders). The third comment supported continuing education for specialty licenses. The Board did not support any changes addressing the specialty licenses since many of the specialty licenses are based on certification programs that already contain a continuing education requirement. The fourth comment asked that North American Technician Excellence (NATE) courses be fast-tracked in the approval process. The Board did not support making this change; all courses will be reviewed and evaluated using the same criteria.

In addition to the Notice of Intended Action, these rules were simultaneously Adopted and Filed Emergency and published as **ARC 8270B**. These rules are identical to the rules published under Notice of Intended Action and Adopted and Filed Emergency.

The Iowa Plumbing and Mechanical Systems Board adopted these rules on December 15, 2009.

These rules will become effective on February 17, 2010, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement Iowa Code chapters 105 and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 30] is being omitted. These rules are identical to those published under Notice as **ARC 8268B** and Adopted and Filed Emergency as **ARC 8270B**, IAB 11/4/09.

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