



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2010

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
2	Friday, July 9, 2010	July 28, 2010
3	Friday, July 23, 2010	August 11, 2010
4	Friday, August 6, 2010	August 25, 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*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, July 13, 2010, at 9:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]

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

Continuing education, ch 10 <u>Notice</u> ARC 8835B	6/16/10
Initial and renewal fees for firm permit to practice, 12.1 <u>Notice</u> ARC 8868B	6/30/10
Fee for interstate transfer form, 12.1 <u>Filed</u> ARC 8866B	6/30/10
Reinstatement fees, 12.1 <u>Filed</u> ARC 8867B	6/30/10
Rules of professional ethics and conduct, ch 13 <u>Notice</u> ARC 8836B	6/16/10

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Crop pests—firewood labeling, 46.13, 46.16 <u>Notice</u> ARC 8911B	6/30/10
Animal care licensure—ineligibility due to animal cruelty or neglect conviction, 67.10(1) <u>Filed Emergency</u> ARC 8847B	6/16/10
Meat and poultry inspection, 76.1 to 76.4, 76.13, 76.14 <u>Notice</u> ARC 8842B	6/16/10

ARCHAEOLOGIST[685]

REGENTS BOARD[681]"umbrella"

Operations of office of the state archaeologist; uniform rules, amend chs 1, 2, 4, 6 to 8, 10 to 12, 14; adopt ch 15 <u>Notice</u> ARC 8870B	6/30/10
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CAPITAL INVESTMENT BOARD, IOWA[123]

Tax credits—venture capital funds, fund of funds, 3.9, 4.4 <u>Notice</u> ARC 8875B	6/30/10
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DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure; continuing education; standards of practice and principles of professional ethics, 11.1 to 11.3, 11.5, 11.6, 13.2, 25.4(3), 25.9(2), 27.7, 27.9 <u>Notice</u> ARC 8846B	6/16/10
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa jobs main street program, ch 40 <u>Notice</u> ARC 8921B , also <u>Filed Emergency</u> ARC 8922B	6/30/10
Disaster recovery business rental assistance program—lease terms, 79.3, 79.5 <u>Filed Emergency</u> ARC 8852B	6/16/10
Iowa small business loan program, ch 80 <u>Notice</u> ARC 8919B , also <u>Filed Emergency</u> ARC 8920B	6/30/10
Targeted industries internship program—definition of "Iowa student," 104.1 to 104.13 <u>Notice</u> ARC 8849B , also <u>Filed Emergency</u> ARC 8848B	6/16/10
Iowa innovation council, ch 114 <u>Notice</u> ARC 8851B , also <u>Filed Emergency</u> ARC 8850B	6/16/10

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Revocation, suspension, and nonrenewal of license for failure to pay state liabilities, ch 16 <u>Filed</u> ARC 8843B	6/16/10
Air quality, 23.1(2), 23.1(4), 23.1(5), 24.1(2), 24.1(3), 28.1 <u>Notice</u> ARC 8845B	6/16/10
Beautification grant program, ch 210 <u>Filed Emergency</u> ARC 8844B	6/16/10

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Historic preservation and cultural and entertainment district tax credits—project commencement, 48.10 <u>Filed Emergency After Notice</u> ARC 8873B	6/30/10
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HUMAN SERVICES DEPARTMENT[441]

Health care access assessment, ch 36 div II and III preambles, 36.10 to 36.12, 79.1 <u>Notice</u> ARC 8896B , also <u>Filed Emergency</u> ARC 8894B	6/30/10
Return of document submitted during eligibility determination, 41.27, 75.57 <u>Notice</u> ARC 8853B	6/16/10
Medical assistance for employed persons with disabilities—eligibility, 75.1(39) <u>Filed</u> ARC 8897B	6/30/10
Reviews of disability; disability redeterminations for members attaining age 18, 75.20(4), 75.20(6) <u>Notice</u> ARC 8864B	6/16/10
Nursing facility services and institutional care—annual update of statewide average cost and charges, 75.23, 75.24(3)"b" <u>Filed Emergency</u> ARC 8898B	6/30/10
Provider reimbursement rates, 79.1, 79.16, 85.25(1) <u>Notice</u> ARC 8900B , also <u>Filed Emergency</u> ARC 8899B	6/30/10
Reimbursement rate for family planning clinics, 79.1(2) <u>Notice of Termination</u> ARC 8865B	6/16/10
HAWK-I—grace period for premium owed, 86.2, 86.3, 86.5, 86.7, 86.8, 86.20 <u>Notice</u> ARC 8840B	6/16/10

HAWK-I—coverage approval and proof of citizenship, 86.2(7) Filed Emergency After Notice ARC 8838B	6/16/10
HAWK-I—change of health or dental plan, 86.6 Notice ARC 8841B	6/16/10
Recovery of overpayment—definition of “client error,” 86.19(1) Filed ARC 8839B	6/16/10
Supervised apartment placement services, 108.10(3)“c” Filed ARC 8901B	6/30/10
Reimbursement rate increase for supervised apartment living, 150.3(5)“p”(2) Filed Emergency ARC 8902B	6/30/10
Reimbursement rate increase for foster group care, 152.3(1)“h” Filed Emergency ARC 8903B	6/30/10
Reimbursement rate increase for foster family care, 156.6 Filed Emergency ARC 8904B	6/30/10
In-home health related care—health assessment, 177.5(2) Filed ARC 8912B	6/30/10
Termination of subsidized guardianship program, amendments to ch 204 Filed ARC 8914B	6/30/10

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Food establishments—inspection of wild morel mushrooms, 31.1(12) Filed ARC 8856B	6/16/10
Psychiatric medical institutions for children—provisions concerning physical restraint, 41.17 Filed ARC 8857B	6/16/10

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Retrospective payment of claims for registered nurse practitioners and physician assistants, 70.10 Notice ARC 8884B	6/30/10
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IOWA FINANCE AUTHORITY[265]

Water pollution control works and drinking water facilities financing, 26.8(7) Filed Emergency ARC 8906B	6/30/10
Jump-start housing assistance program, 29.5(2), 29.6(5) Notice ARC 8908B , also Filed Emergency ARC 8907B	6/30/10
Iowa jobs program, 32.5 Filed Emergency ARC 8905B	6/30/10
Iowa jobs II program, ch 38 Filed Emergency ARC 8890B	6/30/10

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

OSHA regulations—adoption by reference, 10.20, 26.1 Notice ARC 8862B	6/16/10
Professional boxing; mixed martial arts, amendments to chs 173, 177 Filed ARC 8916B	6/30/10

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Standards of practice—medical directors at medical spas, discipline, 13.8, 23.1 Notice ARC 8925B	6/30/10
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Iowa physician health committee, amendments to ch 14 Filed ARC 8917B	6/30/10

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Wildlife habitat funding, 23.1, 23.5 to 23.7, 23.14 Filed ARC 8885B	6/30/10
Boating speed and distance zoning, amendments to ch 40 Filed ARC 8877B	6/30/10
All-terrain vehicles, off-road motorcycles and off-road utility vehicles, ch 46 Filed ARC 8878B	6/30/10
Snowmobiles, ch 47 Filed ARC 8879B	6/30/10
All-terrain vehicle, off-road motorcycle, off-road utility vehicle, snowmobile and vessel bonding, ch 50 Filed ARC 8880B	6/30/10
Controlled hunting program on Lake Odessa, 53.3 Filed ARC 8886B	6/30/10
Procedures for sale of nursery stock, 71.2(2)“c” Notice ARC 8876B	6/30/10
Fishing regulations, 81.2 Notice ARC 8881B	6/30/10
Fishing tournaments, 88.1 Notice ARC 8882B	6/30/10
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Antlerless-deer-only licenses, 106.1(5), 106.6(6) Filed ARC 8888B	6/30/10
Areas open for taking bobcat; quotas, 108.7 Filed ARC 8889B	6/30/10
Priority watersheds, 113.2, 113.5 Notice ARC 8883B	6/30/10

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Pharmacy technician, amendments to chs 3, 5 Notice ARC 8891B	6/30/10
Reference library, 6.3, 7.3, 15.4, 16.5 Notice ARC 8924B	6/30/10
Hospital pharmacy practice—outpatient services, drugs in emergency department, 7.11, 7.12 Filed ARC 8909B	6/30/10
Administration of immunizations by pharmacists, 8.33 Notice ARC 8915B	6/30/10

Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine, 10.32(5) to 10.32(7) <u>Filed</u> ARC 8892B	6/30/10
Drugs in emergency medical service programs, ch 11 <u>Notice</u> ARC 8923B	6/30/10
Sterile compounding—beyond-use date, high-risk preparations, 13.2, 13.13(1)“e” <u>Notice of Termination</u> ARC 8910B	6/30/10
Sterile compounding practices—beyond-use date; approved storage periods, 13.2, 13.13(1) <u>Notice</u> ARC 8913B	6/30/10
Iowa real-time electronic pseudoephedrine tracking system, ch 100 <u>Filed</u> ARC 8893B	6/30/10

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Speech pathology and audiology, 300.6(3), 300.10, 300.14 to 300.16, 303.4 to 303.7, 304.2(11) <u>Filed</u> ARC 8872B	6/30/10
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PUBLIC HEALTH DEPARTMENT[641]

State plumbing code, 25.1 to 25.5 <u>Filed</u> ARC 8860B	6/16/10
Plumbing and mechanical systems board—contested cases, ch 33 <u>Notice</u> ARC 8861B	6/16/10

PUBLIC SAFETY DEPARTMENT[661]

Licensing of fire protection system installers and maintenance workers, ch 276 <u>Notice</u> ARC 8855B	6/16/10
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REGENTS BOARD[681]

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Traffic and parking at ISU—electric bicycles, 4.26 <u>Filed</u> ARC 8874B	6/30/10

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Description of the organization, 1.5(2) <u>Notice</u> ARC 8895B	6/30/10
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TRANSPORTATION DEPARTMENT[761]

Update of motor vehicle rules, amendments to chs 400, 401, 405, 415, 425, 431, 450, 480 <u>Notice</u> ARC 8869B	6/30/10
Update of references to federal motor carrier safety regulations, 529.1 <u>Filed</u> ARC 8837B	6/16/10

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Electric interconnection of distributed generation facilities, amend 15.8, 15.10, 15.11(4); adopt ch 45 <u>Filed</u> ARC 8859B	6/16/10
Disconnection of residence with a deployed service member, 19.4, 20.4 <u>Notice</u> ARC 8858B	6/16/10
High-volume access service, 22.1(3), 22.14(2), 22.20(5) <u>Filed</u> ARC 8871B	6/30/10

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

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

Senator Merlin Bartz
2081 410th Street
Grafton, Iowa 50440

Senator Thomas Courtney
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Burlington, Iowa 52601

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James Larew
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319
Telephone (515)281-0208

DENTAL BOARD[650]

Licensure; continuing education; standards of practice and principles of professional ethics, 11.1 to 11.3, 11.5, 11.6, 13.2, 25.4(3), 25.9(2), 27.7, 27.9 IAB 6/16/10 ARC 8846B	Board Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	July 6, 2010 10 a.m.
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa jobs main street program, ch 40 IAB 6/30/10 ARC 8921B (See also ARC 8922B herein)	Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	July 20, 2010 8:30 to 10 a.m.
Iowa small business loan program, ch 80 IAB 6/30/10 ARC 8919B (See also ARC 8920B herein)	Iowa Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	July 20, 2010 10 to 11:30 a.m.
Targeted industries internship program—definition of “Iowa student,” 104.1 to 104.13 IAB 6/16/10 ARC 8849B	Southwest Conference Room, First Floor 200 E. Grand Ave. Des Moines, Iowa	July 6, 2010 2 to 3 p.m.
Iowa innovation council, ch 114 IAB 6/16/10 ARC 8851B	Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	July 6, 2010 8:30 to 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 23.1, 24.1, 28.1 IAB 6/16/10 ARC 8845B	Air Quality Bureau Office 7900 Hickman Rd. Windsor Heights, Iowa	July 19, 2010 1 p.m.
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HUMAN SERVICES DEPARTMENT[441]

Medicaid—consumer choices option, 78.34(3), 78.37(16), 78.38(9), 78.41(15), 78.43(15), 78.46(6) IAB 6/2/10 ARC 8832B	Iowa Medicaid Enterprise Bldg. 100 Army Post Rd. Des Moines, Iowa	June 30, 2010 10:30 a.m. to 12 noon
Child care quality rating system, 118.1 to 118.5, 118.7, 118.8 IAB 6/16/10 ARC 8863B (See also ARC 8757B , IAB 5/19/10)	First Floor SE Conference Rooms 1 & 2 Hoover State Office Bldg. Des Moines, Iowa	July 9, 2010 10 a.m. to 12 noon

INSURANCE DIVISION[191]

Retrospective payment of claims for registered nurse practitioners and physician assistants, 70.10 IAB 6/30/10 ARC 8884B	330 Maple St. Des Moines, Iowa	July 29, 2010 10 a.m.
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LABOR SERVICES DIVISION[875]

OSHA regulations—adoption by reference, 10.20, 26.1 IAB 6/16/10 ARC 8862B	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	July 7, 2010 9 a.m.
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MEDICINE BOARD[653]

Standards of practice—medical directors at medical spas; discipline, 13.8, 23.1 IAB 6/30/10 ARC 8925B	Suite C 400 SW 8th St. Des Moines, Iowa	July 20, 2010 11 a.m.
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NATURAL RESOURCE COMMISSION[571]

Restrictions on alcohol use at state parks, recreation areas, and public access areas on Fourth of July holiday, ch 68 IAB 6/2/10 ARC 8814B	Gull Point State Park Lodge West Lake Okoboji 1500 Harpen St. Milford, Iowa	July 13, 2010 6:30 p.m.
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Fishing regulations, 81.2 IAB 6/30/10 ARC 8881B	Swiss Valley Nature Center 13606 Swiss Valley Rd. Peosta, Iowa	July 20, 2010 7 p.m.
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Fishing tournaments, 88.1 IAB 6/30/10 ARC 8882B	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	July 20, 2010 1 p.m.
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Priority watersheds, 113.2, 113.5 IAB 6/30/10 ARC 8883B	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	July 20, 2010 2 p.m.
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PUBLIC HEALTH DEPARTMENT[641]

Plumbing and mechanical systems board—contested cases, ch 33 IAB 6/16/10 ARC 8861B (ICN Network)	ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	July 6, 2010 11 a.m. to 1 p.m.
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Room 780, Morningside College 1501 Morningside Ave. Sioux City, Iowa	July 6, 2010 11 a.m. to 1 p.m.
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Public Library 400 Willow Ave. Council Bluffs, Iowa	July 6, 2010 11 a.m. to 1 p.m.
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Meeting Room C, Public Library 415 Commercial St. Waterloo, Iowa	July 6, 2010 11 a.m. to 1 p.m.
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Kelison Room Public Library Information Center 2950 Learning Campus Dr. Bettendorf, Iowa	July 6, 2010 11 a.m. to 1 p.m.
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National Guard Armory 1160 19th St. SW Mason City, Iowa	July 6, 2010 11 a.m. to 1 p.m.
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Room 45, Crestwood High School 1000 4th Ave. E Cresco, Iowa	July 6, 2010 11 a.m. to 1 p.m.
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Room 113, Trinity Hospital 802 Kenyon Rd. Fort Dodge, Iowa	July 6, 2010 11 a.m. to 1 p.m.
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University of Iowa 2222 Old Highway 218 S Iowa City, Iowa	July 6, 2010 11 a.m. to 1 p.m.
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PUBLIC SAFETY DEPARTMENT[661]

Licensing of fire protection system installers and maintenance workers, ch 276 IAB 6/16/10 ARC 8855B	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	July 6, 2010 9 a.m.
Residential construction requirements, 301.8 IAB 5/19/10 ARC 8770B	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	July 6, 2010 10 a.m.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Description of the organization, 1.5(2) IAB 6/30/10 ARC 8895B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 21, 2010 11 a.m.
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TRANSPORTATION DEPARTMENT[761]

Update of motor vehicle rules, amendments to chs 400, 401, 405, 415, 425, 431, 450, 480 IAB 6/30/10 ARC 8869B	DOT Division Office 6310 SE Convenience Blvd. Ankeny, Iowa	July 22, 2010 10 a.m. (If requested)
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UTILITIES DIVISION[199]

Disconnection of residence with a deployed service member, 19.4, 20.4 IAB 6/16/10 ARC 8858B	Board Hearing Room 350 Maple St. Des Moines, Iowa	July 27, 2010 10 a.m.
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The following list will be updated as changes occur.

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

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

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 8868B

ACCOUNTANCY EXAMINING BOARD[193A]

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 542.4, the Accountancy Examining Board hereby proposes to amend Chapter 12, “Fees,” Iowa Administrative Code.

The amendment to Chapter 12 implements an increase in the firm initial and renewal fee from \$50 to \$100 annually. The fee increase will bring the firm permit fees in line with the costs of regulating the accounting profession.

This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before July 20, 2010. Comments should be addressed to Jodi Adams, CPA MBA, Accountancy Examining Board, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to jodi.adams@iowa.gov.

This amendment is intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

The following amendment is proposed.

Amend rule 193A—12.1(542) as follows:

193A—12.1(542) Required fees. The following is a schedule of the fees for examinations, certificates, licenses, permits and renewals adopted by the board:

Initial CPA examination application:	
Paid directly to CPA examination services	not to exceed \$1500
Reexamination:	
Paid directly to CPA examination services	not to exceed \$1500
Original issuance of CPA certificate or LPA license by examination (fee includes wall certificate)	\$100
Original issuance of CPA certificate by reciprocity or substantial equivalency	\$100
CPA wall certificate or LPA license issued by reciprocity or substantial equivalency	\$50
Replacement of lost or destroyed wall CPA certificate or LPA license	\$50
Original issuance of attest qualification	\$100
Biennial renewal of CPA certificate or LPA license—active status	\$100
Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—active status	\$25
Biennial renewal of CPA certificate or LPA license—inactive status	\$50
Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—inactive status	\$10

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

Penalty for failure to comply with continuing education requirements	\$50 to \$250
Original issuance of firm permit to practice	\$50 <u>\$100</u>
Annual renewal of firm permit to practice	\$50 <u>\$100</u>
Reinstatement of lapsed CPA certificate or LPA license	\$100 + renewal fee + \$25 per month of expired registration
Reinstatement of lapsed firm permit to practice	\$100 + renewal fee + \$25 per month of expired registration
Interstate Transfer Form	\$25

~~The board has not yet established a fee schedule for annual renewals commencing with certificates and licenses that expire on and after June 30, 2010, and will amend the rules when the revised fee schedule is available.~~

ADMINISTRATIVE SERVICES DEPARTMENT

Public Notice

NOTICE OF OFFICIAL PUBLICATION RATE INCREASE FOR THE FISCAL YEAR COMMENCING JULY 1, 2010, AND ENDING JUNE 30, 2011

In accordance with Iowa Code section 618.11, Iowa Department of Administrative ITE Infrastructure Services/Printing Administrator hereby publishes the lineage rate* for newspaper publications of any order, citation, or other publication required or allowed by law (also known as official publications) for the period commencing on July 1, 2010, and ending on June 30, 2011, in the following amounts:

* Lineage rate: "...each line of eight point type two inches in length, or its equivalent." (Iowa Code section 618.11.)

One insertion = 43.3 cents
Each subsequent insertion = 29.4 cents

The rate becomes effective on July 1, 2010. The rate was determined by applying the formula specified in the statute. According to the federal Department of Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers increased 2.2% from April 2009 to April 2010. The April index was the most recent index available as of May 26, 2010, the date on which this notice was submitted for publication.

Pursuant to Iowa Code section 618.11, this notice is exempt from the rule-making process in Iowa Code chapter 17A.

Questions with respect to this notice may be directed to:

Lorrie Tritch, ITE Infrastructure/Printing Administrator
Iowa Department of Administrative Services
1305 E. Walnut
Des Moines, Iowa 50319
Telephone: (515)281-7702
E-mail: Lorrie.Tritch@iowa.gov

ARC 8911B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 177A.6 and 177A.13, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 46, “Crop Pests,” Iowa Administrative Code.

The invasive pest that kills ash trees, the Emerald Ash Borer, has been found in the state; and a quarantine has been established for Allamakee County. Under the proposed amendments, firewood offered for sale, sold or distributed would need to be identified by the county and state of origin. Wood may be moved under a compliance agreement or limited permit. Clarifying language is added to provide that certificates can be revoked for regulatory noncompliance. The Department plans to make these amendments effective January 1, 2011.

Any interested persons may make written suggestions or comments on the proposed amendments on or before August 1, 2010. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or E-mail to Margaret.Thomson@IowaAgriculture.gov.

These proposed amendments are subject to the Department’s general waiver provision.

These amendments are intended to implement Iowa Code sections 177A.8 and 177A.13.

The following amendments are proposed.

ITEM 1. Amend rule 21—46.13(177A) as follows:

21—46.13(177A) Certificates. Certificates issued to nursery growers, ~~or~~ nursery dealers or signees of compliance agreements pertaining to regulated articles are nontransferable and are for the exclusive use of the one to whom they are issued. Certificates may be revoked by the state entomologist for a failure to comply with regulatory requirements.

ITEM 2. Adopt the following **new** rule 21—46.16(177A):

21—46.16(177A) Firewood labeling. Every package of firewood offered for sale, sold or distributed must include the harvest location of the wood by county and state. The harvest location of wood sold in bulk must be included on the delivery ticket. These provisions apply to any length of tree that has been cut. A limited permit may be issued by the state entomologist or a compliance agreement may specify the regulations which would allow the movement of the wood. The limited permit or compliance agreement is not transferable and may be revoked by the state entomologist for noncompliance or failure to comply with regulatory requirements.

ARC 8870B**ARCHAEOLOGIST[685]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 17A.3 and chapter 263B, the Office of the State Archaeologist hereby gives Notice of Intended Action to amend Chapters 1, 2, 4, 6, 7, 8, 10, 11, 12, and 14 and to adopt new Chapter 15, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The proposed amendments are designed to comply with requirements in state and federal law, to provide a contested case procedure consistent with Iowa Code chapter 17A, and to more accurately reflect the operations of the Office of the State Archaeologist.

Any interested person may comment either orally or in writing on the proposed amendments on or before July 20, 2010. Comments should be directed to Linda Langenberg, Office of the State Archaeologist, 700 South Clinton Street Building, The University of Iowa, Iowa City, Iowa 52242-1030; telephone (319)384-0732; E-mail linda-langenberg@uiowa.edu.

These amendments are intended to implement Iowa Code chapter 263B.

The following amendments are proposed.

ITEM 1. Amend subrules 1.1(1), 1.1(4) and 1.1(8) as follows:

1.1(1) In order to meet these statutory objectives under Iowa Code section 263B.2 and Acts of the Sixty-seventh General Assembly, Senate File 2200, sections 26 and 50, the OSA is defined as the primary state interagency service organization for archaeological survey, ~~and evaluation, and mitigation.~~ In this capacity, the OSA is notified of projects that are funded or permitted by the state; and projects, organizations or other entities requiring state permits, or receiving state funding for archaeological salvage and for adverse impact upon such sites or that have the potential for adversely affecting archaeological sites.

1.1(4) The goal of utilizing the ~~above-mentioned~~ procedures in this rule, as they apply to the department of transportation and to any other state agency, is to ensure that neither the state nor any of its legal subdivisions is responsible for the needless destruction of historical objects. If such destruction occurs, or cannot be avoided, ~~the~~ OSA will take proper reasonable action to obtain all possible information concerning such materials prior to destruction. However, OSA will not assume financial responsibility for intermediate- to large-scale actions involving the salvaging of archaeological information.

1.1(8) OSA may perform archaeological contract services for agencies utilizing federal, ~~state-federal, or state funds,~~ or private funding.

ITEM 2. Amend subrule 1.2(2) as follows:

1.2(2) ~~The assistant~~ associate director is responsible for administration of the office, ~~and~~ maintenance of the state repository and documents collection, has functional supervision over the staff ~~and,~~ acts in the absence of the director, and contributes to production of scientific reports and articles pursuant to Iowa Code section 263B.2 in coordination with the specific requests of the director and submission of reports and articles to the director according to a specific annual timetable developed by the director.

ITEM 3. Amend rule 685—1.3(263B) as follows:

685—1.3(263B) Further information. The general public may obtain ~~further information on the rules contained in this section and other information~~ concerning the function and operation of OSA either

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in writing or ~~calling~~: by telephone to Director, OSA, ~~Eastlawn~~, 700 S. Clinton Street Building, The University of Iowa, Iowa City, Iowa 52242, ~~(319)353-5175~~; (319)384-0751.

This rule is intended to implement Iowa Code section 17A.3 ~~of the Code~~.

ITEM 4. Amend rule 685—2.1(17A) as follows:

685—2.1(17A) Procedures.

2.1(1) Petitions requesting the promulgation, amendment, waiver, or repeal of a rule ~~are~~ shall be made to the director in writing and include the following information:

- a. Name ~~and~~, address, and telephone number of petitioner.
- b. The text of the rule as is; and as proposed.
- c. A concise statement of the reasons for the adoption, amendment, waiver, or repeal of the rule.
- d. The statutes, rules, or orders applicable to the question presented in the petition.

2.1(2) If a waiver is sought pursuant to rule 685—2.2(17A), in addition to the information set forth in subrule 2.1(1), the petition shall also include the following details:

- a. Precise scope and requested duration of the waiver;
- b. The relevant facts that the petitioner believes will support the four criteria set forth in paragraphs 2.2(3) “a” to “d”;
- c. The name, address, and telephone number of all persons who may have knowledge about the facts and circumstances giving rise to the request for waiver; and
- d. The name, address, and telephone number of all persons whom the petitioner believes may be adversely impacted by OSA’s granting of the waiver request.

~~2.1(2)~~ **2.1(3)** Within 60 days OSA will notify the petitioner of its the disposition of the petition within 60 days.

This rule is intended to implement Iowa Code section 17A.4.

ITEM 5. Adopt the following new rule 685—2.2(17A):

685—2.2(17A) Waivers.

2.2(1) For the purposes of this rule, the term “waiver” means action by the state archaeologist that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of the person.

2.2(2) The state archaeologist may grant a waiver from a rule only if OSA has jurisdiction over the rule and the requested waiver is consistent with applicable statutes and Constitutional provisions or other provisions of law. OSA may not waive requirements created or imposed by statute, by the state or federal Constitution, or by another provision of law.

2.2(3) In response to a petition completed pursuant to rule 685—2.1(17A), OSA may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if OSA, based on clear and convincing evidence, finds all of the following:

- a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

2.2(4) OSA may require the petitioner to serve notice in a form prescribed by OSA on all persons to whom notice is required by any provision of law, as well as all persons who may be impacted by the grant or denial of the waiver sought. OSA may additionally require the petitioner to provide a written statement to OSA attesting that notice has been provided.

2.2(5) The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall not otherwise apply to

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agency proceedings for a waiver. At a hearing on a petition for a waiver, the petitioner may offer exhibits and provide witnesses or testimony. The hearing may be in person, telephonic, or in any other format chosen by OSA. The state archaeologist, or the designee of the state archaeologist, shall preside over the hearing.

2.2(6) An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued. OSA may place any condition on a waiver that OSA finds necessary and supportable by the law.

2.2(7) The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of OSA, upon consideration of all relevant factors. OSA shall evaluate each fact based on the unique, individual circumstances set out in the petition for waiver. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that OSA should exercise its discretion to grant a waiver from an OSA rule.

2.2(8) All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information that OSA is authorized or required to keep confidential. Accordingly, OSA may redact confidential information from petitions or orders prior to public inspection.

2.2(9) Semiannually, OSA shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying OSA's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

2.2(10) A waiver issued by OSA pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, OSA issues an order finding any of the following:

- a. The person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b. The substantially equivalent means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
- c. The subject of the waiver order has failed to comply with all conditions contained in the order.

2.2(11) Judicial review of the OSA decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

This rule is intended to implement Iowa Code chapter 17A.

ITEM 6. Amend **685—Chapter 4**, title, as follows:

PROCEDURES FOR INFORMAL SETTLEMENTS IN CONTESTED CASES

ITEM 7. Adopt the following **new** rules 685—4.2(17A) to 685—4.31(17A):

685—4.2(17A) Contested cases. Except when inconsistent with Iowa Code chapter 263B, this chapter applies to contested case proceedings conducted by OSA.

685—4.3(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

ARCHAEOLOGIST[685](cont'd)

“Presiding officer” means the state archaeologist, the designee of the state archaeologist or, under certain circumstances, the administrative law judge.

“Proposed decision” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the state archaeologist did not preside.

685—4.4(17A) Time requirements.

4.4(1) Time shall be computed as provided in Iowa Code section 4.1(34).

4.4(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

685—4.5(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the OSA action in question. The request for a contested case proceeding should state the name and address of the requester, identify the specific OSA action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

685—4.6(17A) Notice of hearing.

4.6(1) Delivery. Delivery of the notice of hearing by OSA constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.6(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If OSA or another party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for OSA or the state and of parties’ counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11, that the presiding officer be an administrative law judge.

685—4.7(17A) Presiding officer.

4.7(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the state archaeologist or the designee of the state archaeologist.

4.7(2) The state archaeologist may deny the request only upon a finding that one or more of the following apply:

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- a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- b. An administrative law judge is unavailable to hear the case within a reasonable time.
- c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e. Funds are unavailable to pay the costs of an administrative law judge and an interdivision appeal.
- f. The request was not timely filed.
- g. The request is not consistent with a specified statute.

4.7(3) The state archaeologist shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

4.7(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the state archaeologist. A party must seek any available intradivision appeal in order to exhaust adequate administrative remedies.

4.7(5) Unless otherwise provided by law, the state archaeologist, when reviewing a proposed decision upon intradivision appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

685—4.8(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, OSA in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

685—4.9(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

685—4.10(17A) Disqualification.

4.10(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.10(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information

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which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other OSA functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code chapter 17A.

4.10(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.10(4) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and seek a stay pursuant to these rules.

685—4.11(17A) Consolidation—severance.

4.11(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.11(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

685—4.12(17A) Pleadings.

4.12(1) Petition. A petition in a contested case proceeding shall state in separately numbered paragraphs the following:

- a. The persons or entities on whose behalf the petition is filed;
- b. The particular provisions of statutes and rules involved;
- c. The relief demanded and the facts and law relied upon for such relief; and
- d. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.12(2) Answer. An answer shall be filed within 20 days of service of a petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. The answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim. An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

4.12(3) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or at the discretion of the presiding officer, who may impose terms or grant a continuance.

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685—4.13(17A) Service and filing of pleadings and other papers.

4.13(1) Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or OSA, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.13(2) Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.13(3) After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the State Archaeologist, 700 South Clinton Street Building, University of Iowa, Iowa City, Iowa 52242-1030. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with OSA.

4.13(4) Except where otherwise provided by law, a document is deemed filed at the time it is delivered to OSA, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.13(5) Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Office of the State Archaeologist, 700 South Clinton Street Building, University of Iowa, Iowa City, Iowa 52242-1030, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or university mail).

(Date)

(Signature)

685—4.14(17A) Discovery.

4.14(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.14(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in rule 685—4.4(17A).

4.14(3) The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

4.14(4) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

685—4.15(17A) Subpoenas.

4.15(1) Issuance.

a. An OSA subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

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b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.15(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

685—4.16(17A) Motions.

4.16(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.16(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of OSA or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.16(3) The presiding officer may schedule oral argument on any motion.

4.16(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of OSA or an order of the presiding officer.

685—4.17(17A) Prehearing conference.

4.17(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

4.17(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.17(3) In addition to the requirements of subrule 4.17(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.17(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

685—4.18(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.18(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived

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by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. OSA may waive notice of such requests for a particular case or an entire class of cases.

4.18(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

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

685—4.19(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with OSA rules. Unless otherwise provided, a withdrawal shall be with prejudice.

685—4.20(17A) Intervention.

4.20(1) A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.20(2) Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.20(3) The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

4.20(4) If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

685—4.21(17A) Hearing procedures.

4.21(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.21(2) All objections shall be timely made and stated on the record.

4.21(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

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4.21(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.21(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.21(6) Witnesses may be sequestered during the hearing.

4.21(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.

b. The parties shall be given an opportunity to present opening statements.

c. Parties shall present their cases in the sequence determined by the presiding officer.

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.

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

685—4.22(17A) Evidence.

4.22(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.22(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.22(3) Evidence in the proceeding shall be confined to the issues to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.22(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.22(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.22(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

685—4.23(17A) Default.

4.23(1) If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no continuance is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.23(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 20 days after the mailing of the decision to the parties, a motion to vacate pursuant to subrule 4.23(3) is filed and served on all

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parties or, if the decision is a proposed decision within the meaning of Iowa Code section 17A.15(2), an appeal from the decision on the merits is filed within the time provided by rule 685—4.28(17A).

4.23(3) A motion to vacate may be filed only by a party who failed to appear for the hearing and against whom the decision was rendered. The motion must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to and filed and served with the motion.

4.23(4) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown, in accordance with Iowa Rule of Civil Procedure 1.977. The burden of proof as to the existence of good cause is on the moving party. Adverse parties may, within ten days of the service of the motion and supporting affidavit(s) upon them, file a response to the motion. Adverse parties shall be allowed to conduct discovery as to the issue of the existence of good cause and to present evidence on the issue prior to a ruling on the motion, if a request to do so is included in that party's response.

4.23(5) The time for the filing of an intra-agency appeal from or petition for review of a decision for which a timely motion to vacate has been filed is stayed pending the issuance of the presiding officer's ruling on the motion to vacate.

685—4.24(17A) Ex parte communication.

4.24(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case or in proceedings on a petition for declaratory order in which there are two or more parties shall not communicate directly or indirectly with any party, representative of any party or any other person with a direct or indirect interest in such case, nor shall any such party, representative or person communicate directly or indirectly with the presiding officer concerning any issues of fact or law in that case, except upon notice and opportunity for all parties to participate. Nothing in this provision precludes the presiding officer, without such notice and opportunity for all parties to participate, from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish or modify the evidence in the record. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another's investigative work product in the course of determining whether to initiate a proceeding or exposure to factual information while performing other agency functions, including fact-gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as a presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17.

4.24(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and with the filing of the petition in a declaratory order proceeding in which there are two or more parties and continue for as long as the case is pending.

4.24(3) Communications with a presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties prior to seeking to continue hearings or other deadlines.

4.24(4) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case or proceedings on a petition for declaratory order in which there are two or more parties shall disclose to all parties and place on the record of the pending matter all such written communications, all written responses to the communication, and a memorandum stating the substance of all such oral and other communications received, all responses

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made and the identity of each person from whom the presiding officer received a prohibited ex parte communication. The presiding officer shall notify all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited communication will be allowed the opportunity to do so upon written request filed within ten days after the giving of notice that the matters have been placed on the record.

4.24(5) If the presiding officer determines that the effect of a prohibited ex parte communication is so prejudicial that it cannot be cured by the procedure specified in subrule 4.24(4), the presiding officer shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

4.24(6) Promptly after being assigned to serve as presiding officer, a presiding officer shall disclose to all parties any material factual information received through ex parte communication prior to such assignment, unless the factual information has or soon will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery.

4.24(7) Sanctions for prohibited communications.

a. The agency and any party may report any violation of this rule to appropriate authorities for any disciplinary proceedings provided by law.

b. The presiding officer may render a proposed decision or, in the case of OSA, a final decision imposing appropriate sanctions for violations of this rule including a decision against the offending party, censure, suspension, or revocation of the privilege to practice before the agency.

685—4.25(17A) Recording costs. Upon request, OSA shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

685—4.26(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the state archaeologist may review an interlocutory order of the presiding officer. In determining whether to do so, the state archaeologist shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by OSA at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order but no later than the time for compliance with the order or the date of hearing, whichever is first.

685—4.27(17A) Final decision.

4.27(1) When the state archaeologist presides over the reception of evidence at the hearing, the decision is a final decision.

4.27(2) When the state archaeologist does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of OSA without further proceedings unless there is an appeal to, or review on motion of, the state archaeologist within the time provided in rule 685—4.28(17A).

685—4.28(17A) Appeals and review.

4.28(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the state archaeologist within 30 days after issuance of the proposed decision.

4.28(2) Review. The state archaeologist may initiate review of a proposed decision on the state archaeologist's own motion at any time within 30 days following the issuance of such a decision.

4.28(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with OSA. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a.* The parties initiating the appeal;
- b.* The proposed decision or order appealed from;

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- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

4.28(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal, or by a nonappealing party, within 14 days of service of the notice of appeal. The state archaeologist may remand a case to the presiding officer for further hearing or may personally preside at the taking of additional evidence.

4.28(5) Scheduling. OSA shall issue a schedule for consideration of the appeal.

4.28(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The state archaeologist may resolve the appeal on the briefs or provide an opportunity for oral argument. The state archaeologist may shorten or extend the briefing period as appropriate.

685—4.29(17A) Applications for rehearing.

4.29(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

4.29(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.28(4), the applicant requests an opportunity to submit additional evidence.

4.29(3) Time of filing. The application shall be filed with OSA within 20 days after issuance of the final decision.

4.29(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, OSA shall serve copies on all parties.

4.29(5) Disposition. Any application for a rehearing shall be deemed denied unless OSA grants the application within 20 days after its filing.

685—4.30(17A) Stays of OSA actions.

4.30(1) When available.

a. Any party to a contested case proceeding may petition OSA for a stay of an order issued in that proceeding or for other temporary remedies, pending review by OSA. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The state archaeologist may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition OSA for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

4.30(2) When granted. In determining whether to grant a stay, the presiding officer or state archaeologist shall consider the factors listed in Iowa Code section 17A.19(5) "c."

4.30(3) Vacation. A stay may be vacated by the issuing authority by application of any party to OSA or by OSA acting sua sponte.

685—4.31(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached,

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a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the Iowa Rules of Civil Procedure and these administrative rules that govern such motions.

ITEM 8. Adopt the following new implementation sentence in **685—Chapter 4**:

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

ITEM 9. Amend paragraph **6.2(1)“d”** as follows:

d. OSA prints at least one number of the Reports series annually if appropriate manuscripts and funding are available.

ITEM 10. Amend subrules 7.1(1) and 7.1(4) as follows:

7.1(1) ~~Individuals~~ Qualified individuals (see definition at rule 685—14.2(263B)) shall have access to the collections upon request, providing that necessary staff is available. Users are requested to contact OSA in advance in order to facilitate scheduling.

7.1(4) OSA accepts donations of artifacts or artifact collections in accordance with the fee schedule published on the OSA Web site (also available in printed form by written request) provided that explanatory materials, ~~accompany collections~~ such as site sheets, site records and all pertinent locational information, accompany collections. Donated specimens are required to be washed and reasonably identified. OSA will not determine the monetary value of artifacts.

ITEM 11. Amend subrules 8.1(1) and 8.1(2) as follows:

8.1(1) ~~Individuals~~ Qualified individuals (see definition at rule 685—14.2(263B)) shall have access to the collections upon request, providing that necessary staff is available. Users are requested to contact OSA in advance in order to facilitate scheduling.

8.1(2) Donations of materials are accepted in accordance with the fee schedule published on the OSA Web site (also available in printed form by written request) in the following priority:

a. to e. No change.

ITEM 12. Amend subrule 10.1(2) as follows:

10.1(2) ~~The~~ OSA staff will cooperate fully with researchers, aiding with the location of materials needed. Work areas will be provided for reasonable lengths of time. All publications or reports resulting in full or in part from the use of OSA collections and facilities ~~will~~ shall include an appropriate acknowledgment. ~~Two copies~~ One print and one electronic copy of all such publications or reports shall be sent to ~~the~~ OSA for inclusion in the documents collection.

ITEM 13. Amend rule 685—11.1(263B) as follows:

685—11.1(263B) Procedures. OSA is the appropriate agency to contact regarding the discovery of human physical remains or suspected human physical remains believed to be over 150 years ~~old~~ in age. ~~The~~ OSA should be notified of the location of areas believed to represent ancient burial grounds. The director has the authority to deny permission to disinter human physical remains from aboriginal ossuaries, grave sites, cemeteries or any other archaeological deposit that are determined to have state and national significance from the standpoint of history or science.

11.1(1) A site will be judged significant if it has been demonstrated by archaeological investigation, including but not limited to excavation and analysis appropriate to the context, that it possesses one or more of the qualities listed below:

a. to c. No change.

11.1(2) No change.

11.1(3) If a site is determined to be significant by these rules and is designated by the director to be preserved, any human physical remains recovered during testing may be reinterred at the original burial site rather than at one of the designated state cemeteries. Sites that are judged not to be significant will be salvaged by ~~the~~ OSA or its designated representative to the degree permitted by state available funding

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and ~~available~~ staff. In such cases, materials recovered will be the subject of a written report and the human remains will be reburied in one of the designated state cemeteries.

11.1(4) and **11.1(5)** No change.

11.1(6) ~~The~~ OSA will assist with the ongoing identification of ancient cemetery areas to the degree permitted by state available funding and available staff. ~~The~~ OSA will coordinate such actions with appropriate federal, state, county, municipal or private concerns.

11.1(7) No change.

ITEM 14. Amend **685—Chapter 12**, title, as follows:

~~STATE SITE RECORD AND INVENTORY SYSTEM~~ IOWA ARCHAEOLOGICAL SITE FILE

ITEM 15. Amend rules 685—12.1(263B) and 685—12.2(263B) as follows:

685—12.1(263B) Definition. Pursuant to the statutory responsibilities of locating and recovering archaeological and paleontological remains, ~~the~~ OSA maintains ~~site records and prepares and periodically updates the official site inventory for the state~~ the Iowa Archaeological Site File in digital and paper formats. ~~The~~ OSA is the appropriate agency for the public or other agencies to contact to report sites or to receive information concerning known sites in the inventory. ~~The~~ OSA assigns all official site numbers following written guidelines which are available from ~~the~~ OSA upon request.

685—12.2(263B) The Iowa site records Archaeological Site File. ~~Specific locational and descriptive information on each reported site is placed on official Iowa Site Record sheets. Blank sheets and a packet of information explaining how they are to be completed are available from OSA upon request.~~

12.2(1) ~~The official site numbers used on site record sheets and in the inventory in the Iowa Archaeological Site File conform to the Smithsonian trinomial system which incorporates state and county designations coded with sequentially numbered sites within each county.~~

12.2(2) ~~Numbers are usually assigned on an individual basis as needed. In special cases, blocks of site numbers shall be allocated by OSA to researchers to facilitate projects. Individuals, firms, and agencies that are assigned site numbers must submit site data for the assigned numbers within six months of the date assigned.~~

~~a. Blocks of site numbers will be issued for periods of time up to one year.~~

~~b. If an individual or agency fails to utilize assigned numbers within the period allowed, the numbers may be renewed or revoked depending upon the circumstances.~~

12.2(3) If an individual, firm, or agency fails to submit site data within the period allowed, the numbers may be renewed or revoked depending upon the circumstances. OSA may revoke site number assignment privileges to any individual, firm, or agency that consistently fails to submit data for its assigned site numbers.

ITEM 16. Rescind rule 685—12.3(263B) and adopt the following new rule in lieu thereof:

685—12.3(263B) Iowa site database. Specific locational and descriptive information on each reported site is recorded in the Iowa Archaeological Site File database in a data format developed by OSA. The electronically digitized, mapped location of each reported site is part of the Iowa Archaeological Site File database. Information explaining the process of reporting site information is available from OSA upon request.

12.3(1) OSA shall develop and maintain a system for Internet access to the Iowa Archaeological Site File database. Information about access to the system is available from OSA on request.

12.3(2) The Internet system is updated on a regular basis as new site information is added to the Iowa Archaeological Site File.

ITEM 17. Amend **685—Chapter 12**, implementation sentence, as follows:

~~This chapter is~~ These rules are intended to implement Iowa Code section 263B.2 of the Code.

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ITEM 18. Amend rules 685—14.3(263B) and 685—14.4(263B) as follows:

685—14.3(263B) Iowa site records and site location maps Archaeological Site File.

14.3(1) Upon request, the OSA will make the ~~Iowa site records and site location maps~~ Iowa Archaeological Site File including site location maps available to the following individuals for inspection and copying:

- a. Members of the Association of Iowa Archaeologists;
- b. Members of the ~~Society~~ Register of Professional Archaeologists;
- c. Qualified archaeologists;
- d. OSA staff;
- e. Students or researchers under the supervision of a person meeting any of the above criteria;
- f. Amateur archaeologists, at the discretion of the state archaeologist;
- g. Other persons if ~~the~~ OSA determines that disclosure will not result in unreasonable risk of damage to or loss of the resource or site.

14.3(2) ~~The~~ OSA maintains a log of all non-OSA staff users of the ~~Iowa site records~~ Archaeological Site File and associated site location maps. The log includes the name and address of each user and the date of use.

14.3(3) One copy of any report or publication utilizing information obtained from the ~~Iowa site records~~ Archaeological Site File shall be sent to ~~the~~ OSA for inclusion in the documents collection.

14.3(4) Notwithstanding any of the preceding provisions, the state archaeologist retains authority to deny access of any individual to the ~~Iowa site records and site location maps~~ Archaeological Site File including site location maps, in accordance with Iowa Code section 22.7(21)(20), if release of the information will result in unreasonable risk of damage to or loss of archaeological resources. An appeal committee consisting of three members of ~~the~~ OSA advisory committee shall review contested cases and make recommendations to the university of Iowa vice president of educational development and for research.

14.3(5) The state archaeologist may enter into cooperative agreements with the state historical society and other agencies in order to make available ~~copies of access to the~~ Iowa site records Archaeological Site File for planning purposes.

14.3(6) Documents containing information on the specific location of any archaeological resource or site shall be considered an extension of the ~~Iowa site records~~ Archaeological Site File and shall be treated in similar fashion. Such documents include those archived at OSA or released by OSA to agencies or individuals.

685—14.4(263B) Policy on copying charges. Anyone making a request for reproduction ~~of from the~~ Iowa site records Archaeological Site File and OSA documents including electronic records will be charged for services.

ITEM 19. Adopt the following new 685—Chapter 15:

CHAPTER 15
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

685—15.1(17A,22,263B) Definitions. As used in this chapter:

“Agency” means the office of state archaeologist (OSA).

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public and records or information contained in records that are specified as confidential by Iowa Code section 22.7, Iowa Code section 263B.10, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

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“*Custodian*” means the state archaeologist or a person lawfully delegated authority by the state archaeologist to act for the agency in implementing Iowa Code chapter 22.

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” means the whole or a part of a “public record” as defined in Iowa Code section 22.1.

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

685—15.2(17A,22,263B) Requests for access to records.

15.2(1) *Location of record.* A request for access to a record should be directed to the state archaeologist at OSA, 700 South Clinton Street Building, University of Iowa, Iowa City, Iowa 52242; or telephone (319)384-0751.

15.2(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except legal or university holidays.

15.2(3) *Request for access.* Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

15.2(4) *Response to requests.* Access to an open record shall be provided promptly, unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.7 or 22.8. Upon request, the custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code section 22.7 or 22.8, or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 685—15.3(17A,22,263B) and other applicable provisions of law.

15.2(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

15.2(6) *Copying.* A reasonable number of copies of an open record may be made in the agency’s office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

15.2(7) *Fees.*

a. OSA may charge the photocopy fee set forth in its “Fees for Services” document, which reflects the actual cost of such photocopies. The current “Fees for Services” document is available from OSA and posted on the OSA Web site.

b. In addition to photocopy charges, an hourly fee may be charged for actual OSA expenses in supervising the examination and copying of requested records. OSA shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly compensation of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

c. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

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685—15.3(17A,22,263B) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

685—15.4(17A,22,263B) Disclosures without the consent of the subject.

15.4(1) Open records are routinely disclosed without the consent of the subject.

15.4(2) To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Without limiting the custodian's discretion to disclose records pursuant to Iowa Code section 22.7 and applicable law, the following are nonexhaustive examples of instances where disclosure, if lawful, can generally occur without notice to the subject:

a. For a routine use as defined in rule 685—15.5(17A,22,263B) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

685—15.5(17A,22,263B) Routine use.

15.5(1) Definition. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

15.5(2) Examples. To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential or exempt records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the agency or officer which the office is advising or representing in the matter in question or to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

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e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

685—15.6(17A,22,263B) Consensual disclosure of confidential records.

15.6(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 685—15.3(17A,22,263B).

15.6(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

685—15.7(17A,22,263B) Release to subject.

15.7(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 685—15.3(17A,22,263B). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or records otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

15.7(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

685—15.8(17A,22,263B) Availability of records.

15.8(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

15.8(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Records which are exempt from disclosure under Iowa Code section 22.7.

b. Records which constitute attorney work product or attorney-client communications or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R. Civ. P. 1.503(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the code of professional responsibility, and case law.

c. Records relating to the nature and location of archaeological resources or sites, which are exempt from disclosure pursuant to Iowa Code section 22.7(20) and Iowa Code section 263B.10.

d. Personal information in confidential personnel records pursuant to Iowa Code section 22.7(11).

e. Any other records made confidential by law.

685—15.9(17A,22,263B) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 685—15.1(17A,22,263B). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by OSA are personnel and

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employment management information systems, the records for which are collected pursuant to the authority of Iowa Code chapter 263B. Storage is in paper form, though certain employment information may be incorporated into electronic records which could then be matched, collated, or compared.

685—15.10(17A,22,263B) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 685—15.1(17A,22,263B). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, some records may contain information about individuals. All records are stored both on paper and in automated data processing systems unless otherwise noted.

15.10(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

15.10(2) Publications. News releases, annual reports, project reports, and agency newsletters are available through OSA's Web site or from the agency. Any news releases, annual or project reports, or newsletters may contain information about individuals, including agency staff members.

15.10(3) Statistical reports. Periodic reports for various OSA programs may be available from OSA.

15.10(4) Grants/contracts. OSA may have communications with prospective granting agencies or clients about grants or contracts.

These rules are intended to implement Iowa Code chapter 22.

ARC 8875B

CAPITAL INVESTMENT BOARD, IOWA[123]

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 15E.63, the Iowa Capital Investment Board hereby gives Notice of Intended Action to amend Chapter 3, “Tax Credit for Investments in Venture Capital Funds,” and Chapter 4, “Investment Tax Credits Relating to Investments in a Fund of Funds Organized by the Iowa Capital Investment Corporation,” Iowa Administrative Code.

These amendments are proposed as a result of 2010 Iowa Acts, Senate File 2380.

Item 1 adopts new rule 123—3.9(15E) to provide for the repeal of the tax credit for investments in venture capital funds.

Item 2 amends the implementation clause for 123—Chapter 3.

Item 3 amends rule 123—4.4(15E) to provide for a reduction in the amount of contingent tax credits related to investments in the Iowa Fund of Funds to \$60 million.

Item 4 amends the implementation clause for 123—Chapter 4.

These amendments are being proposed by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

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

CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

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 August 3, 2010, to the Iowa Capital Investment Board, in care of 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 July 20, 2010. Such written comments should be directed to the Iowa Capital Investment Board, in care of 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 Iowa Capital Investment Board, in care of 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 July 30, 2010.

These amendments are intended to implement Iowa Code sections 15E.51 and 15E.66 as amended by 2010 Iowa Acts, Senate File 2380.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 123—3.9(15E):

123—3.9(15E) Repeal of the tax credit. The tax credit for investments in venture capital funds is repealed for investments made after July 1, 2010. Any tax credit certificates issued for investments made on or before July 1, 2010, are valid and can be claimed on tax returns beginning with the third tax year following the tax year the investment was made in accordance with rule 123—3.6(15E).

ITEM 2. Amend **123—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 15E.51 as amended by 2010 Iowa Acts, Senate File 2380.

ITEM 3. Amend rule **123—4.4(15E)**, first unnumbered paragraph, as follows:

Following receipt of the certification of the Iowa capital investment corporation pursuant to rule 123—4.3(15E), the board shall issue a certificate to each such designated investor at the closing. The maximum amount of tax credits represented by each certificate shall be calculated in accordance with the limited partnership agreement or operating agreement of the applicable fund of funds. The board shall not issue certificates if, in the aggregate, the maximum amount of tax credits represented by all issued and uncanceled certificates at any time would exceed ~~\$100~~ \$60 million (less the aggregate amount of any tax credits that have been used to reduce tax liabilities) calculated in accordance with Iowa Code section 15E.66.

ITEM 4. Amend **123—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 15E as amended by ~~2005~~ 2010 Iowa Acts, Senate File ~~H4~~ 2380.

ARC 8921B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development proposes to adopt a new Chapter 40, “Iowa Jobs Main Street Program,” Iowa Administrative Code.

The rules implement a new grant program through the existing Iowa Main Street Program within the Community Development Division of the Department. The rules describe criteria for the Director’s determination of high-priority projects eligible for funding through the Iowa Jobs II Program implemented by 2010 Iowa Acts, Senate File 2389.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on July 20, 2010. Interested persons may submit written or oral comments by contacting Thom Guzman, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3058; or E-mail at thom.guzman@iowa.gov.

The Department will hold a public hearing on July 20, 2010, from 8:30 to 10 a.m. to receive comments on these rules. The public hearing will be held in the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 8922B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2010 Iowa Acts, Senate File 2389, sections 10 and 68.

ARC 8919B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development proposes to adopt a new Chapter 80, “Iowa Small Business Loan Program,” Iowa Administrative Code.

The rules implement a new small business loan program to promote the creation and retention of jobs in Iowa’s economy and to assist businesses to be more competitive. The rules establish the process by which a business shall apply for, receive and manage loan funds under this program. The Legislature appropriated to the Department \$5 million for the program, which was created by 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on July 20, 2010. Interested persons may submit written or oral comments by contacting Kelley Myers, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3018; or E-mail at kelly.myers@iowa.gov.

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

The Department will hold a public hearing on July 20, 2010, from 10 to 11:30 a.m. to receive comments on these rules. The public hearing will be held in the Iowa Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 8920B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

ARC 8896B**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 2010 Iowa Acts, Senate File 2388, section 5(4), the Department of Human Services proposes to amend Chapter 36, “Facility Assessments,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments implement a health care access assessment for hospitals other than state-owned hospitals and critical access hospitals and make corresponding adjustments to payment rates for those participating hospitals. Legislation in 2010 Iowa Acts, Senate File 2388, directed the Department to implement a hospital assessment. After reviewing several models of a hospital assessment and revising parameters in consultation with hospital industry representatives, the Department has chosen the model described in these amendments. Implementation of the amendments is conditional upon federal approval by the Centers for Medicare and Medicaid Services.

The health care access assessment rate for a participating hospital will be calculated as 1.26 percent of net patient revenue as specified in the hospital’s Medicare cost report for fiscal year 2008. The hospital shall pay the assessment to the Department on a quarterly basis, no later than 30 days following the end of each calendar quarter. The reimbursement methodology for participating hospitals is modified to provide a health care access assessment inflation factor that is applied to the inpatient diagnosis-related group (DRG) rates and outpatient ambulatory patient classification (APC) base rates.

These amendments also include technical changes to update the legal references in Chapter 36, Division II.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8894B**. 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 July 20, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4, 2009 Iowa Code Supplement chapter 249L, and 2010 Iowa Acts, Senate File 2388.

ARC 8900B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 85, “Services in Psychiatric Institutions,” Iowa Administrative Code.

These proposed amendments continue the rate reductions instituted in December 2009 pursuant to Executive Order 19 for state fiscal year 2011. Rule 441—79.16(249A), which implemented the temporary reimbursement decreases, is rescinded. The reimbursement rules for particular providers are amended to make the same reductions. Reimbursement rules for psychiatric medical institutions for children (PMICs) are revised to continue the interim payment system for another year.

Hospital reimbursement rules are revised to:

- Correct dates and status indicators related to the diagnosis-related group (DRG) and ambulatory payment classification (APC) reimbursement methodologies for inpatient services and outpatient services, respectively.
- Eliminate enhanced disproportionate share hospital (DSH) payments and enhanced graduate medical education (GME) payments.
- Replace the enhanced payments with the Iowa non-state-government-owned acute care teaching hospital DSH payments.
- Establish an Iowa state-owned teaching hospital disproportionate share fund from which payments shall be made monthly to qualifying hospitals.

The requirement that payments to public hospitals and nursing facilities not exceed their actual costs is eliminated as unnecessary in light of the repeal of the state statutory provision limiting payments to public hospitals and nursing facilities to their costs (2010 Iowa Acts, Senate File 2156, section 16).

Some language has been revised to clarify current policy. Obsolete dates are updated. References to the mental retardation waiver are updated to “intellectual disabilities waiver.”

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8899B**. 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 July 20, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 503190114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, House File 2526, section 33, and 2010 Iowa Acts, Senate File 2156, section 16.

ARC 8884B**INSURANCE DIVISION[191]****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 514F.6 and 2010 Iowa Acts, Senate File 2201, section 16, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 70, “Utilization Review,” Iowa Administrative Code.

The proposed amendment implements 2010 Iowa Acts, Senate File 2201, section 16, which includes advanced registered nurse practitioners and physician assistants in the provisions addressing retrospective payment of clean claims for covered services during the credentialing period.

Chapter 70 does not provide for waivers. Persons seeking waivers must petition the Division for a waiver in the manner set forth under 191—Chapter 4.

Any interested person may make written comments on the proposed amendment on or before July 29, 2010. Written comments may be sent to Angela Burke Boston, Assistant Commissioner, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to angela.burke.boston@iid.iowa.gov.

A public hearing will be held at the office of the Insurance Division at 10 a.m. on July 29, 2010. The Division is located at 330 Maple Street, Des Moines, Iowa.

This amendment is intended to implement Iowa Code section 514F.6 as amended by 2010 Iowa Acts, Senate File 2201, section 16.

The following amendment is proposed.

Amend rule 191—70.10(514F) as follows:

191—70.10(514F) Credentialing—retrospective payment.

70.10(1) Purpose. This rule implements Iowa Code section 514F.6 [~~2008 Iowa Acts, House File 2555, section 28~~] as amended by 2010 Iowa Acts, Senate File 2201, section 16, which ~~requires the commissioner to adopt rules to provide~~ provides for the retrospective payment of clean claims for covered services provided by a physician, advanced registered nurse practitioner or physician assistant during the credentialing period, once the physician, advanced registered nurse practitioner or physician assistant is credentialed.

70.10(2) Definitions. For purposes of this rule, the definitions found in Iowa Code section 514F.6 [~~2008 Iowa Acts, House File 2555, section 28~~] as amended by 2010 Iowa Acts, Senate File 2201, section 16, shall apply. In addition, the following definitions shall apply:

“*Application date*” means the date on which the health insurer or other entity responsible for the credentialing of physicians health care professionals on behalf of the health insurer receives the physician’s health care professional’s completed application for credentialing.

“*Clean claim*” means clean claim as defined in Iowa Code section 507B.4A(2) “b.”

“*Health care professional*” means a physician, advanced registered nurse practitioner or physician assistant.

“*Health insurer*” means the same as a carrier, as defined in Iowa Code section 513B.2(4), that provides health insurance coverage, as defined in Iowa Code section 513B.2(12).

70.10(3) Retrospective payment of clean claims. A health insurer shall make retrospective payment for all clean claims submitted by a physician health care professional after the credentialing period for covered services provided by the physician health care professional during the credentialing period subject to all of the following:

INSURANCE DIVISION[191](cont'd)

a. The credentialing period shall begin on the application date and end on the date the health insurer or other entity responsible for credentialing physicians health care professionals on behalf of the health insurer makes a final determination approving the physician's health care professional's application to be credentialed.

b. The health insurer or other entity responsible for credentialing physicians health care professionals on behalf of the health insurer shall notify an applicant of its determination regarding a properly completed application for credentialing within 90 days of receipt of an application containing all information required by the health insurer's credentialing form.

c. The physician health care professional shall not submit any claims to the health insurer during the credentialing period.

d. A health insurer shall not be required to pay any claims submitted by a physician health care professional during the credentialing period.

e. The health insurer's time period for timely submission of claims shall not start until the credentialing period has ended. The health insurer's rules pertaining to timely submission shall not be used to deny payment of any clean claims for medical services provided by a physician health care professional during the credentialing period, so long as the physician health care professional submits all such claims within the time period required by the health insurer's rules beginning on the date the physician health care professional is credentialed.

f. After the physician health care professional has been credentialed, the physician health care professional shall submit all claims to the health insurer for covered services provided by the physician health care professional during the credentialing period.

g. After the physician health care professional has been credentialed, a health insurer shall pay all clean claims submitted by the physician health care professional for covered services provided by the physician health care professional during the credentialing period within the time periods specified in 191—15.32(507B).

70.10(4) Applicability.

a. This rule shall not apply to services provided by a physician health care professional that are covered by Medicaid, Medicare, TRICARE, or other health care benefit programs subject to federal regulations regarding eligibility and provider payments.

b. Nothing contained in this rule shall require a health insurer or other entity responsible for credentialing physicians health care professionals on behalf of the health insurer to take any action in violation of the requirements of the National Committee for Quality Assurance (NCQA) or Utilization Review Accreditation Commission (URAC).

c. Nothing contained in this rule shall require a health insurer or other entity responsible for credentialing physicians health care professionals on behalf of the health insurer to credential a physician health care professional or to permit a noncredentialed physician health care professional to participate in the health insurer's provider network.

70.10(5) Effective date. This rule shall become effective on July 22, 2009.

ARC 8908B

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,” 16.5(1)“r” and 16.40, the Iowa Finance Authority proposes to amend Chapter 29, “Jump-Start Housing Assistance Program,” Iowa Administrative Code.

IOWA FINANCE AUTHORITY[265](cont'd)

The purpose of these amendments is to modify and clarify certain provisions of the program of housing assistance for persons affected by the natural disasters that occurred in Iowa in 2008.

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 rules until 4:30 p.m. on July 20, 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.

On June 9, 2010, the Authority adopted these amendments emergency, pursuant to Iowa Code section 17A.4(3), to be effective immediately upon filing with the Administrative Rules Coordinator. The Adopted and Filed Emergency amendments are published herein as **ARC 8907B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code sections 16.5(1)“r” and 16.40 and 2009 Iowa Acts, Senate File 289.

ARC 8925B

MEDICINE BOARD[653]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76 and chapters 148 and 272C, the Board of Medicine hereby gives Notice of Intended Action to amend Chapter 13, “Standards of Practice and Principles of Medical Ethics,” and Chapter 23, “Grounds for Discipline,” Iowa Administrative Code.

Proposed rule 653—13.8(148,272C) establishes the standards of practice for a physician or surgeon or osteopathic physician who serves as a medical director at a medical spa. Proposed subrules 23.1(43) and 23.1(44) establish as grounds for discipline improper delegation and supervision with regard to rule 653—13.8(148,272C).

The Board approved these amendments during a regularly scheduled meeting on June 11, 2010.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on July 20, 2010. Such written materials should be sent to Mark E. Bowden, Executive Director, Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, Iowa 50309-4686; or E-mailed to Mark.Bowden@iowa.gov.

There will be a public hearing on July 20, 2010, at 11 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine office is located at 400 SW 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapter 148.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 653—13.8(148,272C):

653—13.8(148,272C) Standards of practice—medical directors at medical spas—delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician persons. This rule establishes standards of practice for physicians or surgeons or osteopathic physicians or surgeons who serve as a medical director at a medical spa.

13.8(1) Definitions. As used in this rule:

MEDICINE BOARD[653](cont'd)

“*Delegate*” means to entrust or transfer the performance of a medical aesthetic service to qualified licensed or certified nonphysician persons.

“*Medical aesthetic service*” means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities of the skin, hair, nails and mucous membranes by any means, methods, devices, or instruments including the use of a biological or synthetic material, chemical application, mechanical device, or displaced energy form of any kind if it alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells, with the exception of hair removal. Medical aesthetic service includes, but is not limited to, the following services: ablative laser therapy; vaporizing laser therapy; nonsuperficial light device therapy; injectables; tissue alteration services; nonsuperficial light-emitting diode therapy; nonsuperficial intense pulse light therapy; nonsuperficial radiofrequency therapy; nonsuperficial ultrasonic therapy; nonsuperficial exfoliation; nonsuperficial microdermabrasion; nonsuperficial dermaplane exfoliation; nonsuperficial lymphatic drainage; botox injections; collagen injections; and tattoo removal.

“*Medical director*” means a physician who assumes the role of, or holds oneself out as, medical director or a physician who serves as a medical advisor for a medical spa. The medical director is responsible for implementing policies and procedures to ensure quality patient care and for the delegation and supervision of medical aesthetic services to qualified licensed or certified nonphysician persons.

“*Medical spa*” means any entity, however organized, which is advertised, announced, established, or maintained for the purpose of providing medical aesthetic services. Medical spa shall not include a dermatology practice which is wholly owned and controlled by one or more Iowa-licensed physicians if at least one of the owners is actively practicing at each location.

“*Qualified licensed or certified nonphysician person*” means any person who is not licensed to practice medicine and surgery or osteopathic medicine and surgery but who is licensed or certified by another licensing board in Iowa and qualified to perform medical aesthetic services under the supervision of a qualified physician.

“*Supervision*” means the oversight of qualified licensed or certified nonphysician persons who perform medical aesthetic services delegated by a medical director.

13.8(2) Practice of medicine. The performance of medical aesthetic services is the practice of medicine. A medical aesthetic service shall only be performed by qualified licensed or certified nonphysician persons if the service has been delegated by the medical director who is responsible for supervision of the services performed. A medical director shall not delegate medical aesthetic services to nonphysician persons who are not appropriately licensed or certified in Iowa.

13.8(3) Medical director. A physician who serves as medical director at a medical spa shall:

- a. Hold an active unrestricted Iowa medical license to supervise each delegated medical aesthetic service;
- b. Possess the appropriate education, training, experience and competence to safely supervise each delegated medical aesthetic service;
- c. Retain responsibility for the supervision of each medical aesthetic service performed by licensed or certified nonphysician persons;
- d. Ensure that advertising activities do not include false, misleading, or deceptive representations; and
- e. Be clearly identified as the medical director in all advertising activities, Internet Web sites and signage related to the medical spa.

13.8(4) Delegated medical aesthetic service. When a medical director delegates a medical aesthetic service to qualified licensed or certified nonphysician persons, the service shall be:

- a. Within the medical director’s scope of practice and medical competence to supervise;
- b. Of the type that a reasonable and prudent physician would conclude is within the scope of sound medical judgment to delegate; and
- c. A routine and technical service, the performance of which does not require the skill of a licensed physician.

MEDICINE BOARD[653](cont'd)

13.8(5) *Supervision.* A medical director who delegates performance of a medical aesthetic service to qualified licensed or certified nonphysician persons is responsible for providing appropriate supervision. The medical director shall:

a. Ensure that all licensed or certified nonphysician persons are qualified and competent to safely perform each medical aesthetic service by personally assessing the person's education, training, experience and ability;

b. Ensure that a qualified licensed or certified nonphysician person does not perform any medical aesthetic services which are beyond the scope of that person's license, certification or registration unless the person is supervised by a qualified supervising physician;

c. Ensure that all qualified licensed or certified nonphysician persons receive direct, in-person, on-site supervision from the medical director at least four hours each week and that the regular supervision is documented;

d. Provide on-site review of aesthetic services performed by qualified licensed or certified nonphysician persons each week and reviews at least 10 percent of patient charts for services performed by qualified licensed or certified nonphysician persons;

e. Be physically located within 60 miles of the location where qualified licensed or certified nonphysician persons perform medical aesthetic services at all times;

f. Be available, in person or electronically, at all times, to consult with qualified licensed or certified nonphysician persons who perform medical aesthetic services, particularly in case of injury or an emergency;

g. Assess the legitimacy and safety of all equipment or other technologies being used by qualified licensed or certified nonphysician persons who perform medical aesthetic services;

h. Develop and implement protocols for responding to emergencies or other injuries suffered by persons receiving medical aesthetic services performed by qualified licensed or certified nonphysician persons;

i. Ensure that all qualified licensed or certified nonphysician persons maintain accurate and timely medical records for the medical aesthetic services they perform;

j. Ensure that each patient provides appropriate informed consent for medical aesthetic services performed by qualified licensed or certified nonphysician persons and that such informed consent is timely documented in the patient's medical record;

k. Ensure that each patient receiving medical aesthetic services performed by qualified licensed or certified nonphysician persons is informed of the identity of the medical director if requested; and

l. Ensure that the board receives written verification of the education and training of all qualified licensed or certified nonphysician persons who perform medical aesthetic services at a medical spa, within 14 days of a request by the board.

13.8(6) *Exceptions.* This rule is not intended to apply to physicians who serve as medical directors of licensed medical facilities, clinics or practices that provide medical aesthetic services as part of or incident to their other medical services.

13.8(7) *Physician assistants.* Nothing in these rules shall be interpreted to contradict or supersede the rules established in 645—Chapter 327.

ITEM 2. Adopt the following **new** subrules 23.1(43) and 23.1(44):

23.1(43) Violation of the standards of practice for medical directors who delegate and supervise medical aesthetic services performed by nonphysician persons at a medical spa as set out at rule 653—13.8(148,272C).

23.1(44) Failure to provide the board, within 14 days of a request by the board as set out at 653—paragraph 13.8(5)“l,” written verification of the education and training of all nonphysician persons who perform medical aesthetic services at a medical spa.

ARC 8876B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 71, “Nursery Stock Sale to the Public,” Iowa Administrative Code.

Rule 571—71.2(456A,461A) provides the descriptions of plants made available through the state forest nursery, the obligations of customers purchasing plants from the state forest nursery, and the prices of such plants.

The proposed amendment allows for the sale of state forest nursery stock outside the state of Iowa as authorized under Iowa Code section 455A.13(3) as amended by 2010 Iowa Acts, House File 2531.

Any interested person may make written suggestions or comments on the proposed amendment on or before July 20, 2010. Written comments may be directed to the Forestry Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; E-mail: Paul.Tauke@dnr.iowa.gov; fax (515)281-6794. Persons who wish to convey their views orally should contact the Forestry Bureau at (515)242-6898 or at the Forestry Bureau offices on the fourth floor of the Wallace State Office Building.

This amendment is intended to implement Iowa Code section 455A.13(3) as amended by 2010 Iowa Acts, House File 2531.

The following amendment is proposed.

Rescind paragraph **71.2(2)“c.”**

ARC 8881B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 81, “Fishing Regulations,” Iowa Administrative Code.

The proposed amendments remove the closed December 1 through March 15 fishing season regulation below Lock and Dam 11, 12 and 13; limit anglers to a maximum 5/0 treble hook size when snagging nongame species listed in subrule 81.2(11); and add a no snagging restriction from directly below the Oakland Mills dam to the downstream end of the 253rd Street boat ramp.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 20, 2010. Such written materials should be directed to Martin Konrad, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Martin.Konrad@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Fisheries Bureau at (515)281-6976 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

NATURAL RESOURCE COMMISSION[571](cont'd)

Also, there will be a public hearing on July 20, 2010, at 7 p.m. at Swiss Valley Nature Center, 13606 Swiss Valley Road, Peosta, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code section 456A.25.

The following amendments are proposed.

ITEM 1. Amend subrule 81.2(1) as follows:

81.2(1) Exception closed season. In Lakes West Okoboji and East Okoboji and Spirit Lake, there shall be a closed season on walleye beginning February 15 each year. The annual opening for walleye in these three lakes shall be the first Saturday in May. In these three lakes there shall be a closed season on muskellunge and tiger muskie beginning December 1 each year. The annual opening for muskellunge and tiger muskie in these three lakes shall be May 21 the following year.

~~Fishing in any manner is prohibited from December 1 of each year through March 15 the following year in the following areas of the Mississippi River:~~

- ~~a. From Lock and Dam Number 11 downstream to the railroad bridge near river mile 579.9.~~
- ~~b. From Lock and Dam Number 12 downstream to the mouth of Mill Creek near river mile 556.~~
- ~~c. From Lock and Dam Number 13 downstream to the downstream end of Stamp Island near river mile 521.5.~~

ITEM 2. Amend subrule 81.2(11) as follows:

81.2(11) Method of take. Artificial light may be used in the taking of any fish. The following species of fish may be taken by hand fishing, snagging, spearing, and bow and arrow: common carp, bighead carp, grass carp, silver carp, black carp, bigmouth buffalo, smallmouth buffalo, black buffalo, quillback carpsucker, highfin carpsucker, river carpsucker, spotted sucker, white sucker, shorthead redhorse, golden redhorse, silver redhorse, sheepshead, shortnose gar, longnose gar, dogfish, gizzard shad, and goldfish. All other species of fish not hooked in the mouth, except paddlefish legally taken by snagging, must be returned to the water immediately with as little injury as possible. A fish is foul hooked when caught by a hook in an area other than in the fish's mouth. Snagging is defined as the practice of jerking any type of hook or lure, baited or unbaited, through the water with the intention of foul hooking fish. Hooks larger than a 5/0 treble hook or measuring more than 1¼ inches in length when two of the hook points are placed on a ruler are permitted when snagging. Exceptions to snagging as a method of take are as follows:

No snagging is permitted in the following areas:

1. to 11. No change.
12. Skunk River from directly below Oakland Mills dam to the downstream end of the 253rd Street boat ramp.

ARC 8882B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 88, “Fishing Tournaments,” Iowa Administrative Code.

The proposed amendment more clearly conveys the definition of “fishing tournament” as an event involving 6 or more boats or 12 or more participants, except for waters of the Mississippi River where the number of boats shall be 20 or more or the number of participants shall be 40 or more, or when an entry fee is charged or prizes or other inducements are awarded, no matter the number of boats or participants. The proposed amendment exempts from the permit requirement fishing events held for educational purposes and sponsored by the Department of Natural Resources.

Any interested person may make written suggestions or comments on the proposed amendment on or before July 20, 2010. Such written materials should be directed to Martin Konrad, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Martin.Konrad@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Fisheries Bureau at (515)281-6976 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on July 20, 2010, at 1 p.m. in Conference Room 4E, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code sections 462A.16 and 481A.38.

The following amendment is proposed.

Amend rule 571—88.1(462A,481A) as follows:

571—88.1(462A,481A) Definition.

“Fishing tournament” means any organized fishing event with, except for fishing events held for educational purposes and sponsored by the department of natural resources, involving any of the following:

1. ~~6~~ Six or more boats or 12 or more participants where an entry fee is charged or prizes or other inducements are awarded, except for waters of the Mississippi River, where the number of boats shall be 20 or more and the number of participants shall be 40 or more.

2. An entry fee is charged.

3. Prizes or other inducements are awarded.

ARC 8883B**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 455A.5(6) and 481A.151, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 113, “Restitution for Pollution Causing Injury to Wild Animals,” Iowa Administrative Code.

The proposed amendments define “priority watershed” and direct compensation collected for natural resource damages from the vicinity of the loss to priority watersheds selected by the Department.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 20, 2010. Such written materials should be directed to Martin Konrad, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Martin.Konrad@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Fisheries Bureau at (515)281-6976 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on July 20, 2010, at 2 p.m. in Conference Room 4E, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code sections 456A.23, 481A.2, and 481A.151. The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Priority watershed” in rule **571—113.2(481A)**:
“*Priority watershed*” means a watershed for which:

1. The department of natural resources, in partnership with other state or federal agencies, the agriculture community or nonprofit organizations, creates and implements plans, programs or projects to sustain and enhance watershed and stream functions; and
2. The principle objective is to manage wild animals and their habitats.

ITEM 2. Amend subrules 113.5(1) and 113.5(2) as follows:

113.5(1) *Direct monetary payment.* Compensation shall normally be by direct monetary payment to the department for projects in priority watersheds selected by the department. To the extent reasonable and practical, the money received will be used to replace, restore or rehabilitate the lost or injured animals. Resource enhancement projects, support of educational programs relating to resource protection or enhancement, or resource acquisition of equal or greater value also may be funded. If practical, such alternatives should provide similar services to the public ~~and should be in the vicinity of the loss.~~

113.5(2) *Indirect monetary payment.* In ~~appropriate cases~~ where the destruction of or injury to wild animals is in a selected priority watershed, an equal or greater amount of compensation may be made by monetary payment to another government agency or private nonprofit group in the natural resource field for the same purposes as provided in subrule 113.5(1).

ITEM 3. Amend **571—Chapter 113**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 456A.23, ~~and~~ 481A.2 and ~~2002 Iowa Acts, Senate File 2293, section 58~~ 481A.151.

ARC 8891B**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 3, “Pharmacy Technicians,” and Chapter 5, “Pharmacy Support Persons,” Iowa Administrative Code.

The amendments were approved at the June 1, 2010, regular meeting of the Board of Pharmacy.

The proposed amendments define “uncertified pharmacy technician” and amend the definition of “pharmacy technician” to include pharmacy technician trainee, certified pharmacy technician, and uncertified pharmacy technician. Pursuant to 2010 Iowa Acts, House File 2531, section 112, the proposed amendments establish requirements for extension of the deadline for national certification to December 31, 2013, for a pharmacy technician who was registered prior to January 1, 2010, and who worked as a pharmacy technician for a minimum 2,000 hours during the 18-month period prior to registration and who continues to work a minimum 2,000 hours during any 18-month period. The proposed amendments specify and clarify the technical functions that may be delegated to each of the pharmacy technician classifications, including certified pharmacy technician, pharmacy technician trainee, and uncertified pharmacy technician. References to pharmacy technicians or to specific classifications of pharmacy technicians throughout the chapters have been clarified, and outdated language and information regarding national certification and registrations issued prior to July 1, 2010, are eliminated. The proposed amendments modify the definition of “pharmacy technician” in Chapter 5 to comply with the amended definition in Chapter 3.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on July 20, 2010. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code section 155A.6A as amended by 2010 Iowa Acts, House File 2531, section 112.

The following amendments are proposed.

ITEM 1. Amend rule **657—3.1(155A)**, definition of “Pharmacy technician,” as follows:

“Pharmacy technician” or “technician” means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, as provided in rules 657—3.22(155A) through 657—3.24(155A), and includes a certified pharmacy technician, a pharmacy technician trainee, and an uncertified pharmacy technician.

ITEM 2. Adopt the following **new** definition of “Uncertified pharmacy technician” in rule **657—3.1(155A)**:

“Uncertified pharmacy technician” or “uncertified technician” means a pharmacy technician who has not attained national certification and who qualifies for the time extension to attain national certification as provided in rule 657—3.6(155A).

ITEM 3. Amend rule 657—3.2(155A) as follows:

657—3.2(155A) Purpose of registration. A registration program for pharmacy technicians is established for the purposes of determining the competency of a pharmacy technician or of an applicant

PHARMACY BOARD[657](cont'd)

for registration as a ~~pharmacy technician~~, a certified pharmacy technician, or a pharmacy technician trainee, or uncertified pharmacy technician and for the purposes of identification, tracking, and disciplinary action for violations of federal or state pharmacy or drug laws or regulations.

ITEM 4. Amend rule 657—3.3(155A) as follows:

657—3.3(155A) Registration required. Any person employed in Iowa as a pharmacy technician, except a pharmacist-intern whose pharmacist-intern registration is in good standing with the board, shall obtain and maintain during such employment a current registration as a ~~pharmacy technician~~, certified pharmacy technician, or ~~pharmacy technician trainee~~, or uncertified pharmacy technician pursuant to these rules. An individual accepting employment as a ~~pharmacy technician~~ or ~~technician trainee~~ in Iowa who fails to register as a ~~pharmacy technician~~, certified pharmacy technician, or ~~technician trainee~~, or uncertified technician as provided by these rules may be subject to disciplinary sanctions.

3.3(1) Licensed health care provider. Except as provided in this rule, a licensed health care provider whose registration or license is in good standing with and not subject to current disciplinary sanctions or practice restrictions imposed by the licensee's professional licensing board and who assists in the technical functions of the practice of pharmacy shall be required to register as a ~~pharmacy technician~~, certified pharmacy technician, or ~~technician trainee~~, or uncertified technician pursuant to these rules.

3.3(2) Original application required. Any person not currently registered with the board as a pharmacy technician or ~~certified technician~~ shall complete an the appropriate application for registration within 30 days of accepting employment in an Iowa pharmacy as a pharmacy technician. Such application shall be received in the board office before the expiration of this 30-day period.

3.3(3) No change.

3.3(4) Registration number. Each pharmacy technician, ~~certified technician~~, and ~~technician trainee~~ registered with the board will be assigned a unique registration number.

ITEM 5. Amend rule 657—3.5(155A) as follows:

657—3.5(155A) Certification of pharmacy technicians. ~~Prior to July 1, 2010, the certification and recertification of pharmacy technicians shall be voluntary and not mandatory. Beginning~~ Except as provided in rule 657—3.6(155A) or subrule 3.5(3), effective July 1, 2010, ~~the certification of all~~ pharmacy technicians shall be required to be nationally certified as provided by this rule. National certification does not ~~supplant~~ replace the need for licensed pharmacist control over the performance of delegated functions, nor does national certification exempt the pharmacy technician from registration pursuant to these rules.

3.5(1) ~~Voluntary certification~~ Certification prior to July 1, 2010. An individual who holds a valid current national certification from the Institute for the Certification of Pharmacy Technicians (ICPT) or the Pharmacy Technician Certification Board (PTCB) and who acquired such certification prior to July 1, 2010, shall be deemed to have met the requirement for national certification beginning July 1, 2010, provided the certification is maintained in current standing.

3.5(2) Required certification effective July 1, 2010. Beginning July 1, 2010, a ~~pharmacy technician~~ shall ~~acquire~~ national certification acquired through successful completion of any NCCA-accredited pharmacy technician certification program and examination, ~~the successful completion of which~~ fulfills the requirement for national certification.

3.5(3) Pharmacy technician trainee. ~~Beginning~~ Except as provided in rule 657—3.6(155A), effective July 1, 2009, a person who is in the process of acquiring national certification as a pharmacy technician shall register with the board as a pharmacy technician trainee. The registration shall be issued for a period of one year and shall not be renewed.

3.5(4) Certified pharmacy technician. Beginning July 1, 2010, all applicants for a new pharmacy technician registration, except as provided by subrule 3.5(3), and all applicants for renewal of a pharmacy technician registration except as provided in rule 657—3.6(155A), shall provide proof of current national

PHARMACY BOARD[657](cont'd)

pharmacy technician certification and shall complete the application for certified pharmacy technician registration.

ITEM 6. Adopt the following new rule 657—3.6(155A):

657—3.6(155A) Extension of deadline for national certification. A pharmacy technician who meets all of the criteria identified in this rule shall not be required to acquire national certification prior to December 31, 2013. The pharmacy technician shall register with the board as an uncertified pharmacy technician and shall maintain that registration during all periods of employment as a pharmacy technician. To qualify for this extension, the uncertified pharmacy technician shall meet all of the following criteria:

3.6(1) The pharmacy technician shall have registered as a pharmacy technician prior to January 1, 2010;

3.6(2) The pharmacy technician shall have worked as a pharmacy technician for at least 2,000 hours in the 18-month period immediately before submission of the application for renewal of the pharmacy technician's registration as evidenced by one or more affidavits as provided in paragraph 3.8(5) "d"; and

3.6(3) The pharmacy technician shall continue to work as a pharmacy technician for at least 2,000 hours during any 18-month period between January 1, 2010, and December 31, 2013, or until the pharmacy technician attains national certification.

ITEM 7. Amend rule 657—3.8(155A) as follows:

657—3.8(155A) Application form.

3.8(1) Required information. The application for a ~~pharmacy technician registration~~, certified pharmacy technician registration, ~~or pharmacy technician trainee registration~~, or uncertified pharmacy technician registration shall include the following:

a. to *e.* No change.

3.8(2) to 3.8(4) No change.

3.8(5) Additional information. The following additional information shall be required from an applicant for the specified registration.

a. and *b.* No change.

c. Licensed health care provider. In addition to the additional information required by paragraph "~~a~~" or "~~b~~" "a," "b" or "d" as applicable, a licensed health care provider shall provide evidence that the licensee's professional license or registration is current and in good standing and is not subject to current disciplinary sanctions or practice restrictions imposed by the licensee's professional licensing authority.

d. Uncertified pharmacy technician. The applicant for uncertified pharmacy technician registration shall submit with the application for registration renewal one or more affidavits signed by the pharmacists in charge of one or more Iowa pharmacies where the applicant practiced as a pharmacy technician during the 18 months prior to submission of the application for registration. Affidavits shall be on a form provided by the board office.

3.8(6) No change.

ITEM 8. Amend rule 657—3.9(155A) as follows:

657—3.9(155A) Registration term and renewal. ~~Prior to July 1, 2008, a pharmacy~~ A pharmacy technician registration shall expire on the second last day of the birth month following initial registration, with the exception that a new pharmacy technician registration issued within the two months immediately preceding the applicant's birth month shall expire on the third last day of the birth month following initial registration. A pharmacy technician registration issued between July 1, 2008, and July 1, 2009, except as provided in subrule 3.9(1), shall expire no later than June 30, 2010 as provided in this rule for the specified registration. ~~Registration~~ The board shall not require continuing education for renewal of a pharmacy technician registration.

3.9(1) and 3.9(2) No change.

PHARMACY BOARD[657](cont'd)

3.9(3) *Uncertified pharmacy technician registration.* Beginning June 1, 2010, a registration for a pharmacy technician who qualifies for the time extension for certification as provided by rule 657—3.6(155A) shall expire the second last day of the birth month following the latest scheduled registration renewal. In no case shall a registration for an uncertified pharmacy technician expire later than December 31, 2013, unless the pharmacy technician attains national certification as provided in subrule 3.5(2) and is reclassified as a certified pharmacy technician.

ITEM 9. Amend rule 657—3.10(155A) as follows:

657—3.10(155A) Registration fee. The following fees for initial registration and registration renewal shall apply to the specified registration applications filed within the following time frames. The appropriate fee shall be submitted with the registration application in the form of a personal check, certified check or cashier's check, or a money order payable to the Iowa Board of Pharmacy.

3.10(1) *Registration prior to July 1, 2009.* The fee for obtaining an initial technician registration, for obtaining an initial certified pharmacy technician registration, or for renewal of a technician or certified technician registration prior to July 1, 2009, shall be \$40 plus applicable surcharge pursuant to rule 657—30.8(155A).

3.10(2) 3.10(1) *Registration beginning July 1, 2009 Certified or uncertified pharmacy technician registration.* The fee for obtaining an initial certified pharmacy technician registration or for biennial renewal of a certified pharmacy technician registration beginning July 1, 2009, or an uncertified pharmacy technician registration shall be \$50 plus applicable surcharge pursuant to rule 657—30.8(155A).

3.10(3) 3.10(2) *Technician trainee registration beginning July 1, 2009.* The fee for a one-year pharmacy technician trainee registration shall be \$20 plus applicable surcharge pursuant to rule 657—30.8(155A).

ITEM 10. Amend rule 657—3.12(155A) as follows:

657—3.12(155A) Registration certificates. The certificate of technician registration issued by the board to a ~~pharmacy technician~~, certified pharmacy technician, or pharmacy technician trainee, or ~~uncertified pharmacy technician~~ is the property of and shall be maintained by the registered technician. The certificate or a copy of the certificate shall be maintained in each pharmacy where the pharmacy technician, ~~certified pharmacy technician~~, or ~~pharmacy technician trainee~~ works. Each pharmacy utilizing pharmacy technicians shall be responsible for verifying that all ~~pharmacy technicians~~, ~~certified technicians~~, and ~~technician trainees~~ working in the pharmacy are registered, and that technician registrations remain current and active.

ITEM 11. Amend rule 657—3.13(155A) as follows:

657—3.13(155A) Notifications to the board. A pharmacy technician, ~~certified pharmacy technician~~, or ~~technician trainee~~ shall report to the board within ten days a change of the technician's name, address, or pharmacy employment status.

ITEM 12. Amend subrule 3.18(2) as follows:

3.18(2) *Misrepresentation prohibited.* A pharmacy technician shall not represent himself or herself in any manner as a pharmacist or pharmacist-intern. A pharmacy technician shall not represent himself or herself in any manner as a certified pharmacy technician unless the technician has attained national pharmacy technician certification. ~~A technician trainee shall not represent himself or herself in any manner as a certified pharmacy technician, as a pharmacist intern, or as a pharmacist.~~

ITEM 13. Amend rule 657—3.20(155A) as follows:

657—3.20(155A) Responsibility of supervising pharmacist. The ultimate responsibility for the actions of a pharmacy technician, ~~a certified pharmacy technician~~, or ~~a pharmacy technician trainee~~ shall remain with the supervising pharmacist.

PHARMACY BOARD[657](cont'd)

ITEM 14. Amend rule 657—3.22(155A) as follows:

657—3.22(155A) Technical functions. At the discretion of the supervising pharmacist, the following technical functions which may be delegated to a pharmacy technician, a certified pharmacy technician, or a pharmacy technician trainee include, but are not limited to, as specified in the following: subrules.

3.22(1) Certified pharmacy technician. Under the supervision of a pharmacist, a certified pharmacy technician may perform technical functions delegated by the supervising pharmacist including, but not limited to, the following:

a. 1. Performing Perform packaging, manipulative, or repetitive tasks relating to the processing of a prescription or medication order in a licensed pharmacy.

b. 2. Accepting Accept prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's office.

c. 3. Contacting Contact prescribers to obtain prescription refill authorizations.

d. 4. Processing Process pertinent patient information, including information regarding allergies and disease state.

e. 5. Entering Enter prescription and patient information into the pharmacy computer system.

f. 6. Inspecting Inspect drug supplies provided and controlled by an Iowa-licensed pharmacy but located or maintained outside the pharmacy department, including but not limited to drug supplies maintained in an ambulance or other emergency medical service vehicle, a long-term care facility, a hospital patient care unit, or a hospice facility.

g. 7. Affixing Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.

h. 8. Prepackaging Prepackage or labeling label multidose and single-dose packages of drugs, including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients.

i. Perform drug compounding processes for nonsterile compounding as provided in 657—Chapter 20.

j. Perform drug compounding processes for sterile compounding as provided in 657—Chapter 13.

k. As provided in rule 657—3.24(155A), accept new prescription drug orders or medication orders communicated to the pharmacy by a prescriber or by the prescriber's agent.

3.22(2) Pharmacy technician trainee. Under the supervision of a pharmacist, a pharmacy technician trainee may perform only the following technical functions delegated by the supervising pharmacist:

a. Perform packaging, manipulative, or repetitive tasks relating to the processing of a prescription or medication order in a licensed pharmacy.

b. Accept prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's office.

c. Contact prescribers to obtain prescription refill authorizations.

d. Process pertinent patient information, including information regarding allergies and disease state.

e. Enter prescription and patient information into the pharmacy computer system.

f. Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.

g. Under the continuous and direct supervision of a pharmacist who monitors, reviews, and verifies the accuracy of each step in the compounding process prior to commencement of the next step, perform drug compounding processes for nonsterile compounding as provided in 657—Chapter 20.

h. Under the continuous and direct supervision of a pharmacist who monitors, reviews, and verifies the accuracy of each step in the compounding process prior to commencement of the next step, and following successful completion of the appropriate media fill testing process, perform drug compounding processes for sterile compounding as provided in 657—Chapter 13.

3.22(3) Uncertified pharmacy technician. Under the supervision of a pharmacist, an uncertified pharmacy technician may perform technical functions delegated by the supervising pharmacist limited to the following:

PHARMACY BOARD[657](cont'd)

a. Select the appropriate stock supply of a prescription drug from the pharmacy drug supply shelves to process a prescription drug order.

b. Count dosage forms of prescription drugs into appropriate prescription vials or containers pursuant to prescription drug orders. Uncertified pharmacy technicians shall not prepackage or label multidose and single-dose packages of drugs, including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients.

c. Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.

d. Return or place stock supplies of prescription drugs in the appropriate locations on the pharmacy drug supply shelves.

ITEM 15. Amend rule 657—3.23(155A) as follows:

657—3.23(155A) Tasks a pharmacy technician shall not perform. A pharmacy technician, ~~a certified pharmacy technician, or a pharmacy technician trainee~~ shall not be authorized to perform any of the following judgmental tasks:

1. to 6. No change.

ITEM 16. Amend rule 657—3.24(155A) as follows:

657—3.24(155A) New prescription drug orders or medication orders. At the discretion of the supervising pharmacist, ~~a pharmacy technician or a certified pharmacy technician~~ may be allowed to accept new prescription drug orders or medication orders communicated to the pharmacy by a prescriber or by the prescriber's agent if the ~~pharmacy technician or certified pharmacy technician~~ has received appropriate training pursuant to the pharmacy's policies and procedures. The supervising pharmacist shall remain responsible for ensuring the accuracy, validity, and completeness of the information received by the ~~pharmacy technician or certified pharmacy technician~~. The pharmacist shall contact the prescriber to resolve any questions, inconsistencies, or other issues relating to the information received by the ~~pharmacy technician or certified pharmacy technician~~ that involve a pharmacist's professional judgment.

ITEM 17. Amend rule 657—3.28(147,155A) as follows:

657—3.28(147,155A) Unethical conduct or practice. Violation by a pharmacy technician, ~~certified pharmacy technician, or pharmacy technician trainee~~ of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in rule 657—3.30(155A).

3.28(1) Misrepresentative deeds. A pharmacy technician, ~~certified technician, or technician trainee~~ shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

3.28(2) Confidentiality. In the absence of express written authorization from the patient or written order or direction of a court, except where the best interests of the patient require, a pharmacy technician, ~~certified technician, or technician trainee~~ shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, a person duly authorized by law to receive such information, or as otherwise provided in rule 657—8.16(124,155A), any of the following:

a. to d. No change.

3.28(3) No change.

3.28(4) Unethical conduct or behavior. A pharmacy technician, ~~certified technician, or technician trainee~~ shall not exhibit unethical behavior in connection with the technician's pharmacy employment. Unethical behavior shall include, but is not limited to, the following acts: verbal or physical abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

PHARMACY BOARD[657](cont'd)

ITEM 18. Amend rule 657—3.29(155A) as follows:

657—3.29(155A) Denial of registration. The executive director or designee may deny an application for registration as a ~~pharmacy technician~~, certified pharmacy technician, ~~or~~ pharmacy technician trainee, or uncertified pharmacy technician for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

An individual whose application for registration as a ~~pharmacy technician~~, certified pharmacy technician, ~~or~~ pharmacy technician trainee, or uncertified pharmacy technician is denied pursuant to this rule may, within 30 days after issuance of the notice of denial, appeal to the board for reconsideration of the application.

ITEM 19. Amend subrule 3.30(2) as follows:

3.30(2) Sanctions. The board may impose the following disciplinary sanctions:

a. Revocation of a ~~pharmacy technician~~, certified pharmacy technician, ~~or~~ pharmacy technician trainee, or uncertified pharmacy technician registration.

b. Suspension of a ~~pharmacy technician~~, certified pharmacy technician, ~~or~~ pharmacy technician trainee, or uncertified pharmacy technician registration until further order of the board or for a specified period.

c. Nonrenewal of a ~~pharmacy technician~~ or certified pharmacy technician or uncertified pharmacy technician registration.

d. to i. No change.

ITEM 20. Amend ~~657—Chapter 3~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 147.72, 155A.23, 155A.33, and 155A.39 and Iowa Code ~~Supplement sections 155A.6 and section 155A.6A~~ as amended by 2010 Iowa Acts, House File 2531, section 112.

ITEM 21. Amend rule ~~657—5.1(155A)~~, definition of “Pharmacy technician,” as follows:

“*Pharmacy technician*” or “*technician*” means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, and who is registered pursuant to ~~657—Chapter 3~~, and includes a certified pharmacy technician, a pharmacy technician trainee, and an uncertified pharmacy technician.

ARC 8924B

PHARMACY BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 6, “General Pharmacy Practice,” Chapter 7, “Hospital Pharmacy Practice,” Chapter 15, “Correctional Pharmacy Practice,” and Chapter 16, “Nuclear Pharmacy Practice,” Iowa Administrative Code.

The proposed amendments were approved at the April 29, 2010, regular meeting of the Board of Pharmacy.

The proposed amendments eliminate the requirements that pharmacies maintain the Iowa Pharmacy Law and Information Manual and authorize pharmacies to utilize other sources, including electronic or Internet-based sources, for Iowa pharmacy laws, rules, and regulations.

PHARMACY BOARD[657](cont'd)

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on July 20, 2010. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code section 155A.31.

The following amendments are proposed.

ITEM 1. Amend rule 657—6.3(155A) as follows:

657—6.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. ~~The Iowa Pharmacy Law and Information Manual~~ Current Iowa pharmacy laws, rules, and regulations.

2. to 8. No change.

ITEM 2. Amend rule 657—7.3(155A) as follows:

657—7.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. ~~The Iowa Pharmacy Law and Information Manual~~ Current Iowa pharmacy laws, rules, and regulations.

2. to 9. No change.

ITEM 3. Amend rule 657—15.4(155A) as follows:

657—15.4(155A) Reference library. References may be printed or computer-accessed. Each correctional pharmacy shall have on site, at a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. ~~The Iowa Pharmacy Law and Information Manual~~ Current Iowa pharmacy laws, rules, and regulations.

2. to 8. No change.

ITEM 4. Amend rule 657—16.5(155A) as follows:

657—16.5(155A) Library. Each nuclear pharmacy shall have access to the following references. References may be printed or computer-accessed and shall be current editions or revisions.

1. No change.

2. ~~The Iowa Pharmacy Law and Information Manual~~ Current Iowa pharmacy laws, rules, and regulations;

3. and 4. No change.

ARC 8915B**PHARMACY BOARD[657]****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 147.76 and 272C.3, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 8, “Universal Practice Standards,” Iowa Administrative Code.

The amendment was approved at the April 29, 2010, regular meeting of the Board of Pharmacy.

The proposed amendment rescinds current rule 657—8.33(147,155A) and proposes adoption of a new rule regarding the administration of immunizations by pharmacists. The proposed rule defines terms used in the rule and establishes training and education requirements to qualify a pharmacist as authorized to administer vaccines pursuant to the rule. The proposed rule establishes the requirements for administration of influenza and pneumococcal vaccines via written protocol and for the administration of other vaccines via patient-specific prescription. Requirements are established for the documentation and recording of vaccine administration, reporting of the administration to the Immunization Registry Information System (IRIS), and reporting of serious complications to the patient’s primary care physician and to the Vaccine Adverse Event Reporting System (VAERS).

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on July 30, 2010. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

This amendment is intended to implement Iowa Code sections 147.76, 155A.3, 155A.4, and 272C.3. The following amendment is proposed.

Rescind rule 657—8.33(147,155A) and adopt the following **new** rule in lieu thereof:

657—8.33(147,155A) Administration of immunizations by pharmacists. An authorized pharmacist may administer, pursuant to a prescription or medication order issued by the treating physician authorizing immunization for that patient, immunizations included on the ACIP immunization schedules. An authorized pharmacist may administer, via written protocol, seasonal influenza immunizations and pneumococcal vaccines for adults and adolescents ten years of age and older. An authorized pharmacist may administer, via written protocol to treat or prevent an epidemic or pandemic, influenza and pneumococcal vaccines for patients over the age of six months following a determination of need or declaration of an epidemic or pandemic issued by the department of public health, the CDC, or other state or national authority.

8.33(1) Definitions. For purposes of this rule, the following definitions shall apply:

“*Advisory Council on Immunization Practices*” or “*ACIP*” means a professional advisory body of the Centers for Disease Control and Prevention (CDC) that makes recommendations for the routine administration of vaccines to adults and children in the civilian population.

“*Authorized pharmacist*” means an Iowa-licensed pharmacist who has successfully completed an organized course of study in a college or school of pharmacy or an Accreditation Council for Pharmacy Education (ACPE)-approved continuing pharmaceutical education program on vaccine administration that:

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1. Requires documentation by the pharmacist of current certification in the American Heart Association or the Red Cross Basic Cardiac Life Support Protocol for health care providers;

2. Is an evidence-based course that includes study material and hands-on training and techniques for administering vaccines, requires testing with a passing score, complies with current Centers for Disease Control and Prevention guidelines, and provides instruction and experiential training in the following content areas:

- Standards for immunization practices;
- Basic immunology and vaccine protection;
- Vaccine-preventable diseases;
- Recommended immunization schedules;
- Vaccine storage and management;
- Informed consent;
- Physiology and techniques for vaccine administration;
- Pre- and post-vaccine assessment and counseling;
- Immunization record management; and
- Management of adverse events, including identification, appropriate response, documentation, and reporting.

“*IRIS*” means the immunization registry information system established within the Iowa department of public health for the secure storage of patient immunization histories.

“*Local provider service area*” means the area including the county in which the provider regularly practices plus the counties contiguous to the county of practice.

“*Serious complication*” means a complication that requires medical or therapeutic intervention to effectively protect the patient from additional risk, morbidity, or mortality.

“*Vaccine*” means a specially prepared antigen which, upon administration to a person, will result in immunity.

“*VAERS*” means the Vaccine Adverse Event Reporting System established by the Centers for Disease Control and Prevention and the Food and Drug Administration to collect and analyze information about adverse events that occur following the administration of vaccines.

8.33(2) *Administration of vaccines via written protocol.* A written protocol or protocols for pharmacist-administered immunizations shall be established between an Iowa-licensed physician and one or more authorized pharmacists within the physician’s local provider service area with whom the physician has a working relationship. A written protocol shall be updated at least annually and shall include the following:

a. A statement identifying the individual physician who shall be available through direct telecommunication for consultation, assistance, and direction, or who shall provide physician backup to provide these services when the identified physician is not available, and who is authorized to prescribe drugs for immunization administration;

b. A statement identifying the individual authorized pharmacist or pharmacists;

c. A statement that forbids an authorized pharmacist from delegating the administration of adult immunizations to anyone other than another authorized pharmacist, a registered pharmacist-intern under the direct personal supervision of an authorized pharmacist, or a licensed nurse;

d. A statement identifying the vaccines that may be administered by an authorized pharmacist, the dosages, and the route of administration;

e. A statement identifying the activities an authorized pharmacist shall follow in the course of administering adult immunizations, including:

(1) Procedures for determining if a patient is eligible and has no contraindications to receive the vaccine;

(2) Procedures for determining the appropriate scheduling and frequency of drug administration in accordance with applicable guidelines;

(3) Procedures for record keeping and long-term record storage including manufacturer, batch, or identification numbers;

(4) Procedures to follow in case of serious complications or life-threatening reactions; and

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(5) Procedures for the pharmacist and patient to follow in case of reactions following administration;

f. A statement describing reporting requirements pursuant to subrule 8.33(3).

8.33(3) Reporting. An authorized pharmacist shall be responsible for reporting the administration of immunizations within 30 days to IRIS. An authorized pharmacist may delegate the preparation and submission of IRIS reports to another member of the pharmacy's staff but the authorized pharmacist shall be responsible for ensuring timely and complete reporting. Immunizations administered via protocol as well as immunizations administered pursuant to an individual prescription shall be reported. In case of serious complications, the authorized pharmacist shall notify the patient's primary care physician, when known, within 24 hours and shall submit a VAERS report.

8.33(4) Records and documentation. All records regarding pharmacist administration of immunizations via protocol, and documentation evidencing that each authorized pharmacist has completed the education, training, and certification requirements of an authorized pharmacist, shall be maintained in the pharmacy and shall be available for inspection and copying by the board or its representative for at least two years from the date of the record. If an authorized pharmacist identified in the protocol delegates the administration of immunizations pursuant to paragraph 8.33(2) "c," a log shall be maintained identifying all individuals who administered immunizations pursuant to that delegated authority, including the dates and times those individuals administered immunizations and the signature of the delegating pharmacist.

This rule is intended to implement Iowa Code sections 147.76, 155A.3, 155A.4, and 272C.3.

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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 124.301 and 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to rescind Chapter 11, "Drugs in Emergency Medical Service Programs," Iowa Administrative Code, and to adopt new Chapter 11 with the same title.

The rules were approved at the April 29, 2010, regular meeting of the Board of Pharmacy.

The proposed rules define terms used throughout the chapter and establish responsibilities for parties involved in the provision of drugs to emergency medical service (EMS) programs. The amendments require a written agreement between the EMS program and the party or parties responsible for providing drugs to the EMS program and include procedures for termination of those services. The amendments address requirements for storage and security of drugs maintained at the EMS program site and require the development, implementation, and adherence to policies and procedures for the operation and management of the EMS program. Record-keeping requirements are established, methods for utilization and replenishment of drug stocks are defined, and special handling and record keeping relating to controlled substances are identified.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed rules not later than 4:30 p.m. on July 20, 2010. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These rules are intended to implement Iowa Code chapter 147 and Iowa Code sections 124.301 and 155A.13.

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The following amendment is proposed.

Rescind 657—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
DRUGS IN EMERGENCY MEDICAL SERVICE PROGRAMS

657—11.1(124,147A,155A) Definitions. For the purpose of this chapter, the following definitions shall apply:

“*Adulterated*” means any drug or device that consists in whole or in part of any filthy, putrid, or decomposed substance.

“*Ambulance service*” means any privately or publicly owned service program that utilizes ambulances in order to provide patient transportation and emergency medical services.

“*Authorized prescriber*” means any provider who has prescriptive authority in the state of Iowa.

“*Board*” means the board of pharmacy.

“*Bureau*” means the Iowa department of public health, bureau of emergency medical services (EMS).

“*CSA registration*” means a registration issued by the board pursuant to Iowa Code chapter 124, the Iowa controlled substance Act.

“*DEA*” means the U.S. Department of Justice, Drug Enforcement Administration.

“*DEA registration*” means a registration issued by the DEA pursuant to 21 CFR Part 1301.

“*Department*” means the Iowa department of public health.

“*Drug*” means a substance as defined in Iowa Code section 155A.3(13) or a device as defined in Iowa Code section 155A.3(10).

“*Emergency medical care provider*” means an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist, or other certification level recognized by the department before 1984 and who has been issued a certificate by the department.

“*Emergency medical services*” or “*EMS*” means an integrated medical care delivery system to provide emergency and nonemergency medical care at the scene or during out-of-hospital patient transportation in an ambulance.

“*Emergency medical technician*” means any emergency medical technician or EMT as defined in 641—132.1(147A).

“*Medical direction*” means direction, advice, or orders provided to emergency medical care personnel by a medical director, supervising physician, or physician designee (in accordance with written parameters and protocols).

“*Medical director*” means any physician licensed under Iowa Code chapter 148 who shall be responsible for overall medical direction of the service program and who has completed a medical director workshop, sponsored by the department, within one year of assuming duties.

“*Medical director-based*” means that ownership of the drugs maintained in and used by the service program remains with the medical director.

“*Patient care report*” or “*PCR*” means a computerized or written report that documents the assessment and management of the patient by the emergency care provider in the out-of-hospital setting.

“*Pharmacy-based*” means that ownership of the drugs maintained in and used by the service program remains with the pharmacy.

“*Physician*” means any individual licensed under Iowa Code chapter 148.

“*Physician assistant*” or “*PA*” means any individual licensed under Iowa Code chapter 148C.

“*Physician designee*” means any registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners. The physician designee acts as an intermediary for a supervising physician in accordance with written policies and protocols in directing the care provided by emergency medical care providers.

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“*Program site*” or “*program location*” means the physical location from which the service program is operated.

“*Protocols*” means written direction and orders, consistent with the department’s standard of care, that are to be followed by an emergency medical care provider in emergency and nonemergency situations. Protocols shall be approved by the service program’s medical director and shall address the care of both adult and pediatric patients.

“*Responsible individual*” or “*RI*,” as this term relates to prescription drugs and devices in a medical director-based service, means the medical director for the service. In a pharmacy-based service, “responsible individual” means the pharmacist in charge of the base pharmacy.

“*Service*” or “*service program*” means any medical care ambulance service or nontransport service that has received authorization by the department.

“*Service director*” means the individual who is responsible for the operation and administration of a service program.

“*Supervising physician*” means any physician licensed under Iowa Code chapter 148 who supervises and is responsible for medical direction of emergency medical care personnel when such personnel are providing emergency medical care.

657—11.2(124,147A,155A) Responsibility. Pursuant to rules of the bureau, each service program shall appoint a service director at the program site.

11.2(1) Pharmacy-based. In a pharmacy-based service program, the pharmacist in charge shall be responsible for ensuring that the management of all prescription drugs and devices complies with federal and state laws and regulations. The pharmacist in charge shall not serve as the service director.

11.2(2) Medical director-based. In a medical director-based service program, the medical director shall be responsible for ensuring that the management of all prescription drugs and devices complies with federal and state laws and regulations.

11.2(3) Combination pharmacy-based and medical director-based. If both pharmacy-based and medical director-based programs are in effect, the pharmacist in charge of the base pharmacy and the medical director will be responsible for management of the drugs owned by the base pharmacy and by the medical director, respectively.

657—11.3(124,147A,155A) Written agreement. A signed written formal agreement for the service program shall be maintained at the service program site and be available for inspection and copying by the board or its representative.

11.3(1) Pharmacy-based programs. An Iowa-licensed pharmacy may enter into an agreement with a service program located in the state if the medical director of the service program has obtained a CSA registration as required by rule 657—11.6(124,147A,155A). The agreement with the service program shall establish that the service is operating as an extension of the base pharmacy with respect to prescription drugs and devices. The agreement shall be signed by the pharmacist in charge, the medical director of the service program, and the service director at the service program location. A copy of this agreement shall be maintained while in effect at both the pharmacy and the service program site.

11.3(2) Medical director-based programs. A service program shall maintain a formal written agreement with a medical director that is signed by the medical director and the service director. The agreement shall be maintained while it is in effect at the service program site.

657—11.4(124,147A,155A) Termination of services. EMS services may be terminated at the discretion of either the EMS program or the party or parties responsible for providing drugs to the EMS program. Written notification of such termination shall be provided to the other party at least 30 days prior to termination of services. Transfer of ownership of controlled substances shall be in compliance with rule 657—10.11(124).

11.4(1) Pharmacy-based programs. Immediately upon discontinuation of services, all controlled substances shall be jointly inventoried by the pharmacist in charge and the service director or their designees. A record of this inventory shall be maintained at the pharmacy for two years from the date of

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the inventory. All drugs and devices that are the property of the pharmacy shall be immediately returned to the pharmacy.

11.4(2) *Medical director-based programs.* Immediately upon discontinuation of services, all controlled substances shall be jointly inventoried by the medical director and the service director or their respective designees. A record of this inventory shall be maintained by the medical director for two years and be available for inspection and copying by the board or its representative. All drugs and devices that are the property of the medical director shall be immediately returned to the medical director.

657—11.5 Reserved.

657—11.6(124,147A,155A) Registration required. If the program is a medical director-based service program, the medical director shall obtain and maintain current CSA registration and DEA registration at the program location prior to commencement of responsibilities as medical director. Separate CSA and DEA registrations shall be obtained for each program location and shall be available for inspection and copying by the board or its representative and any other authorized agencies.

11.6(1) *Change of address of registered program location.* An individual practitioner may apply to change the address of the registered program location by submitting a request as provided in 657—subrule 10.11(2). The board and the DEA shall be notified in writing prior to a change of address of a registered program location.

11.6(2) *Change of medical director of a medical director-based program.* The board shall be notified in writing prior to the change of medical director. The new medical director shall obtain a CSA registration and a DEA registration for the service program site prior to commencement of responsibilities as medical director.

657—11.7 Reserved.

657—11.8(124,147A,155A) Identification.

11.8(1) A log of employees who have access to prescription drugs and to records regarding procurement, storage, and administration of prescription drugs at the service program shall be maintained for two years and be available for inspection and copying by the board or its representative. This log shall include the employees' printed names and signatures, printed and signed initials, and their levels of certification.

11.8(2) Policies and procedures shall be developed, implemented, and adhered to that identify at least the following:

- a. Who has access to drugs.
- b. Who has authority to administer drugs.
- c. Who has authority to order, receive, and distribute prescription drugs and devices.

657—11.9 Reserved.

657—11.10(124,147A,155A) Ownership of prescription drugs and devices. All prescription drugs and devices obtained for use in a service program shall be owned either by a pharmacy or by the medical director of the service program.

11.10(1) *Pharmacy-based.* If the drugs are owned by the pharmacy, the service program shall be considered a pharmacy-based service program and shall comply with these rules as they pertain to a pharmacy-based service program.

11.10(2) *Medical director-based.* If the drugs and devices are owned by the medical director, the service program shall be considered a medical director-based service program and shall comply with these rules as they pertain to a medical director-based service program.

11.10(3) *Combination of pharmacy-based and medical director-based.* If the service program has entered into both pharmacy-based and medical director-based service program agreements, both the

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pharmacy and the medical director shall retain separate ownership of the supplied prescription drugs and devices and shall comply with these rules as applicable.

657—11.11(124,147A,155A) Policies and procedures.

11.11(1) Each service program site shall, jointly with the service director and the responsible individual, develop, implement, and adhere to written policies and procedures for the operation and management of the service program with respect to prescription drugs and devices. These policies and procedures shall be available for inspection and copying by the board or its representative. The policies and procedures shall be periodically reviewed by the responsible individual, the medical director, and the service director. Documentation of the review shall be maintained.

11.11(2) The policies and procedures shall address, at a minimum, the following:

- a. Storage of drugs at the service program site including appropriate temperature and humidity controls and security.
- b. Protocols for administration of drugs.
- c. Administration of drugs outside the parameters of written protocols.
- d. Record retention and format including:
 - (1) Ownership of drugs, devices, and medical supplies.
 - (2) Ordering of drugs, devices, and supplies.
 - (3) Receipt of drugs, devices, and supplies.
 - (4) Distribution or administration of drugs, devices, and supplies.
 - (5) Inspections of the service program site and equipment.
 - (6) Inventories of controlled substances.
 - (7) Wastage resulting from the administration of a partial dose or supply of a drug.
 - (8) Drug, device, or supply returns.
- e. Process for the return of drugs.
- f. Out-of-date and adulterated drugs.
- g. Drug and device recalls.

657—11.12 Reserved.

657—11.13(124,147A,155A) Storage. Prescription drugs and devices at service program sites shall be stored in designated secure areas that are clean and free of debris, where temperature and humidity are appropriately controlled, and in a manner to protect identity and integrity.

11.13(1) *Temperature.* All drugs and devices shall be stored at the proper temperature. Drugs that are subjected to extreme temperatures shall not be administered to patients and shall be immediately removed from usable stock. Extreme temperatures shall be defined as excessive heat greater than 40 degrees Celsius (104 degrees Fahrenheit) and, if the product requires protection from freezing temperatures, excessive cold less than -10 degrees Celsius (13 degrees Fahrenheit). Disposal of unusable drugs shall be in compliance with rule 657—11.32(124,147A,155A).

11.13(2) *Security.* The security of prescription drugs and devices is the responsibility of the responsible individual. Policies and procedures for the security of prescription drugs shall provide for the effective control against theft of, diversion of, or unauthorized access to prescription drugs and devices, records for such drugs, and patient records. These policies and procedures shall indicate who has access to prescription drugs.

657—11.14(124,147A,155A) Protocols. Every service program shall utilize department protocols as the standard of care. The service program medical director may make changes to the department protocols provided the changes are within the EMS provider's scope of practice and within acceptable medical practice. Prescription drugs shall be administered pursuant only to a written protocol or oral order by an authorized prescriber. Records of current protocols shall be provided to and maintained by the responsible individual and the service director.

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657—11.15(124,147A,155A) Administration of drugs beyond the limits of the written protocol. Drugs, excluding Schedule II controlled substances, may be administered beyond the limits of the written protocols provided that medical direction from an authorized prescriber has been obtained prior to administration. The authorization shall be recorded in the patient care report documenting the identity of the authorizing prescriber. If an agent of the authorized prescriber relayed the order, the identity of the prescriber's agent, including the agent's title, shall also be recorded.

657—11.16(124,147A,155A) Administration of Schedule II controlled substances. Schedule II controlled substances may be administered to patients under the care of a service program provided that a signed order is obtained from the authorized prescriber within seven days of the date administration was authorized.

11.16(1) Pharmacy-based. The original signed order shall be provided to the pharmacy. A copy of the signed order shall be maintained at the service program site for two years.

11.16(2) Medical director-based. The original signed order shall be retained at the service program site for two years and be available for inspection and copying by the board or its representative.

657—11.17 and 11.18 Reserved.

657—11.19(124,147A,155A) Patient care reports. Patient care reports shall be maintained at the service program site as required by the bureau and rule 657—11.34(124,147A,155A).

657—11.20(124,147A,155A) Prescription drugs and devices in EMS programs. Prescription drugs and devices maintained by a service program shall be owned by an Iowa-licensed pharmacy or the service program's medical director.

11.20(1) Pharmacy-based. The pharmacist in charge, medical director, and the service director shall jointly develop an inventory list of drugs and devices to be maintained for administration at the service program. The pharmacy shall maintain an accurate inventory of all prescription drugs and devices including controlled substances that the pharmacy maintains at the service program site.

a. Replenishment. The responsible individual, the service director, or designee may request that replenishment supplies of drugs be maintained at the service program site provided that the pharmacy has been supplied with administration records justifying the order. The pharmacist shall approve every drug taken from the pharmacy's dispensing stock that will be provided to the service program site prior to the transfer of the drug or device. Documentation of this verification shall be maintained within the pharmacy records.

b. Inspections. The pharmacist in charge shall ensure the completion of a monthly inspection of all prescription drugs and devices maintained by the pharmacy at the service program site. Inspection shall include the removal of outdated or damaged drugs. All drugs removed from administration stock at the service program site shall be returned to the pharmacy. Records of inspection shall be maintained for two years at the service program site and at the pharmacy. The pharmacist in charge may delegate the conduct of the monthly inspection to another pharmacist, a certified pharmacy technician, or the service director.

11.20(2) Medical director-based. The medical director and the service director shall jointly develop an inventory list of drugs and devices to be maintained for administration at the service program. The medical director shall maintain an accurate inventory of all prescription drugs and devices including controlled substances that the medical director maintains at the service program site. EMS personnel shall have authority to handle prescription drugs and devices pursuant to their scope of practice as defined by the bureau.

a. Replenishment. All drugs procured for administration in a medical director-based service program shall be obtained from an Iowa-licensed wholesaler, a pharmacy, or an authorized prescriber.

b. Inspections. The medical director shall ensure the completion of a monthly inspection of all prescription drugs and devices maintained by the medical director at the service program site. Inspection shall include the removal of outdated or adulterated drugs. Records of inspection shall be maintained for

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two years at the service program site. The medical director may designate EMS personnel to conduct required inspections.

657—11.21 Reserved.

657—11.22(124,147A,155A) Return of drugs. Drugs that have been removed from administration stock at the service program site shall be returned to the responsible individual. In a pharmacy-based service, drugs returned from the service program site to the base pharmacy may be used by the pharmacy for subsequent dispensing or administration provided the drugs are not outdated or adulterated. Records of the return of prescription drugs and devices shall be maintained by the responsible individual.

657—11.23(124,147A,155A) Out-of-date drugs or devices. Any drug or device bearing an expiration date shall not be administered beyond the expiration date of the drug or device. Outdated drugs or devices shall be removed from administration stock and quarantined until such drugs or devices are properly disposed of or, if the program is a pharmacy-based service, returned to the base pharmacy. Outdated drugs are the property of the responsible individual and shall be disposed of appropriately. Outdated controlled substances shall be disposed of pursuant to rule 657—11.32(124,147A,155A).

657—11.24(124,147A,155A) Product recall. All service programs shall have a system for removal from administration stock any prescription drugs and devices subject to a product recall. The system shall include action appropriate to the direction or requirements of the recall.

657—11.25 Reserved.

657—11.26(124,147A,155A) Controlled substances records.

11.26(1) Records maintained. Every inventory or other record required to be maintained under this chapter, 657—Chapter 10, or Iowa Code chapter 124 shall be maintained at the service program site and by the pharmacy if the service program is pharmacy-based. All required records shall be available for inspection and copying by the board or its representative for at least two years from the date of such inventory. Controlled substances records shall be maintained in a readily retrievable manner.

11.26(2) Receipt and disbursement records. Any pharmacy or other authorized registrant that provides controlled substances for a medical director-based service program shall maintain records of receipt and disbursement that include the following:

- a. The name of the substance;
- b. The strength and dosage form of the substance;
- c. The number of units or commercial containers acquired from other registrants, including the date of receipt and the name, address, and DEA registration number of the registrant from whom the substances were acquired;
- d. The number of units or commercial containers distributed to other registrants, including the date of distribution and the name, address, and DEA registration number of the registrant to whom the substances were distributed; and
- e. The number of units or commercial containers disposed of in any other manner, including the date and manner of disposal and the name, address, and DEA registration number of the registrant to whom the substances were distributed for disposal, if appropriate.

657—11.27(124,147A,155A) Ordering Schedule II controlled substances—medical director-based. Except as otherwise provided by 657—subrule 10.34(7) and under federal law, a DEA Form 222, preprinted with the address of the program location, is required to be maintained at the service program location for the acquisition of each supply of a Schedule II controlled substance. The order form shall be executed only by the medical director named on the order form or by an authorized signer designated pursuant to a properly executed power of attorney. A DEA Form 222 shall be dated and signed as of the date the order is submitted for filling. A medical director or authorized signer shall not pre-sign a DEA Form 222 for subsequent completion. All Schedule II order forms shall be

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maintained at the service program site and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record.

657—11.28 Reserved.

657—11.29(124,147A,155A) Schedule II perpetual inventory. Each service program located in Iowa that administers Schedule II controlled substances shall maintain a perpetual inventory for all Schedule II controlled substances pursuant to the requirements of this rule. All records relating to the perpetual inventory shall be maintained at the service program location and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record.

11.29(1) Record. The perpetual inventory record may be maintained in a manual or an electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed. An electronic record entry, once recorded, shall not be changed; any needed adjustments or corrections shall require entry of a separate record as provided in subrule 11.29(3).

11.29(2) Information included. The perpetual inventory record shall identify all receipts and disbursements of Schedule II controlled substances by drug name or by National Drug Code (NDC), including each patient administration, wastage, return to the responsible individual, disposal of a drug, and a receipt of each drug. The record of receipt shall also identify the source of the drug, the strength and dosage form, the quantity, the date, and the name or unique identification of the individual verifying receipt of the drug. The disbursement record shall identify where or to whom the drug is disbursed or administered, the strength and dosage form, the quantity, the date, and the name or unique identification of the individual responsible for the disbursement.

11.29(3) Changes to the record. Any changes or adjustments made to the perpetual inventory shall include the identity of the person making the change and the reason for the change or adjustment.

11.29(4) Reconciliation. The pharmacist in charge or designee in a pharmacy-based program, or the medical director or designee in a medical director-based program, shall be responsible for reconciling the physical inventory of all Schedule II controlled substances with the perpetual inventory balance on a periodic basis but no less frequently than monthly. Any discrepancy shall be reported to the medical director and to the pharmacist in charge if the service program is a pharmacy-based program.

657—11.30(124,147A,155A) Controlled substances annual inventory. An accurate inventory shall be taken annually of all controlled substances maintained at the service program site. Controlled substances in a pharmacy-based program shall be included in the pharmacy's annual controlled substance inventory. Records of the inventory shall be maintained pursuant to rule 657—11.34(124,147A,155A).

657—11.31 Reserved.

657—11.32(124,147A,155A) Destruction or disposal of controlled substances. Disposal or destruction of controlled substances shall be pursuant to the requirements of this rule and rule 657—11.29(124,147A,155A). Records shall be maintained at the service program site and, if the program is a pharmacy-based service, records shall be maintained at both the service program site and the pharmacy.

11.32(1) Outdated, damaged, or unwanted supply. EMS personnel shall not destroy any controlled substances except as provided in subrule 11.32(2). Any drug that requires disposal or destruction shall be returned to the responsible individual. The responsible individual shall dispose of or destroy controlled substances according to the following procedures:

a. The responsible individual shall utilize the services of a DEA-registered and Iowa-licensed disposal firm (reverse distributor), or

b. The responsible individual shall utilize such other means determined and approved by the board.

11.32(2) Administration wastage. Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a

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patient may be destroyed or otherwise disposed of by the administering EMS personnel, the medical director, or a pharmacist. Any wastage of a controlled substance shall be conducted in the presence of a responsible adult witness who is a member of the EMS team. A written record of controlled substance wastage shall be made and maintained at the service program location and at the pharmacy, if the program is a pharmacy-based service, for a minimum of two years following the destruction or other disposal. The record shall include the signatures of the individual destroying or otherwise disposing of the wastage of the controlled substance and of the witness and shall identify the following:

- a. The controlled substance wasted;
- b. The date of destruction or other disposition;
- c. The quantity or estimated quantity of the wasted controlled substance;
- d. The source of the controlled substance, including identification of the patient to whom the substance was administered; and
- e. The legibly printed names of the person wasting the unused portions of the controlled substance and of the qualified witness.

657—11.33(124,147A,155A) Report of loss or theft of controlled substance. Upon suspicion of any loss or theft of a controlled substance, the service director shall immediately notify the responsible individual. The responsible individual shall notify the DEA pursuant to rule 657—10.16(124) and federal regulations. The responsible individual shall report in writing, on forms provided by the board, any theft or significant loss of any controlled substance. The report shall be submitted to the board office within two weeks of the discovery of the theft or loss. A copy of the report shall be maintained at the service program site and, if the program is a pharmacy-based service, at the pharmacy.

657—11.34(124,147A,155A) Records. All records regarding prescription drugs and devices in a service program shall be maintained for two years and be available for inspection and copying by the board or its representative.

These rules are intended to implement Iowa Code chapter 147A and Iowa Code sections 124.301 and 155A.13.

ARC 8910B

PHARMACY BOARD[657]

Notice of Termination

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on July 1, 2009, as **ARC 7924B**, proposing to amend Chapter 13, “Sterile Compounding Practices,” Iowa Administrative Code.

The Notice proposed to clarify that the beyond-use date for a sterile compounded product be calculated to include any period of time during which the product is contained in a reservoir administration device and to clarify the approved storage periods for high-risk compounded preparations depending on the temperature of the preparation during storage.

The Board is terminating the rule making commenced in **ARC 7924B** based on comments received from members of the public and other information regarding sterile compounding practices received from professional organizations.

ARC 8913B**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 13, “Sterile Compounding Practices,” Iowa Administrative Code.

The amendments were approved at the April 29, 2010, meeting of the Board of Pharmacy.

The proposed amendments clarify the definition of “beyond-use date” for a sterile compounded product to mean the date following compounding after which a product may not be stored, administered, or transported. The proposed amendments also clarify the approved storage periods for high-risk compounded preparations based on the temperature of the preparation during storage.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on July 20, 2010. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 126.10, 155A.2, 155A.13, and 155A.28.

The following amendments are proposed.

ITEM 1. Amend rule **657—13.2(124,126,155A)**, definition of “Beyond-use date,” as follows:
“Beyond-use date” means the date or time following compounding after which the preparation shall not be stored, administered, or transported. The beyond-use date is determined from the date or time compounding of the preparation is completed.

ITEM 2. Amend paragraph **13.13(1)“e”** as follows:
e. For a sterilized high-risk preparation, in the absence of the preparation’s passing a sterility test, the storage ~~periods~~ period beyond-use date shall not exceed the following:

- (1) At controlled room temperature, ~~for~~ 24 hours;
- (2) At a cold temperature, ~~for~~ 3 days; or
- (3) In a solid-frozen state between minus 25 and minus 10 degrees Celsius, ~~for~~ 45 days.

ARC 8895B**TELECOMMUNICATIONS AND TECHNOLOGY
COMMISSION, IOWA[751]****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 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 1, “Description of the Organization,” Iowa Administrative Code.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

This amendment reflects a change made in the organizational structure of the Iowa Communications Network.

Any interested person may make written comments or suggestions on the proposed amendment on or before July 20, 2010. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on July 21, 2010, beginning at 11 a.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of special needs.

This amendment was approved at the June 4, 2010, meeting of the Iowa Telecommunications and Technology Commission.

This amendment is intended to implement 2010 Iowa Acts, Senate File 2088, division V.

The following amendment is proposed.

Amend subrule 1.5(2) as follows:

1.5(2) *Administrative elements.* In order to carry out the functions of the commission, the following divisions/~~bureaus/~~ and offices have been established:

a. The office of the deputy director is responsible for agency information systems functions, legislative liaison, public information, maintenance of a circuit database, and administrative support to the commission. The office also provides information and education to the public about the commission and the fiberoptic network and maintains the commission's ~~World Wide Web page on the Internet~~ Web site.

b. The office of the chief financial officer is responsible for final review of the financial books and records prepared by the finance division prior to providing them to the commission, asset inventory and management, personnel transactions, and purchasing and contracting activities, as well as coordination with the attorney general's office for legal counsel.

~~*c.* The finance division is responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims for payments of goods and services, processing cash receipts, purchasing and contracting activities, and facilities management and other duties as assigned from time to time.~~

~~*e. d.* The network operations bureau and engineering division is responsible for provisioning of video services, data/Internet services, and voice services for authorized users. It is responsible for all operational aspects of the fiberoptic network. The division is also responsible for the technical operation of the fiberoptic network, including research and development, and network systems.~~

~~*d.* The engineering bureau is responsible for the technical operation of the fiberoptic network, including research and development, and network systems support. It oversees all physical aspects of the network's equipment and circuits and performs other duties as assigned from time to time.~~

e. The service delivery ~~bureau~~ division coordinates the activities between the engineers, individual sites, and authorized users. ~~It~~ The division is responsible for providing cost estimates for services; tracking service requests; executing installation services; assisting authorized users in finding the best structure to meet the users' needs; developing new products and services; maintaining price tables; and providing customer service and assistance.

ARC 8869B**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 400, "Vehicle Registration and Certificate of Title," Chapter 401, "Special Registration Plates," Chapter 405, "Salvage," Chapter 415, "Driver's Privacy Protection—Certificates of Title and Vehicle Registration," Chapter 425, "Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Chapter 431, "Vehicle Recyclers," Chapter 450, "Motor Vehicle Equipment," and Chapter 480, "Abandoned Vehicles," Iowa Administrative Code.

The purpose of this rule making is to amend the rules to conform to recent legislation and the Iowa Code, to clarify and streamline procedures, to clean up and clarify rules, and to rescind rules no longer valid. The following paragraphs summarize the amendments by rule chapter:

The proposed amendments to Chapter 400 add a definition of "social security number"; allow for a certification of trust to be accepted as proof of application for a certificate of title or registration; amend the titling procedure on a restitution or forfeiture lien; clarify that the bonded title application shall be accompanied by evidence of ownership; remove the requirement that a motor vehicle investigator examine the vehicle to verify that the certificate of title application is correct; make necessary amendments relating to certificates of title and registration plates for specialty vehicles to comply with 2008 Iowa Acts, chapter 1044; make changes to the Department's authority to register unconventional vehicles; clarify that the dealer must pay delinquent fees if the vehicle is not currently registered when the dealer acquires the vehicle; remove the requirement that a dealer must assign the title to the dealer; make necessary revisions relating to the registration of vehicles equipped for persons with disabilities to comply with 2008 Iowa Acts, chapter 1042; discontinue the ability to register a truck tractor as a motor home with a minor conversion to avoid commercial driver's license requirements, fuel tax and registration fees; clarify when a fee is not required for a vehicle that is put in or taken out of storage; amend the procedure concerning stored vehicles; and add new rules to clarify appeal time frames.

The proposed amendments to Chapter 401 allow the Department to grant an extension if 500 paid applications for processed emblem plates are not submitted within one year after the date the Department approved the plate and clarify that, although a person that qualifies for the legion of merit plate may apply for more than one set of plates, the person is only allowed the reduced registration fee for one vehicle.

The proposed amendment to Chapter 405 removes the requirement that the previous fees due and the year the vehicle became salvage be entered on an Iowa salvage title.

The proposed amendments to Chapter 415 clarify and update the process, requirements and restrictions for obtaining a vehicle and title information protected by the Driver's Privacy Protection Act. These changes comply with 2009 Iowa Acts, chapter 126.

The proposed amendments to Chapter 425 change "designated location" to "principal place of business"; allow the Department to rescind revocation of a dealer's license that was revoked for failure to file a surety bond if the applicant timely obtained a reinstated or new surety bond meeting the requirements but due to mistake or inadvertence failed to file the original bond; stipulate that a temporary license will no longer be granted; clarify the proper documentation needed by motor vehicle franchisers; and amend the process used to notify persons of pending revocations and appeal requests to comply with Iowa Code chapter 322A.

The proposed amendments to Chapter 431 change "designated location" to "principal place of business."

TRANSPORTATION DEPARTMENT[761](cont'd)

The proposed amendments to Chapter 450 define motorized vehicle classifications and vehicle component working order and conditions for titling and registration of specially constructed or reconstructed vehicles to comply with 2008 Iowa Acts, chapter 1044.

The proposed amendment to Chapter 480 adds a definition of “abandoned vehicle” for consistency and clarification of Iowa Code section 321.18.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet E-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than July 20, 2010.

A meeting to hear requested oral presentations is scheduled for Thursday, July 22, 2010, at 10 a.m. at the Iowa Department of Transportation’s Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by August 2, 2010.

These amendments are intended to implement Iowa Code chapters 17A, 321, 321H, 321L, 322 and 322C.

Proposed rule-making actions:

ITEM 1. Adopt the following **new** definition of “Social security number” in rule **761—400.1(321)**:
“*Social security number*” means a social security number issued by the United States government.

ITEM 2. Amend paragraph **400.3(3)“b”** as follows:

b. A firm, association, corporation, or trust that is not required to have a federal employer identification number shall disclose the social security number, Iowa driver’s license number or Iowa nonoperator’s identification card number of an authorized representative of the firm, association, corporation, or trust. The authorized representative of a trust is the trustee unless otherwise specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604.

ITEM 3. Amend subrule 400.4(9) as follows:

400.4(9) *Applications in the name of trusts.* An application in the name of a trust shall be accompanied by a copy of all documents creating or otherwise affecting the trust or the certification of trust as defined in Iowa Code section 633A.4604. The application shall be signed by each trustee unless otherwise specified in the trust agreement or the certification of trust. The signature shall be followed by the words “as trustee.”

ITEM 4. Amend subrule 400.6(3) as follows:

400.6(3) The Internet at the following address: ~~<http://www.iamvd.com>~~ <http://www.iowadot.gov/mvd>.

ITEM 5. Amend rule 761—400.11(321) as follows:

761—400.11(321) Sheriff’s levy, restitution lien, and forfeiture lien noted as a security interest interests.

TRANSPORTATION DEPARTMENT[761](cont'd)

400.11(1) A sheriff's levy may be noted as a security interest on a certificate of title if the sheriff so desires. To apply for a notation of a security interest, the sheriff or the sheriff's deputy shall complete an application form prescribed by the department. The sheriff or sheriff's deputy shall sign the application in the space where the signature of the owner is ordinarily required. The signature of the owner is not required. The appropriate notation fee shall be submitted with the application form to the county treasurer of the county where the certificate of title was issued. If the certificate of title is not surrendered with the application, the county treasurer shall notify the holder of the certificate of title in the manner prescribed in Iowa Code section 321.50.

400.11(2) A restitution or forfeiture lien may be noted as a security interest on a certificate of title if the county attorney so desires. To apply for a notation of a security interest, the county attorney or designee shall complete an application form prescribed by the department. The county attorney or designee shall sign the application in the space where the signature of the owner is ordinarily required. The signature of the owner is not required. A lien notation fee is not required. If the certificate of title is not surrendered with the application, the county treasurer shall notify the holder of the certificate of title in the manner prescribed in Iowa Code section 321.50.

This rule is intended to implement Iowa Code section 321.50 and chapter 809A.

ITEM 6. Amend paragraph **400.13(1)“a”** as follows:

a. The applicant shall submit a bond application to the office of vehicle services on a form prescribed by the department. The application shall be accompanied by ~~a copy of the written ownership document received at the time the vehicle was acquired~~ evidence of ownership of the vehicle.

ITEM 7. Amend paragraph **400.13(1)“d”** as follows:

d. After the cash deposit or surety bond has been deposited, a motor vehicle investigator of the department ~~shall~~ may examine the vehicle to verify the information submitted on the application is correct. After verifying the information, the investigator shall give to the applicant a document authorizing the county treasurer to issue a title for and register the vehicle. Should the vehicle not meet the equipment requirements of Iowa Code chapter 321, the investigator shall authorize the county treasurer to issue a title and registration but instruct the county treasurer to immediately suspend the registration until such time as the vehicle meets these equipment requirements. If applicable, the investigator shall also affix an assigned identification number to the vehicle and give to the applicant an assigned vehicle identification number (VIN) form.

ITEM 8. Amend paragraph **400.14(3)“b”** as follows:

b. When a vehicle is owned by a trust, the signature of each trustee is required, unless otherwise specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604. The signature shall be followed by the words “as trustee.” In addition, the title shall be accompanied by a copy of all documents creating or otherwise affecting the trust or the certification of trust.

ITEM 9. Amend rule 761—400.16(321), catchwords, as follows:

761—400.16(321) Application for certificate of title or original registration for a specially constructed, ~~or reconstructed, street rod or replica motor vehicle.~~

ITEM 10. Amend subrule 400.16(2) as follows:

400.16(2) Procedures. This subrule describes the procedures for obtaining department approval to title and register a specially constructed, ~~or reconstructed, street rod or replica motor vehicle.~~ The procedures described are in addition to the regular procedures for titling and registering a vehicle.

a. The applicant shall apply to the county treasurer for a certificate of title and registration. The county treasurer, upon receiving an application that indicates the vehicle is a specially constructed, ~~or reconstructed, street rod or replica motor vehicle,~~ shall forward the application to a motor vehicle investigator of the department.

b. and c. No change.

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ITEM 11. Amend subrule 400.16(4) as follows:

400.16(4) Model year. The model year of a specially constructed, ~~or reconstructed,~~ street rod or replica motor vehicle is the year the vehicle is approved by the department as a specially constructed, ~~or reconstructed,~~ street rod or replica motor vehicle.

ITEM 12. Amend subrule 400.21(4) as follows:

400.21(4) The department shall not register an all-terrain vehicle. The department shall not register a vehicle ~~manufactured only for off-road use~~ built on or after January 1, 1968, unless it was manufactured primarily for use on public streets, roads and highways except a vehicle operated exclusively by a person with a disability, which may be registered if the department, in its discretion, determines that the vehicle is not in an unsafe condition. This subrule does not apply to a specially constructed, reconstructed, street rod or replica motor vehicle as defined in Iowa Code section 321.1.

ITEM 13. Amend paragraph **400.27(3)“e”** as follows:

e. The vehicle is ~~not currently registered~~ registration fee was delinquent in Iowa at the time of sale the vehicle was acquired by the dealer. The delinquent fees and penalty shall be paid by the dealer from the first day the registration was due to the month the application for title is submitted.

ITEM 14. Amend subrule 400.27(5) as follows:

400.27(5) Registration fee required. A vehicle owned by a dealer and used as a work or service vehicle, or offered for lease, rent or hire, shall become subject to a registration fee in the month that the vehicle is first used for that purpose. The registration fee shall be due annually unless the vehicle is transferred to the dealer's inventory. To transfer the vehicle, the dealer shall surrender the registration plates that were issued for the vehicle ~~and assign the certificate of title to the dealership name, as provided in subrule 400.27(1).~~

ITEM 15. Amend rule 761—400.35(321) as follows:

761—400.35(321) Registration of vehicles equipped for persons with disabilities. The registration fee shall be reduced for a an automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less with permanent equipment for assisting a person with a disability or for a an automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less used by a person who uses a wheelchair as the person's only means of mobility. To qualify for the reduction, the owner of the vehicle must provide a written self-certification at the first registration and at each renewal:

400.35(1) That the automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less has permanently installed equipment manufactured for and necessary to assist a person with a disability, as defined in Iowa Code section 321L.1, to enter or exit the vehicle, or

400.35(2) No change.

This rule is intended to implement Iowa Code sections 321.109, 321.124 and 321L.1.

ITEM 16. Amend rule 761—400.39(321) as follows:

761—400.39(321) ~~Automobile converted to truck~~ Conversion of motor vehicles.

400.39(1) An automobile converted to a truck with a carrying capacity of 1000 pounds or more shall be registered as a reconstructed motor vehicle.

400.39(2) A vehicle manufactured as a truck tractor shall not be registered as a motor home.

This rule is intended to implement Iowa Code sections 321.23, 321.124, and 321.111.

ITEM 17. Amend rule 761—400.43(321) as follows:

761—400.43(321) Storage of vehicles.

400.43(1) The owner of a vehicle upon which the registration fee is not delinquent may surrender all registration plates for the vehicle to the county treasurer where the vehicle is registered and shall have the right to register the vehicle later upon payment of the annual registration fee due at the time of removal of the vehicle from storage. Payment of a registration fee shall not be required when the vehicle is removed

TRANSPORTATION DEPARTMENT[761](cont'd)

from storage within the current registration year provided that registration fees have not been refunded. However, if a vehicle was placed in storage any month prior to the expiration of the registration, Plates that have been surrendered shall be destroyed. When a vehicle is removed from storage, the fee is \$5 for a set of replacement plates.

~~400.43(2)~~ The registration plates which have been surrendered shall be retained and reissued to the owner if the vehicle is registered again within 30 days from the date of surrender of the plates. If the vehicle is not registered within the 30-day period, the plates shall be destroyed and new plates assigned to the owner when the vehicle is registered.

~~400.43(3)~~ **400.43(2)** The owner of a motor vehicle which is placed in storage when the owner enters the military service of the United States shall comply with Iowa Code subsection 321.126(3), and subrule 400.43(1) does not apply.

This rule is intended to implement Iowa Code sections 321.126 and 321.134.

ITEM 18. Amend paragraph **400.51(1)“c”** as follows:

c. The vehicle is a specially constructed, ~~or reconstructed,~~ street rod or replica motor vehicle. See rule 400.16(321) for the requirements and procedures applicable to specially constructed, ~~or reconstructed,~~ street rod or replica motor vehicles.

ITEM 19. Amend paragraph **400.51(2)“a”** as follows:

a. Request. Whenever an assigned identification number is required under subrule 400.51(1) and the request does not apply to a specially constructed, ~~or reconstructed,~~ street rod or replica motor vehicle, the owner of the vehicle, component part, fence-line feeder, grain cart or tank wagon, or the person holding lawful custody, shall contact the department's office of motor vehicle enforcement and request the assignment of a number.

ITEM 20. Amend rule 761—400.56(321) as follows:

761—400.56(321) Hearings. A The department shall send notice by certified mail to a person whose certificate of title, vehicle registration, license, or permit has been is to be revoked, suspended, canceled, or denied may contest the decision under Iowa Code chapter 17A and rules 761—Chapter 13, Iowa Administrative Code. The notice shall be mailed to the person's mailing address as shown on departmental records and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle services at the address in subrule 400.6(1). The request for a contested case shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation, or denial.

This rule is intended to implement Iowa Code sections 17A.10 to 17A.19, 321.101 and 321.102.

ITEM 21. Amend paragraph **401.2(1)“b”** as follows:

b. Collegiate plates, personalized plates, and special registration plates that have eligibility requirements must be requested using an application form prescribed by the department. Unless otherwise specified, completed application forms for these plates shall be submitted to the department at the following address: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. Application forms may be obtained from the office of vehicle services or from any county treasurer's office. Application forms are also available on the department's Web site at ~~http://www.iamvd.com~~ http://www.iowadot.gov/mvd.

ITEM 22. Amend subrule 401.15(6) as follows:

401.15(6) If the department approves the application, the applicant shall be advised that 500 paid special plate applications must be submitted to the department before the new plate will be manufactured and issued. If 500 paid applications are not submitted within one year after the date the department approved the plate, the department ~~shall~~ may cancel its approval or grant an extension.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 23. Amend rule 761—401.19(321) as follows:

761—401.19(321) Legion of Merit plates. Application for special plates with a Legion of Merit processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the Legion of Merit. Personalized plates with a Legion of Merit processed emblem are not available. Pursuant to Iowa Code section 321.34, an applicant is eligible for one set of Legion of Merit plates at a reduced annual registration fee of \$15 for one vehicle owned. However, an applicant may obtain additional Legion of Merit plates upon payment of the regular annual registration fee.

ITEM 24. Amend subrule 405.3(4) as follows:

405.3(4) Registration fees.

a. An Iowa salvage title may be obtained without payment of the current registration fees or any delinquent registration fees or registration penalties. If the registration fees are delinquent at the time of issuance of an Iowa salvage title, no additional penalty shall accrue after issuance.

b. ~~The previous fees due and the year the vehicle became salvage shall be entered below the “in lieu” field on an Iowa salvage title.~~

e. b. Any registration fees or registration penalties due at the time of issuance of an Iowa salvage title, together with the current registration fees if not already paid, shall be paid upon issuance of a regular title. However, a dealer is not required to pay current registration fees to obtain a regular title for a vehicle held for resale or trade. See rule 761—400.27(321,322) for any exceptions.

ITEM 25. Amend subrule 415.1(1) as follows:

415.1(1) This chapter applies to personal information about vehicle owners in records pertaining to certificates of title, registration receipts and registration renewal receipts issued by the department or ~~the a county treasurers~~ treasurer.

ITEM 26. Amend subrule 415.1(2) as follows:

415.1(2) Rules regarding personal information and highly restricted personal information in records pertaining to drivers' licenses and nonoperators' identification cards are found in 761—~~Chapter~~ Chapters 610 and 611.

ITEM 27. Amend rule 761—415.3(321) as follows:

761—415.3(321) Definitions.

“Driver’s license” is defined in Iowa Code section 321.1.

“Driver’s Privacy Protection Act” or “Act” means the Act adopted in rule 761—415.2(321).

“Highly restricted personal information” means an individual’s photograph or image, social security number, or medical or disability information.

“Law enforcement agency” includes, but is not limited to, offices of county attorneys, ~~federal district attorneys,~~ offices of United states attorneys, attorneys general offices, state and federal departments of justice, and a division or unit of a governmental agency if the division’s or unit’s primary responsibility is to prevent or detect crime or enforce a criminal ~~law of this state~~ laws.

“Motor vehicle record” as used in the Act means any record that pertains to a driver’s license, nonoperator’s identification card, certificate of title, registration receipt, or registration renewal receipt issued by the department or ~~the a county treasurer.~~

“Person” means an individual, organization or entity.

“Personal information” means information that identifies an individual, including the items listed in Iowa Code section 321.11 and 18 U.S.C. § 2725(3) of the Act adopted in rule 761—415.2(321). “Personal information” also includes information on an individual’s nonoperator’s identification card number.

“Requestor” means an individual or entity that seeks from the department access to personal information or highly restricted personal information contained in the individual’s own or another individual’s motor vehicle record. A requestor does not include an individual who is an authorized

TRANSPORTATION DEPARTMENT[761](cont'd)

employee of the department or a county treasurer acting within the scope of the employee's office or employment.

"Vehicle owner" as used in this chapter means a vehicle owner who is an individual, not a company, organization or other legal entity.

ITEM 28. Amend rule 761—415.4(321) as follows:

761—415.4(321) Requirements and procedures. Notwithstanding Iowa Code chapter 22 and 761—Chapter 4, the following procedures implement the Driver's Privacy Protection Act and Iowa Code section 321.11 as they pertain to records relating to certificates of title, registration receipts and registration renewal receipts. The department does not provide the waiver procedure described in the Act (codified as 18 U.S.C. § 2721(d)).

415.4(1) ~~The department or the a county treasurer may require a person or entity that requests personal information about a vehicle owner~~ requestor to:

a. ~~Submit the request in writing~~ Complete Form 431069, "Privacy Act Agreement for Request of Motor Vehicle Records," and submit it to the office of vehicle services.

b. ~~Provide proof of identity and authority to secure access to the information by completing Form 431069 and attaching a legible photocopy of the requestor's driver's license or nonoperator's identification card.~~

c. ~~Provide proof of authority to secure access to the personal information or highly restricted personal information by completing Part C of Form 431069 and providing the department with proof of the requestor's status or other additional information the department may request.~~

e. d. ~~Sign a certified statement, affidavit or contract listing the specific reasons justifying access to the information~~ Complete the certification at Part D of Form 431069 and provide any proof necessary to establish relevant facts.

e. Pay the statutory fee, if applicable, for the requested motor vehicle record.

415.4(2) ~~Form 411069~~ 431069, "Privacy Act Agreement for Request of Motor Vehicle Record(s)," must be completed by an applicant a requestor and approved by the department before the department may disclose personal information or highly restricted personal information to the applicant without the express written consent of the vehicle owner to whom such information applies requestor. On the form, the applicant shall indicate the provision of law that allows the release of personal information to that applicant. For the purpose of this subrule, "applicant" means a person who is not an authorized employee of the department or a county treasurer. The department may deny requests for such information if a requestor refuses to complete Form 431069 or if the department is not satisfied that the requestor provided adequate and truthful information in Form 431069 or in the documents that the requestor attached to Form 431069.

415.4(3) Personal information and highly restricted personal information, except for an individual's photograph or image, may be disclosed with the express written consent of the vehicle owner to whom such information applies. To obtain this consent, a requester may complete Form 411213, "Request for Release of Personal Information," and submit the form to the department. The department shall forward a copy of the completed form to the vehicle owner to obtain the owner's express written consent. If the form is returned signed by the owner approving the release of the owner's personal information, the department will release the information to the requester. When the requestor has obtained the written consent of the vehicle owner to whom the information applies, the requestor must attach that written consent to a completed Form 431069 and submit it to the office of vehicle services, along with the statutory fee, if applicable.

415.4(4) An individual may obtain the individual's own motor vehicle record by completing Part A of Form 431069, providing proof of identity by attaching a legible photocopy of the requestor's driver's license or nonoperator's identification card, submitting both to the office of vehicle services, and paying the statutory fee, if applicable.

415.4(4) 415.4(5) ~~The department shall not release any personal information regarding a motor vehicle record~~ or highly restricted personal information if the request is made by plate number or validation sticker number, except as provided in Iowa Code section 321.11.

TRANSPORTATION DEPARTMENT[761](cont'd)

415.4(6) All persons who obtain personal information or highly restricted personal information from the department are required to comply with Iowa Code section 321.11 and the Driver's Privacy Protection Act.

ITEM 29. Amend paragraph **425.1(2)“b”** as follows:

b. Information about dealer plates and the licensing of motor vehicles and travel trailer dealers, manufacturers, distributors and wholesalers is available from the office of vehicle services or on the department's Web site at <http://www.iamvd.com> <http://www.iowadot.gov/mvd>.

ITEM 30. Amend rule **761—425.3(322)**, definition of “Designated location,” as follows:

“~~Designated location~~ Principal place of business” means a building actually occupied where the public and the department may contact the owner or operator during regular business hours. In lieu of a building, a travel trailer dealer may use a manufactured or mobile home as an office if taxes are current or a travel trailer as an office if registration fees are current.

ITEM 31. Adopt the following **new** paragraph **425.10(2)“e”**:

e. If an applicant whose dealer's license was revoked pursuant to paragraph “*d*” establishes that the applicant obtained a reinstated or new bond meeting the requirements of subrule 425.10(2) that was effective on or before the date of cancellation, but due to mistake or inadvertence failed to file the original bond with the office of vehicle services, the applicant may file the original of the reinstated or new bond. Upon filing, the department will rescind the revocation of the dealer's license.

ITEM 32. Amend subparagraph **425.10(3)“b”(3)** as follows:

(3) The applicant's area of responsibility as stipulated in the franchise and certified on a form prescribed by the department.

ITEM 33. Amend subrule 425.10(5) as follows:

425.10(5) ~~Place~~ Principal place of business. The applicant shall maintain a ~~place of business at a designated location~~ principal place of business, which must be staffed during regular business hours. See rules ~~761—425.12(322)~~ and ~~761—425.14(322)~~ for further requirements.

ITEM 34. Amend subrule 425.10(8) as follows:

425.10(8) *Financial liability*. The applicant for a motor vehicle dealer's license shall certify on the application that the applicant has the required financial liability coverage in the limits as set forth in Iowa Code ~~section 322.4(8)~~ subsection 322.4(1). It is the applicant's responsibility to ensure the required financial liability coverage is continuous with no lapse in coverage as long as the applicant maintains a valid dealer's license.

ITEM 35. Amend subrule 425.12(1) as follows:

425.12(1) *Verification of compliance; temporary license*. Before a motor vehicle dealer's license is issued, an investigator from the department shall physically inspect an applicant's principal place of business to verify compliance with this rule. ~~The department may issue a temporary license upon receipt of certification by the applicant that the place of business complies with this rule. The temporary license shall be in effect until an on-site inspection is completed.~~

ITEM 36. Amend subrule 425.24(1) as follows:

425.24(1) The department shall not issue a license under Iowa Code chapter 322 or 322C to any other person at a principal place of business ~~or designated location~~ of a person currently licensed under Iowa Code chapter 322 or 322C.

ITEM 37. Amend rule **761—425.31(322)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~Supplement~~ subsection 322.5(5).

ITEM 38. Amend subrule 425.62(4) as follows:

425.62(4) The department shall send notice by certified mail to a person whose certificate, license or permit is to be revoked, suspended, canceled or denied. The notice shall be mailed to the person's mailing address as shown on departmental records or, if the person is currently licensed, to the principal place of business, and shall become effective 20 days from the date mailed. A person who is aggrieved by

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a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle services at the address in subrule 425.1(2). The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation or denial.

ITEM 39. Amend subrule 431.1(1) as follows:

431.1(1) Information. Information and blank forms relating to this chapter may be obtained from and completed forms shall be submitted to the Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. Information and forms are also available on the department's Web site at <http://www.iowadot.gov/mvd>.

ITEM 40. Amend subrule **431.1(2)**, definition of “Designated location,” as follows:

~~“Designated location~~ Principal place of business” means a building actually occupied where the public and the department ~~can~~ may contact the owner or operator during regular business hours.

ITEM 41. Amend paragraph **431.2(1)“a”** as follows:

a. Maintain regular business hours and telephone service at ~~a designated location~~ the principal place of business which shall include separate and adequate office space for the recycler's business records. Telephone service must be a land line and not cellular phone service.

ITEM 42. Amend rule 761—450.2(321), introductory paragraph, as follows:

761—450.2(321) Equipment requirements for specially constructed, reconstructed, ~~and kit street rod, and replica motor vehicles, other than motorcycles and motorized bicycles.~~ The following standards are minimum requirements for constructing and equipping specially constructed, reconstructed, ~~and kit~~ street rod, and replica motor vehicles other than motorcycles and motorized bicycles.

ITEM 43. Amend subrule 450.2(1) as follows:

450.2(1) Definitions. The definitions in Iowa Code section 321.1 and ~~rules 761—Chapter 400 rule 761—400.16(321)~~ are hereby made part of this chapter.

ITEM 44. Amend subrule 450.2(2) as follows:

450.2(2) Application. As outlined in rule 761—400.16(321), the applicant shall submit the required application forms and exhibits to the county treasurer. The vehicle and ownership documents shall be examined by the department. If the department determines that the motor vehicle complies with this rule, that the integral parts and components have been identified as to ownership, and that the application forms have been completed properly, the department shall assign an identification number to the vehicle and certify that the motor vehicle is eligible for titling and registration. If the frame or unibody specified on an application for a specially constructed, reconstructed, street rod, or replica motor vehicle is designated “not for highway use,” the application shall not be approved. The exchange of compatible body parts does not constitute a specially constructed, reconstructed, street rod, or replica motor vehicle. The removal, addition, or substitution of reconstructed motor vehicle parts modifies the vehicle's external appearance so that it does not reflect the original make or manufacturer model for that model.

ITEM 45. Amend subrule 450.2(3) as follows:

450.2(3) Defroster and defogging device. Every closed motor vehicle, ~~and every such open vehicle equipped with a convertible top,~~ shall be equipped with a device capable of defogging or defrosting the windshield area.

ITEM 46. Amend subrule 450.2(4) as follows:

450.2(4) Door latches. Every motor vehicle that is equipped with doors leading directly into a compartment that contains one or more seating accommodations shall be equipped with mechanically actuated door latches which firmly and automatically secure the door when pushed closed and which allow each door to be opened from the inside by the actuation of a convenient lever, handle or other ~~suitable~~ nonelectric device. ~~Exterior and interior~~ Interior handles must be visible.

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ITEM 47. Amend subrule 450.2(13) as follows:

450.2(13) Seating. All bench-type and individual seats in motor vehicles shall be ~~attached~~ firmly anchored to structural components or body parts.

ITEM 48. Rescind and reserve subrules **450.2(14)** and **450.2(15)**.

ITEM 49. Amend subrule 450.2(17) as follows:

450.2(17) Frame. Every vehicle shall be equipped with a frame consisting of a wall box tubing, round tubing, wall channel or unitized construction capable of supporting the vehicle, its load and the torque produced by the power source.

ITEM 50. Amend subrule 450.2(19) as follows:

450.2(19) Steering and suspension.

a. No change.

b. ~~These vehicles shall have a right turn and left turn minimum turning radius of 20 feet measured from the center of the turning circle to the outside front wheel track.~~ The steering system shall remain unobstructed when turned from lock to lock.

c. to h. No change.

i. ~~Motor vehicles shall be capable of stable, controlled operation while traversing, at a minimum velocity of 25 miles per hour, a slalom-type path passing alternately to the left and right of at least four cones or markers arranged in a straight line and spaced at a distance of 40 feet greater than the length of the motor vehicle.~~

ITEM 51. Amend rule 761—450.4(321), introductory paragraph, as follows:

761—450.4(321) Minimum requirements for constructing and equipping specially constructed or reconstructed motorcycles or motorized bicycles. Minimum requirements for constructing and equipping specially constructed or reconstructed motorcycles or motorized bicycles as defined in Iowa Code section 321.1 are as follows:

ITEM 52. Amend subrule 450.4(1) as follows:

450.4(1) Application. ~~Reserved.~~ As outlined in rule 761—400.16(32), the applicant shall submit the required application forms and exhibits to the county treasurer. The vehicle and ownership documents shall be examined by the department. If the department determines that the motor vehicle complies with this rule, that the integral parts and components have been identified as to ownership, and that the application forms have been completed properly, the department shall assign an identification number to the vehicle and certify that the motor vehicle is eligible for titling and registration. If the frame specified on an application for a specially constructed or reconstructed motorcycle or motorized bicycle is designated “not for highway use,” the application shall not be approved. The exchange of compatible body parts does not constitute a specially constructed or reconstructed motorcycle or motorized bicycle. The removal, addition, or substitution of a reconstructed motorcycle or motorized bicycle part modifies the vehicle’s external appearance so that it does not reflect the original make or manufacturer model. EXEMPTION: The conversion of a manufactured motorcycle from two wheels to three-wheel operation by the addition or substitution of a bolt-on conversion kit shall not constitute a reconstructed motorcycle.

ITEM 53. Rescind and reserve subrule **450.4(3)**.

ITEM 54. Amend subrule 450.4(4) as follows:

450.4(4) Frame/chassis. A motorcycle or motorized bicycle frame/chassis, including the suspension components and engine mountings, shall be of sufficient strength, capable of supporting the combined weight of all vehicle components and riders for which the vehicle was designed.

ITEM 55. Amend subrule 450.4(5) as follows:

450.4(5) Front end assembly.

a. *Trail (extended fork measured in inches).* No reconstructed or specially constructed motorcycle or motorized bicycle shall have the front fork so extended as to place the center of the front wheel axle farther than 36 inches from a vertical plane through the steering axis.

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b. Rake (extended fork measured in degrees). No reconstructed or specially constructed motorcycle or motorized bicycle shall have the front fork so extended as to exceed a 45-degree angle between the fork assembly and a vertical plane through the steering axis.

c. Extensions. No reconstructed or specially constructed motorcycle or motorized bicycle shall be equipped with extension slugs. However, one-piece extension tubes and springer units, if approved, are acceptable.

d. Wheelbase. No reconstructed or specially constructed motorcycle or motorized bicycle shall have an overall wheelbase, measured from the center of the front axle to the center of the rear axle, of less than 40 inches.

e. No change.

ITEM 56. Amend subrule 450.4(6) as follows:

450.4(6) Brakes. Every motorcycle and motorized bicycle shall be equipped with at least a rear brake. If the vehicle is also equipped with a front brake, all control cables, lines and hoses shall be located and secured so as not to become pinched between the fork and frame members when the wheel is turned completely to the left or right. Brake-actuating devices shall be in a readily accessible location, unencumbered by vehicle components. A suitable mechanism shall be provided for the purpose of automatically returning the actuating devices to a normal position upon release.

ITEM 57. Amend subrule 450.4(8) as follows:

450.4(8) Steering and suspension.

a. Stability. Motorcycle or motorized bicycle steering and suspension shall provide the operator with the means of safely controlling vehicle direction.

b. Wheel alignment. The rear wheel of a two-wheel motorcycle or motorized bicycle shall track behind the front wheel within 1 inch with both wheels in a vertical plane when the vehicle is operating on a straight course. On a three-wheel motorcycle or motorized bicycle, the two wheels mounted on the rear axle shall have a wheel track distance not less than 30 inches and the midpoint of the rear wheel track distance shall be within 1 inch of the front wheel track when the vehicle is proceeding on a straight course.

c. Steering head.

(1) The steering head shall be provided with a bearing or similar device that will allow the steering shaft to turn freely in rotational motion only. All handlebar-mounted control cables, wires, lines and hoses shall be located and secured so as not to become pinched between the fork and frame members when the wheel is turned completely to the right or the left.

(2) A steering wheel may be used on a three-wheel reconstructed or specially constructed motorcycle or motorized bicycle provided:

1. The steering wheel is circular or nearly circular in shape, having an outside diameter of not less than 13 inches.

2. The steering wheel shall have no less than two turns and no more than six turns when the road wheels are turned from lock to lock.

d. Handlebars. Handlebars shall be of sturdy construction, adequate in size (length) to provide proper leverage for steering, and capable of withstanding a minimum force of 100 pounds applied to each hand grip in any direction. ~~Handlebar grips shall be located no more than 15 inches above the occupied seat with the handlebars located in a straight ahead steering position. The handlebars shall be capable of vertical adjustment.~~ The handlebars shall provide a minimum distance of 18 inches between grips after final assembly.

e. Hand grips. Motorcycles or motorized bicycles shall have handlebars equipped with hand grips of nonslip design or material.

f. Suspension. Motorcycles or motorized bicycles shall be equipped with a suspension system, and the suspension system shall be applicable to at least the front wheel. The suspension system(s) shall be designed for the purpose of maximum vehicle stability.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 58. Amend subrule 450.4(9) as follows:

450.4(9) Fuel system. All fuel system components, including the tank, pump, tubing, hoses, clamps, etc., shall be securely fastened to the motorcycle or motorized bicycle so as not to interfere with vehicle operation and be leakproof when the vehicle is in its normal operating attitude. Fuel lines and tank shall be positioned in a manner so as to prevent their contact with the engine head, manifold, exhaust system, or other high temperature surfaces or moving components. The fuel system shall be adequately vented and provided with a fuel shutoff valve located between the fuel supply and the engine.

ITEM 59. Amend subrule 450.4(10) as follows:

450.4(10) Exhaust system. Motorcycles or motorized bicycles with an internal combustion engine shall be equipped with an exhaust system incorporating a muffler or other mechanical device for the purpose of reducing engine noise. Cutouts and bypasses in the exhaust system are prohibited. The system shall be leakproof and all components shall be securely attached to the vehicle and located so as not to interfere with the operation of the motorcycle or motorized bicycle. Shielding shall be provided to prevent inadvertent contact with the exhaust system by the operator and/or passenger during normal operations.

ITEM 60. Amend subrule 450.4(11) as follows:

450.4(11) Mirrors. Every motorcycle and motorized bicycle shall be equipped with at least one mirror of unit magnification, securely affixed to the handlebar and capable of adjustment within a range that will reflect an image that includes at least the horizon and the road surface to the rear of the motorcycle or motorized bicycle. The mirror shall consist of a minimum reflective surface of 10 square inches. All mirrors shall be regular in shape (circular, oval, rectangular, or square) and shall not contain sharp edges or projections capable of producing injury.

ITEM 61. Rescind and reserve subrule **450.4(12)**.

ITEM 62. Amend subrule 450.4(14) as follows:

450.4(14) Horn. Every motorcycle and motorized bicycle shall be equipped with at least one horn. The horn shall be electrically operated and shall operate from a control device located on the handlebar. When operated the horn shall be audible for at least 200 feet.

ITEM 63. Amend subrule 450.4(15) as follows:

450.4(15) Speedometer and odometer. Every motorcycle and motorized bicycle shall be equipped with a properly operating speedometer and odometer calibrated in miles per hour and miles respectively and shall be fully illuminated when the headlamp(s) is ~~(are)~~ activated.

ITEM 64. Amend subrule 450.4(16) as follows:

450.4(16) Lighting equipment. Every motorcycle and motorized bicycle shall be equipped with at least one headlamp but not more than two, mounted securely. Headlamp(s) shall be mounted not less than 24 inches, nor more than 54 inches, above the level road surface. A headlight beam indicator light shall be located within the operator's field of vision and illuminated automatically when the high beam of the headlamp is actuated. Every motorcycle and motorized bicycle shall be equipped with a tail and brake light assembly and a license plate light. All original lamps and lighting equipment provided on the motor vehicle by the manufacturer shall be maintained in working condition or shall be replaced with equivalent equipment.

ITEM 65. Amend subrule 450.4(17) as follows:

450.4(17) Footrest. ~~Two~~ Every motorcycle shall be equipped with two footrests, one on each side of the vehicle, and shall be provided for each designated seating position. Footrests shall be located so as to provide reasonable accessibility. Footrests shall be able to fold upward if they protrude beyond the side of the motorcycle's fixed items. Every motorized bicycle shall be equipped with either two footrests or two pedals, one on each side of the vehicle, to provide reasonable accessibility.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 66. Amend subrule 450.4(18) as follows:

450.4(18) Highway bars. If a motorcycle or motorized bicycle is so equipped, highway bars (alternate footrests) shall be located at a maximum distance of 26 inches from the foot controls and shall not interfere with the operation of the foot controls.

ITEM 67. Rescind “Appendix to Rule 761—450.2(321), Fender Requirements,” in **761—Chapter 450**.

ITEM 68. Adopt the following **new** definition of “Abandoned vehicle” in rule **761—480.1(321)**: “*Abandoned vehicle,*” when used in Iowa Code section 321.89 and this chapter of rules, means only those vehicles subject to registration as referred to in Iowa Code section 321.18.

ITEM 69. Amend rule 761—480.2(321) as follows:

761—480.2(321) Location. Information, forms and instructions are available from: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278 or the department’s Web site at <http://www.iowadot.gov/mvd>.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for June is 5.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective June 9, 2010, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .20%
One year to 397 days	Minimum .50%
More than 397 days	Minimum 1.00%

TREASURER OF STATE(cont'd)

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 8922B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts a new Chapter 40, "Iowa Jobs Main Street Program," Iowa Administrative Code.

These rules implement a new grant program through the existing Iowa Main Street Program within the Community Development Division of the Department. The rules describe criteria for the Director's determination of high-priority projects eligible for funding through the Iowa Jobs II Program implemented by 2010 Iowa Acts, Senate File 2389.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable because of the need for rules to implement new provisions of the law.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and the rules be made effective upon filing on June 11, 2010. These rules describe the criteria used to define the Department's highest-priority Main Street Projects made eligible for funding under the Act and benefit the public by making this funding available to these eligible entities beginning with this summer's construction season. The Legislature deemed this activity of great importance by making it effective immediately.

The Iowa Economic Development Board adopted the rules on June 9, 2010.

These rules are also published herein under Notice of Intended Action as **ARC 8921B** to allow for public comment.

These rules are intended to implement 2010 Iowa Acts, Senate File 2389, sections 10 and 68.

These rules became effective on June 11, 2010.

The following amendment is adopted.

Adopt the following new 261—Chapter 40:

CHAPTER 40

IOWA JOBS MAIN STREET PROGRAM

261—40.1(83GA,SF2389) Authority. The authority for establishing the Iowa jobs main street program is provided in 2010 Iowa Acts, Senate File 2389, sections 10 and 68.

261—40.2(83GA,SF2389) Purpose. The purpose of the program is to fund projects that are currently on the department's highest-priority list. The highest-priority list shall include those projects that have previously applied for funding consideration or have received partial funding for façade master plans to rehabilitate storefronts in Iowa main street districts; that complete streetscape projects where planning and the majority of funding are already secure; that are unfunded main street challenge grant projects; and that are other building rehabilitation projects.

261—40.3(83GA,SF2389) Definitions.

"*Department*" means the Iowa department of economic development.

"*Director*" means the director of the department or the director's designee.

"*Eligible applicant*" means a department-designated main street organization that participates in the Iowa main street program described by 261—Chapter 39 and that has a current contract with the department for participation in the program.

"*Grant*" means funds received through the program as evidenced by an agreement with the department.

"*Grantee*" means any eligible applicant receiving funds under the program.

"*Highest-priority list*" means the list of projects developed under these rules that contains a description and prioritization of main street projects eligible for funding under the program.

"*Program*" means the Iowa jobs main street program.

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

“*Project*” means a project that has previously applied to the department under its main street program, sustainable community fund, or downtown revitalization fund.

261—40.4(83GA,SF2389) Highest-priority list. The director shall compile at least annually a highest-priority list of projects proposed for funding and shall publish the highest-priority list on the department’s Web site.

40.4(1) Eligibility. To be eligible to be included on the highest-priority list, the proposed project must be managed or owned by an eligible applicant, be eligible for main street funding described in 261—Chapter 39, and meet one of the following requirements:

a. The project has previously applied for funding consideration or has received partial funding for façade master plans to rehabilitate storefronts in Iowa main street districts through the department’s community development programs;

b. The project is a complete streetscape project for which planning and the majority of funding is already secure;

c. The project is an unfunded project through the main street challenge grant described in 261—Chapter 39; or

d. The project is a building rehabilitation project.

40.4(2) Priority. Proposed projects shall be prioritized based on the following criteria:

a. The eligible applicant is in good standing with the department, that is, the eligible applicant is conforming with contractual requirements or has satisfactorily performed under prior awards.

b. The project is currently under construction or has adequate development of construction documents so that it could be under construction within 60 days of award. For purposes of this subrule, “under construction” shall mean that construction contracts have been executed by the grantee or its subrecipients.

c. The project could be completed within the grant period of 18 months from the date of award.

d. The project has demonstrated a broad base of funding outside the public investment.

e. The project is utilizing, intends to utilize, or has utilized state or federal historic tax credits, as evidenced by appropriate filings to the state historic preservation office.

f. The project conforms to the state of Iowa’s Green Streets Criteria, version 2.0, published in August 2009.

g. The project is considered a key structure or group of structures in a historic commercial district.

h. The project, if funded, would likely result in job creation or revenue increases for the community.

i. The estimated costs of the project are documented and credible.

40.4(3) Additional information. The department may request additional information from eligible applicants in developing the highest-priority list. Failure on the part of an eligible applicant to provide additional information to the department in the form and by the date requested may result in an eligible applicant’s project not being included in the highest-priority list.

261—40.5(83GA,SF2389) Funding. All Iowa jobs funds shall be awarded and used as specified in 2009 Iowa Acts, Senate File 376, and 2010 Iowa Acts, Senate File 2389, and these rules. Funds shall be paid on a reimbursement basis as described in the grant agreement. Any portion of an amount awarded for projects that remains unexpended upon completion of the project may be reallocated to other projects on the highest-priority list at the discretion of the director.

40.5(1) Timing of grants. The funding of projects on the highest-priority list under the program is contingent upon the availability of funds allocated to the department. When funds are available, the department shall fund main street projects on the highest-priority list in the order they are listed and subject to the conditions of these rules.

40.5(2) Grant period. A grantee may receive a grant for a term not to exceed 18 months unless otherwise agreed upon by the department and included as part of the grant agreement or amendment thereof.

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

40.5(3) *Compliance and termination.* Continued funding through the grant period is contingent upon acceptable audit and monitoring reports received by the department and the grantee's compliance with the terms and conditions of the grant agreement. The department may terminate or suspend funding, in whole or in part, if there is a substantial violation of a specific provision of the agreement or these rules and corrective action has not been taken by the grantee.

40.5(4) *Allowable cost.* Funds granted by this program to a grantee shall be applied toward the project described in the grant agreement.

40.5(5) *Ineligible costs.* In addition to any limitations described in the grant agreement, funds shall not be used for the following:

- a. Expenditures made prior to the date of the award.
- b. The refinancing of a loan existing prior to the date of the award.
- c. Administrative costs of the grantee.
- d. Routine, recurring maintenance or operational expenses of the project.
- e. Purchase of real property.

40.5(6) *Amendments.* Any substantive change to a grant agreement shall be considered an amendment. Amendments must be requested in writing by the grantee and shall not be considered effective until the director has approved and executed such an amendment. All amendments must be executed in conformance with the grant agreement and these rules.

261—40.6(83GA,SF2389) Financial management.

40.6(1) *Audits.* All grants under the program are subject to audit. Grantees shall be responsible for the procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor. Representatives of the department and the state auditor's office shall have access to all books, accounts, documents and records belonging to, or in use by, grantees pertaining to the receipt of a grant under these rules.

40.6(2) *Record retention.* All records shall be retained for five years beyond the grant period or longer if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the record. In these instances, the records shall be retained until the litigation, audit or claim has been resolved.

261—40.7(83GA,SF2389) Reports.

40.7(1) *General reporting requirements.* Reports shall include information required by the grant agreement and shall be submitted to the department at intervals described in the grant agreement. The reports shall assess the use of funds in accordance with the program's objectives and progress of the program activities.

40.7(2) *Job creation.* The grantee shall report the total number of jobs created as a result of the project along with other information related to the quality of such jobs, including hours and wages, as requested by the department. For purposes of this rule, the number of jobs created may be calculated by determining which new employment positions created and filled would not have been continued were it not for this program. This would include both permanent and temporary positions filled by the grantee, a contractor or a subcontractor, including construction contractors and their employees. This requirement shall be in effect for two years beyond the project's completion.

261—40.8(83GA,SF2389) Signs. Each project shall recognize in a prominent location and manner the fact that the project was made possible, in part, through a grant from the Iowa jobs program. During the construction period, the recognition (including a display of the Iowa jobs logo) may be located on temporary signage. The completed project shall feature a permanent acknowledgment, such as a plaque or similar commemoration. Other benefactors of the project may be similarly acknowledged as well. The department may provide funding to the grantees for these signs using funds appropriated to the department through 2010 Iowa Acts, Senate File 2389, sections 10 and 68.

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

261—40.9(83GA,SF2389) Noncompliance. If the department finds that a grantee is not in compliance with the requirements under this program, the grantee will be required to refund to the state all disallowed costs. Reasons for a finding of noncompliance include, but are not limited to, a finding that the grantee is using program funds for unauthorized activities, has failed to complete approved activities in a timely manner, has failed to comply with applicable laws and regulations or the grant agreement, or lacks the capacity to carry out the purposes of the program.

261—40.10(83GA,SF2389) Great places consideration. In compliance with Iowa Code section 303.3C, projects that are identified in an Iowa great places agreement developed pursuant to section 303.3C that are otherwise eligible projects under these rules shall receive additional consideration for placement on the highest-priority list. Such additional consideration shall be afforded only to those projects that have been identified as an Iowa great place under Iowa Code section 303.3C within the past three years.

These rules are intended to implement 2010 Iowa Acts, Senate File 2389, sections 10 and 68.

[Filed Emergency 6/11/10, effective 6/11/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8920B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 80, "Iowa Small Business Loan Program," Iowa Administrative Code.

These rules implement a new small business loan program to promote the creation and retention of jobs in Iowa's economy and to assist businesses to be more competitive. The rules establish the process by which a business shall apply for, receive and manage loan funds under this program. The Legislature appropriated to the Department \$5 million for the program, which was created by 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

The Department is proceeding with emergency adoption and implementation of these rules because the Legislature deemed this Act of immediate importance and made it effective upon enactment. In addition, the law requires the Department to begin providing assistance under this program no later than August 1, 2010.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable because of the need for rules to implement new provisions of the law. The law requires the Department to begin providing assistance under this program no later than August 1, 2010.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and these rules be made effective upon filing on June 11, 2010. These rules describe the criteria used to make funding available through the loan program. The Legislature deemed this activity of great importance by making it effective immediately.

The Iowa Economic Development Board adopted the rules on June 9, 2010.

These rules are also published herein under Notice of Intended Action as **ARC 8919B** to allow for public comment.

These rules are intended to implement 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

These rules became effective on June 11, 2010.

The following amendment is adopted.

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

Adopt the following new 261—Chapter 80:

CHAPTER 80
IOWA SMALL BUSINESS LOAN PROGRAM

261—80.1(83GA,SF2389) Purpose. The purpose of the program is to promote the creation and retention of jobs in the state's economy and to assist businesses to be more competitive by aiding entrepreneurs and small businesses in their efforts to upgrade or modernize equipment; realize additional efficiencies in their supply chains; improve their distribution and transportation margins; reduce facility costs through increased energy efficiency; and leverage other sources of business financing.

261—80.2(83GA,SF2389) Authority. The authority for establishing the program is provided in 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

261—80.3(83GA,SF2389) Definitions.

“Administrator” means the organization designated by the department pursuant to rule 261—80.4(83GA,SF2389) to administer portions of the program.

“Co-financed loan” means a loan made under this program to a recipient who has contingent approval from another lender for leverage of other sources of business financing for the recipient's Iowa small business at the time of origination.

“Department” means the Iowa department of economic development.

“Direct loan” means a loan made under this program that is not part of a co-financing arrangement with another lender.

“Director” means the director of the department.

“Iowa small business” means a business located in Iowa that is owned, operated and actively managed by an Iowa resident and that has 35 or fewer full-time equivalent employees.

“Program” means the Iowa small business loan program.

“Recipient” means an Iowa small business that has applied for and received a loan under the program.

261—80.4(83GA,SF2389) Administrator. The department may enter into an agreement with and thereby designate a nonprofit organization to administer portions of the program provided the nonprofit organization is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is designated by the United States Small Business Administration as a statewide microloan provider. Among other duties identified in the agreement, the administrator may manage the program application and review process to ensure consistency with these rules and may make recommendations to the department for loan approval under the program.

261—80.5(83GA,SF2389) General loan terms. In addition to terms and conditions in the loan agreement, loans made under the program shall have the following terms:

80.5(1) Amount. Loans made under the program may be for \$2,500 to \$50,000.

80.5(2) Interest rates. The interest rates for the following loans made available under the program shall be:

a. Direct loans: annual percentage rate of 3.9 percent.

b. Co-financed loans: annual percentage rate of 2 percent.

80.5(3) Security. Recipients must provide collateral to secure the entire loan value. The department may require a first position on any collateral offered in connection with receiving a loan under the program or any equipment purchases or other uses that can be securitized. The department may, however, allow for a subordinated position on collateral on co-financed loans that involve a conventional lender.

80.5(4) Term. The term of any loan made under the program shall not exceed five years. The department may require a shorter loan term for loans at the sole discretion of the director.

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

80.5(5) *Unallowable uses.* Proceeds from any loans made under the program shall not be used for any of the following:

- a. Compensation to employees, including any benefits.
- b. Refinancing existing or future loans.
- c. Working capital.
- d. Payment of liabilities incurred prior to the origination of the loan, including unpaid taxes and money owed to creditors.
- e. Charitable donations.
- f. Purchase of real estate.
- g. Purchase of a business unless the loan made under the program is leveraged with other sources of financing, including at least ten percent equity investment by the owner.
- h. Purchase of vehicles unless the vehicle is a special-use vehicle that shall only be used for purposes related to the Iowa small business and personal use is not allowed.
- i. Purchase of equipment unless the equipment is deployed and primarily used by the Iowa small business in Iowa throughout the life of the loan.

261—80.6(83GA,SF2389) Eligibility. An Iowa small business is eligible to apply for a loan under the program provided the Iowa small business meets the following requirements:

80.6(1) The Iowa small business has a business plan and has received assistance from an Iowa small business development center or qualified public or nonprofit business consultant as defined by the department.

80.6(2) The Iowa small business is not in violation of environmental or worker safety laws or rules. This requirement shall apply only if the Iowa small business has been incorporated for at least two years.

80.6(3) The Iowa small business employs only workers legally authorized to work in the state.

80.6(4) The Iowa small business does not engage in the production, depiction or distribution of obscene material as defined in Iowa Code section 728.1.

80.6(5) The Iowa small business is not in bankruptcy or imminently contemplating filing for bankruptcy.

80.6(6) The Iowa small business has a demonstrated need for the funds and will use them for a purpose described in rule 261—80.1(83GA,SF2389).

261—80.7(83GA,SF2389) Application.

80.7(1) *General.* Applications will be evaluated at least monthly and in the order they are received. Iowa small businesses that desire to participate in the program shall submit to the administrator a standard application, which shall be made available on the department's Web site www.lifechanging.com. In addition to the information requested in the application, Iowa small businesses applying under this rule may also be required to submit the following documents:

- a. Business plan and summary.
- b. Financial statements that show total assets and total liabilities.
- c. Such other supporting documents as may be required by the administrator to demonstrate the Iowa small business's eligibility for the loan and its ability to repay the loan.
- d. An energy audit of the facilities for which the loan is sought, if the loan is proposed to be used to reduce facility costs.

80.7(2) *Startup businesses.* In addition to the requirements described in subrule 80.7(1), Iowa small businesses that have been incorporated for less than two years must submit the following additional information unless the business can document that its assets are three times greater than its liabilities, including the loan sought under this program:

- a. Contingent loan approval from a conventional loan source; or
- b. Application to the Iowa microloan program for co-financing consideration. Such application must be made prior to submission of an application under this chapter.

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

261—80.8(83GA,SF2389) Application review.

80.8(1) Criteria. The administrator shall evaluate applications based on the following criteria:

- a. The quality of the Iowa small business's business plan and whether it projects a positive cash flow after the loan repayment.
- b. Cash flow of the Iowa small business.
- c. Credit score of the principal owner of the Iowa small business and any owners of the Iowa small business with an interest of greater than 25 percent in the Iowa small business. Applicants with a credit score lower than 625 shall not be considered for a loan under this program.
- d. Value and quality of collateral.
- e. Education and experience of the owner of the Iowa small business related to owning and operating a business.
- f. The quality and results of a marketing plan related to the Iowa small business.
- g. The legal history, including any UCC-1 filings, of the principal owner of the Iowa small business and any owners with an interest of greater than 25 percent in the Iowa small business to the extent that history could negatively impact the business.

80.8(2) Additional information. The administrator or the department may require additional information from the Iowa small business in reviewing applications made under the program.

80.8(3) Additional expertise. The administrator and the department may use or procure the services of individuals with particular or specialized expertise in evaluating applications.

261—80.9(83GA,SF2389) Recommendation; loan agreement.

80.9(1) Recommendation. Upon final review of the application, the administrator shall prepare loan closing documents, including a loan agreement, for those businesses the administrator recommends to participate in the program and deliver them, along with the business's file, to the department for its review and approval. The administrator shall recommend and make part of the proposed loan agreements requirements in addition to standard loan provisions when the business poses a higher risk.

80.9(2) Loan agreement required. The administrator shall prepare a loan agreement, which includes, but is not limited to, a description of the project to be completed by the business, the term of the loan, conditions to disbursement, a requirement for annual reporting to the department, and the repayment requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the loan agreement and other specific repayment provisions ("clawback provisions") to be established on a project-by-project basis.

80.9(3) Security. The department may take security for any loan. The form of such security may include but not be limited to one or more of the following:

- a. Promissory note.
- b. First real estate mortgage.
- c. Assignment of option.
- d. Assignment of lease.
- e. Lien on personal property.

261—80.10(83GA,SF2389) Repayment. All loans made under the program shall be subject to repayment as described in the loan agreement. Loans made under the program shall not be forgivable.

261—80.11(83GA,SF2389) Default.

80.11(1) Events of default. The department may, for cause, determine that a recipient is in default under the terms of the loan agreement. The reasons for which the department may determine that the recipient is in default of the contract include, but are not limited to, any of the following:

- a. Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.
- b. A material change in the business ownership or structure occurs without prior written disclosure and the permission of the department.
- c. A relocation or abandonment of the business during the term.

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

- d. Expenditure of funds for purposes not described in the application or authorized in the agreement.
- e. Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.
- f. Failure of the recipient to perform or comply with the terms and conditions of the contract.
- g. Failure of the recipient to comply with any applicable state rules or regulations.
- h. Failure of the recipient to file the required annual report.

80.11(2) Closures. If a recipient closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the loan assistance. If a business closes any of its facilities within the state after executing a contract to receive the loan assistance, the department may consider this an event of default and the business may be subject to repayment of all or a portion of the loan assistance that it has received.

80.11(3) Department actions upon default.

- a. The department will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.
- b. If the department determines that the recipient is in default, the department may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the department deems necessary.
- c. The department shall attempt to collect the amount owed. Negotiated settlements, write-offs or discontinuance of collection efforts is subject to final review and approval by the director.
- d. If the department refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the department and the outside counsel regarding scope of counsel's authorization to accept settlements shall apply.

These rules are intended to implement 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

[Filed Emergency 6/11/10, effective 6/11/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8873B

HISTORICAL DIVISION[223]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs amends Chapter 48, "Historic Preservation and Cultural and Entertainment District Tax Credits," Iowa Administrative Code.

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

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on May 5, 2010, as **ARC 8721B**. The Department received three letters of comment on the Notice of Intended Action. All comments were in support of the proposed amendment. This amendment is identical to that published under Notice of Intended Action.

The Department director adopted this amendment on June 10, 2010.

The Department finds that this amendment confers a benefit to the public by removing a restriction. Therefore, the amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

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

This amendment became effective on June 10, 2010.

The following amendment is adopted.

HISTORICAL DIVISION[223](cont'd)

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

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

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

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

[Filed Emergency After Notice 6/10/10, effective 6/10/10]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8894B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2010 Iowa Acts, Senate File 2388, section 5(4), the Department of Human Services amends Chapter 36, "Facility Assessments," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments implement a health care access assessment for hospitals other than state-owned hospitals and critical access hospitals and make corresponding adjustments to payment rates for those participating hospitals. Legislation in 2010 Iowa Acts, Senate File 2388, directed the Department to implement a hospital assessment. After reviewing several models of a hospital assessment and revising parameters in consultation with hospital industry representatives, the Department has chosen the model described in these amendments. Implementation of the amendments is conditional upon federal approval by the Centers for Medicare and Medicaid Services.

The health care access assessment rate for a participating hospital will be calculated as 1.26 percent of net patient revenue as specified in the hospital's Medicare cost report for fiscal year 2008. The hospital shall pay the assessment to the Department on a quarterly basis, no later than 30 days following the end of each calendar quarter. The reimbursement methodology for participating hospitals is modified to provide a health care access assessment inflation factor that is applied to the inpatient diagnosis-related group (DRG) rates and outpatient ambulatory payment classification (APC) base rates.

These amendments also include technical changes to update the legal references in Chapter 36, Division II.

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

The Council on Human Services adopted these amendments June 9, 2010.

The Department finds that notice and public participation are impracticable in that the authorizing legislation cites a beginning date for the hospital health care access assessment of July 1, 2010, which provides insufficient time for notice and public participation. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds that these amendments confer a benefit by allowing the Iowa Medicaid program to draw down additional federal funds for services to members and payments to providers.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 8896B** to allow for public comment.

These amendments shall become effective on July 1, 2010.

These amendments are intended to implement Iowa Code section 249A.4, 2009 Iowa Code Supplement chapter 249L, and 2010 Iowa Acts, Senate File 2388.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 36**, Division II, Preamble, as follows:

These rules describe the nursing facility quality assurance assessment authorized by ~~2009 Iowa Acts, Senate File 476, enacted by the Eighty-third General Assembly~~ 2009 Iowa Code Supplement chapter 249L. The rules explain how the assessment is determined and paid.

ITEM 2. Amend rules 441—36.6(83GA,SF476) and 441—36.7(83GA,SF476), parenthetical implementation, as follows:

441—36.6(83GA,SF476 249L) Assessment.

441—36.7(83GA,SF476 249L) Determination and payment of assessment.

ITEM 3. Reserve rules **441—36.8** and **441—36.9**.

ITEM 4. Amend **441—Chapter 36**, Division II, implementation sentence, as follows:

These rules are intended to implement ~~2009 Iowa Acts, Senate File 476~~ 2009 Iowa Code Supplement chapter 249L.

ITEM 5. Adopt new **441—Chapter 36**, Division III, title and preamble, as follows:

DIVISION III
HEALTH CARE ACCESS ASSESSMENT FOR HOSPITALS

These rules describe the hospital health care access assessment authorized by 2010 Iowa Acts, Senate File 2388, enacted by the Eighty-third General Assembly. The rules explain how the assessment is determined and paid.

ITEM 6. Adopt the following new rules 441—36.10(83GA,SF2388) to 441—36.12(83GA,SF2388):

441—36.10(83GA,SF2388) Application of assessment.

36.10(1) Participating hospitals. For the purpose of the health care access assessment program, a “participating hospital” is defined as a non-state-owned hospital licensed under Iowa Code chapter 135B that is paid on a prospective payment system basis by Medicare and the medical assistance programs for inpatient and outpatient services.

36.10(2) Assessment. Participating hospitals are required to pay a quarterly health care access assessment equal to 1.26 percent of net patient revenue as specified in the hospital’s fiscal year 2008 Medicare cost report. “Net patient revenue” means all revenue reported for acute patient care and services, but does not include:

- a. Contractual adjustments,
- b. Charity care,
- c. Bad debt,
- d. Medicare revenue, or
- e. Other revenue derived from sources other than hospital operations including but not limited to:
 - (1) Nonoperating revenue,
 - (2) Other operating revenue,
 - (3) Skilled nursing facility revenue,

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (4) Physician revenue, and
- (5) Long-term care revenue.

441—36.11(83GA,SF2388) Determination and payment of assessment. The assessment shall be determined and paid as follows:

36.11(1) The department shall calculate the annual amount of the health care access assessment as 1.26 percent of net patient revenue as specified in the participating hospital's fiscal year 2008 Medicare cost report. The annual amount shall be divided by four to calculate the quarterly amount.

36.11(2) Each participating hospital shall pay the health care access assessment to the department on a quarterly basis. The hospital shall submit the quarterly assessment payment no later than 30 days following the end of each calendar quarter.

36.11(3) A participating hospital shall retain and preserve the Medicare cost report and financial statements used to prepare the cost report for a period of three years.

36.11(4) If the department determines that a participating hospital has underpaid or overpaid the health care access assessment, the department shall notify the hospital of the amount of the unpaid health care access assessment or refund due. Such amount shall be due or refunded within 30 days of the issuance of the notice.

36.11(5) A participating hospital that fails to pay the health care access assessment within the time frame specified in subrule 36.11(2) shall pay a penalty in the amount of 1.5 percent of the health care access assessment amount owed for each month or portion of a month that the payment is overdue.

a. If the department determines that good cause is shown for failure to comply with payment of the health care access assessment, the department shall waive the penalty or a portion of the penalty.

b. Requests for a good cause waiver must be submitted to the Iowa Medicaid Enterprise, Provider Cost Audit and Rate Setting Unit, 100 Army Post Road, Des Moines, Iowa 50315, within 30 days of notice to the facility that the penalty is due.

36.11(6) The department shall deduct the quarterly amount due from Medicaid payments to the participating hospital if the department has not received the health care access assessment by the last day of the month in which the payment is due. The department shall also withhold an amount equal to the penalty owed from any payment due.

441—36.12(83GA,SF2388) Termination of health care access assessment. If the federal government fully funds Iowa's medical assistance program, if federal law changes to negatively impact the assessment program as determined by the department, or if a federal audit determines the assessment program is invalid, the assessment shall terminate on the date the federal statutory, regulatory, or interpretive change takes effect.

These rules are intended to implement 2010 Iowa Acts, Senate File 2388.

ITEM 7. Adopt the following **new** paragraph **79.1(5)"s"**:

s. *Health care access assessment inflation factor.* Effective with the implementation of the health care access assessment paid pursuant to 441—Chapter 36, Division III, a health care access assessment inflation factor shall be applied to the Medicaid DRG blended base amount as otherwise calculated pursuant to this subrule for all "participating hospitals" as defined in 441—subrule 36.10(1).

(1) Calculation of inflation factor. The health care access assessment inflation factor for participating hospitals shall be calculated by dividing the amount allowed under the Medicare inpatient upper payment limit for the fiscal year beginning July 1, 2010, by the sum of the projected expenditures for participating hospitals for the fiscal year beginning July 1, 2010, as determined by the fiscal management division of the department, and the amount allowed under the Medicare inpatient upper payment limit.

(2) Implementation date. The health care access assessment inflation factor shall not be applied until federal financial participation to match money collected from the health care access assessment pursuant to 441—Chapter 36, Division III, has been approved by the federal Centers for Medicare and Medicaid Services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) End date. Application of the health care access assessment inflation factor shall terminate if the health care access assessment is terminated pursuant to rule 441—36.12(83GA,SF2388). If federal match money is unavailable for a retroactive period or the authority to collect the assessment is rescinded for a retroactive period, the department shall:

1. Recalculate Medicaid rates in effect during that period without the application of the health care access assessment inflation factor;
2. Recompute Medicaid payments due based on the recalculated Medicaid rates;
3. Recoup any previous overpayments; and
4. Determine for each hospital the amount of health care access assessment collected during that period and refund that amount to the facility.

ITEM 8. Adopt the following **new** paragraph **79.1(16)“m”**:

m. Health care access assessment inflation factor. Effective with the implementation of the health care access assessment paid pursuant to 441—Chapter 36, Division III, a health care access assessment inflation factor shall be applied to the Medicaid blended base APC rate as otherwise calculated pursuant to this subrule for all “participating hospitals” as defined in 441—subrule 36.10(1).

(1) Calculation of inflation factor. The health care access assessment inflation factor for participating hospitals shall be calculated by dividing the amount allowed under the Medicare outpatient upper payment limit for the fiscal year beginning July 1, 2010, by the sum of the projected expenditures for participating hospitals for the fiscal year beginning July 1, 2010, as determined by the fiscal management division of the department, and the amount allowed under the Medicare outpatient upper payment limit.

(2) Implementation date. The health care access assessment inflation factor shall not be implemented until federal financial participation to match money collected from the health care access assessment pursuant to 441—Chapter 36, Division III, has been approved by the federal Centers for Medicare and Medicaid Services.

(3) End date. Application of the health care access assessment inflation factor shall terminate if the health care access assessment is terminated pursuant to rule 441—36.12(83GA,SF2388). If federal match money is unavailable for a retroactive period or the authority to collect the assessment is rescinded for a retroactive period, the department shall:

1. Recalculate Medicaid rates in effect during that period without the application of the health care access assessment inflation factor;
2. Recompute Medicaid payments due based on the recalculated Medicaid rates;
3. Recoup any previous overpayments; and
4. Determine for each hospital the amount of health care access assessment collected during that period and refund that amount to the facility.

[Filed Emergency 6/10/10, effective 7/1/10]

[Published 6/30/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8898B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

The amendments provide the Department’s annual updates of the statewide average cost of nursing facility services to a private-pay resident and the statewide average charges or maximum Medicaid rate for four levels of care in a medical institution.

The statewide average cost of nursing facility services to a private-pay resident is determined by a survey of nursing facilities, including freestanding facilities, hospital-based skilled nursing facilities,

HUMAN SERVICES DEPARTMENT[441](cont'd)

and facilities serving special populations. This monthly average cost has increased from \$4,598.61 to \$4,842.72 (equivalent to \$159.30 per day). This amount is used to determine the period of ineligibility for Medicaid payment of nursing facility care and other long-term care services that is required when a person has transferred assets for less than market value to obtain Medicaid eligibility. The amount transferred is divided by this monthly average cost to determine the number of months of ineligibility. Since the cost has gone up, the resulting periods of ineligibility will be slightly shorter.

Iowa Code chapter 633C requires the Department to determine and publish the statewide average charges or maximum Medicaid rate for various levels of institutional care. These amounts are used to regulate the disposition of funds in a medical assistance income (Miller-type) trust. A medical assistance income trust allows a person whose income is above the Medicaid income limit for long-term care (currently \$2,022 per month) but is less than the cost of care in a medical institution to attain eligibility by depositing the income in a trust. Only the income released from the trust is counted as income in the determination of Medicaid eligibility. Changes in the average charge or maximum figures are as follows:

- Nursing facility care: increases from \$4,189 per month to \$4,422 per month, based on data from freestanding facilities only, since the cost of special care is considered separately.
- ICF/MR care: increases from \$20,960 to \$23,845 per month.
- Care in a mental health institute: decreases from \$17,758 per month to \$16,720 per month.
- Care in a psychiatric medical institution for children: decreases from \$5,044 per month to \$5,101 per month.

The amendments also clarify that only one of the conditions listed in paragraph 75.23(5)“c” must be met to qualify for an exemption from the period of ineligibility for transfer of an asset at less than full market value.

These amendments do not provide for waivers in specified situations, since these amounts are derived through a standard methodology and are required by statute.

The Council on Human Services adopted these amendments on June 9, 2010.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because the Department has no discretion in setting these amounts.

The Department finds that these amendments confer a benefit on the public by carrying out the Department’s statutory responsibility to make available to the public the specific amounts for the thresholds referenced in the statute. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 249A.4 and Iowa Code chapter 633C.

These amendments shall become effective on July 1, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 75.23(3) as follows:

75.23(3) *Period of ineligibility.* The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual’s spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, ~~2009~~ 2010, through June 30, ~~2010~~ 2011, this average statewide cost shall be ~~\$4,598.61~~ \$4,842.72 per month or ~~\$151.27~~ \$159.30 per day.

ITEM 2. Amend paragraph **75.23(5)“c”** as follows:

- c.* A satisfactory showing is made that one of the following is true:
(1) to (3) No change.

ITEM 3. Amend paragraph **75.24(3)“b”** as follows:

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual. For disposition of trust amounts pursuant to

HUMAN SERVICES DEPARTMENT[441](cont'd)

Iowa Code sections 633C.1 to 633C.5, the average statewide charges and Medicaid rates for the period from July 1, ~~2009~~ 2010, to June 30, ~~2010~~ 2011, shall be as follows:

- (1) The average statewide charge to a private-pay resident of a nursing facility is ~~\$4,189~~ \$4,422 per month.
- (2) and (3) No change.
- (4) The maximum statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is ~~\$20,960~~ \$23,845 per month.
- (5) The average statewide charge to a resident of a mental health institute is ~~\$17,758~~ \$16,720 per month.
- (6) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is ~~\$5,044~~ \$5,010 per month.
- (7) No change.

[Filed Emergency 6/10/10, effective 7/1/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8899B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2010 Iowa Acts, House File 2526, section 33(13), the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 85, "Services in Psychiatric Institutions," Iowa Administrative Code.

These amendments continue the rate reductions instituted in December 2009 pursuant to Executive Order 19 for state fiscal year 2011. Rule 441—79.16(249A), which implemented the temporary reimbursement decreases, is rescinded. The reimbursement rules for particular providers are amended to make the same reductions. Reimbursement rules for psychiatric medical institutions for children (PMICs) are revised to continue the interim payment system for another year.

Hospital reimbursement rules are revised to:

- Correct dates and status indicators related to the diagnosis-related group (DRG) and ambulatory payment classification (APC) reimbursement methodologies for inpatient services and outpatient services, respectively.
- Eliminate enhanced disproportionate share hospital (DSH) payments and enhanced graduate medical education (GME) payments.
- Replace the enhanced payments with the Iowa non-state-government-owned acute care teaching hospital DSH payments.
- Establish an Iowa state-owned teaching hospital disproportionate share fund from which payments shall be made monthly to qualifying hospitals.

The requirement that payments to public hospitals and nursing facilities not exceed their actual costs is eliminated as unnecessary in light of the repeal of the state statutory provision limiting payments to public hospitals and nursing facilities to their costs (2010 Iowa Acts, Senate File 2156, section 16).

Some language has been revised to clarify current policy. Obsolete dates are updated. References to the mental retardation waiver are updated to "intellectual disabilities waiver."

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

The Council on Human Services adopted these amendments June 9, 2010.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments implement 2010 Iowa Acts, House File 2526, section 33, which authorizes the Department to adopt rules without notice and public participation.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2010 Iowa Acts, House File 2526, section 33.

These amendments are also published herein under Notice of Intended Action as **ARC 8900B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, House File 2526, section 33, and 2010 Iowa Acts, Senate File 2156, section 16.

These amendments shall become effective July 1, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 441—79.1(249A), introductory paragraph, as follows:

441—79.1(249A) Principles governing reimbursement of providers of medical and health services. The basis of payment for services rendered by providers of services participating in the medical assistance program is either a system based on the provider’s allowable costs of operation or a fee schedule. Generally, institutional types of providers such as hospitals and nursing facilities are reimbursed on a cost-related basis, and practitioners such as physicians, dentists, optometrists, and similar providers are reimbursed on the basis of a fee schedule. ~~Payments to health care providers that are owned or operated by Iowa state or non-state government entities shall not exceed the provider’s cost of providing services to Medicaid members.~~ Providers of service must accept reimbursement based upon the department’s methodology without making any additional charge to the member.

ITEM 2. Amend paragraph **79.1(1)“e”** as follows:

e. Retrospectively limited prospective rates. Providers are reimbursed on the basis of a rate for a unit of service calculated prospectively for each participating provider (and, for supported community living daily rates, for each consumer or site) based on projected or historical costs of operation, subject to the maximums listed in subrule 79.1(2) and to retrospective adjustment ~~based on actual, current costs of operation so as not to exceed reasonable and proper costs by more than 2.5 percent pursuant to subparagraph 79.1(1)“e”(3).~~

(1) The prospective rates for new providers who have not submitted six months of cost reports will be based on a projection of the provider’s reasonable and proper costs of operation until the provider has submitted an annual cost report that includes a minimum of six months of actual costs.

(2) The prospective rates paid established providers who have submitted an annual report with a minimum of a six-month history are based on reasonable and proper costs in a base period and are adjusted annually for inflation.

(3) The prospective rates paid to both new and established providers are subject to ~~the maximums listed in subrule 79.1(2) and to~~ retrospective adjustment based on the provider’s actual, current costs of operation as shown by financial and statistical reports submitted by the provider, so as not to exceed reasonable and proper costs actually incurred ~~by more than 2.5 percent.~~

ITEM 3. Amend subrule 79.1(2) as follows:

79.1(2) Basis of reimbursement of specific provider categories.

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Advanced registered nurse practitioners	Fee schedule	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.
Ambulance	Fee schedule	Ground ambulance: Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%. Air ambulance: Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.
Ambulatory surgical centers	Fee Base rate fee schedule as determined by Medicare. See 79.1(3)	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Area education agencies	Fee schedule	Fee schedule in effect 6/30/00 plus 0.7%.
Audiologists	Fee schedule	Fee schedule in effect 6/30/08 plus 1% 11/30/09 less 5%.
Behavioral health services	Fee schedule	Fee schedule in effect 11/30/09 less 5%.
Birth centers	Fee schedule	Fee schedule in effect 6/30/08 plus 1% 11/30/09 less 5%.
Chiropractors	Fee schedule	Fee schedule in effect 6/30/08 plus 1% 11/30/09 less 5%.
Clinics	Fee schedule	Maximum physician reimbursement rate.
Community mental health centers and providers of mental health services to county residents pursuant to a waiver approved under Iowa Code section 225C.7(3)	Retrospective cost-related. See 79.1(25)	100% of reasonable Medicaid cost as determined by Medicare cost reimbursement principles.
Dentists	Fee schedule	Fee schedule in effect 6/30/08 plus 1% 11/30/09 less 2.5%.
Durable medical equipment, prosthetic devices and medical supply dealers	Fee schedule. See 79.1(4)	Fee schedule in effect 6/30/08 plus 1% 11/30/09 less 5%.
Family planning clinics	Fee schedule	Beginning 2/1/10, fee Fee schedule in effect 6/30/09 plus 5% 1/31/10.
Federally qualified health centers	Retrospective cost-related. See 441—88.14(249A)	<ol style="list-style-type: none"> 1. Prospective payment rate as required by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA 2000) or an alternative methodology allowed thereunder, as specified in “2” below. 2. 100% of reasonable cost as determined by Medicare cost reimbursement principles. 3. In the case of services provided pursuant to a contract between an FQHC and a managed care organization (MCO), reimbursement from the MCO shall be supplemented to achieve “1” or “2” above.
HCBS waiver service providers, including:		Except as noted, limits apply to all waivers that cover the named provider.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
1. Adult day care	Fee schedule	For AIDS/HIV, brain injury, elderly, and ill and handicapped waivers: Veterans Administration contract rate or \$22.12 <u>\$21.57</u> per half-day, \$44.03 <u>\$42.93</u> per full day, or \$66.03 <u>\$64.38</u> per extended day if no Veterans Administration contract. For mental retardation <u>intellectual disabilities</u> waiver: County contract rate or, in the absence of a contract rate, \$29.47 <u>\$28.73</u> per half-day, \$58.83 <u>\$57.36</u> per full day, or \$75.00 <u>\$73.13</u> per extended day.
2. Emergency response system	Fee schedule	Initial one-time fee \$49.53 <u>\$48.29</u> . Ongoing monthly fee \$38.52 <u>\$37.56</u> .
3. Home health aides	Retrospective cost-related	For AIDS/HIV, elderly, and ill and handicapped waivers: Lesser of maximum Medicare rate in effect 6/30/08 <u>plus 1% 11/30/09</u> or maximum Medicaid rate in effect 6/30/08 <u>plus 1% 11/30/09</u> less 5%. For mental retardation <u>intellectual disabilities</u> waiver: Lesser of maximum Medicare rate in effect 6/30/08 <u>plus 1% 11/30/09</u> or maximum Medicaid rate in effect 6/30/08 <u>plus 1% 11/30/09</u> less 5%, converted to an hourly rate.
4. Homemakers	Fee schedule	Maximum of \$19.81 <u>\$19.31</u> per hour.
5. Nursing care	For elderly and mental retardation <u>intellectual disabilities</u> waivers: Fee schedule as determined by Medicare. For AIDS/HIV and ill and handicapped waivers: Agency's financial and statistical cost report and Medicare percentage rate per visit.	For elderly waiver: \$82.92 <u>\$80.85</u> per visit. For mental retardation <u>intellectual disabilities</u> waiver: Lesser of maximum Medicare rate in effect 6/30/08 <u>plus 1% 11/30/09</u> or maximum Medicaid rate in effect 6/30/08 <u>plus 1% 11/30/09</u> less 5%, converted to an hourly rate. For AIDS/HIV and ill and handicapped waivers: Cannot exceed \$82.92 <u>\$80.85</u> per visit.
6. Respite care when provided by: Home health agency:		

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Specialized respite	Cost-based rate for nursing services provided by a home health agency	Lesser of maximum Medicare rate in effect 6/30/08 plus 1% 11/30/09 or maximum Medicaid rate in effect 6/30/08 plus 1% 11/30/09 less 2.5%, converted to an hourly rate, not to exceed \$296.94 per day.
Basic individual respite	Cost-based rate for home health aide services provided by a home health agency	Lesser of maximum Medicare rate in effect 6/30/08 plus 1% 11/30/09 or maximum Medicaid rate in effect 6/30/08 plus 1% 11/30/09 less 2.5%, converted to an hourly rate, not to exceed \$296.94 per day.
Group respite	Retrospectively limited prospective rates. See 79.1(15)	\$13.12 <u>\$12.79</u> per hour not to exceed \$296.94 per day.
Home care agency:		
Specialized respite	Retrospectively limited prospective rates. See 79.1(15)	\$33.75 <u>\$32.91</u> per hour not to exceed \$296.94 per day.
Basic individual respite	Retrospectively limited prospective rates. See 79.1(15)	\$18.01 <u>\$17.56</u> per hour not to exceed \$296.94 per day.
Group respite	Retrospectively limited prospective rates. See 79.1(15)	\$13.12 <u>\$12.79</u> per hour not to exceed \$296.94 per day.
Nonfacility care:		
Specialized respite	Retrospectively limited prospective rates. See 79.1(15)	\$33.75 <u>\$32.91</u> per hour not to exceed \$296.94 per day.
Basic individual respite	Retrospectively limited prospective rates. See 79.1(15)	18.01 <u>\$17.56</u> per hour not to exceed \$296.94 per day.
Group respite	Retrospectively limited prospective rates. See 79.1(15)	\$13.12 <u>\$12.79</u> per hour not to exceed \$296.94 per day.
Facility care:		
Hospital or nursing facility providing skilled care	Fee schedule	\$13.12 <u>\$12.79</u> per hour not to exceed daily per diem for skilled nursing facility level of care.
Nursing facility	Fee schedule	\$13.12 <u>\$12.79</u> per hour not to exceed daily per diem for nursing facility level of care.
Camps	Retrospectively limited prospective rates. See 79.1(15)	\$13.12 <u>\$12.79</u> per hour not to exceed \$296.94 per day.
Adult day care	Fee schedule	\$13.12 <u>\$12.79</u> per hour not to exceed rate for regular adult day care services.
Intermediate care facility for the mentally retarded	Fee schedule	\$13.12 <u>\$12.79</u> per hour not to exceed daily per diem for ICF/MR level of care.
Residential care facilities for persons with mental retardation	Fee schedule	\$13.12 <u>\$12.79</u> per hour not to exceed contractual daily per diem.
Foster group care	Fee schedule	\$13.12 <u>\$12.79</u> per hour not to exceed daily per diem rate for child welfare services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Child care facilities	Fee schedule	\$13.12 <u>\$12.79</u> per hour not to exceed contractual daily per diem.
7. Chore service	Fee schedule	\$7.71 <u>\$7.52</u> per half hour.
8. Home-delivered meals	Fee schedule	\$7.71 <u>\$7.52</u> per meal. Maximum of 14 meals per week.
9. Home and vehicle modification	Fee schedule	For elderly waiver: \$1,010 lifetime maximum. For mental retardation <u>intellectual disabilities</u> waiver: \$5,050 lifetime maximum. For brain injury, ill and handicapped and physical disability waivers: \$6,060 per year.
10. Mental health outreach providers	Fee schedule	On-site Medicaid reimbursement rate for center or provider. Maximum of 1440 units per year.
11. Transportation	Fee schedule	County contract rate or, in the absence of a contract rate, the rate set by the area agency on aging.
12. Nutritional counseling	Fee schedule	\$8.25 <u>\$8.04</u> per unit.
13. Assistive devices	Fee schedule	\$110.05 <u>\$107.30</u> per unit.
14. Senior companion	Fee schedule	\$6.59 <u>\$6.44</u> per hour.
15. Consumer-directed attendant care provided by:		
Agency (other than an elderly waiver assisted living program)	Fee agreed upon by consumer and provider	\$20.20 <u>\$19.70</u> per hour not to exceed the daily rate of \$116.72 <u>\$113.80</u> per day.
Assisted living program (for elderly waiver only)	Fee agreed upon by consumer and provider	For elderly waiver only: \$1,117 <u>\$1,089.08</u> per calendar month. Rate must be prorated per day for a partial month, at a rate not to exceed \$36.71 <u>\$35.79</u> per day.
Individual	Fee agreed upon by consumer and provider	\$13.47 <u>\$13.13</u> per hour not to exceed the daily rate of \$78.56 <u>\$76.60</u> per day.
16. Counseling		
Individual:	Fee schedule	\$10.79 <u>\$10.52</u> per unit.
Group:	Fee schedule	\$43.14 <u>\$42.06</u> per hour.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
17. Case management	Fee schedule with cost settlement. See 79.1(1) "d."	For brain injury waiver: Retrospective cost-settled rate. For elderly waiver: Quarterly revision of reimbursement rate as necessary to maintain projected expenditures within the amounts budgeted under the appropriations made for the medical assistance program for the fiscal year.
18. Supported community living	Retrospectively limited prospective rates. See 79.1(15)	\$34.98 <u>\$34.11</u> per hour, \$78.88 <u>\$76.91</u> per day not to exceed the maximum daily ICF/MR per diem <u>less 2.5%</u> .
19. Supported employment:		
Activities to obtain a job:		
Job development	Fee schedule	\$909 <u>\$886.28</u> per unit (job placement). Maximum of two units per 12 months.
Employer development	Fee schedule	\$909 <u>\$886.28</u> per unit (job placement). Maximum of two units per 12 months.
Enhanced job search	Retrospectively limited prospective rates. See 79.1(15)	Maximum of \$34.98 <u>\$34.11</u> per hour and 26 hours per 12 months.
Supports to maintain employment	Retrospectively limited prospective rates. See 79.1(15)	Maximum of \$34.98 <u>\$34.11</u> per hour for all activities other than personal care and services in an enclave setting. Maximum of \$19.84 <u>\$19.31</u> per hour for personal care. Maximum of \$6.19 <u>\$6.04</u> per hour for services in an enclave setting. Total not to exceed \$2,883.74 <u>\$2,811.62</u> per month. Maximum of 40 units per week.
20. Specialized medical equipment	Fee schedule	\$6,060 per year.
21. Behavioral programming	Fee schedule	\$10.79 <u>\$10.52</u> per 15 minutes.
22. Family counseling and training	Fee schedule	\$43.14 <u>\$42.06</u> per hour.
23. Prevocational services	Fee schedule	For the brain injury waiver: \$37.44 <u>\$36.50</u> per day. For the mental retardation <u>intellectual disabilities</u> waiver: County contract rate or, in absence of a contract rate, \$48.22 <u>\$47.01</u> per day.
24. Interim medical monitoring and treatment:		
Home health agency (provided by home health aide)	Cost-based rate for home health aide services provided by a home health agency	Lesser of maximum Medicare rate in effect 6/30/08 plus 1% 11/30/09 or maximum Medicaid rate in effect 6/30/08 plus 1% 11/30/09 <u>less 5%</u> , converted to an hourly rate.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Home health agency (provided by nurse)	Cost-based rate for nursing services provided by a home health agency	Lesser of maximum Medicare rate in effect 6/30/08 plus 1% 11/30/09 or maximum Medicaid rate in effect 6/30/08 plus 1% , 11/30/09 less 5%, converted to an hourly rate.
Child development home or center	Fee schedule	\$13.12 <u>\$12.79</u> per hour.
25. Residential-based supported community living	Retrospectively limited prospective rates. See 79.1(15)	The maximum daily per diem for ICF/MR less 2.5%.
26. Day habilitation	Fee schedule	County contract rate or, in the absence of a contract rate, \$13.21 <u>\$12.88</u> per hour, \$32.15 <u>\$31.35</u> per half-day, or \$64.29 <u>\$62.68</u> per day.
27. Environmental modifications and adaptive devices	Fee schedule	\$6,060 per year.
28. Family and community support services	Retrospectively limited prospective rates. See 79.1(15)	\$34.98 <u>\$34.11</u> per hour.
29. In-home family therapy	Fee schedule	\$93.63 <u>\$91.29</u> per hour.
30. Financial management services	Fee schedule	\$65.65 <u>\$64.01</u> per enrolled consumer member per month.
31. Independent support broker	Rate negotiated by consumer member	\$15.15 <u>\$14.77</u> per hour.
32. Self-directed personal care	Rate negotiated by consumer member	Determined by consumer's member's individual budget.
33. Self-directed community supports and employment	Rate negotiated by consumer member	Determined by consumer's member's individual budget.
34. Individual-directed goods and services	Rate negotiated by consumer member	Determined by consumer's member's individual budget.
Hearing aid dispensers	Fee schedule plus product acquisition cost	Fee schedule in effect 6/30/08 plus 1% 11/30/09 less 5%.
Home- and community-based habilitation services:		
1. Case management	Fee schedule with cost settlement. See 79.1(1) "d."	Retrospective cost-settled rate.
2. Home-based habilitation	Retrospective cost-related. See 79.1(24)	\$46.70 per hour or \$105.97 per day.
3. Day habilitation	Retrospective cost-related. See 79.1(24)	\$13.21 per hour, \$32.15 per half-day, or \$64.29 per day.
4. Prevocational habilitation	Retrospective cost-related. See 79.1(24)	\$9.91 per hour, \$24.11 per half-day, or \$48.22 per day.
5. Supported employment:		
Activities to obtain a job:		
Job development	Fee schedule	\$909 per unit (job placement). Maximum of two units per 12 months.
Employer development	Fee schedule	\$909 per unit (job placement). Maximum of two units per 12 months.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Enhanced job search	Retrospective cost-related. See 79.1(24)	Maximum of \$34.98 per hour and 26 hours per 12 months.
Supports to maintain employment	Retrospective cost-related. See 79.1(24)	\$6.19 per hour for services in an enclave setting; \$19.81 per hour for personal care; and \$34.98 per hour for all other services. Total not to exceed \$2,883.71 per month. Maximum of 40 units per week.
Home health agencies		
1. Skilled nursing, physical therapy, occupational therapy, home health aide, and medical social services; home health care for maternity patients and children	Retrospective cost-related	Lesser of maximum Medicare rate in effect 6/30/08 <u>plus 1% 11/30/09</u> or maximum Medicaid rate in effect 6/30/08 <u>plus 1% 11/30/09</u> less 5%.
2. Private duty nursing and personal care for persons aged 20 or under	Interim fee schedule with retrospective cost settlement	Medicaid rate in effect 6/30/08 <u>plus 1% 11/30/09</u> less 5%.
3. Administration of vaccines	Physician fee schedule	Physician fee schedule rate.
Hospices	Fee schedule as determined by Medicare	Medicare cap. (See 79.1(14) "d")
Hospitals (Critical access)	Retrospectively adjusted prospective rates. See 79.1(1) "g" and 79.1(5)	The reasonable cost of covered services provided to medical assistance recipients or the upper limits for other hospitals, whichever is greater.
Hospitals (Inpatient)	Prospective reimbursement. See 79.1(5)	Reimbursement rate in effect 6/30/08 <u>plus 1% 11/30/09</u> less 5%.
Hospitals (Outpatient)	Prospective reimbursement or hospital outpatient fee schedule. See 79.1(16) "c"	Ambulatory payment classification rate or hospital outpatient fee schedule rate in effect 7/01/08 <u>11/30/09</u> less 5%.
Independent laboratories	Fee schedule. See 79.1(6)	Medicare fee schedule <u>less 5%</u> . See 79.1(6)
Indian health service 638 facilities	1. Base rate as determined by the United States Office of Management and Budget for outpatient visits for American Indian and Alaskan native members. 2. Fee schedule for service provided for all other Medicaid members.	1. Office of Management and Budget rate published in the Federal Register for outpatient visit rate. 2. Fee schedule.
Infant and toddler program providers	Fee schedule	Fee schedule.
Intermediate care facilities for the mentally retarded	Prospective reimbursement. See 441—82.5(249A)	Eightieth percentile of facility costs as calculated from annual cost reports.
Lead inspection agency	Fee schedule	Fee schedule in effect 6/30/08 <u>plus 1% 11/30/09</u> less 5%.
Local education agency services providers	Fee schedule	Fee schedule.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Maternal health centers	Reasonable cost per procedure on a prospective basis as determined by the department based on financial and statistical data submitted annually by the provider group	Fee schedule in effect 6/30/08 plus 1% <u>11/30/09 less 5%</u> .
Nursing facilities: 1. Nursing facility care	Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A). The percentage of the median used to calculate the direct care excess payment allowance ceiling under 441—81.6(16)“d”(1)“1” and (2)“1” is 95% of the patient-day-weighted median. The percentage of the difference used to calculate the direct care excess payment allowance is 0%. The percentage of the median used to calculate the direct care excess payment allowance limit is 10% of the patient-day-weighted median. The percentage of the median used to calculate the non-direct care excess payment allowance ceiling under 441—81.6(16)“d”(1)“2” and (2)“2” is 96% of the patient-day-weighted median. The percentage of the difference used to calculate the non-direct care excess payment allowance limit is 0%. The percentage of the median used to calculate the non-direct care excess payment allowance limit is 8% of the patient-day-weighted median.	See 441—subrules 81.6(4) and 81.6(14) and paragraph 81.6(16)“f.” The direct care rate component limit under 441—81.6(16)“f”(1) and (2) is 120% of the patient-day-weighted median. The non-direct care rate component limit under 441—81.6(16)“f”(1) and (2) is 110% of the patient-day-weighted median.
2. Hospital-based, Medicare-certified nursing care	Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A). The percentage of the median used to calculate the direct care excess payment allowance ceiling under 441—81.6(16)“d”(3)“1” is 95% of the patient-day-weighted median. The percentage of the difference used to calculate the direct care excess payment allowance is 0%. The percentage of the median used to calculate the direct care excess payment allowance limit is 10% of the patient-day-weighted median. The percentage of the median used to calculate the non-direct care excess payment allowance ceiling under 441—81.6(16)“d”(3)“2” is 96% of the patient-day-weighted median. The percentage of the difference used to calculate the	See 441—subrules 81.6(4) and 81.6(14) and paragraph 81.6(16)“f.” The direct care rate component limit under 441—81.6(16)“f”(3) is 120% of the patient-day-weighted median. The non-direct care rate component limit under 441—81.6(16)“f”(3) is 110% of the patient-day-weighted median.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
	non-direct care excess payment allowance limit is 0%. The percentage of the median used to calculate the non-direct care excess payment allowance limit is 8% of the patient-day-weighted median.	
Occupational therapists	Fee schedule	Medicare fee schedule. Fee schedule in effect 11/30/09 less 5%.
Opticians	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.
Optometrists	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.
Orthopedic shoe dealers	Fee schedule	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.
Pharmaceutical case management	Fee schedule. See 79.1(18)	Refer to 79.1(18).
Physical therapists	Fee schedule	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7) "a"	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.
Anesthesia services	Fee schedule	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.
Podiatrists	Fee schedule	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.
Prescribed drugs	See 79.1(8)	\$4.57 \$4.34 dispensing fee. (See 79.1(8) "a," "b," and "e.")
Psychiatric medical institutions for children		
1. Inpatient	Retrospective cost-related	Effective July 1, 2009, actual Actual and allowable cost not to exceed a maximum for non-state-owned providers of 103% of patient-day-weighted average costs of non-state-owned providers located within Iowa less 5%.
2. Outpatient day treatment	Fee schedule	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.
Psychologists	Fee schedule	Fee schedule in effect 6/30/08 plus 1%. 11/30/09 less 5%.

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Rehabilitation agencies	Fee schedule	Medicare fee schedule <u>less 5%</u> ; refer to 79.1(21).
Remedial services	Retrospective cost-related plus 1%. See 79.1(23)	110% of average cost <u>less 5%</u> .
Rural health clinics	Retrospective cost-related. See 441—88.14(249A)	1. Prospective payment rate as required by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA 2000) or an alternative methodology allowed thereunder, as specified in “2” below. 2. 100% of reasonable cost as determined by Medicare cost reimbursement principles. 3. In the case of services provided pursuant to a contract between an RHC and a managed care organization (MCO), reimbursement from the MCO shall be supplemented to achieve “1” or “2” above.
Screening centers	Fee schedule	Reimbursement rate for center in effect 6/30/08 plus 1% <u>11/30/09 less 5%</u> .
State-operated institutions	Retrospective cost-related	
Targeted case management providers	Fee for service with cost settlement. See 79.1(1)“d.”	Retrospective cost-settled rate.

ITEM 4. Amend paragraph **79.1(5)“a,”** definitions of “Base year cost report” and “Graduate medical education and disproportionate share fund,” as follows:

“*Base year cost report;*” ~~for rates effective October 1, 2005, shall mean~~ means the hospital’s cost report with fiscal year end on or after January 1, ~~2004~~ 2007, and before January 1, ~~2005~~ 2008, except as noted in 79.1(5)“x.” Cost reports shall be reviewed using Medicare’s cost reporting and cost reimbursement principles for those cost reporting periods.

“*Graduate medical education and disproportionate share fund*” or “GME/DSH fund” ~~shall mean~~ means a reimbursement fund developed as an adjunct reimbursement methodology to directly reimburse qualifying hospitals for the direct and indirect costs associated with the operation of graduate medical education programs and the costs associated with the treatment of a disproportionate share of poor, indigent, nonreimbursed or nominally reimbursed patients for inpatient services.

ITEM 5. Adopt the following new definitions in paragraph **79.1(5)“a”**:

“*GME/DSH fund apportionment claim set*” means the hospital’s applicable Medicaid claims paid from July 1, 2008, through June 30, 2009. The claim set is updated in July of every third year.

“*GME/DSH fund implementation year*” means 2009.

“*Medicaid claim set*” means the hospital’s applicable Medicaid claims for the period of January 1, 2006, through December 31, 2007, and paid through March 31, 2008.

“*Rebasing implementation year*” means 2008 and every three years thereafter.

ITEM 6. Amend paragraph **79.1(5)“c”** as follows:

c. *Calculation of Iowa-specific weights and case-mix index.* ~~Using all applicable claims for the period January 1, 2003, through December 31, 2004, and paid through March 31, 2005, From the Medicaid claim set,~~ the recalibration for rates effective October 1, ~~2005~~ 2008, will use all normal inlier claims, discard short stay outliers, discard transfers where the final payment is less than the full DRG payment, include transfers where the full payment is greater than or equal to the full DRG payment, and

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use only the estimated charge for the inlier portion of long stay outliers and cost outliers for weighting calculations. These are referred to as trimmed claims.

(1) Iowa-specific weights are calculated ~~from with~~ Medicaid charge data ~~on discharge dates occurring from January 1, 2003, to December 31, 2004, and paid through March 31, 2005~~ from the Medicaid claim set using trimmed claims. Medicaid charge data for hospitals receiving reimbursement as critical access hospitals during any of the period included in the base-year cost report shall not be used in calculating Iowa-specific weights. One weight is determined for each DRG with noted exceptions. Weights are determined through the following calculations:

1. to 5. No change.

(2) The hospital-specific case-mix index is computed by taking each hospital's trimmed claims that match the hospital's ~~2004 fiscal year and paid through March 31, 2005~~ base year cost reporting period, summing the assigned DRG weights associated with those claims and dividing by the total number of Medicaid claims associated with that specific hospital for that period. Case-mix indices are not computed for hospitals receiving reimbursement as critical access hospitals.

(3) For purposes of calculating the disproportionate share rate only, a separate hospital-specific case-mix index shall be computed for any hospital that qualifies for a disproportionate share payment only as a children's hospital, ~~using~~. The computation shall use only claims and associated DRG weights only for services provided to patients under 18 years of age at the time of admission in all distinct areas of the hospital where services are provided predominantly to children under 18 years of age.

ITEM 7. Amend subparagraph **79.1(5)“k”(2)** as follows:

(2) Base amounts shall be rebased and weights recalibrated in 2005 and every three years thereafter. Cost reports used in rebasing shall be the hospital fiscal year-end Form CMS 2552, Hospital and Healthcare Complex Cost Report, as submitted to Medicare in accordance with Medicare cost report submission time lines for the hospital fiscal year ending during the ~~preceeding~~ preceding calendar year preceding the rebasing implementation year. If a hospital does not provide this cost report to the Iowa Medicaid enterprise provider cost audits and rate-setting unit by May 31 of a ~~year in which~~ year in which rebasing ~~occurs~~ implementation year, the most recent submitted cost report will be used with the addition of a hospital market basket index inflation factor.

ITEM 8. Amend paragraph **79.1(5)“t”** as follows:

t. Limitations and application of limitations on payment. Diagnosis-related group payments are subject to the upper payment limits as stated in 42 CFR 447.271 and 42 CFR 447.272 as amended to September 5, 2001.

~~Payment limits as stated in subparagraphs (1) and (2) below are applied in the aggregate during the cost settlement process at the completion of the hospital's fiscal year end. The payment limit stated in subparagraph (3) is applied to aggregate Medicaid payments at the end of the state's fiscal year.~~

(1) The department may not pay a provider more for inpatient hospital services under Medicaid than the provider's customary charges to the general public for the services. This limit is applied in the aggregate during the cost settlement process at the end of the hospital's fiscal year.

~~(2) Payments to a hospital that is owned or operated by state or non-state government shall not exceed the hospital's actual medical assistance program costs. The department shall perform a cost settlement annually after the desk review or audit of the hospital's cost report. The department shall determine the aggregate payments made to the hospital under the diagnosis-related group methodology and compare this amount to the hospital's actual medical assistance program costs as determined from the audit or desk review of the hospital's cost report. For purposes of this determination, payments shall include amounts received from the Medicaid program, including graduate medical education payments and outlier payments, as well as patient and third-party payments up to the Medicaid-allowed amount. If the payments exceed the hospital's actual medical assistance program costs, the amount by which payments exceed actual costs shall be requested and collected from the hospital.~~

~~(3)~~ (2) Aggregate payments to hospitals and state-operated hospitals may not exceed the amount that can reasonably be estimated would have been paid for those services under Medicare payment principles. This limit is applied to aggregate Medicaid payments at the end of the state's fiscal year.

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ITEM 9. Adopt the following **new** paragraphs **79.1(5)“u”** and **“v”**:

u. State-owned teaching hospital disproportionate share payment. In addition to payments from the graduate medical education and disproportionate share fund made pursuant to paragraph 79.1(5)“y,” payment shall be made to Iowa hospitals qualifying for the Iowa state-owned teaching hospital disproportionate share fund. Interim monthly payments based on estimated allowable costs will be paid to qualifying hospitals under this paragraph.

(1) Qualifying criteria. A hospital qualifies for Iowa state-owned teaching hospital disproportionate share payments if it qualifies for disproportionate share payments pursuant to paragraph 79.1(5)“y” and is an Iowa state-owned hospital with more than 500 beds and eight or more distinct residency specialty or subspecialty programs recognized by the American College of Graduate Medical Education.

(2) Allocation to fund. The total amount of funding that is allocated on July 1 of each year to the Iowa state-owned teaching hospital disproportionate share fund is \$26,633,430.

(3) Amount of payment. The total amount of disproportionate share payments from the graduate medical education and disproportionate share fund and from the Iowa state-owned teaching hospital disproportionate share fund shall not exceed the amount of the state’s allotment under Public Law 102-234. In addition, the total amount of all disproportionate share payments shall not exceed the hospital-specific disproportionate share limits under Public Law 103-666.

(4) Final disproportionate share adjustment. The department’s total year-end disproportionate share obligations to a qualifying hospital will be calculated following completion of the desk review or audit of CMS 2552-96, Hospital and Healthcare Complex Cost Report.

v. Non-state-owned teaching hospital disproportionate share payment. In addition to payments from the graduate medical education and disproportionate share fund made pursuant to paragraph 79.1(5)“y,” payment shall be made to Iowa hospitals qualifying for Iowa non-state-government-owned acute care teaching hospital disproportionate share payments. Interim monthly payments based on estimated allowable costs will be paid to qualifying hospitals under this paragraph.

(1) Qualifying criteria. A hospital qualifies for the Iowa non-state-government-owned acute care teaching hospital disproportionate share payments if it qualifies for disproportionate share payments pursuant to paragraph 79.1(5)“y” and is an Iowa non-state-government-owned acute care teaching hospital located in a county with a population over 350,000.

(2) Amount of payment. The total amount of disproportionate share payments pursuant to paragraph 79.1(5)“y” and the Iowa non-state-government-owned acute care teaching hospital disproportionate share payments shall not exceed the amount of the state’s allotment under Public Law 102-234. In addition, the total amount of all disproportionate share payments shall not exceed the hospital-specific disproportionate share limits under Public Law 103-666.

(3) Final disproportionate share adjustment. The department’s total year-end disproportionate share obligations to a qualifying hospital will be calculated following completion of the desk review or audit of CMS 2552-96, Hospital and Healthcare Complex Cost Report. The department’s total year-end disproportionate share obligation shall not exceed the difference between \$51 million and the actual IowaCare expansion population claims submitted and paid by the Iowa Medicaid enterprise.

ITEM 10. Amend subparagraphs **79.1(5)“y”(2)** and **(3)** and **79.1(5)“y”(5)** to **(9)** as follows:

(2) Allocation to fund for direct medical education. ~~Except as reduced pursuant to subparagraph 79.1(5)“y”(3), the~~ The total state fiscal year annual amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to inpatient services for July 1, 2008, through June 30, 2009, is \$8,642,112 \$8,210,006. If a hospital fails to qualify for direct medical education payments from the fund because the hospital does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.

(3) Distribution to qualifying hospitals for direct medical education. Distribution of the amount in the fund for direct medical education shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for direct medical education, the following formula is used:

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1. Multiply the total of all DRG weights for claims paid from ~~July 1, 2005, through June 30, 2006,~~ the GME/DSH fund apportionment claim set for each hospital reporting direct medical education costs that qualify for payment as medical education costs under the Medicare program in the hospital's base year cost report by each hospital's direct medical education rate to obtain a dollar value.

2. Sum the dollar values for each hospital, then divide each hospital's dollar value by the total dollar value, resulting in a percentage.

3. Multiply each hospital's percentage by the amount allocated for direct medical education to determine the payment to each hospital.

~~Effective for payments from the fund for July 2006, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2005, through June 30, 2006. Thereafter, the state fiscal year used as the source of DRG weights shall be updated by a three-year period effective for payments from the fund for July of every third year.~~

~~If a hospital fails to qualify for direct medical education payments from the fund because it does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.~~

(5) Allocation to fund for indirect medical education. ~~Except as reduced pursuant to subparagraph 79.1(5) "y"(6), the~~ The total state fiscal year annual amount of funding that is allocated to the graduate medical education and disproportionate share fund for indirect medical education related to inpatient services for July 1, 2008, through June 30, 2009, is \$15,174,101 \$14,415,396. ~~If a hospital fails to qualify for indirect medical education payments from the fund because the hospital does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.~~

(6) Distribution to qualifying hospitals for indirect medical education. Distribution of the amount in the fund for indirect medical education shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for indirect medical education, the following formula is used:

1. Multiply the total of all DRG weights for claims paid from ~~July 1, 2005, through June 30, 2006,~~ the GME/DSH fund apportionment claim set for each hospital reporting direct medical education costs that qualify for payment as medical education costs under the Medicare program in the hospital's base year cost report by each hospital's indirect medical education rate to obtain a dollar value.

2. Sum the dollar values for each hospital, then divide each hospital's dollar value by the total dollar value, resulting in a percentage.

3. Multiply each hospital's percentage by the amount allocated for indirect medical education to determine the payment to each hospital.

~~Effective for payments from the fund for July 2006, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2005, through June 30, 2006. Thereafter, the state fiscal year used as the source of DRG weights shall be updated by a three-year period effective for payments from the fund for July of every third year.~~

~~If a hospital fails to qualify for indirect medical education payments from the fund because it does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.~~

(7) Qualifying for disproportionate share. For months beginning with July 2002, hospitals qualify for disproportionate share payments from the fund when the hospital's low-income utilization rate exceeds 25 percent, when the hospital's Medicaid inpatient utilization rate exceeds one standard deviation from the statewide average Medicaid utilization rate, or when the hospital qualifies as a children's hospital under subparagraph (10). Information contained in the hospital's base year cost

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report is used to determine the hospital's low-income utilization rate and the hospital's Medicaid inpatient utilization rate.

For those hospitals that qualify for disproportionate share under both the low-income utilization rate definition and the Medicaid inpatient utilization rate definition, the disproportionate share percentage shall be the greater of (1) the product of 2½ percent multiplied by the number of standard deviations by which the hospital's own Medicaid inpatient utilization rate exceeds the statewide mean Medicaid inpatient utilization rate for all hospitals, or (2) 2½ percent.

For those hospitals that qualify for disproportionate share under the low-income utilization rate definition, but do not qualify under the Medicaid inpatient utilization rate definition, the disproportionate share percentage shall be 2½ percent.

For those hospitals that qualify for disproportionate share under the Medicaid inpatient utilization rate definition, but do not qualify under the low-income utilization rate definition, the disproportionate share percentage shall be the product of 2½ percent multiplied by the number of standard deviations by which the hospital's own Medicaid inpatient utilization rate exceeds the statewide mean Medicaid inpatient utilization rate for all hospitals.

For those hospitals that qualify for disproportionate share as a children's hospital, the disproportionate share percentage shall be the greater of (1) the product of 2½ percent multiplied by the number of standard deviations by which the Medicaid inpatient utilization rate for children under 18 years of age at the time of admission in all areas of the hospital where services are provided predominantly to children under 18 years of age exceeds the statewide mean Medicaid inpatient utilization rate for all hospitals, or (2) 2½ percent.

~~Information contained in the hospital's available 2004 submitted Medicare cost report is used to determine the hospital's low-income utilization rate and the hospital's Medicaid inpatient utilization rate.~~

Additionally, a qualifying hospital other than a children's hospital must also have at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to Medicaid-eligible persons who are in need of obstetric services. In the case of a hospital located in a rural area as defined in Section 1886 of the Social Security Act, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

Out-of-state hospitals serving Iowa Medicaid patients qualify for disproportionate share payments from the fund based on their state Medicaid agency's calculation of the Medicaid inpatient utilization rate. The disproportionate share percentage is calculated using the number of standard deviations by which the hospital's own state Medicaid inpatient utilization rate exceeds the hospital's own statewide mean Medicaid inpatient utilization rate.

Hospitals qualify for disproportionate share payments from the fund without regard to the facility's status as a teaching facility or bed size.

Hospitals receiving reimbursement as critical access hospitals shall not qualify for disproportionate share payments from the fund.

(8) Allocation to fund for disproportionate share. The total state fiscal year annual amount of funding that is allocated to the graduate medical education and disproportionate share fund for disproportionate share payments ~~for July 1, 2008, through June 30, 2009, is \$7,253,641~~ \$6,890,959. If a hospital fails to qualify for disproportionate share payments from the fund due to closure or for any other reason, the amount of money that would have been paid to that hospital shall be removed from the fund.

(9) Distribution to qualifying hospitals for disproportionate share. Distribution of the amount in the fund for disproportionate share shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for disproportionate share, the following formula is used:

1. Multiply the total of all DRG weights for claims paid ~~July 1, 2005, through June 30, 2006, from the GME/DSH fund apportionment claim set~~ for each hospital that met the qualifications during the fiscal year used to determine the hospital's low-income utilization rate and Medicaid utilization rate (or for children's hospitals, during the preceding state fiscal year) by each hospital's disproportionate share rate to obtain a dollar value. For any hospital that qualifies for a disproportionate share payment only as a children's hospital, only the DRG weights for claims paid for services rendered to patients

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under 18 years of age at the time of admission in all distinct areas of the hospital where services are provided predominantly to children under 18 years of age shall be used in this calculation.

2. Sum the dollar values for each hospital, then divide each hospital's dollar value by the total dollar value, resulting in a percentage.

3. Multiply each hospital's percentage by the amount allocated for disproportionate share to determine the payment to each hospital.

Effective for payments from the fund for July 2006, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2005, through June 30, 2006. Thereafter, the state fiscal year used as the source of DRG weights shall be updated by a three-year period effective for payments from the fund for July of every third year. In compliance with Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (Public Law 102-234) and 1992 Iowa Acts, chapter 1246, section 13, the total of disproportionate share payments from the GME/DSH fund and supplemental disproportionate share of payments pursuant to paragraph 79.1(5) "ab," 79.1(5) "u" or 79.1(5) "v" cannot exceed the amount of the federal cap under Public Law 102-234. If a hospital fails to qualify for disproportionate share payments from the fund due to closure or for any other reason, the amount of money that would have been paid to that hospital shall be removed from the fund.

ITEM 11. Rescind paragraphs 79.1(5) "ab" and "ac."

ITEM 12. Amend paragraph 79.1(8) "g" as follows:

g. ~~The~~ For services rendered on or after July 1, 2010, the professional dispensing fee is \$4.57 \$4.34 or the pharmacy's usual and customary fee, whichever is lower, ~~except for the period from December 1, 2009, to June 30, 2010, during which the professional dispensing fee shall be \$4.34.~~

ITEM 13. Amend subparagraphs 79.1(15) "f"(2) and (3) as follows:

(2) Revenues exceeding 100 percent of adjusted actual costs ~~by more than 2.5 percent~~ shall be remitted to the department. Payment will be due upon notice of the new rates and retrospective adjustment.

(3) Providers who do not reimburse revenues exceeding ~~2.5~~ 100 percent of actual costs 30 days after notice is given by the department will have the revenues over ~~2.5~~ 100 percent of the actual costs deducted from future payments.

ITEM 14. Amend paragraph 79.1(16) "a," definitions of "Base year cost report," and "Graduate medical education and disproportionate share fund," as follows:

"*Base year cost report*," for rates effective ~~July 1, 2008~~ January 1, 2009, shall mean the hospital's cost report with fiscal year end on or after January 1, ~~2006~~ 2007, and before January 1, ~~2007~~ 2008. Cost reports shall be reviewed using Medicare's cost reporting and cost reimbursement principles for those cost reporting periods.

"*Graduate medical education and disproportionate share fund*" or "GME/DSH fund" shall mean a reimbursement fund developed as an adjunct reimbursement methodology to directly reimburse qualifying hospitals for the direct costs of interns and residents associated with the operation of graduate medical education programs for outpatient services.

ITEM 15. Adopt the following new definitions of "GME/DSH fund apportionment claim set," "GME/DSH fund implementation year" and "Medicaid claim set" in paragraph 79.1(16) "a":

"*GME/DSH fund apportionment claim set*" means the hospital's applicable Medicaid claims paid from July 1, 2008, through June 30, 2009. The claim set is updated every three years in July.

"*GME/DSH fund implementation year*" means 2009.

"*Medicaid claim set*" means the hospital's applicable Medicaid claims for the period of January 1, 2006, through December 31, 2007, and paid through March 31, 2008.

ITEM 16. Amend subparagraphs 79.1(16) "c"(2) and (4) as follows:

(2) Except as provided in paragraph 79.1(16) "h," outpatient hospital services that have been assigned to an APC with an assigned weight shall be reimbursed based on the APC to which the services provided are assigned. ~~For dates of services beginning on or after July 1, 2008, the~~ The department adopts and incorporates by reference the OPPS APCs and relative weights effective January 1, 2008,

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published on November 27, 2007, as final by the Centers for Medicare and Medicaid Services in the Federal Register at Volume 72, No. 227, page 66579. Relative weights and APCs shall be updated pursuant to paragraph 79.1(16)“j.”

(4) The OPPS APC payment status indicators show whether a service represented by a CPT or HCPCS code is payable under an OPPS APC or under another payment system and whether particular OPPS policies apply to the code. The following table lists the status indicators and definitions for both services that are paid under an OPPS APC and services that are not paid under an OPPS APC.

Indicator	Item, Code, or Service	OPPS Payment Status
A	<p>Services furnished to a hospital outpatient that are paid by Medicare under a fee schedule or payment system other than OPPS, such as:</p> <ul style="list-style-type: none"> ● Ambulance services. ● Clinical diagnostic laboratory services. ● Diagnostic mammography. ● Screening mammography. ● Nonimplantable prosthetic and orthotic devices. ● Physical, occupational, and speech therapy. ● Erythropoietin for end-stage renal dialysis (ESRD) patients. ● Routine dialysis services provided for ESRD patients in a certified dialysis unit of a hospital. 	<p>If For services covered by Iowa Medicaid as an outpatient hospital service, the service is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1)“c.”</p> <p>If For services not covered by Iowa Medicaid as an outpatient hospital service, the service is not paid under OPPS APC, but may be paid by Iowa Medicaid under the specific rate or methodology established by other rules (other than outpatient hospital).</p>
B	Codes that are not paid by Medicare on an outpatient hospital basis	<p>Not paid under OPPS APC.</p> <ul style="list-style-type: none"> ● May be paid when submitted on a different bill type other than outpatient hospital (13x). ● An alternate code that is payable when submitted on an outpatient hospital bill type (13x) may be available.
C	Inpatient procedures	<p>If covered by Iowa Medicaid as an outpatient hospital service, the service is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1)“c.”</p> <p>If not covered by Iowa Medicaid as an outpatient hospital service, the service is not paid under OPPS APC. Admit the patient and bill as inpatient care.</p>
D	Discontinued codes	Not paid under OPPS APC or any other Medicaid payment system.
E	<p>Items, codes, and services:</p> <ul style="list-style-type: none"> ● That are not covered by Medicare based on statutory exclusion and may or may not be covered by Iowa Medicaid; or ● That are not covered by Medicare for reasons other than statutory exclusion and may or may not be covered by Iowa Medicaid; or ● That are not recognized by Medicare but for which an alternate code for the same item or service may be available under Iowa Medicaid; or ● For which separate payment is not provided by Medicare but may be provided by Iowa Medicaid. 	<p>If covered by Iowa Medicaid, the item, code, or service is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1)“c.”</p> <p>If not covered by Iowa Medicaid, the item, code, or service is not paid under OPPS APC or any other Medicaid payment system.</p>

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Indicator	Item, Code, or Service	OPPS Payment Status
F	Certified registered nurse anesthetist services Corneal tissue acquisition Hepatitis B vaccines	If covered by Iowa Medicaid, the item or service is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) "c." If not covered by Iowa Medicaid, the item or service is not paid under OPPS APC or any other Medicaid payment system.
G	Pass-through drugs and biologicals	If covered by Iowa Medicaid, the item is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) "c." If not covered by Iowa Medicaid, the item is not paid under OPPS APC or any other Medicaid payment system.
H	Pass-through device categories	If covered by Iowa Medicaid, the device is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) "c." If not covered by Iowa Medicaid, the device is not paid under OPPS APC or any other Medicaid payment system.
K	Blood and blood products Brachytherapy sources Non-pass-through drugs and biologicals Therapeutic radiopharmaceuticals	If covered by Iowa Medicaid, the item is: <ul style="list-style-type: none"> • Paid under OPPS APC with a separate APC payment when both an APC and an APC weight are established. • Paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) "c" when either no APC or APC weight is established. If not covered by Iowa Medicaid, the item is not paid under OPPS APC or any other Medicaid payment system.
L	Influenza vaccine Pneumococcal pneumonia vaccine	If covered by Iowa Medicaid, the vaccine is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) "c." If not covered by Iowa Medicaid, the vaccine is not paid under OPPS APC or any other Medicaid payment system.
M	Items and services not billable to the Medicare fiscal intermediary	If covered by Iowa Medicaid, the item or service is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) "c." If not covered by Iowa Medicaid, the item or service is not paid under OPPS APC or any other Medicaid payment system.

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Indicator	Item, Code, or Service	OPPS Payment Status
N	Packaged services not subject to separate payment under Medicare OPPS payment criteria	Paid under OPPS APC. Payment, including outliers, is included with payment for other services; therefore, no separate payment is made.
P	Partial hospitalization	Not a covered service under Iowa Medicaid.
Q	Packaged services subject to separate payment under Medicare OPPS payment criteria	Paid under OPPS APC in a separate APC payment based on Medicare OPPS payment criteria. If criteria are not met, payment, including outliers, is packaged into payment for other services; therefore, no separate APC payment is made.
Q1	<u>STVX-packaged codes</u>	<u>Paid under OPPS APC.</u> <ul style="list-style-type: none"> ● <u>Packaged APC payment if billed on the same date of service as HCPCS code assigned status indicator "S," "T," "V," or "X."</u> ● <u>In all other circumstances, payment is made through a separate APC payment.</u>
Q2	<u>T-packaged codes</u>	<u>Paid under OPPS APC.</u> <ul style="list-style-type: none"> ● <u>Packaged APC payment if billed on the same date of service as HCPCS code assigned status indicator "T."</u> ● <u>In all other circumstances, payment is made through a separate APC payment.</u>
Q3	<u>Codes that may be paid through a composite APC</u>	<u>If covered by Iowa Medicaid, the code is paid under OPPS APC with separate APC payment.</u> <u>If not covered by Iowa Medicaid, the code is not paid under OPPS APC or any other Medicaid payment system.</u>
R	<u>Blood and blood products</u>	<u>If covered by Iowa Medicaid, the item is paid under OPPS APC with separate APC payment.</u> <u>If not covered by Iowa Medicaid, the item is not paid under OPPS APC or any other Medicaid payment system.</u>
S	Significant procedure, not discounted when multiple	If covered by Iowa Medicaid, the procedure is paid under OPPS APC with separate APC payment. If not covered by Iowa Medicaid, the procedure is not paid under OPPS APC or any other Medicaid payment system.
T	Significant procedure, multiple reduction applies	If covered by Iowa Medicaid, the procedure is paid under OPPS APC with separate APC payment subject to multiple reduction. If not covered by Iowa Medicaid, the procedure is not paid under OPPS APC or any other Medicaid payment system.

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Indicator	Item, Code, or Service	OPPS Payment Status
<u>U</u>	<u>Brachytherapy sources</u>	<p>If covered by Iowa Medicaid, the procedure is paid under OPPS APC with separate APC payment.</p> <p>If not covered by Iowa Medicaid, the procedure is not paid under OPPS APC or any other Medicaid payment system.</p>
V	Clinic or emergency department visit	<p>If covered by Iowa Medicaid, the service is paid under OPPS APC with separate APC payment.</p> <p>If not covered by Iowa Medicaid, the service is not paid under OPPS APC or any other Medicaid payment system.</p>
X	Ancillary services	<p>If covered by Iowa Medicaid, the service is paid under OPPS APC with separate APC payment.</p> <p>If not covered by Iowa Medicaid, the service is not paid under OPPS APC or any other Medicaid payment system.</p>
<u>Y</u>	<u>Nonimplantable durable medical equipment</u>	<p>For items covered by Iowa Medicaid as an outpatient hospital service, the item is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospitals services established pursuant to 79.1(1) "c."</p> <p>For items not covered by Iowa Medicaid as an outpatient hospital service, the item is not paid as an outpatient hospital service, but may be paid by Iowa Medicaid under the specific rate or methodology established by other rules (other than outpatient hospital).</p>

ITEM 17. Amend paragraph **79.1(16)“d,”** introductory paragraph, as follows:

d. Calculation of case-mix indices. Hospital-specific and statewide case-mix indices shall be calculated using ~~all applicable claims with dates of service occurring in the period July 1, 2006, through June 30, 2007, paid through September 10, 2007~~ the Medicaid claim set.

ITEM 18. Amend subparagraphs **79.1(16)“e”(2)** and **(4)** as follows:

(2) The cost-to-charge ratios are applied to each line item charge reported on claims ~~with dates of service occurring in the period July 1, 2006, through June 30, 2007, paid through September 10, 2007,~~ from the Medicaid claim set to calculate the Medicaid cost per service. The hospital's total outpatient Medicaid cost is the sum of the Medicaid cost per service for all line items.

(4) The remaining amount is multiplied by a factor to limit aggregate expenditures to available funding, divided by the hospital-specific case-mix index, and then divided by the total number of APC services for that hospital ~~during the period July 1, 2006, through June 30, 2007, that were paid through September 10, 2007~~ from the Medicaid claim set.

ITEM 19. Amend subparagraph **79.1(16)“f”(2)** as follows:

(2) The resulting amount is multiplied by a factor to limit aggregate expenditures to available funding, divided by the statewide case-mix index, and then divided by the statewide total number of APC services ~~for the period July 1, 2006, through June 30, 2007, that were paid through September 10, 2007~~ from the Medicaid claim set.

ITEM 20. Rescind and reserve paragraph **79.1(16)“t.”**

ITEM 21. Amend subparagraphs **79.1(16)“v”(2)** and **(3)** as follows:

(2) Allocation to fund for direct medical education. ~~Except as reduced pursuant to subparagraph 79.1(16)“v”(3),~~ the The total amount of annual state fiscal year funding that is allocated to the graduate

HUMAN SERVICES DEPARTMENT[441](cont'd)

medical education and disproportionate share fund for direct medical education related to outpatient services for July 1, 2008, through June 30, 2009, is \$2,922,460 ~~\$2,776,336~~. If a hospital fails to qualify for direct medical education payments from the fund because the hospital does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.

(3) Distribution to qualifying hospitals for direct medical education. Distribution of the amount in the fund for direct medical education shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for direct medical education, the following formula is used:

1. Multiply the total count of outpatient visits for claims paid from July 1, 2005, through June 30, 2006, ~~the GME/DSH fund apportionment claim set for each hospital reporting direct medical education costs that qualify for payment as medical education costs under the Medicare program in the hospital's base year cost report by each hospital's direct medical education rate to obtain a dollar value.~~

2. Sum the dollar values for each hospital, then divide each hospital's dollar value by the total dollar value, resulting in a percentage.

3. Multiply each hospital's percentage by the amount allocated for direct medical education to determine the payment to each hospital.

~~Effective for payments from the fund for July 2006, the state fiscal year used as the source of the count of outpatient visits shall be updated to July 1, 2005, through June 30, 2006. Thereafter, the state fiscal year used as the source of the count of outpatient visits shall be updated by a three-year period effective for payments from the fund for July of every third year.~~

~~If a hospital fails to qualify for direct medical education payments from the fund because it does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.~~

ITEM 22. Amend subparagraph **79.1(23)“c”(1)** as follows:

(1) A reasonable cost for a member is one that does not exceed 110 percent of the average allowable costs reported by Iowa Medicaid providers for providing similar remedial services to members who have similar diagnoses and live in similar settings, less 5 percent.

ITEM 23. Rescind and reserve rule **441—79.16(249A)**.

ITEM 24. Amend subrule 85.25(1) as follows:

85.25(1) Computation of inpatient rate. Facilities are paid at a per diem rate based on the facility's actual and allowable cost for the service not to exceed the upper limit as provided in 441—subrule 79.1(2).

a. and b. No change.

c. For services rendered July 1, 2009 2010, through June 30, 2010 2011, rates paid shall be adjusted to 100 percent of the facility's actual and allowable average costs per patient day, based on the cost information submitted pursuant to paragraphs 85.25(1)“a” and “b,” subject to the upper limit provided in 441—subrule 79.1(2) for non-state-owned facilities. ~~Facilities may submit a projected cost report for purposes of determining the rates initially paid for services rendered July 1, 2009, through June 30, 2010, before rate adjustment based on actual costs. Before rate adjustment, providers shall be paid a prospective interim rate equal to the previous year's retrospectively calculated unit-of-service rate.~~

[Filed Emergency 6/10/10, effective 7/1/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8902B**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 150, "Purchase of Service," Iowa Administrative Code.

This amendment increases the reimbursement rates for supervised apartment living service providers by 1.31 percent over the rates in effect on June 30, 2010. Legislation in 2010 Iowa Acts, House File 2531, provides for partial restoration of the reimbursement rates that were reduced as a result of Executive Order 19, which were implemented through amendments published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8447B**.

This amendment does not provide for waivers in specified situations since an increase in reimbursement is beneficial to service providers.

The Council on Human Services adopted this amendment on June 9, 2010.

The Department finds that notice and public participation are impracticable because 2010 Iowa Acts, House File 2531, directs the Department to make this increase effective on July 1, 2010. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department also finds that this amendment confers a benefit on the affected providers by increasing reimbursement rates. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of the amendment is waived.

This amendment is intended to implement Iowa Code section 234.6 and 2010 Iowa Acts, House File 2531, section 83(5).

This amendment shall become effective on July 1, 2010.

The following amendment is adopted.

Amend subparagraph **150.3(5)"p"(2)** as follows:

(2) Effective for the period from January 1, 2010, to June 30, 2010, the reimbursement rates for services provided under a purchase of social service agency contract for supervised apartment living shall be decreased by 5 percent of the rates in effect on December 1, 2009. For the fiscal year beginning July 1, 2010, the reimbursement rates for supervised apartment living service providers shall be increased by 1.31 percent over the rates in effect on June 30, 2010.

[Filed Emergency 6/10/10, effective 7/1/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8903B**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 152, "Foster Group Care Contracting," Iowa Administrative Code.

This amendment increases the reimbursement rates for foster group care service providers by 1.31 percent over the rates in effect on June 30, 2010. Legislation in 2010 Iowa Acts, House File 2531, provides for partial restoration of the reimbursement rates that were reduced as a result of Executive Order 19, which were implemented through amendments published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8449B**.

This amendment does not provide for waivers in specified situations since the amount of the increase is controlled by legislative appropriation.

The Council on Human Services adopted this amendment on June 9, 2010.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department finds that notice and public participation are unnecessary because the amount of the increase is set by statute and are impracticable because 2010 Iowa Acts, House File 2531, directs the Department to make this increase effective on July 1, 2010. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department also finds that this amendment confers a benefit on the affected providers by increasing reimbursement rates. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of the amendment is waived.

This amendment is intended to implement Iowa Code section 234.6 and 2010 Iowa Acts, House File 2531, section 83(5).

This amendment shall become effective on July 1, 2010.

The following amendment is adopted.

Amend paragraph **152.3(1)“h”** as follows:

h. Once a negotiated rate is established, it shall not be changed or renegotiated, except in the following circumstances:

(1) Rates may be changed when funds are appropriated for an across-the-board increase. For the fiscal year beginning July 1, 2010, the reimbursement rates for foster group care service providers shall be increased by 1.31 percent over the rates in effect on June 30, 2010.

(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 6/10/10, effective 7/1/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8904B

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, “Payment for Foster Care,” Iowa Administrative Code.

These amendments increase the reimbursement rates for foster family care by 1.31 percent over the rates in effect on June 30, 2010. Legislation in 2010 Iowa Acts, House File 2531, provides for partial restoration of the reimbursement rates that were reduced as a result of Executive Order 19, which were implemented through amendments published in the Iowa Administrative Bulletin on January 13, 2010, as **ARC 8451B**. This increase also affects maintenance payments for adoption subsidies, which are based on foster family care rates.

These amendments do not provide for waivers in specified situations since the amount of the increase is controlled by legislative appropriation.

The Council on Human Services adopted these amendments on June 9, 2010.

The Department finds that notice and public participation are unnecessary because the amount of the increase is set by statute and are impracticable because 2010 Iowa Acts, House File 2531, directs the Department to make this increase effective on July 1, 2010. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds that these amendments confer a benefit on foster families by increasing reimbursement rates. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of the amendments is waived.

These amendments are intended to implement Iowa Code section 234.6 and 2010 Iowa Acts, House File 2526, section 33(4), and House File 2531, section 83(5).

These amendments shall become effective on July 1, 2010.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

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	\$15.54 <u>\$15.74</u>
6 through 11	\$16.16 <u>\$16.37</u>
12 through 15	\$17.69 <u>\$17.92</u>
16 or over	\$17.93 <u>\$18.16</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 ~~\$4.75~~ \$4.81 per day.
2. Behavioral needs rated at level 2 qualify for a payment of ~~\$9.50~~ \$9.62 per day.
3. Behavioral needs rated at level 3 qualify for a payment of ~~\$14.25~~ \$14.44 per day.

ITEM 3. Amend rule **441—156.6(234)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 234.38 and 2010 Iowa Acts, House File 2526, section 33(4), and House File 2531, section 83(5).

[Filed Emergency 6/10/10, effective 7/1/10]

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ARC 8906B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

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 this amendment is to extend from 10 years to 15 years the maximum allowable loan term for livestock water quality facilities loans made pursuant to the water pollution control works and drinking water facilities financing program.

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 assistance for livestock water quality facilities projects is needed immediately, and the normal notice and public participation process would delay implementation of the changes.

The Authority finds that this amendment confers a benefit on the parties affected, livestock producers, lenders, and all Iowans who benefit from a cleaner environment, in that the amendment eases and speeds the administration of an important program benefiting those parties and should be implemented as soon as feasible in order to facilitate assistance under the program. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of the amendment is waived.

The Authority adopted this amendment on June 9, 2010.

This amendment became effective June 10, 2010.

This amendment is intended to implement Iowa Code sections 16.5(1)“r” and 16.133.

The following amendment is adopted.

IOWA FINANCE AUTHORITY[265](cont'd)

Amend subrule **26.8(7)**, table, as follows:

Type of Project	Type of Assistance	Minimum Loan Amount	Maximum Outstanding Balance	Maximum Loan Term	Project Approval Agency
General Nonpoint Source	Low-interest loans, Linked deposit or Loan participations	\$5,000	No maximum	20 years	DNR
Local Water Protection	Linked deposit	\$5,000	\$500,000 per common ownership	10 years	Division of Soil Conservation
Livestock Water Quality Facilities	Linked deposit	\$10,000	\$500,000 per common ownership	40 <u>15</u> years*	Division of Soil Conservation
Onsite Wastewater Systems Assistance	Linked deposit	\$2,000	No maximum	10 years	County

*If the loan is made only for preparation of a comprehensive nutrient management plan, the loan period shall not exceed 5 years.

[Filed Emergency 6/10/10, effective 6/10/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8907B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)"b," 16.5(1)"r" and 16.40, the Iowa Finance Authority hereby amends Chapter 29, "Jump-Start Housing Assistance Program," Iowa Administrative Code.

The purpose of these amendments is to modify and clarify certain provisions of the program of housing assistance for persons affected by the natural disasters that occurred in Iowa in 2008.

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 assistance to the victims of the natural disasters is needed immediately, and the normal notice and public participation process would delay implementation of the changes.

The Authority finds that these amendments confer a benefit on the persons affected, persons adversely affected by the natural disasters, in that the amendments ease and speed the administration of an important program benefiting those persons and should be implemented as soon as feasible in order to facilitate assistance under the program and to avoid confusion. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 8908B** to allow for public comment.

The Authority adopted these amendments on June 9, 2010.

These amendments became effective June 10, 2010.

These amendments are intended to implement Iowa Code sections 16.5(1)"r" and 16.40 and 2009 Iowa Acts, Senate File 289.

IOWA FINANCE AUTHORITY[265](cont'd)

The following amendments are adopted.

ITEM 1. Amend subrule 29.5(2) as follows:

29.5(2) *Interim mortgage assistance loans.* An eligible resident whose disaster-affected home is proposed, or is located in an area proposed, by a municipality or county to the Iowa homeland security and emergency management division for property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008) may receive financial assistance equivalent to an amount of up to \$1,000 per month for the purpose of paying mortgage payments and other eligible property-carrying costs for the disaster-affected home for a period not to exceed 12 months. An eligible resident who receives assistance pursuant to this subrule shall not be eligible for assistance under paragraph 29.5(1) "*a b.*" If, however, it subsequently is determined by the Iowa homeland security and emergency management division that the disaster-affected home of the eligible resident will not be acquired under the hazard mitigation grant program, then the eligible resident shall be eligible for assistance under paragraph 29.5(1) "*a b.*" on the condition that the amount of assistance available under that paragraph shall be reduced by the amount of assistance received by the eligible resident under subrule 29.5(2). Financial assistance provided pursuant to this subrule shall be in the form of a forgivable loan.

a. and b. No change.

ITEM 2. Amend subrule 29.6(5) as follows:

29.6(5) *Retention agreement.* Each loan made pursuant to this program shall be secured by a retention agreement which shall constitute a lien on the title of the real property for which the forgivable loan is made until such time as the forgivable loan has either been fully forgiven or paid in full; provided, however, that in the case of a property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or under any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008), payment of the following shall be waived:

a. That portion of the repayment due for a down payment assistance loan made under paragraph 29.5(1) "*a*" or an interim mortgage assistance loan made under subrule 29.5(2), provided that the amount so waived shall not exceed \$25,000; ~~and~~

b. That portion of the repayment due for a housing repair or rehabilitation assistance loan made under paragraph 29.5(1) "*b*" for which the eligible resident provides documentation that the assistance was expended for the purpose for which it was awarded; ~~and~~

c. That portion of the repayment due for an energy efficiency assistance loan made under subrule 29.5(3) for which the eligible resident provides documentation that the assistance was expended for the purpose for which it was awarded.

[Filed Emergency 6/10/10, effective 6/10/10]

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ARC 8905B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1) "b," 16.5(1) "r," and 16.191 and 2010 Iowa Acts, Senate File 2389, section 10(4), the Iowa Finance Authority hereby amends Chapter 32, "Iowa Jobs Program," Iowa Administrative Code.

The purpose of these amendments is to implement 2010 Iowa Acts, Senate File 2389, section 10(4), by amending Chapter 32, governing the Iowa Jobs Program.

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

IOWA FINANCE AUTHORITY[265](cont'd)

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 assistance for disaster relief and mitigation, renovation and construction projects.

The Authority finds that adoption of these amendments confers a benefit on the public in that these amendments promote disaster relief 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. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

The Authority adopted these amendments on June 9, 2010.

These amendments became effective June 10, 2010.

These amendments are intended to implement Iowa Code section 16.5(1)“r” and 2010 Iowa Acts, Senate File 2389, section 10.

The following amendments are adopted.

ITEM 1. Rescind subrule 32.5(1) and adopt the following **new** subrule in lieu thereof:

32.5(1) Pursuant to 2010 Iowa Acts, Senate File 2389, section 10(4)“a,” the board shall award \$30,900,000 as follows for disaster relief and mitigation renovation and construction projects, notwithstanding any limitation on the state’s percentage participation in funding as contained in Iowa Code section 29C.6(17):

a. To a county with a population between 189,000 and 196,000 in the last preceding certified federal census for the renovation and expansion of an administrative office building: \$4,400,000.

b. To a city with a population between 120,500 and 120,800 in the last preceding certified federal census, for the following projects:

(1) For renovation of an existing public building to make the building useful for city department offices: \$4,400,000.

(2) For flood mitigation or renovation in and around an existing courthouse: \$2,000,000.

c. To a city with a population between 198,000 and 199,000 in the last preceding certified federal census to be allocated as follows:

(1) For site acquisition, design, engineering, and construction of a fire training and logistics center: \$3,000,000.

(2) For land acquisition, design, and construction of sewers, structures, and pumping facilities necessary to separate and convey sewer flow within the riverpoint service area: \$1,250,000.

(3) For land acquisition, design, and construction of sewers, structures, and pumping facilities necessary to separate or convey sewer flow within the Court Avenue service area: \$3,050,000.

(4) For bank stabilization, stream bed stabilization, and erosion control on highly erodible ground that is impacting utilities, road infrastructure, and water quality: \$700,000.

(5) To improve utilization of two of the wastewater reclamation authority’s existing equalization basins for the control of peak flows during wet weather events in the authority’s sewer system: \$500,000.

d. For a publicly owned acute care teaching hospital located in a county with a population of over 350,000, for the construction and renovation of patient access and care facilities, equipment replacement and upgrades, and other infrastructure improvements: \$1,000,000.

e. For a city with a population between 98,300 and 98,400 in the last preceding certified federal census, for flood protection, replacement, and construction improvements to a recreational sports facility: \$1,050,000.

f. For a city with a population between 68,700 and 68,800 in the last preceding certified federal census, for a public works building that will allow the city to provide for disaster-related services: \$5,000,000.

g. For a city with a population between 62,100 and 62,250 in the last preceding certified federal census, for the demolition, relocation, and reconstruction of a public wastewater treatment plant and the development of a public green space: \$2,000,000.

IOWA FINANCE AUTHORITY[265](cont'd)

h. For a city with a population between 2,545 and 2,555 in the last preceding certified federal census, for a streetscape project that reconstructs existing horizontal infrastructure and lighting systems utilizing sustainable development practices: \$1,175,000.

i. For a city with a population between 2,200 and 2,220 in the last preceding certified federal census, for construction of a public city building: \$475,000.

j. For a city with a population between 2,558 and 2,565 in the last preceding certified federal census, for the installation of backflow prevention devices for the city's storm sewer system: \$600,000.

k. For a city with a population between 6,875 and 6,890 in the last preceding certified federal census, for the construction of grade control structures and associated grading to mitigate future water damage to residential structures: \$300,000.

ITEM 2. Amend subrule 32.5(2) as follows:

32.5(2) Noncompetitive grant awards are contingent upon submission of a plan for each project by the applicable county or city governing board ~~or, in the case of a project submitted pursuant to subparagraph 32.5(1)“b”(2), by the board of directors,~~ to the Iowa jobs board no later than September 1, ~~2009~~ 2010, on a form to be prescribed by the authority, detailing information requested thereon, such as a description of the project, the plan to rebuild, and the amount or percentage of federal, state, local, or private matching moneys which will be or have been provided for the project, and similar information. ~~Funds not utilized in accordance with this rule due to failure to submit a plan by the September 1 deadline shall revert to the Iowa jobs restricted capitals fund to be available for local infrastructure competitive grants.~~

ITEM 3. Rescind subrule **32.5(3)**.

[Filed Emergency 6/10/10, effective 6/10/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8890B

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 2010 Iowa Acts, Senate File 2389, sections 84 to 88, the Iowa Finance Authority hereby adopts new Chapter 38, “Iowa Jobs II Program,” Iowa Administrative Code.

The purpose of this amendment is to implement 2010 Iowa Acts, Senate File 2389, sections 84 to 88, by adopting new Chapter 38, governing the Iowa Jobs II Program.

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 assistance for disaster prevention projects.

The Authority also finds that adoption of these rules confers a benefit on the public in that these rules promote disaster prevention and economic stimulus and ease and speed the administration of the program. The Authority finds that these rules 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. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these rules is waived.

The Authority adopted these rules on June 9, 2010.

These rules became effective June 10, 2010.

IOWA FINANCE AUTHORITY[265](cont'd)

These rules are intended to implement Iowa Code section 16.5(1)“r” and 2010 Iowa Acts, Senate File 2389, sections 84 to 88.

The following amendment is adopted.

Adopt the following new 265—Chapter 38:

CHAPTER 38
IOWA JOBS II PROGRAM

265—38.1(16) Purpose. The Iowa jobs board is charged by the Iowa legislature and the governor with establishing, overseeing and providing approval of the administration of the Iowa jobs II program. The board will encourage and support public construction projects relating to disaster prevention.

265—38.2(16) Definitions. When used in this chapter, the following definitions apply unless the context otherwise requires:

“*Authority*” or “*IFA*” means the Iowa finance authority.

“*Board*” means the Iowa jobs board as established in 2009 Iowa Code Supplement section 16.191.

“*Disaster*” means an occurrence that causes widespread or extensive destruction and distress, including but not limited to floods, tornadoes, blizzards, fires, earthquakes, terrorist attacks, aviation and environmental accidents, and similar catastrophes.

“*Disaster prevention*” means the prevention, reduction (in number or in scope), mitigation, or amelioration of future disasters or the harm caused thereby.

“*Financial feasibility*” means the ability of a project, once completed, to be maintained and operated for its useful life with funds either generated by the project itself or from an identifiable source of funds available for such purpose.

“*Indirect jobs*” means jobs created by suppliers of materials used in the construction or operation of the project.

“*Induced jobs*” means jobs collaterally created throughout the economy by a project as employed workers and firms buy other goods and services.

“*Iowa jobs program review committee*” or “*review committee*” means the committee established by 2009 Iowa Code Supplement section 16.195.

“*Local infrastructure*” means projects relating to disaster prevention. “Local infrastructure” does not include routine, recurring maintenance or operational expenses or the leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

“*Local support*” means endorsement of a proposed project by local individuals, organizations, or governmental bodies that have a substantial interest in a project.

“*Program*” means the Iowa jobs II program established in 2010 Iowa Acts, Senate File 2389, section 88.

“*Public construction project*” means a project for the construction of local infrastructure by a county or city.

“*Recipient*” means an entity under contract with the Iowa jobs board to receive Iowa jobs II program funds and undertake a funded project.

“*Smart planning principles*” means the principles set forth in division VII of 2010 Iowa Acts, Senate File 2389.

“*Sustainability*” means the use, development, and protection of resources at a rate and in a manner that enables people to meet their current needs while allowing future generations to meet their own needs; “sustainability” requires simultaneously meeting environmental, economic and community needs.

265—38.3(16) Allocation of funds. All Iowa jobs II funds shall be awarded and used as specified in 2010 Iowa Acts, Senate File 2389, division VII, and these rules. If a city or county that is awarded funds under the program has not begun drawing funds within one year of the date of the award, the grant shall terminate and no funds shall be disbursed unless the board, in its sole discretion, prior to the first anniversary of the date of the award, grants an extension due to extraordinary circumstances. Any

IOWA FINANCE AUTHORITY[265](cont'd)

portion of an amount allocated for projects that remains unexpended or unencumbered one year after the allocation has been made by the board may be reallocated by the board to another project category, at the discretion of the board. All bond proceeds shall be expended within three years from when the allocation was initially made. The total amount of allocations for disaster prevention projects (pursuant to the local infrastructure competitive grant program) shall not exceed \$30 million for the fiscal year beginning July 1, 2010.

265—38.4(16) Iowa jobs II program. The board shall assist in the development and completion of public construction projects relating to disaster prevention by overseeing and providing approval of the administration of the Iowa jobs II grant program, as set forth herein.

38.4(1) Eligible applicants. Eligible applicants for Iowa jobs II local infrastructure competitive grant program funds shall be Iowa cities and counties that apply smart planning principles and guidelines pursuant to division VII of 2010 Iowa Acts, Senate File 2389. A city or county shall be deemed to apply smart planning principles if it has committed by resolution promptly to perform a review to determine the potential advantages and disadvantages to the city or county of adopting a comprehensive plan or, if the city or county already has a comprehensive plan, of amending that comprehensive plan. By such resolution, to be eligible, the city or county must also commit, in the event it is awarded a grant under the Iowa jobs II local infrastructure competitive grant program, to complete the adoption or amendment of its comprehensive plan utilizing smart planning principles within three years of the award of such grant.

38.4(2) Eligible projects and forms of assistance. For a project to be eligible to receive a competitive grant under the program, the project must be a public construction project relating to disaster prevention to be located in the state of Iowa which will have a demonstrated substantial local, regional, or statewide economic impact. Financial assistance shall be awarded only in the form of grants. In the event that a project has multiple intended uses or purposes, of which only a portion is related to disaster prevention, then only that portion of the project intended or designed for disaster prevention shall be deemed eligible.

a. Any award of a competitive grant to a project shall be limited as follows:

(1) Up to 90 percent of the first \$500,000 in total cost of the development and completion of a public construction project relating to disaster prevention;

(2) Up to 50 percent of all additional costs of such project;

(3) An applicant or a combination of applicants for a project within the same county shall not be awarded more than 40 percent of the funds available under the program.

b. The authority, with the approval of the chair and vice chair of the Iowa jobs board, shall have the ability to make technical corrections to awards that are within the intent of the terms of a board-approved award.

38.4(3) Ineligible projects. The board shall not approve an application for a competitive grant for the following purposes:

a. To refinance a loan existing prior to the date of the initial financial assistance application.

b. For a project that has previously received financial assistance under the local infrastructure competitive grant program, unless the applicant demonstrates that the financial assistance would be used for a significant expansion of such a project.

38.4(4) Threshold application requirements. To be considered for a competitive grant, an application shall meet all of the following threshold requirements:

a. Prior to filing an application, the applicant must file, on the form and in the manner prescribed by the authority, a notice of intent to apply not less than 10 days prior to submitting its application;

b. The application must be submitted by an eligible applicant via the board's application Web site (<http://www.ijobsiowa.gov>) prior to the applicable deadline;

c. The proposed project must be for the development and completion of one or more public construction projects relating to disaster prevention;

d. There must be demonstrated local support for the proposed project;

e. The proposed public construction project must have a demonstrated substantial local, regional, or statewide economic impact;

f. The applicant must document its application of smart planning principles; and

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g. The application must coordinate any federal funds with state, local, and private funds and shall avoid any duplication of benefits that would limit or cause the loss of federal funding.

Prior to submitting an application to the review committee, the authority may contact the applicant to clarify information contained in the application. An application may be amended one time prior to being sent to the review committee. Applications may be otherwise amended with the approval of a majority of the review committee.

38.4(5) Application procedure.

a. Applications shall be reviewed and scored in rounds. The deadline for submission for the first round of applications shall be August 2, 2010. Subsequent rounds, if any, shall be at the discretion of the board as funding is available.

b. Applications will be reviewed by authority staff for completeness and eligibility. If additional information is required, the applicant shall be requested, in writing, to submit additional information. For applications that meet the threshold requirements, authority staff shall submit to the members of the review committee a copy of the application along with a review, analysis, and evaluation of complete applications.

c. The review committee members will score the applications according to the criteria set forth in subrule 38.4(6), and authority staff shall compile the scores. To be eligible for a grant, a proposed project must receive a minimum score of at least 100 points on the scoring criteria listed in paragraphs 38.4(6) "a" to "e." The review committee shall meet to review the ratings for each round of applications. Those applications meeting the minimum criteria shall be referred to the Iowa jobs board with a recommendation of final approval, denial, or deferral.

d. If the board determines that an application should be approved, the board shall send the application to negotiations. Negotiations shall be conducted by IFA staff, who may work in cooperation with members of the Iowa jobs board. The negotiators shall negotiate the terms and conditions of a grant agreement to recommend to the board.

e. Following negotiations, the negotiating team shall report back to the Iowa jobs board as to whether it was able to agree with the applicant on the terms of a proposed grant agreement and, if so, the proposed terms and conditions resulting from the negotiations. The Iowa jobs board shall then vote, without further substantive revision, on whether to agree to the negotiated terms.

f. If the negotiated terms are agreed to by the Iowa jobs board, a grant agreement memorializing the negotiated terms shall be executed by the chair or vice chair of the Iowa jobs board.

g. Application resources for the Iowa jobs II program are available at the Iowa jobs Web site: www.ijobsiowa.gov.

h. IFA may provide technical assistance as necessary to applicants. IFA staff may conduct on-site evaluations of proposed projects.

i. A denied or deferred application may be revised and resubmitted as a new application in a subsequent round, if any. Unless a deferred application is withdrawn by the applicant or revised and resubmitted as a new application, the authority shall keep it on file, and its score shall automatically be ranked among new applications submitted for the next round, if any, once such new applications have been scored.

38.4(6) Application review criteria. The Iowa jobs program review committee shall evaluate and rank applications based on the following criteria:

a. *The total number and quality of jobs to be created and the benefits likely to accrue to areas distressed by high unemployment (0-40 points).* The number of jobs created and other measures of economic impact to areas distressed by high unemployment, including long-term tax generation, shall be evaluated. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Number of jobs. The number of jobs reasonably projected to be created or retained and the number of hours anticipated for each such job shall be compared and ranked.

(2) Quality of jobs. The wages to be paid for each position to be created or retained, the average benefits (including health benefits) to be provided, as well as other subjective qualitative factors, such as work conditions and safety, shall be compared and ranked.

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(3) Other benefits likely to accrue to areas distressed by high unemployment, such as the degree to which the project enhances the quality of life in a region and contributes to the community's efforts to retain and attract a skilled workforce.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

b. Financial feasibility, including the ability of projects to fund depreciation costs or replacement reserves, and the availability of other federal, state, local, and private sources of funds (0-40 points). The feasibility of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) (0-15 points) A financial analysis of the project, which shall include a description of sources of funding, project budget, and detailed projections of the project's revenues and expenses for the projected useful life of the project;

(2) (0-15 points) An analysis of the operational plan, which shall provide detailed information about how the proposed project will be operated and maintained, including a time line for implementing the project;

(3) (0-10 points) The extent to which the applicant will use funds other than an Iowa Jobs II grant to fund its project. For each percentage (rounded to the nearest percentage divisible by 10) of the total projected project cost that is to be funded with non-Iowa jobs II grant funds, the project shall receive one point.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

c. Sustainability and energy efficiency. The sustainability and energy efficiency of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) Sustainability (0-20 points). The extent to which the project has taken sustainability planning principles into consideration.

1. The project shall be evaluated based on the following specific factors:

- Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land; conservation of open space and farmland and preservation of critical environmental areas; and promotion of the safety, livability, and revitalization of existing urban and rural communities. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bicycle and pedestrian networks, and interconnection with the existing street grid.

- Provision for a variety of transportation choices, including public transit and pedestrian and bicycle traffic.

- Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

- Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.

- The extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals: (1) office of energy independence's Iowa energy independence plan; and (2) general reduction of greenhouse gas emissions.

2. Alternatively, in lieu of being evaluated on each of the criteria set forth above, projects which are designed to receive certification (either platinum level, gold level, silver level, or basic LEED 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 which comply 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, N.E., Atlanta, GA 30329, shall receive 20 points.

(2) Energy efficiency (0-20 points). The extent to which the project has taken energy efficiency planning principles into consideration.

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1. In the case of new construction, whether the project is designed to meet the current state building energy code. The application for the project must include a letter from the engineer or architect to IFA certifying whether the proposed construction meets the current state building energy code. Additionally, the application should address whether the proposed project is designed to meet energy star standards. If the project is of such a nature that the current state building energy code does not apply to it, the letter shall so state.

2. In the case of rehabilitation of existing structures, an energy audit conducted by a certified energy rater should be provided on each building prior to the preparation of the final work rehabilitation order to determine the feasibility of meeting the requirements of the current state building energy code and energy star standards prior to the start of the rehabilitation. If it is determined to be feasible to meet the current state building energy code standards and energy star standards, appropriate specifications will be written into the work order. If it is not feasible to meet the requirements of the current state building energy code and energy star standards (or either of them), the application will provide information indicating what effective and cost-effective energy improvements will be included as a part of the rehabilitation project.

d. Benefits for disaster prevention (0-40 points). The likely benefits for disaster prevention of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, whether the proposed project is designed to prevent, reduce (in number or in scope), mitigate, or ameliorate future disasters or the losses therefrom.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

e. The project's readiness to proceed (0-40 points). The readiness of the project to proceed shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether all engineering and architectural work required for construction to begin has been completed;

(2) Whether all financing for the project (other than competitive grant funds awarded under this chapter) has been committed and is available;

(3) Whether all real property interests (including easements and temporary construction easements) necessary for the construction of the project have been acquired;

(4) Whether all necessary governmental approvals, at the federal, state, and local levels (including, but not limited to, zoning variances, building permits, approval from the Army Corps of Engineers, etc.), have been obtained;

(5) Whether the project has demonstrated a reasonable likelihood of incurring at least 10 percent of the project's total projected development cost within three months of execution of the grant award agreement.

f. General scoring criteria.

(1) In instances where a given criterion is not applicable to a proposed project due to the nature of the project, the review committee members may adjust scoring so that the project is not disadvantaged as a result of the inapplicable criterion. For example, if an earthen levee is proposed as a means of flood control, it should not lose points relative to other proposed projects because it does not comply with the current state building energy code (which does not apply to earthen levees).

(2) Any proposed project that is identified in an Iowa great places agreement, pursuant to Iowa Code section 303.3C, shall have an additional two points added to its cumulative point total.

265—38.5(16) General grant conditions. As a condition of receipt of Iowa jobs II funds, recipients shall agree, at a minimum, to all of the following:

38.5(1) Documentation of jobs created or retained. Following the receipt of grant funds pursuant to this chapter and for two years following the completion of the project, each recipient shall report to the authority quarterly the actual number of jobs created as a result of the project along with other information relating to the quality of such jobs, including hours and wages, as requested by the authority.

38.5(2) Recipient obligations. In the event a recipient fails to comply with the requirements of this program or the recipient's grant agreement, the board may cancel the recipient's grant and require

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the return of any grant funds previously disbursed pursuant to this program. Recipients shall agree to hold harmless and to indemnify the Iowa jobs board, the authority, the state of Iowa, and their officers, employees and agents from any claims, costs or liabilities arising out of the development or operation of the project.

38.5(3) *Grant acknowledgment.* Each project shall recognize in a prominent location and manner the fact that the project was made possible, in part, through a grant from the Iowa jobs program. During the construction period the recognition (including a display of the Iowa jobs logo) may be located on temporary signage. The completed project shall feature a permanent acknowledgment, such as a plaque or a similar commemoration. Other benefactors of the project may be similarly acknowledged as well.

38.5(4) *Use of Iowa jobs Web site.* All positions that need to be filled for a project shall be posted on Iowa workforce development's Iowa jobs Web site: www.iowajobs.org/.

265—38.6(16) Calculation of jobs created. For purposes of this chapter, new employment positions created and filled (or to be created and filled) as a result of the project and existing positions that would not have been continued were it not for Iowa jobs funding shall be counted when estimating the number of jobs to be created during the application process and when counting the number of actual jobs created in post-grant reporting. Both permanent and temporary positions filled by the grantee, a contractor, or a subcontractor (or sub-subcontractor, etc.), including construction work, shall be counted. To be counted, a position must be compensated. Indirect jobs and induced jobs shall not be counted.

265—38.7(16) 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 II 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 II program grant.

265—38.8(16) Administration of awards.

38.8(1) A grant agreement shall be executed between successful applicants 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.

38.8(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 II 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.

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38.8(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.

38.8(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.

38.8(5) Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

38.8(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.

These rules are intended to implement Iowa Code section 16.5(1) "r" and 2010 Iowa Acts, Senate File 2389, sections 84 to 88.

[Filed Emergency 6/10/10, effective 6/10/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8866B

ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby adopts an amendment to Chapter 12, "Fees," Iowa Administrative Code.

The Board adopts an amendment to implement a \$25 fee for the completion of Interstate Transfer Forms for examination candidates and licensees.

Notice of Intended Action for this amendment was published on March 24, 2010, in the Iowa Administrative Bulletin as **ARC 8616B**. No comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

This amendment will become effective August 4, 2010.

The following amendment is adopted.

Amend rule **193A—12.1(542)**, fee schedule, by adding the following new fee at the end thereof:

Interstate Transfer Form	\$25
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[Filed 5/27/10, effective 8/4/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8867B

ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby amends Chapter 12, "Fees," Iowa Administrative Code.

The Board adopts amendments to implement the \$100 reinstatement fees for lapsed CPA and LPA licenses and lapsed firm permits to practice. These fees were inadvertently left out of a previous rule making that added the \$25 per-month fee.

Notice of Intended Action for these amendments was published on March 24, 2010, in the Iowa Administrative Bulletin as **ARC 8617B**. No comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

These amendments will become effective August 4, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **193A—12.1(542)**, fee schedule, by adding the following new fees at the end thereof:

Reinstatement of lapsed CPA certificate or LPA license	\$100 + renewal fee + \$25 per month of expired registration
Reinstatement of lapsed firm permit to practice	\$100 + renewal fee + \$25 per month of expired registration

ITEM 2. Amend subrules 12.2(1) and 12.2(2) as follows:

12.2(1) *Reinstatement of a lapsed CPA certificate or LPA license.* ~~The fee for reinstatement of a lapsed CPA certificate or LPA license is \$100 plus the renewal fee for applications to reinstate filed on or before June 30, 2009.~~ The fee for the reinstatement of a lapsed CPA certificate or LPA license for applications filed on or after July 1, 2009, is \$100 plus the renewal fee plus \$25 per month of expired registration up to a maximum of \$1,000.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

12.2(2) *Reinstatement of lapsed firm permit to practice.* ~~The fee for reinstatement of a lapsed CPA or LPA firm permit to practice is \$100 plus the renewal fee for applications to reinstate filed on or before June 30, 2009.~~ The fee for the reinstatement of a lapsed CPA or LPA firm permit to practice for applications filed on or after July 1, 2009, is \$100 plus the renewal fee plus \$25 per month of expired registration up to a maximum of \$1,000.

[Filed 5/27/10, effective 8/4/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8897B**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 two changes to policy for Medicaid eligibility for employed persons with disabilities:

- Substitution of the phrase "before the next eligibility review" for the phrase "the 12-month period" in the discussion of when and how the monthly premium amount is set. This text change is intended to clarify that the premium may not be increased due to an increase in the member's income before the next annual review of the member's eligibility.

- Addition of a requirement for a member to submit a specific form when the member has reported that employment has stopped. The form will provide a standard procedure for informing the member of the responsibility to seek new employment and of the six-month limit on continued benefits when a member's employment has stopped. Quality control reviews have identified this area as error-prone.

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

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on April 21, 2010, as **ARC 8705B**. 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 June 9, 2010.

These amendments are intended to implement Iowa Code section 249A.3(2)(a).

These amendments shall become effective on September 1, 2010.

The following amendments are adopted.

ITEM 1. Amend subparagraph **75.1(39)"b"(1)** as follows:

(1) Beginning with the month of application, the monthly premium amount shall be established ~~for a 12-month period~~ based on projected average monthly income ~~for the 12-month period~~. The monthly premium established shall not be increased for any reason ~~during the 12-month period~~ before the next eligibility review. The premium shall not be reduced due to a change in the federal poverty level but may be reduced or eliminated prospectively ~~during the 12-month period~~ before the next eligibility review if a reduction in projected average monthly income is verified.

ITEM 2. Amend paragraph **75.1(39)"c"** as follows:

c. ~~Persons receiving assistance under~~ Members in this coverage group who become unable to work due to a change in their medical condition or who lose employment shall remain eligible for a period of six months from the month of the change in their medical condition or loss of employment as long as they intend to return to work and continue to meet all other eligibility criteria under this subrule.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Members shall submit Form 470-4856, MEPD Intent to Return to Work, to report on the end of their employment and their intent to return to employment.

[Filed 6/10/10, effective 9/1/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8901B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 238.16, the Department of Human Services hereby amends Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Iowa Administrative Code.

This amendment changes licensing requirements for child-placing agencies that provide supervised apartment living placement services to be consistent with foster care program requirements at 441—subrule 202.9(2). The amendment requires weekly supervisory visits when the youth in placement is under the age of 18 and biweekly visits when the youth is aged 18 or older. The change requires more frequent supervision of minor children in supervised apartment living placement.

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

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on March 10, 2010, as **ARC 8582B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on June 9, 2010.

This amendment is intended to implement Iowa Code chapter 238.

This amendment shall become effective on September 1, 2010.

The following amendment is adopted.

Amend paragraph **108.10(3)"c"** as follows:

~~c. At least weekly face-to-face contacts with the child for the first 60 days of placement and at least twice a month face-to-face contact thereafter. Frequency of visits shall be based on the needs of the individual child.~~ Supervision to assist the youth in developing the needed structure to live in this setting and in locating and using other needed services. Supervision may include guidance, oversight, and behavior monitoring.

(1) If the youth is under age 18, supervision shall include a minimum of weekly face-to-face contacts.

(2) For youth aged 18 or older, supervision shall include a minimum of biweekly face-to-face contacts.

[Filed 6/10/10, effective 9/1/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8912B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 177, "In-Home Health Related Care," Iowa Administrative Code.

This amendment provides that an advanced registered nurse practitioner or a physician assistant working under the direction of a physician may certify a prospective care provider's ability to provide

HUMAN SERVICES DEPARTMENT[441](cont'd)

services under the State Supplementary Assistance in-home health related care program. Currently, the rules provide that the certification must be made by a physician. To prevent a conflict of interest, the amendment also provides that if the provider is working for an agency, the health practitioner who provides the certification may not be in the employ of the same agency.

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

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on April 21, 2010, as **ARC 8690B**. The Department received two comments on the Notice of Intended Action clarifying that Iowa law does not require advanced registered nurse practitioners to work under the supervision of a physician. In response to these comments, the Department has revised the first sentence of paragraph 177.5(2)“a” to read as follows: “The certification shall be based on an examination performed by a physician or advanced registered nurse practitioner or by a physician assistant who is working under the direction of a physician.”

The Council on Human Services adopted this amendment on June 9, 2010.

This amendment is intended to implement Iowa Code section 249.3(2)“a”(2).

This amendment shall become effective on September 1, 2010.

The following amendment is adopted.

Amend subrule 177.5(2) as follows:

177.5(2) *Physician's report Health assessment.* ~~The provider shall obtain a physician's report at the time service is initiated and annually thereafter. The report shall be on Form 470-0672, Provider Health Assessment.~~ The provider shall obtain certification that the provider is physically and emotionally capable of providing assistance to another person who may have physical and emotional limitations.

a. The certification shall be based on an examination performed by a physician or advanced registered nurse practitioner or by a physician assistant who is working under the direction of a physician. If the provider works for an agency, the practitioner performing the examination may not be employed by the same agency.

b. The practitioner conducting the examination shall indicate the certification by signing Form 470-0672, Provider Health Assessment.

c. The certification shall be submitted to the department service worker:

- (1) Before the provider agreement is signed, and
- (2) Annually thereafter.

[Filed 6/11/10, effective 9/1/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8914B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 204, “Subsidized Guardianship Program,” Iowa Administrative Code.

These amendments end the subsidized guardianship program currently administered under a federal waiver demonstration project. Public Law 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008, makes federal funding available under Title IV-E of the Social Security Act for an ongoing guardianship subsidy program. The Act also states that guardianship subsidy agreements entered into after September 28, 2008, under a demonstration project are no longer eligible for federal IV-E matching funds.

The Department proposed rule amendments to switch from the demonstration waiver to an ongoing program and notified the federal government that Iowa's demonstration project would end on February 1, 2010. (Notice of Intended Action on those amendments was published in the Iowa Administrative

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Bulletin on September 23, 2009, as **ARC 8183B**.) Subsequently, the Department determined that it has insufficient resources to implement a subsidized guardianship program under the federal Act. Rule-making proceedings were terminated in a Notice of Termination published on March 10, 2010, as **ARC 8613B**.

These amendments end a permanency option available to children in foster care who were randomized into the experimental group under the demonstration project. Guardianship subsidy agreements in place based on a valid application signed before August 31, 2010, will be honored until grounds for termination of the subsidy exist, as specified in Chapter 204.

These amendments do not provide for waivers in specified situations because no federal funding is available to the Department to continue this program. The Department's authorization to implement the program (contained in 2006 Iowa Acts, chapter 1184, section 17, subsection 10) was conditional on the availability of federal funds.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on April 21, 2010, as **ARC 8701B**. 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 June 9, 2010.

These amendments are intended to implement Iowa Code section 234.6.

These amendments shall become effective on August 4, 2010.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 204**, Preamble, as follows:

PREAMBLE

This chapter ~~implements~~ implemented a five-year demonstration waiver project for a subsidized guardianship program to provide financial assistance to guardians of eligible children who are not able to be adopted and who are not able to return home. ~~The purpose of the project is to test new approaches to service delivery for improving outcomes for children and families and to allow children a more permanent placement than they have in foster care.~~ Notification has been given to the United States Department of Health and Human Services that the demonstration project will end effective September 1, 2010. A subsidized guardianship agreement authorized under this chapter will remain in effect until the agreement is terminated under the terms of this chapter.

~~Eligible children will be randomly assigned to a control group or to an experimental group. Children assigned to the control group will not be eligible to receive subsidized guardianship. Children assigned to the experimental group will be eligible to receive subsidized guardianship if all other conditions are met. This waiver project may be extended or renewed after the five years through reauthorization by the federal government.~~

ITEM 2. Rescind rule 441—204.3(234) and adopt the following new rule in lieu thereof:

441—204.3(234) Application. Applications for the subsidized guardianship program shall not be accepted after August 31, 2010.

ITEM 3. Amend rule 441—204.6(234), introductory paragraph, as follows:

441—204.6(234) Termination of subsidy. A guardianship subsidy agreement negotiated based on an application signed on or before August 31, 2010, shall remain in effect until the subsidy is terminated based on one of the grounds listed in this rule. The subsidy shall terminate when any of the following occur, and a notice shall be sent which states the reason for the termination:

[Filed 6/11/10, effective 8/4/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8916B**LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 90A.7 and 2010 Iowa Acts, Senate File 2286, the Labor Commissioner hereby amends Chapter 173, "Professional Boxing," and Chapter 177, "Professional Shoot Fighting," Iowa Administrative Code.

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

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

Notice of Intended Action was published in the May 5, 2010, Iowa Administrative Bulletin as **ARC 8752B**. No public comments concerning the proposed amendments were received.

These amendments have been changed from the Notice of Intended Action. Paragraph 177.2(7)"d" has been changed to clarify the method for determining if a contestant is considered amateur or professional. Paragraph "d" now reads as follows:

"d. A match between a contestant who has previously fought in a reported professional MMA match and a contestant who has not previously fought in a reported professional MMA match. Prior to applying for a license pursuant to subrule 177.2(9), a promoter shall confirm that each contestant on an amateur card has not participated in a reported professional MMA match by visiting www.mixedmartialarts.com."

In subparagraph 177.2(9)"i"(5), the description of an acceptable identification card for a contestant was changed. Subparagraph (5) now reads as follows:

"(5) An identification card issued to the contestant by a governmental entity and which includes the contestant's photograph and birth date; or"

Finally, subrule 177.4(10) concerning the decorum of officials and participants has been changed to clarify that contestants are exempt from the restrictions in the subrule during a round. Subrule 177.4(10) now reads as follows:

"**177.4(10) Decorum of officials and participants.**

"a. Except as allowed in this subrule, a promoter, official, or participant shall not:

"(1) Intentionally or recklessly strike or injure a person;

"(2) Speak or act in a threatening manner toward a person; or

"(3) Damage, destroy, or attempt to damage or destroy property.

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

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

"d. A contestant is exempt from 177.4(10)"a"(1) and (2) while interacting with the contestant's opponent during a round. However, if the round is stopped by the physician or referee for a time out, 177.4(10)"a"(1) and (2) shall apply to a contestant."

No variance procedures are included in these rules. Variance procedures are set forth in 875—Chapter 1.

LABOR SERVICES DIVISION[875](cont'd)

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

These amendments shall become effective on August 4, 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 Chs 173, 177] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 8752B**, IAB 5/5/10.

[Filed 6/11/10, effective 8/4/10]

[Published 6/30/10]

[For replacement pages for IAC, see IAC Supplement 6/30/10.]

ARC 8918B**MEDICINE BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76 and chapters 148 and 272C, the Board of Medicine hereby amends Chapter 13, "Standards of Practice and Principles of Medical Ethics," Iowa Administrative Code.

This rule establishes standards of practice for interventional chronic pain management. The purpose of this rule is to assist physicians who consider interventional techniques to treat patients with chronic pain.

The Board approved the amendment to Chapter 13 as a Notice of Intended Action during a regularly scheduled meeting on February 5, 2010.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on March 10, 2010, as **ARC 8579B**. A public hearing was held on March 30, 2010. Comments were received. A declaratory order was received with three intervenors. The order was addressed during the regularly scheduled Board teleconference on May 6, 2010. This amendment is identical to that published under Notice.

The amendment was approved for adoption on June 11, 2010.

This amendment will become effective on August 4, 2010.

This amendment is intended to implement Iowa Code section 147.76 and chapters 148 and 272C.

The following amendment is adopted.

Adopt the following **new** rule 653—13.9(147,148,272C):

653—13.9(147,148,272C) Standards of practice—interventional chronic pain management. This rule establishes standards of practice for the practice of interventional chronic pain management. The purpose of this rule is to assist physicians who consider interventional techniques to treat patients with chronic pain.

13.9(1) Definition. As used in this rule:

"Interventional chronic pain management" means the diagnosis and treatment of pain-related disorders with the application of interventional techniques in managing subacute, chronic, persistent, and intractable pain. Interventional techniques include percutaneous (through the skin) needle placement to inject drugs in targeted areas. Interventional techniques also include nerve ablation (excision or amputation) and certain surgical procedures. Interventional techniques often involve injection of steroids, analgesics, and anesthetics and include: lumbar, thoracic, and cervical spine injections, intra-articular injections, intrathecal injections, epidural injections (both regular and transforaminal), facet injections, discography, nerve destruction, occipital nerve blocks, lumbar sympathetic blocks and vertebroplasty, and kyphoplasty. Interventional chronic pain management includes the use of fluoroscopy when it is used to assess the cause of a patient's chronic pain or when it is used to identify anatomic landmarks during interventional techniques. Specific interventional techniques include: SI

MEDICINE BOARD[653](cont'd)

joint injections; spinal punctures; epidural blood patches; epidural injections; epidural/spinal injections; lumbar injections; epidural/subarachnoid catheters; occipital nerve blocks; axillary nerve blocks; intercostals nerve blocks; multiple intercostals nerve blocks; ilioinguinal nerve blocks; peripheral nerve blocks; facet joint injections; cervical/thoracic facet joint injections; lumbar facet injections; multiple lumbar facet injections; transforaminal epidural steroid injections; transforaminal cervical steroid injections; sphenopalatine ganglion blocks; paravertebral sympathetic blocks; neurolysis of the lumbar facet nerve; neurolysis of the cervical facet nerve; and destruction of the peripheral nerve.

13.9(2) *Interventional chronic pain management.* The practice of interventional chronic pain management shall include the following:

- a. Comprehensive assessment of the patient;
- b. Diagnosis of the cause of the patient's pain;
- c. Evaluation of alternative treatment options;
- d. Selection of appropriate treatment options;
- e. Termination of prescribed treatment options when appropriate;
- f. Follow-up care; and
- g. Collaboration with other health care providers.

13.9(3) *Practice of medicine.* Interventional chronic pain management is the practice of medicine.

[Filed 6/11/10, effective 8/4/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8917B

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272C.4, the Board of Medicine hereby amends Chapter 14, "Iowa Physician Health Committee," Iowa Administrative Code.

Chapter 14 provides direction to the Iowa Physician Health Committee regarding the Iowa Physician Health Program. These amendments allow for the sharing of physician health program participant information with the Board if a participant's information held by the Physician Health Committee indicates that a significant risk to the public exists.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on May 5, 2010, as **ARC 8751B**. A public hearing was held on May 25, 2010, and comments were received from the Iowa Medical Society (IMS). The adopted amendments differ slightly from the Noticed amendments due to comments from the IMS and an Assistant Attorney General assigned to the Board.

The changes are as follows:

- In subrule 14.9(1), a cross-reference to Iowa Code section 272C.6(4) has been added.
- In subrule 14.9(4), the new language has been clarified by adding "reliable" and "reasonably" as follows:

"14.9(4) The IPHC is authorized to communicate information about an IPHP participant to the board if reliable information held by the IPHC reasonably indicates a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing if necessary to address impairment issues related to the violations which are the subject of the disciplinary action."

The amendments were approved during a regularly scheduled Board meeting on June 11, 2010.

These amendments shall become effective August 4, 2010.

MEDICINE BOARD[653](cont'd)

These amendments are intended to implement Iowa Code section 272C.4.

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 14] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 8751B**, IAB 5/5/10.

[Filed 6/11/10, effective 8/4/10]

[Published 6/30/10]

[For replacement pages for IAC, see IAC Supplement 6/30/10.]

ARC 8885B

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 23, "Wildlife Habitat Promotion with Local Entities Program," Iowa Administrative Code.

These amendments clarify the types of projects that are eligible to be cost-shared, when applications are due, how the applications are evaluated, and how the applications are scored.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 7, 2010, as **ARC 8680B**. A public hearing was held on April 27, 2010. The only comments received were in support of the changes. No changes were made to the amendments published under Notice.

These amendments are intended to implement Iowa Code section 483A.3.

These amendments shall become effective August 18, 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 [23.1, 23.5 to 23.7, 23.14] is being omitted. These amendments are identical to those published under Notice as **ARC 8680B**, IAB 4/7/10.

[Filed 6/10/10, effective 8/18/10]

[Published 6/30/10]

[For replacement pages for IAC, see IAC Supplement 6/30/10.]

ARC 8877B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission amends Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 5, 2010, as **ARC 8728B**. A public hearing was held on May 25, 2010. Several written and oral comments were received at the hearing and during the comment period. Only one comment received was not in favor of the proposed amendments. No changes have been made to the amendments published under Notice of Intended Action.

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

NATURAL RESOURCE COMMISSION[571](cont'd)

These amendments will become effective August 4, 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 40] is being omitted. These amendments are identical to those published under Notice as **ARC 8728B**, IAB 5/5/10.

[Filed 6/10/10, effective 8/4/10]

[Published 6/30/10]

[For replacement pages for IAC, see IAC Supplement 6/30/10.]

ARC 8878B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of 2009 Iowa Code Supplement section 321I.22(9) and Iowa Code section 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 46, "All-Terrain Vehicle and Snowmobile Bonding," and adopts a new Chapter 46, "All-Terrain Vehicles, Off-Road Motorcycles and Off-Road Utility Vehicles," Iowa Administrative Code.

The adopted new chapter clarifies the procedures for registration, renewal, titling, decal placement and accident reporting for all-terrain vehicles, off-road motorcycles and off-road utility vehicles. Division II of the new chapter establishes minimum standards for all-terrain vehicle dealers as authorized under 2009 Iowa Code Supplement section 321I.22(9). Division III provides for the regulation of designated off-highway vehicle riding areas.

Rules related to bonding requirements that are currently included in Chapter 46 are being moved to new Chapter 50, "All-Terrain Vehicle, Off-Road Motorcycle, Off-Road Utility Vehicle, Snowmobile and Vessel Bonding" (see **ARC 8880B** herein).

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 5, 2010, as **ARC 8730B**. Public comments were taken through the public hearing, which was held on May 25, 2010.

Comments received and the Department responses are as follows:

1. The Department received a request to amend rule 571—46.23(321I) to add a "landline" telephone service requirement. The Department agrees and has made the change. Rule 571—46.23(321I) now reads as follows:

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

2. The Department received a request to amend subrule 46.26(1) to remove the word "sell" from the language. No change has been made to subrule 46.26(1) because the practice is already allowed under Iowa Code section 321I.22.

3. The Department received a request to amend paragraph 46.52(3)"d" to remove language that would require the Department to satisfy "all" concerns of adjacent property owners to a proposed OHV park. The request noted that the proposed language goes beyond the Department OHV Land Acquisition and Development Policy. The Department agrees that there is a difference between addressing concerns and satisfying everyone and, therefore, has made the change. Paragraph 46.52(3)"d" now reads as follows:

"d. There is evidence that adjacent property owners, including those within the viewshed and within earshot of the proposed designated riding area, that exist at the time of establishment have been notified of the plan and their concerns have been addressed."

4. The Department received a request to amend subrule 46.54(5) to require both the operator and passenger to wear a helmet. As proposed, the subrule only applies to the operator. The Department agrees and has made the change. Subrule 46.54(5) now reads as follows:

NATURAL RESOURCE COMMISSION[571](cont'd)

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

5. The Department received a request to delete subrule 46.54(8) because the language has been duplicated elsewhere in the chapter. The Department agrees and has removed the subrule.

6. The Department received a request to amend subrule 46.58(4) to allow for seat belts other than original manufactured equipment. Improved seatbelts are available from other suppliers and should be allowed. The Department agrees and has made the change. Subrule 46.58(4) now reads as follows:

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

7. The Department received a request to amend subrule 46.58(6) to allow for a machine width of 62 inches rather than the proposed 60 inches. The Department agrees and has made the change.

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

These rules shall become effective on August 4, 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 rules [Ch 46] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 8730B**, IAB 5/5/10.

[Filed 6/10/10, effective 8/4/10]

[Published 6/30/10]

[For replacement pages for IAC, see IAC Supplement 6/30/10.]

ARC 8879B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of 2009 Iowa Code Supplement section 321G.21(9) and Iowa Code section 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 47, “Vessel Bonding,” and adopts new Chapter 47, “Snowmobiles,” Iowa Administrative Code.

The adopted new chapter clarifies the procedures for registration, renewal, titling, decal placement and accident reporting for snowmobiles. Division II of the new chapter establishes minimum standards for snowmobile dealers as authorized under 2009 Iowa Code Supplement section 321G.21(9).

Rules related to bonding requirements that were in Chapter 47 have been moved to new 571—Chapter 50, “All-Terrain Vehicle, Off-Road Motorcycle, Off-Road Utility Vehicle, Snowmobile and Vessel Bonding” (see **ARC 8880B** herein).

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 5, 2010, as **ARC 8731B**. Public comments were taken through the public hearing, which was held on May 25, 2010, in the Wallace Building. One comment was received requesting that a landline telephone service requirement be added to rule 571—47.23(321G) and that the right to “sell” be removed from subrule 47.26(1).

The Department has revised rule 571—47.23(321G) to include that the telephone service be a landline as requested. Rule 571—47.23(321G) now reads as follows:

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

However, the Department has not revised subrule 47.26(1) as requested. The right for manufacturers, distributors and dealers to sell unregistered snowmobiles is authorized pursuant to Iowa Code section 321G.21(1).

NATURAL RESOURCE COMMISSION[571](cont'd)

These rules are intended to implement Iowa Code chapter 321G.
These rules will become effective on August 4, 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 rules [Ch 47] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 8731B**, IAB 5/5/10.

[Filed 6/10/10, effective 8/4/10]

[Published 6/30/10]

[For replacement pages for IAC, see IAC Supplement 6/30/10.]

ARC 8880B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 50, "All-Terrain Vehicle and Snowmobile Accident Reports, Titling, Registration and Numbering," and adopts new Chapter 50, "All-Terrain Vehicle, Off-Road Motorcycle, Off-Road Utility Vehicle, Snowmobile and Vessel Bonding," Iowa Administrative Code.

New Chapter 50 defines each of the regulated vehicles covered by these rules, clarifies the criteria that require the bonding of a regulated vehicle or vessel, and updates the process used to bond a regulated vehicle or vessel. Responsibilities for both the applicant and the Department are delineated. The specifics for regulated vehicles are covered in Division I of the chapter, and the specifics for vessels are captured in Division II of the chapter. This adopted rule making also combines the rules for bonding in one chapter. Existing rules found in Chapter 50 have been moved to new 571—Chapter 46 and 571—Chapter 47 as part of an update and reorganization of the rules pertaining to the Off-Highway Vehicle Program and the Snowmobile Program (see **ARCs 8878B** and **8879B** herein).

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 5, 2010, as **ARC 8732B**. Public comments were taken through the public hearing, which was held on May 25, 2010. One comment was received that requested the consistent use of the abbreviation "ORV" for off-road utility vehicle. The Department is relying on the term "regulated vehicle" in this chapter, which had been defined as "all-terrain vehicles, off-road motorcycles, and off-road utility vehicles, either collectively or individually." The Department believes that using the term "regulated vehicles" clarifies that this term applies to all vehicles rather than identifying each vehicle's bonding requirements separately. No changes have been made to the rules published under Notice of Intended Action.

These rules shall become effective on August 4, 2010.

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

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 50] is being omitted. These rules are identical to those published under Notice as **ARC 8732B**, IAB 5/5/10.

[Filed 6/10/10, effective 8/4/10]

[Published 6/30/10]

[For replacement pages for IAC, see IAC Supplement 6/30/10.]

ARC 8886B**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 53, "Controlled Hunting Areas," Iowa Administrative Code.

This amendment rescinds the rule requiring a controlled hunting program on Lake Odessa, Louisa County, Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 7, 2010, as **ARC 8681B**. A public hearing was held on April 27, 2010. Comments were received both in support of closing the check station and for keeping it open. The Department's recommendation is to close the check station. Department staff believes that this will provide better recreational opportunity with fewer restrictions for Iowa's waterfowl hunters.

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39. This amendment shall become effective August 18, 2010.

The following amendment is adopted.

Rescind and reserve rule **571—53.3(481A)**.

[Filed 6/10/10, effective 8/18/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8887B**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 94, "Nonresident Deer Hunting," Iowa Administrative Code.

Chapter 94 gives the regulations for nonresident deer hunting and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements. The amendment to subrule 94.7(5) makes the regulation on shooting from a roadway for residents and nonresidents consistent. The amendments to subrules 94.8(3) and 94.8(4) provide that a person who was unsuccessful in the drawing for an any-deer license and then purchases an any-sex deer license will receive a refund for the cost of the preference point.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 7, 2010, as **ARC 8683B**. A public hearing was held on April 27, 2010. The only comments received were from staff and the Administrative Rules Committee. Changes have been made to clarify the wording used in subrule 94.7(5) and to make the hunting regulations for shooting from the roadway the same for both resident and nonresident deer hunters.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, 483A.8 and 483A.24.

These amendments shall become effective August 18, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 94.7(5) as follows:

94.7(5) Discharge of firearms from highway. No person shall discharge a shotgun shooting slugs or ~~muzzleloader~~ a rifle, including a muzzleloading rifle or musket, or a handgun from a highway during the regular gun seasons in all counties and parts of counties north of Highway 30 ~~and west of Highway 63~~. A "highway" means the way between property lines open to the public for vehicle traffic, including the road ditch, as defined in Iowa Code section 321.1(78).

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 2. Amend subrules 94.8(3) and 94.8(4) as follows:

94.8(3) Preference points. Each individual applicant who is unsuccessful in the drawing for an any-deer license will be assigned one preference point for each year that the individual is unsuccessful. If a person who was unsuccessful in the drawing purchases a leftover license within four weeks, the person will receive a refund for the cost of the preference point. Preference points will not accrue in a year in which an applicant fails to apply, but the applicant will retain any preference points previously earned. Preference points will apply only to obtaining any-deer licenses. Once an applicant receives an any-deer nonresident deer hunting license, all preference points will be removed until the applicant is again unsuccessful in a drawing or purchases a preference point as described in subrule 94.8(4). Preference points will apply to any zone or season for which a hunter applies. The first drawing for any-deer licenses each year will be made from the pool of applicants with the most preference points. If licenses are still available after the first drawing, subsequent drawings will be made from pools of applicants with successively fewer preference points and continue until the any-deer license quota is reached or all applicants have received licenses. Applicants who apply as a group will be included in a pool of applicants with the same number of preference points as that of the member of the group with the fewest preference points assigned.

94.8(4) Purchasing preference points. A nonresident who does not want to hunt in the current year may purchase one preference point per calendar year. The preference point will apply to the next year's drawing for any-deer licenses. The preference point will be treated in the same manner as preference points obtained by hunters who are unsuccessful in the any-deer license drawing. A nonresident may not purchase a preference point and apply for an any-deer license in the same calendar year. Preference points may be purchased only during the application period for any-deer licenses. ~~Preference points will cost \$10 to offset administrative costs in addition to the usual writing fee, convenience fee and other fees charged by the ELSI system.~~

[Filed 6/10/10, effective 8/18/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8888B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

These amendments specify changes in quota numbers by county for antlerless deer licenses in order to meet the Department's management objective for deer. The amendments increase the antlerless-only license quotas by 3,900 in 8 counties and reduce the quotas by 2,600 in 14 counties. The amendments also clarify that landowner antlerless-only licenses will be issued only in those counties where paid licenses are available for the November antlerless-only season.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 7, 2010, as **ARC 8684B**. A public hearing was held on April 27, 2010. Comments were received both in support of increasing the county antlerless quotas and in decreasing them further than proposed. The final county antlerless-only license quotas were adjusted from the Notice to reflect latest population surveys that are completed in April. The reason for the change from the Notice is to meet the Department's management objective for deer in each county and in the state.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.24, 483A.24B, and 483A.24C.

These amendments shall become effective August 18, 2010.

The following amendments are adopted.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 1. Amend subrule 106.1(5) as follows:

106.1(5) *November antlerless-deer-only licenses.* Only antlerless-deer-only licenses, paid or free, will be issued for the November antlerless-deer-only season. Free antlerless-deer-only licenses shall be available only for the portion of the farm unit located in a county where paid antlerless-deer-only licenses are available during that season.

ITEM 2. Amend subrule 106.6(6) as follows:

106.6(6) *Antlerless-deer-only licenses.* Paid antlerless-deer-only licenses will be available by county as follows:

County	Quota	County	Quota	County	Quota
Adair	2400	Floyd	450 0	Monona	1900 2500
Adams	1950	Franklin	400 0	Monroe	3000
Allamakee	4500	Fremont	1500	Montgomery	1300
Appanoose	3300	Greene	150	Muscatine	1700
Audubon	100	Grundy	0	O'Brien	0
Benton	1000	Guthrie	3300	Osceola	0
Black Hawk	0	Hamilton	100	Page	1800
Boone	650	Hancock	0	Palo Alto	0
Bremer	700	Hardin	400 200	Plymouth	100
Buchanan	400 250	Harrison	1900 2500	Pocahontas	0
Buena Vista	0	Henry	2000	Polk	1500
Butler	150 0	Howard	800 350	Pottawattamie	2100
Calhoun	0	Humboldt	0	Poweshiek	750 650
Carroll	100	Ida	0	Ringgold	2600
Cass	1300	Iowa	1200	Sac	0
Cedar	1300	Jackson	1800	Scott	800
Cerro Gordo	0	Jasper	1700	Shelby	300 400
Cherokee	0	Jefferson	2150	Sioux	0
Chickasaw	600 450	Johnson	2000	Story	500
Clarke	2200 2500	Jones	1500	Tama	800 650
Clay	0	Keokuk	1900	Taylor	2650
Clayton	5800	Kossuth	0	Union	2100
Clinton	1200	Lee	2500	Van Buren	5400
Crawford	200 300	Linn	1900	Wapello	2150
Dallas	2700	Louisa	1500	Warren	3200 4200
Davis	3600	Lucas	2200 2800	Washington	2250
Decatur	2800	Lyon	0	Wayne	3000

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County	Quota	County	Quota	County	Quota
Delaware	1700 <u>1550</u>	Madison	4000	Webster	100
Des Moines	2000	Mahaska	1350	Winnebago	0
Dickinson	0	Marion	2250	Winneshiek	3500
Dubuque	2000	Marshall	650 <u>500</u>	Woodbury	1900 <u>2500</u>
Emmet	0	Mills	1350	Worth	500 <u>0</u>
Fayette	3000 <u>2500</u>	Mitchell	450 <u>0</u>	Wright	0

[Filed 6/10/10, effective 8/18/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8889B**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 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons," Iowa Administrative Code.

Chapter 108 sets the season dates, bag limits, possession limits and areas open to hunting or trapping furbearers.

The amendments add Adair, Cass, Guthrie, Keokuk, Louisa, Madison, Mahaska, Marion, Warren and Washington Counties to the open area for taking bobcats and increase the quota from 200 to 250.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 7, 2010, as **ARC 8685B**. A public hearing was held on April 27, 2010. Comments were received both in support of increasing the quota and the open area for taking bobcat and asking that the season be closed. Department staff believe that the proposed changes are conservative and warranted based upon Department surveys and that allowing Iowa's hunters and trappers the opportunity to take additional animals will not impact bobcat populations. No changes were made to the amendments published under Notice.

These amendments are intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87, and 481A.90.

These amendments shall become effective August 18, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 108.7(2) as follows:

108.7(2) Open area. River otters may be taken statewide. Bobcats may be taken in the following counties: Adair, Adams, Appanoose, Cass, Clarke, Davis, Decatur, Des Moines, Fremont, Guthrie, Harrison, Henry, Jefferson, Keokuk, Lee, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Page, Pottawattamie, Ringgold, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, and Woodbury.

ITEM 2. Amend paragraph **108.7(3)"b"** as follows:

b. Quotas. The quota for the number of river otters that may be taken is 500 statewide. The quota for the number of bobcats that may be taken is ~~200~~ 250 in the open area. The season shall end for river otters when the number of river otters trapped, as determined by the harvest reporting system, reaches 500. The season shall end for bobcats when the number of bobcats taken, as determined by the harvest reporting system, reaches ~~200~~ 250. Trappers shall be allowed a 48-hour grace period after the quota is reached to clear their traps of river otters or bobcats. River otters or bobcats found in traps during the

NATURAL RESOURCE COMMISSION[571](cont'd)

grace period may be kept even though the quota is exceeded provided that the trapper has not reached the trapper's personal bag limit. River otters or bobcats trapped after the grace period or in excess of the seasonal bag limit must be turned over to the department; the trapper shall not be penalized.

[Filed 6/10/10, effective 8/18/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8909B**PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby amends Chapter 7, "Hospital Pharmacy Practice," Iowa Administrative Code.

The amendments establish criteria for the administration and dispensing of prescription drugs through hospital outpatient services and a hospital emergency department. The amendments define terms specifically related to these hospital outpatient services and the hospital emergency department; address accountability controls for drugs maintained, administered, or dispensed through these services; and specifically address the use of an InstyMeds dispensing system in a hospital emergency department.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 30, 2009, Iowa Administrative Bulletin as **ARC 8413B**. The Board received written comments regarding the proposed amendments from three pharmacists. The adopted amendments differ from those published under Notice. In response to comments, the Board amended use of the term "prescription" when referring to the authorization for administration of a drug in the outpatient and emergency departments to alternately include an "order" for administration of a drug in those settings. Paragraph 7.11(2)"c" is changed to eliminate the requirement that all outpatient medication orders be in written format and to specifically address the unique requirements of outpatient medication orders for Schedule II controlled substances, Schedules III, IV, and V controlled substances, and noncontrolled substances. Subrule 7.12(3) is amended to clarify the applicability of the rule when 24-hour outpatient pharmacy services are not available.

The amendments were approved during the April 29, 2010, meeting of the Board of Pharmacy.

These amendments will become effective on August 4, 2010.

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 126.10, 126.11, 155A.13, 155A.27, and 155A.28.

The following amendments are adopted.

ITEM 1. Adopt the following **new** rule 657—7.11(124,126,155A):

657—7.11(124,126,155A) Outpatient services. No prescription drugs shall be dispensed to patients in a hospital outpatient setting. If a need is established for the dispensing of a prescription drug to an outpatient, a prescription drug order shall be provided to the patient to be filled at a pharmacy of the patient's choice.

7.11(1) Definitions. For the purposes of this rule, the following definitions shall apply:

"Emergency department patient" means an individual who is examined and evaluated in the emergency department.

"Outpatient" means an individual examined and evaluated by a prescriber who determined the individual's need for the administration of a drug or device, which individual presents to the hospital outpatient setting with a prescription or order for administration of a drug or device. "Outpatient" does not include an emergency department patient.

"Outpatient medication order" means a written order from a prescriber or an oral or electronic order from a prescriber or the prescriber's authorized agent for administration of a drug or device. An

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outpatient medication order may authorize continued or periodic administration of a drug or device for a period of time and frequency determined by the prescriber or by hospital policy, not to exceed legal limits for the refilling of a prescription drug order.

7.11(2) Administration in the outpatient setting. Drugs shall be administered only to outpatients who have been examined and evaluated by a prescriber who determined the patient's need for the drug therapy ordered.

a. Accountability. A system of drug control and accountability shall be developed and supervised by the pharmacist in charge and the facility's outpatient services committee, or a similar group or person responsible for policy in the outpatient setting. The system shall ensure accountability of drugs incidental to outpatient nonemergency therapy or treatment. Drugs shall be administered only in accordance with the system.

b. Controlled substances. Controlled substances maintained in the outpatient setting are kept for use by or at the direction of prescribers for the nonemergency therapy or treatment of outpatients. In order to receive a controlled substance, a patient shall be examined in the outpatient setting or in an alternate practice setting or office by a prescriber who shall determine the patient's need for the drug. If the patient is examined in a setting outside the outpatient setting, the prescriber shall provide the patient with a written prescription or order to be presented at the hospital outpatient setting.

c. Outpatient medication orders. A prescriber may authorize, by outpatient medication order, the periodic administration of a drug to an outpatient.

(1) Schedule II controlled substance. An outpatient medication order for administration of a Schedule II controlled substance shall be written and, except as provided in rule 657—10.25(124) regarding the issuance of multiple Schedule II prescriptions, shall authorize a single administration of the prescribed substance.

(2) Schedule III, IV, or V controlled substance. An outpatient medication order for administration of a Schedule III, IV, or V controlled substance shall be written and may be authorized for a period not to exceed six months from the date ordered.

(3) Noncontrolled substance. An outpatient medication order for administration of a noncontrolled prescription drug may be authorized for a period not to exceed 18 months from the date ordered.

ITEM 2. Rescind rule 657—7.12(124,126,155A) and adopt the following **new** rule in lieu thereof:

657—7.12(124,126,155A) Drugs in the emergency department. Drugs maintained in the emergency department are kept for use by or at the direction of prescribers in the emergency department. Drugs shall be administered or dispensed only to emergency department patients. For the purposes of this rule, "emergency department patient" means an individual who is examined and evaluated in the emergency department.

7.12(1) Accountability. A system of drug control and accountability shall be developed and supervised by the pharmacist in charge and the facility's emergency department committee, or a similar group or person responsible for policy in the emergency department. The system shall identify drugs of the nature and type to meet the immediate needs of emergency department patients. Drugs shall be administered or dispensed only in accordance with the system.

7.12(2) Controlled substances. Controlled substances maintained in the emergency department are kept for use by or at the direction of prescribers in the emergency department.

a. In order to receive a controlled substance, a patient shall be examined in the emergency department by a prescriber who shall determine the need for the drug. It is not permissible under state and federal regulations for a prescriber to see a patient outside the emergency department setting, or talk to the patient on the telephone, and then proceed to call the emergency department and order the administration of a stocked controlled substance upon the patient's arrival at the emergency department except as provided in paragraph 7.12(2) "c" or "d."

b. A prescriber may authorize, without again examining the patient, the administration of additional doses of a previously authorized drug to a patient presenting to the emergency department within 24 hours of the patient's examination and treatment in the emergency department.

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c. In an emergency situation when a health care practitioner authorized to prescribe controlled substances is not available on site, and regardless of the provisions of paragraph 7.12(2)“a,” the emergency department nurse may examine the patient in the emergency department and contact the on-call prescriber. The on-call prescriber may then authorize the nurse to administer a controlled substance to the patient pending the arrival of the prescriber at the emergency department. As soon as possible, the prescriber shall examine the patient in the emergency department and determine the patient’s further treatment needs.

d. In an emergency situation when a health care practitioner authorized to prescribe controlled substances examines a patient in the prescriber’s office and determines a need for the administration of a controlled substance, and regardless of the provisions of paragraph 7.12(2)“a,” the prescriber may direct the patient to present to the emergency department, with a valid written prescription or order for the administration of the controlled substance. As soon as possible, the prescriber shall examine the patient in the emergency department and determine the patient’s further treatment needs.

7.12(3) Drug dispensing. In those facilities with 24-hour pharmacy services, only a pharmacist or prescriber may dispense any drugs to an emergency department patient. In those facilities located in an area of the state where 24-hour outpatient or 24-hour on-call pharmacy services are not available within 15 miles of the hospital, and which facilities are without 24-hour outpatient pharmacy services, the provisions of this rule shall apply.

a. *Pharmacist in charge responsibility.* The pharmacist in charge is responsible for maintaining accurate records of dispensing of drugs from the emergency department and for ensuring the accuracy of prepackaged drugs and the complete and accurate labeling of prepackaged drugs pursuant to this paragraph.

(1) Prepackaging. Except as provided in subrule 7.12(4), drugs dispensed to an emergency department patient in greater than a 24-hour supply may be dispensed only in prepackaged quantities not to exceed a 72-hour supply or the minimum prepackaged quantity in suitable containers, except that a seven-day supply of doxycycline provided through the department of public health pursuant to the crime victim compensation program of the Iowa department of justice may be dispensed for the treatment of a victim of sexual assault. Prepackaged drugs shall be prepared pursuant to the requirements of rule 657—22.3(126).

(2) Labeling. Drugs dispensed pursuant to this paragraph shall be appropriately labeled as required in paragraph 7.12(3)“b,” including necessary auxiliary labels.

b. *Prescriber responsibility.* Except as provided in subrule 7.12(4), a prescriber who authorizes dispensing of a prescription drug to an emergency department patient is responsible for the accuracy of the dispensed drug and for the accurate completion of label information pursuant to this paragraph.

(1) Labeling. Except as provided in subrule 7.12(4), at the time of delivery of the drug the prescriber shall appropriately complete the label such that the dispensing container bears a label with at least the following information:

1. Name and address of the hospital;
2. Date dispensed;
3. Name of prescriber;
4. Name of patient;
5. Directions for use;
6. Name and strength of drug.

(2) Delivery of drug to patient. Except as provided in subrule 7.12(4), the prescriber, or a licensed nurse under the supervision of the prescriber, shall give the appropriately labeled, prepackaged drug to the patient or patient’s caregiver. The prescriber, or a licensed nurse under the supervision of the prescriber, shall explain the correct use of the drug and shall explain to the patient that the dispensing is for an emergency or starter supply of the drug. If additional quantities of the drug are required to complete the needed course of treatment, the prescriber shall provide the patient with a prescription for the additional quantities.

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7.12(4) Use of InstyMeds dispensing system. A hospital located in an area of the state where 24-hour outpatient pharmacy services are not available within 15 miles of the hospital may implement the InstyMeds dispensing system in the hospital emergency department only as provided by this subrule.

a. Persons with access to the dispensing machine for the purposes of stocking, inventory, and monitoring shall be limited to pharmacists, pharmacy technicians, and pharmacist-interns.

b. The InstyMeds dispensing system shall be used only in the hospital emergency department for the benefit of patients examined or treated in the emergency department.

c. The dispensing machine shall be located in a secure and professionally appropriate environment.

d. The stock of drugs maintained and dispensed utilizing the InstyMeds dispensing system shall be limited to acute care drugs provided in appropriate quantities for a 72-hour supply or the minimum commercially available package size, except that antimicrobials may be dispensed in a quantity to provide the full course of therapy.

e. Drugs dispensed utilizing the InstyMeds dispensing system shall be appropriately labeled as provided in 657—subrule 6.10(1), paragraphs “a” through “g.”

f. Prior to authorizing the dispensing of a drug utilizing the InstyMeds dispensing system, the prescriber shall offer the patient the option of being provided a prescription that may be filled at the pharmacy of the patient’s choice.

g. When appropriate for an acute condition, the prescriber shall provide to the patient or the patient’s caregiver a prescription for the remainder of drug therapy beyond the supply available utilizing the InstyMeds dispensing system. During consultation with the patient or the patient’s caregiver, the prescriber shall clearly explain the appropriate use of the drug supplied, the need to have a prescription for any additional supply of the drug filled at a pharmacy of the patient’s choice, and the need to complete the full course of drug therapy.

h. The pharmacy shall, in conjunction with the hospital emergency department, implement policies and procedures to ensure that a patient utilizing the InstyMeds dispensing system has been positively identified.

i. The hospital pharmacist shall review the printout of drugs provided utilizing the InstyMeds dispensing system within 24 hours unless the pharmacy is closed, in which case the printout shall be reviewed during the first day the pharmacy is open following the provision of the drugs. The purpose of the review is to identify any dispensing errors, to determine dosage appropriateness, and to complete a retrospective drug use review of any antimicrobials dispensed in a quantity greater than a 72-hour supply. Any discrepancies found shall be addressed by the pharmacy’s continuous quality improvement program.

[Filed 6/11/10, effective 8/4/10]

[Published 6/30/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8892B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of 2009 Iowa Code Supplement section 124.212B(8) and Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 10, “Controlled Substances,” Iowa Administrative Code.

The amendments clarify the form of identification to be reviewed by a pharmacist prior to dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription and provide that purchase records be recorded in the real-time electronic repository established by the Governor’s Office of Drug Control Policy pursuant to 657—Chapter 100 (published herein as **ARC 8893B**). The amendments also establish the format and content of an alternate record to be maintained

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if the real-time electronic repository is temporarily unavailable for use and provide for a notice to purchasers warning of criminal penalties if a purchaser is found in violation of laws relating to the purchase of ephedrine, pseudoephedrine, or phenylpropanolamine.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the April 7, 2010, Iowa Administrative Bulletin as **ARC 8667B**. The Board received written comments regarding the proposed amendments. The adopted amendments differ from those published under Notice as follows:

In new Item 1, the catchwords for rule 657—10.32(124,155A) are amended to read, “Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription” to clarify the applicability of the rule to the dispensing of these products without a prescription. Subrule 10.32(5) is changed by removing the word “valid” that was proposed to describe the government-issued photo identification required of every purchaser.

The amendments were approved during the June 1, 2010, meeting of the Board of Pharmacy.

These amendments will become effective on September 1, 2010.

These amendments are intended to implement 2009 Iowa Code Supplement sections 124.212, 124.212A, 124.212B, and 124.213 and Iowa Code section 155A.13.

The following amendments are adopted.

ITEM 1. Amend rule 657—10.32(124,155A), catchwords, as follows:

657—10.32(124,155A) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription.

ITEM 2. Amend subrule 10.32(5) as follows:

10.32(5) Identification. The pharmacist shall require every purchaser under this rule to present a current government-issued photo identification, including proof of age when appropriate. The pharmacist shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

ITEM 3. Amend subrule 10.32(6) as follows:

10.32(6) Record. ~~A legible dispensing record shall be created and maintained for the dispensing of ephedrine, pseudoephedrine, and phenylpropanolamine products pursuant to this rule. Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor’s office of drug control policy pursuant to 657—Chapter 100. If the real-time electronic repository is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).~~

~~a. Record~~ Alternate record contents. The alternate record shall contain the following:

- (1) The name, address, and signature of the purchaser.
- (2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.
- (3) The date and time of the purchase.
- (4) The name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the product.

~~b. Record~~ Alternate record format. The record shall be maintained using one of the following options:

- (1) A hard-copy record ~~maintained in a bound logbook (i.e., with pages sewn or glued to the spine).~~
- (2) A record in the pharmacy’s electronic prescription dispensing record-keeping system that is capable of producing a hard-copy printout of a record.
- (3) A record in an electronic data collection system that captures each of the data elements required by this subrule. ~~The electronic data collection system shall be~~ and that is capable of producing a hard-copy printout of a record.

c. PTS records retrieval. Pursuant to 657—subrule 100.4(6), the pharmacy shall be able to produce a hard-copy printout of transactions recorded in the PTS by the pharmacy for one or more

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specific products for a specified period of time upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

ITEM 4. Amend subrule 10.32(7) as follows:

10.32(7) Notice required. ~~The pharmacy shall ensure that the following notice shall be included in the logbook required pursuant to subrule 10.32(6) or shall be is provided to purchasers of ephedrine, pseudoephedrine, or phenylpropanolamine products and that the notice is displayed with or on the electronic signature device or is displayed in the dispensing area and be visible to the public:~~

~~“WARNING: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than \$250,000 if an individual or \$500,000 if an organization, imprisoned not more than five years, or both.”~~

[Filed 6/10/10, effective 9/1/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8893B

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of 2009 Iowa Code Supplement section 124.212B, the Board of Pharmacy and the Governor's Office of Drug Control Policy hereby jointly adopt new Chapter 100, "Iowa Real-Time Electronic Pseudoephedrine Tracking System," Iowa Administrative Code.

These rules establish a real-time electronic repository to monitor and control the sale of Schedule V products that are not listed in another controlled substance schedule and that contain any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine. In addition, the rules identify the responsibilities of the parties involved. A pharmacy dispensing such products shall electronically report all such sales to a central repository under the control and administration of the Office of Drug Control Policy. These rules are in addition to the Board of Pharmacy rules amended in 657—Chapter 10 regarding the dispensing of these products by pharmacies. (See **ARC 8892B** herein.)

Notice of Intended Action was published in the April 7, 2010, Iowa Administrative Bulletin as **ARC 8666B**. The Governor's Office of Drug Control Policy and the Board of Pharmacy received comments and action was taken on those comments.

The comments received included requests to remove the waiver provision, clarify the law enforcement release rule, elaborate on situations in which a pharmacy uses the override function, and clarify the rule on the liability of a pharmacy that uses the override function.

In response to those comments, the following changes have been made to the rules published under Notice:

In rule 657—100.1(124), the waiver provision was removed because the statute does not allow for any waivers. The qualifier "without a prescription" was added to rule 657—100.3(124), introductory paragraph, and to subrule 100.3(1) to clarify which products will be tracked. In subrule 100.3(3), documentation of the use of the override function was added to clarify the requirements for using that process. In subrules 100.4(1) and 100.4(2), language relating to the provision of information to law enforcement officers was moved to clarify different requirements based on federal and state laws. In subrule 100.4(4), the mailing address for the Governor's Office of Drug Control Policy was changed because the planned relocation of the office to that address has been indefinitely postponed. In rule 657—100.5(124), the provision regarding administrative charges for violations of the rules was

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removed because professional licensing boards already provide for administrative action as a result of violations of rules and laws.

These rules were approved by the Governor's Office of Drug Control Policy on May 14, 2010. These rules were approved by the Board of Pharmacy during the June 1, 2010, regular meeting of the Board.

These rules will become effective on September 1, 2010.

These rules are intended to implement 2009 Iowa Code Supplement sections 124.212, 124.212A, 124.212B, and 124.213.

The following amendment is adopted.

Adopt the following **new** 657—Chapter 100:

CHAPTER 100
IOWA REAL-TIME ELECTRONIC PSEUDOEPHEDRINE
TRACKING SYSTEM

657—100.1(124) Purpose and scope. 2009 Iowa Code Supplement section 124.212B directs the governor's office of drug control policy to establish a real-time electronic repository to monitor and control the sale of Schedule V products that are not listed in another controlled substance schedule and that contain any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine. All pharmacies dispensing such products without a prescription shall electronically report all such sales to the repository. The real-time electronic repository shall be under the control of and administered by the governor's office of drug control policy. Both the governor's office of drug control policy and the board of pharmacy are directed to adopt rules relating to the real-time electronic repository and have jointly adopted these rules. These rules establish the pseudoephedrine tracking system (PTS).

657—100.2(124) Definitions. As used in this chapter:

"Attempted purchase" means a proposed transaction for the dispensing of a product that is entered by a dispenser into the electronic pseudoephedrine tracking system, which transaction is not completed because the system recommends that the transaction be denied pursuant to the quantity limits established in 2009 Iowa Code Supplement section 124.213.

"Board" means the board of pharmacy.

"Council" means the pseudoephedrine advisory council established pursuant to Iowa Code section 124.212C.

"Dispenser" means a licensed Iowa pharmacist or a registered pharmacist-intern under the direct supervision of a pharmacist preceptor.

"Law enforcement officer" means all of the following:

1. State police officer.
2. City or county police officer.
3. Sheriff or deputy sheriff.
4. State or public university safety and security officer.
5. Department of natural resources officer.
6. Certified or full-time peace officer of this or another state.
7. Federal peace officer.
8. Criminal analyst assigned to a law enforcement agency.

"Office" means the governor's office of drug control policy.

"Product" means a Schedule V drug product that is not listed in another controlled substance schedule and that contains any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine.

"Pseudoephedrine tracking system" or *"PTS"* means the real-time electronic repository established to monitor and control the sale of products and administered by the governor's office of drug control policy.

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“*Purchaser*” means an individual 18 years of age or older who purchases or attempts to purchase a product.

657—100.3(124) Electronic pseudoephedrine tracking system (PTS). Unless granted an exemption by the office pursuant to these rules, all pharmacies dispensing products as defined in rule 657—100.2(124) without a prescription are required to participate in the PTS pursuant to 2009 Iowa Code Supplement section 124.212B. The office has established a council to provide input and advise the office regarding the implementation, maintenance, and administration of the PTS. The council also assists the office in developing guidelines to ensure patient confidentiality and the integrity of the relationship established by the patient and the patient’s health care provider.

100.3(1) Reporting elements. The record of a completed purchase or attempted purchase of a product without a prescription shall contain the following:

- a. The name and address of the purchaser.
- b. A current government-issued photo identification number.
- c. The electronic signature of the purchaser. If a pharmacy is not able to secure or record an electronic signature, a hard-copy signature logbook shall be utilized and maintained by the pharmacy. Each record in the logbook shall include the purchaser’s signature and shall identify the purchase by transaction number.
- d. Date and time of purchase.
- e. The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.
- f. The name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the product.

100.3(2) Frequency and quantity. Dispensing at retail to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine, pseudoephedrine, or phenylpropanolamine; dispensing at retail to the same purchaser within a single calendar day shall not exceed 3,600 mg.

100.3(3) Denial of transactions and overrides.

- a. If an individual attempts to purchase a product in violation of these rules, the PTS shall:
 - (1) Notify the dispenser at the time of sale; and
 - (2) Recommend that the dispenser deny the transaction.
- b. The PTS shall provide an override feature for use by a dispenser to allow completion of the sale. For security purposes and to ensure the integrity of the PTS, use of the override feature shall be restricted to authorized dispensers and may not be delegated to a pharmacy technician or a pharmacy support person. A dispenser utilizing the override feature shall document the reason that, in the professional judgment of the dispenser, it is necessary to override the recommendation of the PTS to deny the transaction.

100.3(4) Availability of electronic PTS. If the electronic PTS is unavailable for use:

- a. A written record of each purchase shall be maintained pursuant to 657—subrule 10.32(6).
- b. The information shall be provided to the office for inclusion in the PTS within 72 hours after the PTS becomes operational.
- c. A PTS administrator shall enter the information from the written record into the PTS within 72 hours of receipt.

657—100.4(124) Access to database information and confidentiality. Information collected in the PTS is confidential unless otherwise ordered by a court or released by the office pursuant to state or federal law. Information may not be released except as provided by this rule.

100.4(1) PTS administrators. PTS administrators shall be provided access to the PTS for the purpose of searching and retrieving reports only by articulating reasonable suspicion or providing a case number or reference number for an ongoing investigation. PTS administrators shall also be provided information on purchasers directly from the PTS. This information may be sent directly to law enforcement officers pursuant to paragraph 100.4(2)“e” for purposes of investigation.

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100.4(2) Law enforcement release. PTS reports may be provided to a law enforcement officer whose duty is to enforce the drug laws of this state, another state, or the United States pursuant to this subrule.

a. A law enforcement officer shall register with the PTS prior to requesting reports. To ensure the identity of the officer and to maintain confidentiality of PTS information, the officer's identity shall be verified and registration shall be approved by the office.

b. A law enforcement officer may request information or data from the PTS by providing to a PTS administrator a case or reference number for an ongoing investigation and by articulating reasonable suspicion.

c. At the discretion of the office, law enforcement officers may be given direct access to data from the PTS pursuant to the federal Combat Methamphetamine Epidemic Act.

d. If a law enforcement officer requests PTS information on purchases or attempted purchases in excess of the monthly limit established in 657—subrule 10.32(3) or subrule 100.3(2), a subpoena or other court order is required.

e. Data collected on purchases in excess of limits established pursuant to the federal Combat Methamphetamine Epidemic Act may be released to law enforcement officers by PTS administrators without a court order or articulating reasonable suspicion.

100.4(3) Statistical data. The PTS administrator, following establishment of confidentiality, may provide summary, statistical, or aggregate data to public or private entities for statistical, research, or educational purposes. Prior to release of any such data, the administrator shall remove any information that could be used to identify an individual patient, dispenser, or other person who is the subject of or identified in the PTS information or data.

100.4(4) Patients. A patient may request and receive information regarding products reported to have been purchased by the patient.

a. A patient may submit a signed, written request for records of the patient's purchases and attempted purchases during a specified period of time. The request shall identify the patient by name, including any aliases used by the patient, and shall include the patient's date of birth and gender. The request shall also include any address where the patient resided during the time period of the request and the patient's current address and daytime telephone number. A patient may personally deliver the request to the PTS administrator or authorized staff member of the office located at 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309. The patient shall be required to present current government-issued photo identification at the time of delivery of the request. A copy of the patient's identification shall be maintained in the records of the PTS.

b. A patient who is unable to personally deliver the request to the office may submit a request via mail or commercial delivery service. The request shall comply with all provisions of paragraph "a" above, and the signature of the requesting patient shall be witnessed and the patient's identity shall be attested to by a currently registered notary public. In addition to the notary's signature and assurance of the patient's identity, the notary shall certify a copy of the patient's current government-issued photo identification, and that certified copy shall be submitted with the written request. The request shall be submitted to the governor's office of drug control policy at the address identified in paragraph 100.4(4)"a."

100.4(5) Regulatory officers. Regulatory agencies that supervise or regulate a health care practitioner shall be able to access information from the PTS only pursuant to an order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause. A director of a regulatory agency with jurisdiction over a practitioner, or the director's designee, who seeks access to PTS information for an investigation shall submit to the PTS administrator in a format established by the office a written request via mail, facsimile, or personal delivery. The request shall be signed by the director or the director's designee and shall be accompanied by an order, subpoena, or other form of legal compulsion establishing that the request is supported by a determination of probable cause.

100.4(6) Pharmacy administrators. A pharmacy, an authorized employee of a pharmacy, or a licensed pharmacist shall be provided access to the stored PTS information only for the limited purpose of determining the sales made by the pharmacy. A pharmacy shall be able to print the pharmacy's sales

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records for any product during any specified period of time upon the request of the board or an agent of the board.

100.4(7) Court orders and subpoenas. The PTS administrator shall provide database information in response to a court order or a county attorney subpoena or other subpoena issued by a court upon a determination of probable cause.

657—100.5(124) Violations. Violations of provisions of these rules or 2009 Iowa Code Supplement section 124.212A, 124.212B, or 124.213 may subject the violator to criminal prosecution.

These rules are intended to implement 2009 Iowa Code Supplement sections 124.212, 124.212A, 124.212B, and 124.213.

[Filed 6/10/10, effective 9/1/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8872B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology hereby amends Chapter 300, "Licensure of Speech Pathologists and Audiologists," Chapter 303, "Continuing Education for Speech Pathologists and Audiologists," and Chapter 304, "Discipline for Speech Pathologists and Audiologists," Iowa Administrative Code.

These amendments update requirements for applicants applying for temporary licensure as a speech pathologist or temporary licensure as an audiologist; remove language in the licensure and continuing education chapters that has been added to the common chapters for the Professional Licensure Division; and amend language in the discipline chapter to be consistent with the Iowa Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 7, 2010, as **ARC 8639B**. A public hearing was held on April 27, 2010, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

These amendments were adopted by the Iowa Board of Speech Pathology and Audiology on June 4, 2010.

These amendments will become effective August 4, 2010.

These amendments are intended to implement Iowa Code chapters 21, 147, 154F and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 300.6(3) as follows:

300.6(3) The plan for supervised clinical experience must be approved by the board before the applicant starts practice and shall:

a. Include at least nine months of full-time clinical experience, or equivalent;

b. Include supervision by an Iowa-licensed speech pathologist or audiologist, as appropriate. If the applicant is being supervised by more than one individual, each supervisor must submit a supervised clinical experience plan for approval. If there is a change in the supervised clinical experience plan at any time during the supervised clinical experience, the licensee must contact the board for approval within 30 days of the change;

c. Be kept by the supervisor for two years from the last date of the clinical experience; and

d. Include a completed supervised clinical experience report form that shall be submitted to the board of speech pathology and audiology upon the applicant's successful completion of the nine months of full-time clinical experience. If the applicant was supervised by more than one individual, each supervisor must submit a supervised clinical experience report. The applicant may then apply for licensure.

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ITEM 2. Rescind and reserve rule **645—300.10(147)**.

ITEM 3. Rescind and reserve rules **645—300.14(147)** to **645—300.16(17A,147,272C)**.

ITEM 4. Rescind and reserve rules **645—303.4(147,272C)** to **645—303.7(147,272C)**.

ITEM 5. Amend subrule 304.2(11) as follows:

304.2(11) Conviction of a felony crime related to the profession or occupation of the licensee or the conviction of any felony crime that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 6/9/10, effective 8/4/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8874B

REGENTS BOARD[681]

Adopted and Filed

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby adopts an amendment to Chapter 4, "Traffic and Parking at Universities," Iowa Administrative Code.

The amendment revises rule 681—4.26(262) to amend the definitions of "bicycle" and "motorcycle" at Iowa State University.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 21, 2010, as **ARC 8693B**. A comment period was established. No comments were received. The adopted amendment is identical to the proposed amendment.

The Board of Regents adopted this amendment on June 9, 2010.

This amendment is intended to implement Iowa Code section 262.9(3).

This amendment shall become effective August 4, 2010.

The following amendment is adopted.

Amend rule **681—4.26(262)**, definitions of "Bicycle" and "Motorcycle," as follows:

"Bicycle" means any vehicle ~~which is not self-propelled and which is designed to be pedaled by the rider. Any bicycle equipped with a motor is considered a motoreycle and subject to the traffic and parking regulations for motoreycles~~ having two or three wheels and fully operable pedals which is either a traditional bicycle designed solely to be pedaled by the rider or an electric bicycle designed not only to be pedaled by the rider but also propelled by an electric motor of less than 750 watts (one horsepower).

"Motorcycle" or *"moped"* or *"motorized bicycle"* means any vehicle which is self-propelled and has ~~less fewer~~ than four wheels in contact with the ground and is not a bicycle or an electric bicycle. For purposes of these rules, a moped or motorized bicycle is considered a motorcycle.

[Filed 6/10/10, effective 8/4/10]

[Published 6/30/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/10.

ARC 8871B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 17A.7, 476.2 and 476.95, the Utilities Board (Board) gives notice that on June 7, 2010, the Board issued an order in Docket No. RMU-2009-0009, In re: High-Volume Access Services [199 IAC 22], "Order Adopting Rules," by which the Board adopted amendments to 199 IAC 22. The adopted rules address high-volume access service (HVAS) and

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the effect HVAS can have on a local exchange carrier's (LEC's) revenues from intrastate switched access services.¹ In particular, these amendments are focused on situations in which an LEC's rates for intrastate access services are based, indirectly, on relatively low traffic volumes, but the LEC then experiences a relatively large and rapid increase in those volumes, resulting in a substantial increase in revenues without a matching increase in the total cost of providing access service.

¹Intrastate access services are services of telephone utilities that provide the capability to deliver intrastate telecommunications services which originate with end users to interexchange carriers (IXCs) and the capability to deliver intrastate telecommunications services from IXCs to end users. 199 IAC 22.1(3).

Notice of Intended Action was published in the Iowa Administrative Bulletin at IAB Vol. XXXII, No. 8 (10/07/2009) p. 1022, as **ARC 8227B**. Written comments were filed on or before October 27, 2009, by the following participants: Iowa Telecommunications Association (ITA); Rural Iowa Independent Telephone Association (RIITA); Iowa Association of Municipal Utilities (IAMU); Reasnor Telephone Company (Reasnor); Aventure Communication Technology, LLC (Aventure); Greenway Communications, LLC (Greenway); Qwest Communications Corporation (QCC); AT&T Communications of the Midwest, Inc. (AT&T); MCImetro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services (collectively "Verizon"); Iowa Coalition of Access Payers² (ICAP); and the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

²The Iowa Coalition of Access Payers consists of Sprint Communications Corporation, LP; U.S. Cellular Corporation; T-Mobile Central, LLC; and Level 3 Communications, LLC.

A public hearing to receive oral comments on the proposed amendments was held on December 8, 2009. On January 11, 2010, the Board issued an order allowing for additional comments on the proposed amendments and proposals presented at the oral comment hearing. Additional written comments were filed by Consumer Advocate, ITA, RIITA, QCC, AT&T, Verizon, ICAP, and two additional participants, XO Communications Services, Inc. (XO Communications), and McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services (PAETEC).

A copy of the Board's order adopting rules and a summary of the oral and written comments, along with staff recommendations, are available through the Board's electronic filing system, which can be accessed at <http://efs.iowa.gov>. Based on the comments submitted, the Board determined that the proposed amendments to 199 IAC 22 should be adopted with some modifications, as described in the order adopting rules.

The Board does not find it necessary to propose a separate waiver provision in the rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these amendments.

These amendments shall become effective on August 4, 2010.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, 476.4, 476.5, 476.11, and 476.95.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definition of "High-volume access service (HVAS)" in subrule **22.1(3)**:

"High-volume access service (HVAS)" is any service that results in an increase in total billings for intrastate exchange access for a local exchange utility in excess of 100 percent in less than six months. By way of illustration and not limitation, HVAS typically results in significant increases in interexchange call volumes and can include chat lines, conference bridges, call center operations, help desk provisioning, or similar operations. These services may be advertised to consumers as being free or for the cost of a long-distance call. The call service operators often provide marketing activities for HVAS in exchange for direct payments, revenue sharing, concessions, or commissions from local service providers.

ITEM 2. Adopt the following **new** subparagraph **22.14(2)"d"(8)**:

(8) A provision prohibiting the application of association access service rates to HVAS traffic.

ITEM 3. Adopt the following **new** paragraph **22.14(2)"e"**:

e. A local exchange utility that is adding a new HVAS customer or otherwise reasonably anticipates an HVAS situation shall provide notice of the situation, the telephone numbers that will be

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assigned to the HVAS customer (if applicable), and the expected date service to the HVAS customer will be initiated, if applicable. Notice may be sent to each interexchange utility that paid for intrastate access services from the local exchange carrier in the preceding 12 months; to any carrier with whom the local exchange carrier exchanged traffic in the preceding 12 months; and to all other local exchange carriers authorized to provide service in the subject exchange, by a method calculated to provide adequate notice. Any interexchange utility may request negotiations concerning the access rates applicable to calls to or from the HVAS customer.

Any interexchange utility that believes a situation has occurred or is occurring that does not specifically meet the HVAS threshold requirements defined in subrule 22.1(3), but which raises the same general concerns and issues as an HVAS situation, may file a complaint with the board pursuant to these rules.

A local exchange utility that experiences an increase in intrastate access billings that qualifies as an HVAS situation, but did not add a new HVAS customer or otherwise anticipate the situation, shall notify interexchange utilities of the HVAS situation at the earliest reasonable opportunity, as described in the preceding paragraph. Any interexchange utility may request negotiations concerning whether the local exchange utility's access rates, as a whole or for HVAS only, should be changed to reflect the increased access traffic.

When a utility requests negotiations concerning intrastate access services, the parties shall negotiate in good faith to achieve reasonable terms and procedures for the exchange of traffic. No access charges shall apply to the HVAS traffic until an access tariff for HVAS is accepted for filing by the board and has become effective. At any time that any party believes negotiations will not be successful, any party may file a written complaint with the board pursuant to Iowa Code section 476.11. In any such proceeding, the board will consider setting the rate for access services for HVAS traffic based upon the incremental cost of providing HVAS, although any other relevant evidence may also be considered. The incremental cost will not include marketing or other payments made to HVAS customers. The resulting rates for access services may include a range of rates based upon the volume of access traffic or other relevant factors. Any negotiations pursuant to this paragraph shall conclude within 60 days. After 60 days, a party to the negotiations may petition the board to extend the period of negotiations or may petition the board to set a hearing pursuant to 199—paragraph 7.4(10)“d.”

ITEM 4. Amend subrule 22.20(5), introductory paragraph, as follows:

22.20(5) Certificate revocation. Any five subscribers or potential subscribers, an interexchange utility, or consumer advocate upon filing a sworn statement showing a generalized pattern of inadequate telephone service or facilities may petition the board to begin formal certificate revocation proceedings against a local exchange utility. For the purposes of this rule, inadequate telephone service or facilities may include the failure to bill high-volume intrastate access (HVAS) charges in a manner consistent with the requirements of rule 199—22.14(476). While similar in nature to a complaint filed under rule 199—6.2(476), a petition under this rule shall be addressed by the board under the following procedure and not the procedure found in 199—Chapter 6.

[Filed 6/7/10, effective 8/4/10]

[Published 6/30/10]

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AGENCY	RULE	DELAY
Natural Resource Commission[571]	44.1 to 44.16 [IAB 6/2/10, ARC 8815B]	Effective date of July 7, 2010, delayed 70 days by the Administrative Rules Review Committee at its meeting held June 8, 2010. [Pursuant to §17A.4(7)]