



# 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.

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

### 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 2B.5A, 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 2012

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
5	Friday, August 17, 2012	September 5, 2012
6	Wednesday, August 29, 2012	September 19, 2012
7	Friday, September 14, 2012	October 3, 2012

**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\*\*\***

**ACCOUNTANCY EXAMINING BOARD[193A]**

Practice privilege for out-of-state CPAs and CPA firms, 6.1(3), 7.1, 13.6(2), 20.5, 21.3(2), 21.5 IAB 8/8/12 <b>ARC 0254C</b>	Professional Licensing Conference Room Second Floor 1920 SE Hulsizer Rd. Ankeny, Iowa	August 28, 2012 9 a.m.
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**BLIND, DEPARTMENT FOR THE[111]**

Organization and procedures; personnel; library services; vocational and independent living rehabilitation services, amendments to chs 1 to 3, 6, 8 to 11, 13 IAB 6/27/12 <b>ARC 0181C</b>	Director's Conference Room, First Floor Department for the Blind 524 4th St. Des Moines, Iowa	September 15, 2012 10 a.m.
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Mathematics—grade nine endorsement, 13.28(12) IAB 7/25/12 <b>ARC 0235C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 15, 2012 1 p.m.
Special education—update of terminology to “intellectual disability,” 14.2 IAB 7/25/12 <b>ARC 0229C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 15, 2012 1 p.m.

**ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]**

Unethical or illegal conduct, 8.2(6)“a” IAB 8/8/12 <b>ARC 0264C</b>	Professional Licensing Bureau Offices 1920 SE Hulsizer Rd. Ankeny, Iowa	August 30, 2012 9 to 11 a.m.
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**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Wastewater construction and operation permits—disadvantaged community status, 64.3, 64.5(1), 64.7 IAB 8/8/12 <b>ARC 0270C</b>	DNR Field Office 4 1401 Sunnyside Ln. Atlantic, Iowa	August 29, 2012 4 to 6 p.m.
	Public Library 609 Cayuga St. Storm Lake, Iowa	August 30, 2012 4 to 6 p.m.
	Conference Rooms 4 East/West Wallace State Office Bldg. Des Moines, Iowa	September 5, 2012 10 a.m. to 12 noon
	Public Library 805 1st St. East Independence, Iowa	September 6, 2012 4 to 6 p.m.
	Public Library 104 West Adams St. Fairfield, Iowa	September 11, 2012 4 to 6 p.m.

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]**

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Sign language interpreters and transliterators—examinations for licensure, 361.2(1) IAB 7/25/12 <b>ARC 0228C</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 14, 2012 9 to 9:30 a.m.

**PUBLIC HEALTH DEPARTMENT[641]**

Maternal and child health program, amendments to ch 76 IAB 7/25/12 <b>ARC 0226C</b>	GoToMeeting online at: <a href="https://www1.gotomeeting.com/register/265192552">https://www1.gotomeeting.com/register/265192552</a> Toll-free: 1-877-568-4108 Access Code: 803-892-592	August 14, 2012 9 to 11 a.m.
Substance abuse and problem gambling treatment programs—tuberculosis screening of staff and residents, 155.21(16)“d,” 155.36 to 155.38 IAB 7/25/12 <b>ARC 0227C</b>	Room 517 Lucas State Office Bldg. Des Moines, Iowa	August 14, 2012 12 noon to 1 p.m.

**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]**

Iowa communications network—organizational structure, certified user, notices and minutes of meetings, 1.5, 9.1, 15.3(3) IAB 8/8/12 <b>ARC 0269C</b>	ICN Thompson Conference Room Grimes State Office Bldg. Des Moines, Iowa	August 29, 2012 11 a.m.
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**UTILITIES DIVISION[199]**

Recovering certain energy-related costs through an automatic adjustment clause, 20.1(3), 20.9(2), 20.13(1), 20.17 IAB 8/8/12 <b>ARC 0237C</b>	Hearing Room 1375 East Court Ave. Des Moines, Iowa	September 25, 2012 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.”

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## ARC 0254C

## 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 gives Notice of Intended Action to amend Chapter 6, “Attest and Compilation Services,” Chapter 7, “Certified Public Accounting Firms,” Chapter 13, “Rules of Professional Ethics and Conduct,” Chapter 20, “Practice Privilege for Out-of-State Certified Public Accountants,” and Chapter 21, “Practice Privilege for Out-of-State Certified Public Accounting Firms,” Iowa Administrative Code.

The proposed amendment to subrule 6.1(3) clarifies who may exercise a practice privilege in Iowa pursuant to Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122.

The proposed amendment to subrule 7.1(1) ensures that the rules are consistent and comply with Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122. Proposed new subrule 7.1(6) clarifies when an out-of-state firm may exercise a practice privilege pursuant to Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122.

The proposed amendment to subrule 13.6(2) clarifies what an out-of-state CPA firm may or may not do in Iowa under the practice privilege, in compliance with Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122.

The proposed amendment to subrule 20.5(1) clarifies what an out-of-state individual CPA may or may not do in Iowa with regard to attest and compilation services, in compliance with Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122. Proposed new subrule 20.5(3) clarifies who may review financial statements for a client in Iowa or for a client with a home office in Iowa pursuant to Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122.

The proposed amendments to subrules 21.3(2) and 21.5(1) modify the services a firm may perform without Iowa licensure pursuant to Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122. Proposed new subrule 21.5(3) clarifies when a peer review must be completed in compliance with Iowa Code section 542.7.

Consideration will be given to all written suggestions or comments on the proposed amendments received no later than 4:30 p.m. on August 28, 2012. Comments should be addressed to Toni Bright, Accountancy Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021. E-mail may be sent to [toni.bright@iowa.gov](mailto:toni.bright@iowa.gov).

A public hearing will be held on August 28, 2012, at 9 a.m. in the Second Floor Professional Licensing Conference Room, 1920 SE Hulsizer Road, Ankeny, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendments.

These amendments do not have any fiscal impact to the state of Iowa.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 17A, 272C and 546 and Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122.

The following amendments are proposed.

ITEM 1. Amend subrule 6.1(3) as follows:

**6.1(3)** CPAs performing attest services, whether certified in Iowa or exercising a practice privilege, must do so in a CPA firm that holds a permit to practice pursuant to Iowa Code section 542.7. However,

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

a CPA exercising a practice privilege who works for an out-of-state CPA firm that does not hold a permit to practice under Iowa Code section 542.7 may provide review services in Iowa or for a client with a home office in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules.

ITEM 2. Amend subrule 7.1(1) as follows:

**7.1(1)** A Except as provided in subrule 7.1(6), a sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice as a firm of certified public accountants prior to:

*a.* Performing or offering to perform audit, review or other attest services in Iowa or for a client with a home office in Iowa; or

*b.* Establishing an office in Iowa at which the firm uses the title “CPAs,” “CPA firm,” “certified public accountants,” or “certified public accounting firm.”

ITEM 3. Adopt the following **new** subrule 7.1(6):

**7.1(6)** An out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules.

ITEM 4. Amend subrule 13.6(2) as follows:

**13.6(2)** *Practice privilege.* All audit, review, and other attest services performed in Iowa or for a client with a home office in Iowa must be performed through a CPA firm that holds an active Iowa firm permit to practice; provided that, an out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules. Unless Iowa certification is specifically required by a governmental body or client, the individual CPAs performing such attest services may either hold an active Iowa CPA certificate or exercise a practice privilege as more fully described in Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122. LPAs and LPA firms are not authorized to perform attest services.

ITEM 5. Amend subrule 20.5(1) as follows:

**20.5(1)** Individuals providing audit, review or other attest services in Iowa or for a client with a home office in Iowa must practice through a CPA firm that holds an active permit to practice pursuant to Iowa Code section 542.7; provided that, an out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules.

ITEM 6. Adopt the following **new** subrule 20.5(3):

**20.5(3)** Individuals who provide reviews of financial statements, as provided in Iowa Code section 542.3, subsection 1, in Iowa or for a client with a home office in Iowa must provide such services through a certified public accounting firm that is validly licensed in the state of its principal place of business and that complies with the peer review and ownership provisions of Iowa Code section 542.7.

ITEM 7. Amend subrule 21.3(2) as follows:

**21.3(2)** Iowa licensure is required if:

*a.* The firm performs or offers to perform audit, review or other attest services, other than review services, in Iowa or for a client with a home office in Iowa; or

*b.* The firm has one or more offices in Iowa at which the firm uses the title “CPAs,” “CPA firm,” “certified public accountants,” or “certified public accounting firm.”

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

ITEM 8. Amend subrule 21.5(1) as follows:

**21.5(1)** ~~Audit, review or other attest~~ Attest services, other than review services, must be performed in Iowa or for a client with a home office in Iowa by a CPA firm that holds an active permit to practice under Iowa Code section 542.7.

ITEM 9. Adopt the following new subrule 21.5(3):

**21.5(3)** CPA firms providing review services in Iowa or for a client with a home office in Iowa must comply with the peer review and ownership provisions of Iowa Code section 542.7.

**ARC 0263C****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 section 163.1(1), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 64, “Infectious and Contagious Diseases,” Iowa Administrative Code.

The amendment lowers the age of a slaughtered Cervidae animal that is subject to testing for chronic wasting disease.

Any interested persons may make written suggestions or comments on the proposed amendment on or before August 28, 2012. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

This proposed amendment is subject to the Department’s general waiver provisions.

After analysis and review of this rule making, no adverse impact on jobs has been found.

This amendment is intended to implement Iowa Code section 163.1.

The following amendment is proposed.

Amend subrule 64.106(1) as follows:

**64.106(1)** *Slaughter establishments.* All slaughtered Cervidae ~~46~~ 12 months of age and older must have brain tissue submitted at slaughter and examined for CWD by an approved laboratory. This brain tissue sample will be obtained by a state or federal meat inspector or accredited veterinarian on the premises at the time of slaughter.

**ARC 0248C****COLLEGE STUDENT AID COMMISSION[283]****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 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to adopt new Chapter 23, “Skilled Workforce Shortage Tuition Grant Program,” Iowa Administrative Code.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

Proposed Chapter 23 describes the administration of a new Skilled Workforce Shortage Tuition Grant Program pursuant to 2012 Iowa Acts, Senate File 2321, section 20.

Interested persons may submit comments orally or in writing by 4:30 p.m. on August 28, 2012, to the Executive Director, Iowa College Student Aid Commission, Fifth Floor, 603 East 12th Street, Des Moines, Iowa 50319-9017; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of this rule.

After analysis and review of this rule making, the Commission finds that there could be a positive impact on jobs. This rule making increases the amount of scholarship dollars distributed to individuals who will attend higher education. Individuals will be able to attend higher education institutions and obtain good jobs.

This amendment is intended to implement Iowa Code chapter 261 as amended by 2012 Iowa Acts, Senate File 2321, section 20.

The following amendment is proposed.

Adopt the following **new** 283—Chapter 23:

CHAPTER 23  
SKILLED WORKFORCE SHORTAGE TUITION GRANT PROGRAM

**283—23.1(84GA,SF2321) Tuition grant based on financial need to Iowa residents enrolled in career-technical or career option programs at community colleges in the state.** This grant shall commonly be known as the Kibbie grant.

**23.1(1) Financial need.**

*a.* Financial need shall be evaluated annually on the basis of a confidential financial statement filed on a form designated by the commission. For the purposes of determining financial need, the commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need known as expected family contribution. The FAFSA must be received by the processing agent by the date specified by the college student aid commission.

*b.* Financial need is defined as the difference between the total maximum federal Pell grant for the academic year for a student with an expected family contribution of \$0 minus the Pell grant award received by the student minus the Iowa vocational-technical tuition grant received by the student.

**23.1(2) Student eligibility.**

*a.* A recipient must be an Iowa resident as defined by the Iowa department of education's Iowa community college uniform policy on student residency status.

*b.* A recipient must be enrolled at an Iowa community college for at least three semester hours or the equivalent in a career-technical, career option, or other training program which is eligible for federal Title IV funding and is in an industry which has been identified as having a shortage of skilled workers by the community college in a regional skills gap analysis or by the department of workforce development in the department's most recent quarterly report.

*c.* A recipient may receive an award under this program for general education classes identified by the community college as required for completion of a career-technical or career option program in an identified skilled workforce shortage area. A recipient must be concurrently enrolled in a career-technical or career option program.

*d.* A recipient may receive an award under this program for not more than the equivalent of four semesters. A recipient who is making satisfactory academic progress but cannot complete the course because of required classes may receive the grant for one additional semester.

*e.* A recipient who is a full-time student may receive no more than one-half of the student's tuition and fees, as established by the commission, or the amount of the student's established financial need, whichever is less. A recipient who is a part-time student shall receive a prorated portion of the full-time award. The proration will be established by the commission in a manner consistent with federal Pell Grant Program proration. Recipients who are part-time students enrolled in 3 to 5 credit hours will

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

receive awards equal to one-fourth of the full-time award; recipients enrolled in 6 to 8 credit hours will receive awards equal to one-half of the full-time award; and recipients enrolled in 9 to 11 credit hours will receive awards equal to three-fourths of the full-time award.

*f.* A student shall not receive a grant if the maximum grant for which the student is eligible is less than \$200 per semester or the equivalent.

*g.* A recipient may again be eligible for an award under paragraph 23.1(2)“*d*” if the recipient resumes study after at least a two-year absence, except that award assistance shall not be used for coursework for which credit was previously received.

**23.1(3) Priority for grants.**

*a.* Applicants enrolled in programs required to fill the needs of industry in areas which have been identified as having shortages of skilled workers by the community college in a regional skills gap analysis or by the department of workforce development in the department’s most recent quarterly report will receive priority. Skill gap areas will be ranked by each community college in order of the perceived need, and awards will be made to applicants as long as funding remains available.

*b.* Applicants who apply by the priority date specified in the application are ranked in order of the estimated amount of the family’s contribution toward college expenses; and awards are granted to those who demonstrate need in order of family contribution from lowest to highest, insofar as funds permit.

**23.1(4) Award notification.** A grant recipient will be notified of the award by the community college to which application is made. The community college is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The community college shall report changes in student eligibility to the commission.

**23.1(5) Enrollment terms.** For purposes of this program, the commission has defined “semester” as one of two terms of enrollment established by the community college between August 1 and May 30 of each academic year or the equivalent and a summer term of equal length or the equivalent. Grant payments are prorated according to paragraph 23.1(2)“*e.*”

**23.1(6) Award transfers and adjustments.** Recipients are responsible for promptly notifying the appropriate community college of any change in enrollment or financial situation. The community college will make necessary changes and notify the commission.

**23.1(7) Restrictions.** A student who is in default on a Stafford Loan, an SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the skilled workforce shortage tuition grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by the commission’s ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—Chapters 4 and 5.

This rule is intended to implement 2012 Iowa Acts, Senate File 2321, section 20.

**ARC 0249C**

**COLLEGE STUDENT AID COMMISSION[283]**

**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 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 27, “Iowa Grant Program,” Iowa Administrative Code.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

Chapter 27 describes the administration of the Iowa Grant Program. This amendment proposes the inclusion of new priority recipient requirements enacted by the Iowa General Assembly in 2012 Iowa Acts, House File 2465, sections 26, 27, and 28.

Interested persons may submit comments orally or in writing by 4:30 p.m. on August 28, 2012, to the Executive Director, Iowa College Student Aid Commission, Fifth Floor, 603 East 12th Street, Des Moines, Iowa 50319-9017; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of this rule.

After analysis and review of this rule making, the Commission finds that there could be a positive impact on jobs. Individuals will be able to attend higher education institutions and obtain good jobs.

This amendment is intended to implement Iowa Code chapter 261 as amended by 2012 Iowa Acts, House File 2465, sections 26, 27, and 28.

The following amendment is proposed.

Amend **283—Chapter 27** as follows:

CHAPTER 27  
IOWA GRANT PROGRAM

**283—27.1(261) State-supported grants.** The Iowa grant program is a state-supported and administered grant based on financial need for Iowa residents enrolled at approved institutions of postsecondary education in Iowa.

**27.1(1) Definitions.** As used in this chapter:

*“Accredited higher education institution”* means any public ~~or private~~ institution of higher learning or accredited private institution defined in Iowa Code section 261.9 that is located in Iowa that is and accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools (NCA).

*“Financial need”* means the difference between the student’s financial resources, including resources available from the student’s parents and the student, as determined by a ~~completed~~ parent’s or student’s completed financial statement, and the student’s anticipated expenses while attending the accredited higher education institution. Any federal, state, institutional, or private aid, other than work-study, shall also be considered an available resource. Financial need shall be determined at least annually on the basis of a confidential financial statement filed on a form designated by the commission. The commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine expected family contribution. Relative need will be ranked based on the applicant’s expected family contribution (EFC) as determined by the U.S. Department of Education. The application form must be received by the needs analysis processor by the deadline date specified by the commission.

*“Full-time resident student”* means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least 12 semester hours or the ~~trimester or quarter~~ equivalent. “Course of study” does not include correspondence courses.

*“Located in Iowa”* means a college or university that is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, that has made a substantial investment in a permanent Iowa campus and staff, and that offers a full range of courses leading to the degrees offered by the institution as well as a full range of student services.

*“Part-time resident student”* means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least three semester hours or the ~~trimester or quarter~~ equivalent. “Course of study” does not include correspondence courses.

*“Qualified student”* means a resident student who has established financial need and who is making satisfactory progress toward graduation at an eligible Iowa institution.

*“Tuition and mandatory fees”* means those college costs paid annually by all students enrolled on a full-time basis, as reported annually to the commission by each participating institution.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

**27.1(2) Student eligibility.** A recipient must be an Iowa resident enrolled for at least three semester hours or the ~~trimester or quarter~~ equivalent in a program leading to a degree from an eligible Iowa institution. The criteria used by the state board of regents to determine residency for tuition purposes, 681—1.4(262), are adopted for this program.

**27.1(3) Award limits and eligibility requirements.**

a. A grant may be awarded to any qualified person who is accepted for admission or is enrolled for at least three semester hours, or the ~~trimester or quarter~~ equivalent, in a program leading to a degree from an approved, accredited higher education institution and who demonstrates financial need.

b. The annual amount of the grant to a full-time student shall not exceed the amount specified by Iowa law or the amount of the student's financial need or the maximum annual grant, whichever is less.

c. The maximum amount of a grant to a part-time student shall be prorated by dividing the maximum annual grant amount by 24 semester hours or the ~~trimester or quarter~~ equivalent, and multiplying that amount by the number of hours the student is enrolled.

d. Grants shall be awarded on an annual basis and shall be credited by the institution against the student's tuition, fees, and room and board charges at the beginning of each term in equal installments upon certification that the eligible student is enrolled.

e. If a credit balance remains after crediting the amount of the grant to the student's tuition, fees, and, if applicable, room and board charges, the institution may distribute the grant balance to the student who may use the proceeds for other bona fide education expenses such as books, equipment, and transportation.

f. If a student receiving a grant under the program discontinues attendance before the end of any academic period, but after receiving payment of grant funds for the academic period, the entire amount of any refund due the student, up to the amount of any payments made by the state, shall be distributed as follows:

(1) If an initial institutional allocation was made and funds are available due to the refund, the institution may offer additional awards, but in no case may an institution exceed its annual allocation.

(2) If institutional allocations are not made, then any refunds must be returned to the commission.

**27.1(4) Extent of grant.** A qualified full-time student may receive grants for not more than eight semesters of undergraduate study or the ~~trimester or quarter~~ equivalent. A qualified part-time resident student may receive grants for not more than 16 semesters of undergraduate study or the ~~trimester or quarter~~ equivalent.

**27.1(5) Application process.**

a. Eligible students shall apply for this grant through the use of an approved financial aid form, which uses the federally accepted method of needs analysis. For the purpose of determining financial need, the commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need. Priority applicants, as described in Iowa Code section 261.93 as amended by 2012 Iowa Acts, House File 2465, section 26, must complete an additional application if required by the commission.

b. Institutions shall coordinate aid packages to ensure that this grant program supplements rather than supplants federal and institutional gift aid awards and shall report need figures to the commission.

c. The institution shall clearly identify the Iowa grant on the student's aid award notice.

~~d. A student shall accept all available federal and state grants before being considered for grants under this program.~~

**27.1(6) Full year of study.** For purposes of this program, the commission has defined full year of study as ~~either three quarters or two semesters~~ or the equivalent. Grant payments are prorated according to this definition.

**27.1(7) Priority for grants.**

a. Applicants are ranked in order of the estimated amount which the family reasonably can be expected to contribute toward college expenses; and awards are granted to those who demonstrate need in order of family contribution, from lowest to highest, insofar as funds permit.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

b. Priority will be given to a qualified student who is a resident of Iowa; who is under the age of 26, or the age of 30 if the student is a veteran who is eligible for benefits, or has exhausted the benefits, under the federal Post-9/11 Veterans Educational Assistance Act of 2009; who is not a convicted felon as defined in Iowa Code section 910.15; and who meets at least one of the following criteria and agrees to allow the commission to verify the criteria:

(1) Is the child of a peace officer, as defined in Iowa Code section 97A.1, who was killed in the line of duty as determined by the board of trustees of the Iowa department of public safety peace officers' retirement, accident, and disability system in accordance with Iowa Code section 97A.6, subsection 16.

(2) Is the child of a police officer or a fire fighter, as defined in Iowa Code section 411.1, who was killed in the line of duty as determined by the statewide fire and police retirement system in accordance with Iowa Code section 411.6, subsection 15.

(3) Is the child of a sheriff or deputy sheriff, as defined in Iowa Code section 97B.49C, who was killed in the line of duty as determined by the Iowa public employees' retirement system in accordance with Iowa Code section 97B.52, subsection 2.

(4) Is the child of a fire fighter included under Iowa Code section 97B.49B who was killed in the line of duty as determined by the Iowa public employees' retirement system in accordance with Iowa Code section 97B.52, subsection 2.

~~b. c.~~ Funds Remaining funds will be allocated to the sectors according to the appropriations language.

~~e. d.~~ If funds are insufficient to help all students with no means of contribution to their educational expenses, institutional aid administrators will select students to receive grants.

**27.1(8) Award notification.** A grant recipient is notified of the award by the educational institution to which application is made. Any award notification provided by an institution on probation with the accrediting agency must be made contingent upon the institution's maintaining affiliation with the accrediting agency. The institution is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The institution ~~reports~~ shall report changes of student eligibility to the commission.

**27.1(9) Award transfers and adjustments.**

a. Awards may be transferred among eligible institutions unless funding limitations require institutional allocations.

b. Recipients are responsible for promptly notifying the appropriate institution of any change in enrollment or financial situation. The educational institution will make necessary changes and notify the commission.

**27.1(10) Restrictions.** A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedure set forth in 283—Chapters 4 and 5, Iowa Administrative Code.

**27.1(11) Institutional reporting.** The commission will monitor the program according to this chapter and will require participating postsecondary institutions that receive funds for enrolled students to furnish any information necessary for the implementation or administration of the program.

This rule is intended to implement Iowa Code ~~sections~~ section 261.93 as amended by 2012 Iowa Acts, House File 2465, section 26, and section 261.97.

**ARC 0264C****ENGINEERING AND LAND SURVEYING  
EXAMINING BOARD[193C]****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 542B.6, the Engineering and Land Surveying Examining Board proposes to amend Chapter 8, “Professional Conduct of Licensees,” Iowa Administrative Code.

The proposed amendments to Chapter 8 clarify the rules pertaining to unethical or illegal conduct. These amendments were included in error as Items 3 and 4 in a Notice of Intended Action published in the Iowa Administrative Bulletin on June 13, 2012, as **ARC 0159C**. The proposed amendments in Items 3 and 4 of **ARC 0159C** had not yet been voted on by the Board. When the Board follows up on **ARC 0159C**, Items 3 and 4 will not be adopted as part of that rule making.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before August 30, 2012. Comments should be directed to Robert Lampe, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; by telephone at (515)281-7360; or by e-mail to [robert.lampe@iowa.gov](mailto:robert.lampe@iowa.gov).

A public hearing will be held on Thursday, August 30, 2012, from 9 to 11 a.m. at the offices of the Professional Licensing Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any person who plans to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact the Board to discuss specific needs.

The proposed amendments are subject to waiver or variance pursuant to 193—Chapter 5.

The proposed amendments were approved by the Board on July 12, 2012.

After analysis and review of this rule making, no adverse impact on jobs has been found. Although there should be no impact on jobs, the Board will continue to work with stakeholders to minimize any negative impact and maximize any positive impact toward jobs.

These amendments are intended to implement Iowa Code section 542B.2.

The following amendments are proposed.

ITEM 1. Amend subparagraph **8.2(6)“a”(4)** as follows:

(4) Licensees shall not solicit or accept an engineering or land surveying contract from a governmental body when a principal or officer of ~~their~~ the licensee’s organization serves as a an elected, appointed, voting or nonvoting member of that governmental body.

ITEM 2. Adopt the following new subparagraph **8.2(6)“a”(7)**:

(7) When a licensee’s organization or a principal, officer, other member, or employee of the licensee’s organization has review authority over the engineering or land surveying projects performed by private contractors within the jurisdiction of a governmental body, the licensee shall not solicit or accept a private engineering or land surveying contract that falls under the review services performed for that governmental body. The purpose of this paragraph is to avoid a circumstance in which a licensee may be called upon to review on behalf of a governmental body the engineering or land surveying services performed by the licensee’s own organization.

**ARC 0270C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

The primary purpose of the proposed amendments is to implement the provisions of Iowa Code section 455B.199A and 2011 Iowa Code Supplement section 455B.199B. Iowa Code section 455B.199B was adopted in 2009 and modified in 2011 to provide economically disadvantaged communities with relief from the costs related to compliance with state and federal water pollution control laws.

Pursuant to Iowa Code section 455B.173(3), the Commission is required to establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and specifying the conditions under which the Director of the Department of Natural Resources shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system, or for the discharge of any pollutant. The proposed amendments will fulfill the Commission’s and the Department’s requirements pursuant to Iowa Code section 455B.173(3).

2011 Iowa Code Supplement section 455B.199B establishes the following basic principles:

1. A community cannot be required to install a wastewater treatment system if the installation of that system causes substantial and widespread economic and social impact (i.e., the system is unaffordable).
2. Such a community must continue to make reasonable progress toward compliance.
3. The alternative pursued must comply with state and federal law. There is no waiver of other legal requirements or prohibitions.

Iowa Code section 455B.186 prohibits the discharge of a pollutant except as authorized by a written permit from the Department. Section 301 of the Clean Water Act contains the same prohibition. The water quality standards and effluent limitations established by rule and approved by the U.S. Environmental Protection Agency (EPA) define the terms and conditions of National Pollutant Discharge Elimination System (NPDES) permits. When a schedule of compliance is required for a community to achieve permit compliance, both state and federal law require that compliance be achieved in the shortest reasonable period of time (see 40 CFR 122.47(a)(1)).

The proposed amendments are intended to implement 2011 Iowa Code Supplement section 455B.199B and to maintain compliance with Iowa Code section 455B.186. In order to ensure that no community is required to install a wastewater treatment system that causes substantial and widespread economic and social impact, and to ensure that pollutants are not discharged except as authorized by a permit, the proposed amendments allow a community or regulated entity that qualifies as disadvantaged more time to consider other treatment options and to seek additional funding. This additional time allowance, as included in a compliance schedule or agreement, ensures that the community or regulated entity will be able to explore affordable treatment options.

Any person may submit written suggestions or comments on the proposed amendments through September 14, 2012. Such written material should be submitted to Courtney Cswercko, NPDES Section, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; or sent by fax to (515)281-8895 or by e-mail to [courtney.cswercko@dnr.iowa.gov](mailto:courtney.cswercko@dnr.iowa.gov). Persons who have questions may contact Courtney Cswercko by e-mail or by telephone at (515)281-7206.

Public hearings where persons may present their views orally or in writing will be held as follows:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Wednesday, August 29, 2012	4 to 6 p.m.	Iowa DNR Field Office 4 1401 Sunnyside Lane Atlantic, Iowa
Thursday, August 30, 2012	4 to 6 p.m.	Storm Lake Public Library 609 Cayuga Street Storm Lake, Iowa
Wednesday, September 5, 2012	10 a.m. to 12 noon	Wallace State Office Building Conference Rooms 4 East/West 502 East 9th Street Des Moines, Iowa
Thursday, September 6, 2012	4 to 6 p.m.	Independence Public Library 805 1st Street East Independence, Iowa
Tuesday, September 11, 2012	4 to 6 p.m.	Fairfield Public Library 104 West Adams Street Fairfield, Iowa

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subjects of the amendments. Any person who intends to attend a public hearing and has special requirements, such as those related to mobility or hearing impairments, should contact the Department to advise of any specific needs.

#### Summary

The following summary describes the changes that are proposed for Chapter 64.

The proposed amendments correct three cross references to ensure that new subrules 64.7(5) and 64.7(6) relating to disadvantaged communities and the existing subrules that are being renumbered are referenced properly. The time frame for interim compliance schedule dates in subrule 64.7(4) is changed from nine months to one year, in accordance with the Code of Federal Regulations (40 CFR 122.47). The language in paragraph "b" of renumbered subrule 64.7(8) regarding plans of action for permitted facilities is changed to allow for the submittal of a disadvantaged community analysis as part of a plan of action.

Two new subrules are proposed: 64.7(5) for schedules of compliance in NPDES permits for disadvantaged communities and 64.7(6) for disadvantaged unsewered communities. The criteria for evaluation of disadvantaged community status from 2011 Iowa Code Supplement section 455B.199B are included in both new subrules.

In new subrule 64.7(5), entities that wish to be considered for disadvantaged status will be required to submit a disadvantaged community analysis (DCA). Publicly owned treatment works, semipublic facilities, and other wastewater dischargers that are not private sewage disposal systems and do not discharge industrial wastes will be allowed to submit a DCA for renewal or amendment of an NPDES permit. Under subrule 64.7(5), DCAs will also be accepted prior to the issuance of an NPDES permit from facilities that do not discharge industrial wastes and are not new sources or new dischargers.

In the proposed DCA, the regulated entity or facility will calculate the total annual project costs. As proposed, these costs are the current costs of wastewater treatment in the community plus the future costs of proposed wastewater system improvements that will meet or exceed all applicable wastewater requirements. The total annual project costs will be divided by the number of households or ratepayers in the community to determine the costs per household or per ratepayer, then divided by the community's median household income (MHI). In subrule 64.7(5), this ratio of the total annual project costs per household to the community MHI will be used to determine if the regulated entity or community is disadvantaged.

After receipt of a DCA, the Department will use the supplied information to determine if the regulated entity or community is disadvantaged. Subrule 64.7(5) references the disadvantaged community matrix (DCM), a new form that is to be used by Department staff to determine disadvantaged status. The matrix is based on the worksheets in EPA's Interim Economic Guidance for Water Quality Standards, March

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1995. The DCM will be used to assign points based on the ratio of the total annual project costs per household to the community MHI; the community MHI in relation to all community MHIs in the state; the bond rating of the community (if available); and the unemployment rate of the county in which the community is located in relation to the state unemployment rate.

If a regulated entity or community qualifies as disadvantaged under subrule 64.7(5), it will receive the compliance schedule established in paragraph 64.7(5)“g.” The proposed compliance schedule has two parts: one for the first NPDES permit issued after the disadvantaged determination and one for the second NPDES permit issued after the determination. The first NPDES permit for a disadvantaged community will have a schedule that requires the community to explore alternative methods of wastewater treatment that will comply with state and federal regulations, to consider which alternative method or methods can be implemented, and to pursue funding options.

If, after the first five-year schedule, the disadvantaged community can implement one of the alternatives explored in the first schedule, the schedule for the second five-year NPDES permit will require the implementation of the chosen alternative. If the disadvantaged community cannot implement any alternatives and the community still qualifies as disadvantaged under the scoring system in the DCM, the second NPDES permit schedule will require the community to detail a future plan for meeting state and federal regulations and to continue exploring all available wastewater treatment options.

Because of compliance schedule restrictions in the Code of Federal Regulations (CFR), a DCA will not be accepted from a new source or a new discharger prior to the issuance of an initial NPDES permit under subrule 64.7(5). 40 CFR 122.47 allows compliance schedules in initial NPDES permits only if a facility is not a new source or a new discharger, unless the schedule pertains to compliance with regulations that became effective after construction of a wastewater system began. “New source” and “new discharger” are defined in 40 CFR 122.2. Briefly, a new source is a discharger that began construction after the promulgation of federal effluent guidelines, most of which apply to industrial wastewater discharges. A new discharger is a discharger that began the discharge in question after 1979, that is not a new source, and that has never had an NPDES permit.

For example, a discharge from a newly constructed wastewater treatment facility whose owner (such as a city) has never been permitted is a new discharge, and the facility cannot receive a compliance schedule in an initial NPDES permit. However, a replacement wastewater treatment facility constructed in a city with an existing wastewater discharge is not a new discharger. Thus, under subrule 64.7(5), a DCA can be submitted, and an extended disadvantaged community compliance schedule in an NPDES permit is allowable, for the construction of a replacement wastewater treatment facility by an entity with an existing NPDES permit. A DCA cannot be submitted, and an extended disadvantaged community compliance schedule in an NPDES permit is not allowed, for a new wastewater treatment facility in a community that has never had an NPDES permit. Such a community must submit a disadvantaged unsewered community analysis under new subrule 64.7(6) for unsewered communities.

As proposed, new subrule 64.7(6) for unsewered communities is similar to new subrule 64.7(5). The differences lie in the criteria and in the location of the schedule for a disadvantaged unsewered community. The criteria in 2011 Iowa Code Supplement section 455B.199B for unsewered communities do not include the community bond rating, and current costs do not need to be factored into the calculation of the total annual project costs. If an unsewered community qualifies as disadvantaged under subrule 64.7(6), it will receive a schedule in an administrative order rather than in an NPDES permit because unsewered communities qualify as new dischargers that cannot receive a compliance schedule in an initial NPDES permit.

Entities that wish to be considered for disadvantaged unsewered community status will be required to submit a disadvantaged unsewered community analysis (DUCA). Proposed subrule 64.7(6) allows unsewered communities, defined as a grouping of ten or more residential houses with a density of one house or more per acre and with either no wastewater treatment or inadequate wastewater treatment, to submit analyses. An entity defined as a private sewage disposal system may not submit a DUCA under subrule 64.7(6).

In the proposed DUCA, the total annual project costs must be calculated according to a method that is similar to the method used in proposed subrule 64.7(5). For unsewered communities, the costs include

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only the future costs of proposed wastewater system improvements that will meet or exceed all applicable wastewater requirements. The total annual project costs will be divided by the number of households in the unsewered community to determine the costs per household, then divided by the community MHI. In subrule 64.7(6), this ratio of the total annual project costs per household to the unsewered community MHI will be used to determine if the unsewered community is disadvantaged.

After receipt of a DUCA, the Department will use the supplied information to determine if the unsewered community is disadvantaged. Subrule 64.7(6) references the disadvantaged unsewered community matrix (DUCM), a new form that is to be used by Department staff to determine disadvantaged status for unsewered communities. The DUCM is similar to the DCM that is to be used for communities with an NPDES permit. The matrix for unsewered communities will be used to assign points based on the ratio of the total annual project costs per household to the unsewered community MHI; the unsewered community MHI in relation to all community MHIs in the state; and the unemployment rate of the county in which the unsewered community is located in relation to the state unemployment rate.

If an unsewered community qualifies as disadvantaged under subrule 64.7(6), it will receive a schedule in an administrative order, which will have a similar timetable to a schedule established pursuant to subrule 64.7(5). The proposed disadvantaged unsewered community schedule has two parts: one for the exploration of alternative treatment methods and funding options and one for either the implementation of an alternative or the submittal of a future compliance plan.

Prior to the publication of this Notice, one open house-style public meeting, which included presentation and discussion of the proposed amendments, was held in November 2011. At this meeting, comments were accepted from several stakeholders. In January 2012, six rural community sewer open houses were held around the state to address concerns relating to wastewater systems in rural areas. The proposed amendments were discussed with interested persons at the six rural community sewer open houses. Very few comments were received regarding the proposed amendments, and those that were received were similar to the comments received at the November 2011 open house. All of the stakeholder comments were considered and incorporated into the proposed amendments where appropriate.

After analysis and review of this rule making, no fiscal impact on the State of Iowa has been found. The rule making will have a positive fiscal impact on regulated entities and communities that qualify as disadvantaged, as the additional time allotted by disadvantaged status will translate into cost savings for these entities and communities. As intended by the statutes, the disadvantaged communities will delay expenditures on goods and services provided by private engineering firms, construction companies, and wastewater treatment plant operators.

After analysis and review of this rule making, a positive impact on jobs and the economy in both rural and urban communities exists. The provisions in this rule making allow disadvantaged communities more time and more financial options (i.e., grants) in regards to treatment of their water or wastewater. Qualified communities and entities will experience a positive fiscal impact that will allow for a cost-savings to local residents and businesses in the form of lower utilities costs and other forms of expenses. This will help support local job growth and economic development.

These amendments are intended to implement Iowa Code sections 455B.173, 455B.174, 455B.175, and 455B.199A and 2011 Iowa Code Supplement section 455B.199B.

The following amendments are proposed.

ITEM 1. Amend subrule 64.3(9) as follows:

**64.3(9)** When necessary to comply with present standards which must be met at a future date, an operation permit shall include a schedule for the alteration of the permitted facility to meet said standards in accordance with 64.7(4) and 64.7(5). Such schedules shall not relieve the permittee of the duty to obtain a construction permit pursuant to 567—64.2(455B). When necessary to comply with a pretreatment standard or requirement which must be met at a future date, a significant industrial user will be given a compliance schedule for meeting those requirements.

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ITEM 2. Amend subparagraph **64.3(11)“b”(5)** as follows:

(5) Failure or refusal of an NPDES permittee to carry out the requirements of ~~64.7(5)“e.”~~  
64.7(7)“c.”

ITEM 3. Amend subparagraph **64.5(1)“a”(2)** as follows:

(2) If necessary, a proposed schedule of compliance, including interim dates and requirements, identified pursuant to 64.7(4) and 64.7(5), for meeting the effluent limitations and other permit requirements.

ITEM 4. Amend paragraph **64.7(4)“b”** as follows:

*b.* In any case where the period of time for compliance specified in paragraph 64.7(4)“a” of this subrule exceeds nine months one year, a schedule of compliance shall be specified in the permit which ~~will~~ shall set forth interim requirements and the dates for their achievement; in no event shall more than nine months one year elapse between interim dates. If the time necessary for completion of the interim requirements (such as the construction of a treatment facility) is more than nine months one year and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement.

[COMMENT. Certain interim requirements such as the submission of preliminary or final plans often require less than nine months one year, and thus a shorter interval should be specified. Other requirements such as the construction of treatment facilities may require several years for completion and may not readily subdivide into nine-month one-year intervals. Long-term interim requirements should nonetheless be subdivided into intervals not longer than nine months one year at which the permittee is required to report progress to the director pursuant to 64.7(4)“c.”]

ITEM 5. Renumber subrules **64.7(5)** and **64.7(6)** as **64.7(7)** and **64.7(8)**.

ITEM 6. Adopt the following new subrules 64.7(5) and 64.7(6):

**64.7(5) Schedules of compliance in issued NPDES permits for disadvantaged communities.** If compliance with federal regulations, applicable requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department will result in substantial and widespread economic and social impact (SWESI) to the ratepayers and the affected community, the director may establish in an NPDES permit a schedule of compliance that will result in an improvement of water quality and reasonable progress toward complying with the applicable requirements but does not result in SWESI. Schedules of compliance established under this subrule are intended to result in compliance with the applicable federal and state regulations and requirements by the regulated entity and the affected community.

*a. Disadvantaged community status.* The director shall find that a regulated entity and the affected community are a disadvantaged community by evaluating all of the following:

(1) The ability of the regulated entity and the affected community to pay for a project based on the ratio of the total annual project costs per household to median household income (MHI),

(2) MHI in the community and the unemployment rate of the county in which the community is located, and

(3) The outstanding debt of the system and the bond rating of the community.

*b. Disadvantaged community analysis (DCA).* A regulated entity or affected community must submit a disadvantaged community analysis (DCA) to the director.

(1) A DCA may be submitted prior to the reissuance or amendment of an NPDES permit with requirements that have changed since the previous permit, by any of the following:

1. A wastewater disposal system owned by a municipal corporation or other public body created by or under Iowa law and having jurisdiction over disposal of sewage, industrial wastes or other wastes, or a designated and approved management agency under Section 208 of the Act (a POTW);

2. A wastewater disposal system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated and approved management agency under Section 208 of the Act (33 U.S.C. 1288) (a semipublic system);  
or

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3. Any other owner of a wastewater disposal system that is not a private sewage disposal system and does not discharge industrial wastes. “Private sewage disposal system” and “industrial waste” are defined in rule 567—60.2(455B).

(2) A DCA may be submitted prior to the issuance of an initial NPDES permit if the facility does not discharge industrial wastes and is not a new source or new discharger. “New source” is defined in rule 567—60.2(455B). “New discharger” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants; that did not commence the discharge of pollutants at a particular site prior to August 13, 1979; that is not a new source; and that has never received a finally effective NPDES permit for discharges at that site.

*c. Contents of a DCA.*

(1) A DCA must contain all of the following:

1. Proposed total annual project costs as defined in paragraph 64.7(5) “d”;
2. The number of households in the affected community or, if the entity is not serving households, the number of ratepayers;
3. A description of the bond rating of the affected community over the last year, if available;
4. The user rates, as follows:
  - If the DCA is submitted by or for a municipality or other community, the current sewer rate ordinances, including the sewer rates of any industrial users;
  - If the DCA is submitted by or for a water treatment facility, the water rate schedules or tables;
 or
  - If the DCA is submitted by or for an entity other than a municipality, community, or water treatment facility, the monthly ratepayer charge for wastewater treatment;
5. An explanation of why the regulated entity or affected community believes that compliance with the proposed requirements will result in SWESI.

(2) If the DCA is submitted by or for an entity other than a municipality, community, or water treatment facility, the DCA must also contain either:

1. For entities with more than ten households or ratepayers, the median household or ratepayer income, as determined by an income survey conducted by the regulated entity based on the Iowa community development block grant income survey guidelines (the survey must be included in the DCA); or
2. For entities with ten or fewer households or ratepayers, an estimate of median household or ratepayer income.

*d. Definition of total annual project costs.* “Total annual project costs” means the current costs of wastewater treatment in the community (if any) plus the future costs of proposed wastewater system improvements that will meet or exceed all applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or requirements of an order of the department. Total annual project costs shall include any current and proposed facility operation and maintenance costs and any existing (outstanding) and proposed system debt, as expressed in current and proposed sewer rates. The costs of the proposed wastewater treatment shall assume a 30-year loan period at an interest rate equal to the current state revolving fund interest rate. Awarded grant funding must be subtracted from the total annual project costs.

The formula for the calculation of total annual project costs for a regulated entity and affected community is: total annual project costs = [(Estimated costs to design and build proposed project - Awarded grant funding) amortized over 30 years] + Current annual system budget (if any), including operation and maintenance (O&M) and existing debt service + Future annual O&M costs.

*e. Disadvantaged community matrix (DCM).* The department hereby incorporates by reference “Disadvantaged Community Matrix,” DNR Form 542-XXXX, effective [date to be inserted]. This document may be obtained on the department’s NPDES Web site.

Upon receipt of a complete DCA, the director shall use the disadvantaged community matrix (DCM) to evaluate the disadvantaged status of the community. Compliance with the applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department shall be considered to result in SWESI, and the regulated entity and affected community shall be considered

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a disadvantaged community, if the point total derived from the DCM is equal to or greater than 12. The following data sources shall be used to derive the point total in the DCM:

- (1) The total annual project costs as stated in the DCA;
- (2) The number of households or ratepayers in a community as stated in the DCA;
- (3) The bond rating of the community, if available, as stated in the DCA;
- (4) The MHI of either:

1. The community, as found in the most recent American Community Survey or United States Census or as stated in an income survey that is conducted by the regulated entity or community and is based on the Iowa community development block grant income survey guidelines; or

2. The ratepayer group, as stated in an income survey that is conducted by the regulated entity and is based on the Iowa community development block grant income survey guidelines; and

- (5) The unemployment rate of the county where the community is located and of the state as found in the most recent Iowa Workforce Information Network unemployment data.

The ratio of the total annual project costs per household or per ratepayer to MHI shall be calculated in the DCM as follows: The total annual project costs shall be divided by the number of households or ratepayers to obtain the costs per household or per ratepayer, and the costs per household or per ratepayer shall be divided by the MHI to obtain the ratio.

*f. Ratio.* The director shall not consider a regulated entity or affected community a disadvantaged community if the ratio of compliance costs to MHI is less than 1 percent. The director shall consider a regulated entity or affected community a disadvantaged community if the ratio of compliance costs to MHI is greater than or equal to 2 percent. If the ratio of compliance costs to MHI is greater than or equal to 1 percent and less than 2 percent, the director shall use the DCM to determine if the community is disadvantaged. The ratio of compliance costs to MHI shall be the ratio of the total annual project costs per household to MHI as calculated in the DCM.

*g. Compliance schedule for a disadvantaged community.* A schedule of compliance established in an NPDES permit for a disadvantaged community as a result of SWESI may contain one or two parts as necessary to comply with the applicable federal regulations and requirements in 567—Chapters 60, 61, 62, 63, and 64.

- (1) The first part of a schedule of compliance for a disadvantaged community shall encompass one five-year NPDES permit cycle and shall require the permit holder to submit an alternatives report, an alternatives implementation compliance plan (AICP), and annual reports of progress that contain brief updates regarding the completion of the alternatives report and the AICP.

1. Alternatives report. The alternatives report must detail the alternative pollution control measures that will be investigated and contain an examination of all other appropriate measures that may achieve compliance with applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department without creating SWESI. The alternatives report must describe which measures will be evaluated for feasibility and affordability during the next portion of the compliance schedule. Alternative pollution control measures may include, but are not limited to, facility upgrades, construction of a new facility, relocation of the discharge point(s), regionalization, or outfall consolidation. Other appropriate measures may include, but are not limited to, mixing zone studies, consideration of seasonal limitations or site-specific data, alteration of current facility operations, intermittent discharges, source reduction, effluent recycling or reuse, or renegotiation of treatment agreements. The alternatives report must also include a plan for pursuing funding options, including grants and low-interest loans. The alternatives report shall be submitted no later than two years after permit issuance.

2. Alternative implementation compliance plan (AICP). The AICP shall include the results of the investigation detailed in the alternatives report, a description of any feasible and affordable alternative(s) that will be implemented, a schedule of the time necessary to implement the alternative(s), and an updated DCA. The AICP shall be submitted no later than 4½ years after permit issuance.

- (2) If the entity or community continues to qualify as disadvantaged according to the DCM evaluation based on the DCA submitted with the AICP, the entity or community may receive a second schedule of compliance as specified in this subrule. The second schedule of compliance for a

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disadvantaged community may contain either the implementation schedule from the AICP or a schedule for submittal of a future compliance plan (FCP).

1. AICP implementation schedule. If the AICP proposes a schedule for implementation of one or more feasible alternatives, the proposed schedule shall be included in the reissued NPDES permit for the disadvantaged community.

2. Future compliance plan (FCP). The submittal of an FCP will be necessary only if the AICP concludes that the disadvantaged community cannot feasibly implement any alternatives and if the community is still disadvantaged according to the updated information in the DCA submitted with the AICP. The FCP shall detail how the disadvantaged community will meet the applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department and the period necessary to do so. An FCP shall review the types of technology capable of treating the pollutant of concern, as well as the costs of installing and operating each type of technology. All technically feasible alternatives shall be explored. The FCP shall be submitted no later than three years after permit issuance. A schedule of compliance requiring the submittal of an FCP shall also require the submittal of annual reports of progress that contain updated financial information, an updated DCA, and a brief update regarding the completion or implementation of the FCP. If the DCM evaluation determines that an entity or community is no longer disadvantaged based on the most recent DCA, the NPDES permit may be amended to change the schedule of compliance.

3. Schedule extension. The second part of a schedule of compliance for a disadvantaged community may be extended at the discretion of the director.

(3) Schedules of compliance issued in accordance with this subrule shall comply with paragraphs 64.7(4)“b” through “e.”

**64.7(6) *Disadvantaged unsewered communities.*** If compliance with applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department will result in substantial and widespread economic and social impact (SWESI) to the ratepayers of an unsewered community, the director may negotiate a compliance agreement that will result in an improvement of water quality and reasonable progress toward complying with the applicable requirements but does not result in SWESI.

*a. Disadvantaged unsewered community status.* The director shall find that an unsewered community is a disadvantaged community by evaluating all of the following:

- (1) The ability of the community to pay for a project based on the ratio of the total annual project costs per household to MHI,
- (2) The unemployment rate in the county where the community is located, and
- (3) The MHI of the community.

*b. Disadvantaged unsewered community analysis (DUCA).* An unsewered community must submit a disadvantaged unsewered community analysis (DUCA) to the director prior to the issuance of or amendment to an administrative order with requirements that could result in SWESI and that are based on applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department. Only unsewered communities may submit a DUCA under this subrule. For the purposes of this subrule, an unsewered community is defined as a grouping of ten or more residential houses with a density of one house or more per acre and with either no wastewater treatment or inadequate wastewater treatment. An entity defined in rule 567—60.2(455B) as a private sewage disposal system may not submit a DUCA or qualify for a disadvantaged unsewered community compliance agreement under paragraph 64.7(6)“g.”

*c. Contents of a DUCA.* A DUCA must contain:

- (1) Proposed total annual project costs as defined in paragraph 64.7(6)“d”;
- (2) The number of households in the unsewered community and source of household information;
- (3) Total amount of any awarded grant funding;
- (4) An explanation of why the unsewered community believes that compliance with the proposed requirements will result in SWESI.

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If no MHI information is available for the unsewered community, the community should conduct a rate survey to determine the MHI. The survey must be conducted in accordance with the Iowa community development block grant income survey guidelines. In addition, the survey must be attached to the DCA.

*d. Definition of total annual project costs.* “Total annual project costs” means the future costs of proposed wastewater system installation or improvements that will meet or exceed all applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or requirements of an order of the department. Total annual project costs shall include the proposed facility operation and maintenance (O&M) costs and the proposed debt of the system as expressed in the proposed sewer rates. The costs of the proposed wastewater treatment shall assume a 30-year loan period at an interest rate equal to the current state revolving fund interest rate. Awarded grant funding must be subtracted from the total annual project costs.

The formula for the calculation of total annual project costs for an unsewered community is: total annual project costs = [(Estimated costs to design and build proposed project - Awarded grant funding) amortized over 30 years] + Future annual O&M costs.

*e. Disadvantaged unsewered community matrix (DUCM).* The department hereby incorporates by reference “Disadvantaged Unsewered Community Matrix,” DNR Form 542-XXXX, effective [date to be inserted]. This document may be obtained on the department’s NPDES Web site.

Upon receipt of a complete DUCA, the director shall use the disadvantaged unsewered community matrix (DUCM) to evaluate the disadvantaged status of the community. Compliance with applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department shall be considered to result in SWESI, and the unsewered community shall be considered a disadvantaged unsewered community, if the point total derived from the DUCM is equal to or greater than 10. The following data sources shall be used to derive the point total in the DUCM:

- (1) The total annual project costs as stated in the DUCA;
- (2) The number of households in a community as stated in the DUCA;
- (3) The MHI of the community as found in the most recent American Community Survey or United States Census or as stated in an income survey that is conducted by the regulated entity or community and is based on the Iowa community development block grant income survey guidelines; and
- (4) The unemployment rate of the county where the community is located and of the state as found in the most recent Iowa Workforce Information Network unemployment data.

The ratio of the total annual project costs per household to MHI shall be calculated in the DUCM as follows: the total annual project costs shall be divided by the number of households in the community to obtain the costs per household, and the costs per household shall be divided by MHI to obtain the ratio.

*f. Ratio and other considerations.* The director shall not consider an unsewered community a disadvantaged community if the ratio of compliance costs to MHI is below 1 percent. The director shall consider an unsewered community a disadvantaged community if the ratio of compliance costs to MHI is greater than or equal to 2 percent. If the ratio of compliance costs to MHI is greater than or equal to 1 percent, and less than 2 percent, the director shall use the DUCM to determine if the community is disadvantaged. The ratio of compliance costs to MHI shall be the ratio of the total annual project costs per household to MHI as calculated in the DUCM. The director shall not require installation of a wastewater treatment system by an unsewered community if the director determines that such installation would create SWESI.

*g. Compliance agreement for a disadvantaged unsewered community.* A compliance agreement negotiated with a disadvantaged unsewered community as a result of SWESI shall require the unsewered community to submit an alternatives report and an alternatives implementation compliance plan (AICP).

- (1) Alternatives report. The alternatives report must detail the alternative pollution control measures that will be investigated and contain an examination of all other appropriate measures that may achieve compliance with the water quality standards without creating SWESI. The alternatives report must describe which measures will be evaluated for feasibility and affordability after the report submittal. Alternative pollution control measures may include, but are not limited to, upgrades of existing infrastructure, construction of a new facility, relocation of the discharge point(s), regionalization, or outfall consolidation. Other appropriate measures may include, but are not limited

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to, mixing zone studies, consideration of seasonal limitations or site-specific data, alteration of current facility operations, intermittent discharges, source reduction, effluent recycling or reuse, or renegotiation of treatment agreements. The alternatives report shall also include a plan for pursuing funding options, including grants and low-interest loans. The alternatives report shall be submitted no later than two years after an unsewered community has been determined to be a disadvantaged community.

(2) Alternative implementation compliance plan (AICP). The AICP shall include the results of the investigation detailed in the alternatives report, a description of any feasible and affordable alternative(s) that will be implemented, a schedule of the time necessary to implement the alternative(s), and an updated DUCA. The AICP shall be submitted no later than 4½ years after an unsewered community has been determined to be a disadvantaged community.

(3) AICP implementation schedule. If the AICP proposes a schedule for implementation of one or more feasible alternatives, the proposed schedule shall be included in an administrative order between the department and the unsewered community. If the feasible alternative that will be implemented requires a construction permit, an operation permit, or an NPDES permit, the unsewered community shall comply with the rules regarding those permits in this chapter.

(4) Future compliance plan (FCP). The submittal of an FCP will be necessary only if the AICP concludes that the unsewered community cannot feasibly implement any alternatives and if the community is still disadvantaged according to the updated information in the DUCA submitted with the AICP. The FCP shall detail how the unsewered community will meet the water quality standards and the period necessary to do so. An FCP shall review the types of technology capable of treating the pollutant of concern, as well as the costs of installing and operating each type of technology. All technically feasible alternatives shall be explored. The FCP shall be submitted no later than seven years after an unsewered community has been determined to be a disadvantaged community. An administrative order requiring the submittal of an FCP shall also require the submittal of biennial progress reports that contain an updated DUCA. If the DUCM evaluation determines that a community is no longer disadvantaged based on the most recent DUCA, the order may be amended at the discretion of the director.

ITEM 7. Amend renumbered paragraph 64.7(8)“b,” introductory paragraph, as follows:

*b.* The plan of action will vary in length and complexity depending on the compliance history and physical status of the particular POTW. It must identify the deficiencies and needs of the system, describe the causes of such deficiencies or needs, propose specific measures (including an implementation schedule) that will be taken to correct the deficiencies or meet the needs, and discuss the method of financing the improvements proposed in the plan of action. A plan may include the submittal of a disadvantaged community analysis in accordance with subrule 64.7(5), at the discretion of the POTW.

**ARC 0255C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 9, “Public Records and Fair Information Practices,” Iowa Administrative Code.

This amendment will add new Form 470-4670, “Addendum for Application and Review Forms for Release of Information.” This form is attached to public assistance program applications and review forms. The form is used to obtain written permission from the client to request information necessary to determine program eligibility.

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

This amendment will also change the name of existing Form 470-1631, "Financial Institution Questionnaire," to "Bank or Credit Union Information," and remove Form 470-1632, "Landlord Questionnaire," from the rules because it has become obsolete.

Any interested person may make written comments on the proposed amendment on or before August 28, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-00114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 234.6.

The following amendment is proposed.

Amend paragraph **9.7(1)“b”** as follows:

*b. Obtaining information from a third party.* The department is required to obtain information to establish eligibility, determine the amount of assistance, and provide services. Requests to third parties for this information involve release of confidential identifying information about clients. Except as provided in rule 441—9.9(17A,22), the department may make these requests only when the client has authorized the release on one of the following forms.

1. Form 470-0461, Authorization for Release of Information.
2. Form 470-1630, Household Member Questionnaire.
3. Form 470-1631, ~~Financial Institution Questionnaire~~ Bank or Credit Union Information.
4. ~~Form 470-1632, Landlord Questionnaire~~ Form 470-4670, Addendum for Application and Review Forms for Release of Information.
5. Form 470-1638, Request for School Verification.
6. Form 470-2844, Employer's Statement of Earnings.
7. Form 470-1640, Verification of Educational Financial Aid.
8. Form 470-3742, Financial Institution Verification.
9. Form 470-3951, Authorization to Obtain or Release Health Care Information.

**ARC 0259C**

## 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 77, "Conditions of Participation for Providers of Medical and Remedial Care," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

The proposed amendments change Medicaid payments for drugs.

There are two components to pharmacy reimbursement for a drug: the ingredient cost and a dispensing fee. The current Iowa Medicaid reimbursement methodology for drug ingredient cost incorporates the average wholesale price (AWP) published by Medi-Span minus a percentage, upper payment limits established by the federal Medicaid agency, state-set maximums, and the provider's usual and customary charge. Unless payment is made based on the pharmacy's usual and customary charge, a dispensing fee

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

is added to the ingredient cost to cover the pharmacist's professional services and costs associated with transferring the drug to a Medicaid member. The dispensing fee is currently set at \$6.20 for any drug.

The proposed amendments implement an average actual acquisition cost (AAC) reimbursement methodology for all drug ingredient costs, replacing the AWP and state-set maximums and using a survey of pharmacy invoices to determine the average AAC. Enrolled pharmacies are required to provide drug acquisition cost invoice information. In cases where AAC is not available, wholesale acquisition cost (WAC) published by Medi-Span will be used.

The dispensing fee will be set based on cost of dispensing surveys of Iowa Medicaid participating pharmacies. All participating pharmacies will be required to complete the survey. The Department expects the initial dispensing fee to be within the range of \$10.00 to \$11.10. Based on the survey results, the Department will consider any additional costs to dispense specialty drugs.

Any dispensing or acquisition cost information required to be submitted to the Department that specifically identifies a pharmacy's individual costs will be held confidential.

These amendments comply with 2012 Iowa Acts, Senate File 2336, section 33, which requires that the Department implement ingredient cost reimbursement based on "average acquisition cost," as determined by a survey of the pharmacy invoices, and that the dispensing fee be determined by a cost of dispensing survey. The amendments also comply with proposed federal regulations that define "Actual Acquisition Cost (AAC)" as a reference price for drug reimbursement, use the AAC as an upper payment limit for drugs not subject to upper limits as multiple source drugs, and provide that payments for drugs must be based on surveys of retail pharmacy providers or on other reliable data regarding a pharmacy's actual or average acquisition costs. See 77 Fed. Reg. 5318 at 5320-21, 5366-67 (Feb. 2, 2012).

Licensure requirements for out-of-state pharmacies delivering drugs in Iowa are also clarified, pursuant to Board of Pharmacy rules. See rule 657—19.2(155A).

Any interested person may make written comments on the proposed amendments on or before August 28, 2012. Comments should be directed to Harry Rossander, 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](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waiver in specified situations because the state legislation and proposed federal rule do not allow for exclusions and because all pharmacies should be subject to the same reimbursement methodology. The Department has an exception to policy process that may be pursued should a pharmacy determine that its circumstances would merit an exception. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2012 Iowa Acts, Senate File 2336, section 33.

The following amendments are proposed.

ITEM 1. Amend rule 441—77.2(249A) as follows:

**441—77.2(249A) Retail pharmacies.** ~~Pharmacies~~ Retail pharmacies are eligible to participate ~~providing they are licensed in the state of Iowa or duly licensed in other states~~ if they meet the requirements of this rule.

77.2(1) Licensure. Participating retail pharmacies must be licensed in the state of Iowa or duly licensed in another state. Out-of-state retail pharmacies delivering, dispensing, or distributing drugs by any method to an ultimate user physically located in Iowa must be duly licensed by Iowa as a nonresident pharmacy for that purpose.

77.2(2) Survey participation. As a condition of participation, retail pharmacies are required to make available drug acquisition cost invoice information, product availability information, dispensing cost information, and any other information deemed necessary by the department to assist in monitoring

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

and revising reimbursement rates pursuant to 441—subrule 79.1(8) or for the efficient operation of the pharmacy benefit.

a. A pharmacy shall produce and submit all requested information in the manner and format requested by the department or its designee at no cost to the department or its designee.

b. A pharmacy shall submit information to the department or its designee within the time frame indicated following receipt of a request for information unless the department or its designee grants an extension upon written request of the pharmacy.

c. Any dispensing or acquisition cost information submitted to the department that specifically identifies a pharmacy's individual costs shall be held confidential.

ITEM 2. Amend subrule **79.1(2)**, provider category "Prescribed drugs," as follows:

Provider category	Basis of reimbursement	Upper limit
Prescribed drugs	See 79.1(8)	\$6.20 dispensing fee effective 8/1/11. (See 79.1(8) "a," "b," and "c.") Amount pursuant to 79.1(8).

ITEM 3. Amend subrule 79.1(8) as follows:

**79.1(8) Drugs.** The amount of payment shall be based on several factors, subject to the upper limits in 42 CFR 447.500 to 447.520 as amended to ~~October 7, 2008~~ May 16, 2012. The Medicaid program relies on information published by Medi-Span to classify drugs as brand-name or generic. ~~Specialty drugs include biological drugs, blood-derived products, complex molecules, and select oral, injectable, and infused medications identified by the department and published on the specialty drug list.~~

a. Reimbursement for covered generic prescription drugs and for covered nonprescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined: The average actual acquisition cost (AAC), determined pursuant to paragraph 79.1(8) "g," plus the professional dispensing fee determined pursuant to paragraph 79.1(8) "f."

~~1. For covered nonspecialty generic prescription drugs, as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph "g"; or~~

~~2. For covered specialty generic prescription drugs, as the average wholesale price as published by Medi-Span less 17 percent, plus the professional dispensing fee specified in paragraph "g."~~

(2) The maximum allowable cost (MAC), defined as the specific upper limit for multiple source drugs established in accordance with the methodology of the Centers for Medicare and Medicaid Services as described in 42 CFR 447.514, plus the professional dispensing fee specified in determined pursuant to paragraph "g." 79.1(8) "f."

~~(3) The state maximum allowable cost (SMAC), defined as the average wholesale acquisition cost for a generic drug (the average price pharmacies pay to obtain the generic drug as evidenced by purchase records) adjusted by a multiplier of 1.2, plus the professional dispensing fee specified in paragraph "g."~~

(4) (3) The submitted charge, representing the provider's usual and customary charge for the drug.

b. Reimbursement for covered brand-name prescription drugs shall be the lower of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined: The average actual acquisition cost (AAC), determined pursuant to paragraph 79.1(8) "g," plus the professional dispensing fee determined pursuant to paragraph 79.1(8) "f."

~~1. For covered nonspecialty brand-name prescription drugs, as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph "g"; or~~

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

~~2. For covered specialty brand name prescription drugs, as the average wholesale price as published by Medi-Span less 17 percent, plus the professional dispensing fee specified in paragraph "g."~~

(2) The submitted charge, representing the provider's usual and customary charge for the drug.

c. No payment shall be made for sales tax.

d. All hospitals that wish to administer vaccines which are available through the vaccines for children program to Medicaid members shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid members. Hospitals receive reimbursement for the administration of vaccines to Medicaid members through the DRG reimbursement for inpatients and APC reimbursement for outpatients.

~~e. The basis of payment for nonprescription drugs shall be the same as specified in paragraph "a" except that the department shall establish a maximum allowable reimbursable cost for these drugs using the average wholesale prices of the chemically equivalent products available. The department shall set the maximum allowable reimbursable cost at the median of those average wholesale prices. No exceptions for higher reimbursement will be approved.~~

~~f. e.~~ An additional reimbursement amount of one cent per dose shall be added to the allowable ingredient cost of a prescription for an oral solid if the drug is dispensed to a patient in a nursing home in unit dose packaging prepared by the pharmacist.

~~g. f.~~ For services rendered on or after August 1, 2011, the professional dispensing fee is \$6.20 or the pharmacy's usual and customary fee, whichever is lower. Professional dispensing fees shall be amounts determined by the department based on a survey of Iowa Medicaid retail pharmacy providers' costs of dispensing drugs to Medicaid beneficiaries. For services rendered on or after January 1, 2013, the dispensing fee for all drugs shall be [\$10.00 - \$11.10].

~~g.~~ For purposes of this rule, average actual acquisition cost (AAC) is defined as retail pharmacies' average prices paid to acquire drug products. Average AAC shall be determined by the department based on a survey of invoice prices paid by Iowa Medicaid retail pharmacies. Surveys shall be conducted at least once every six months, or more often at the department's discretion. The average AAC shall be calculated as a statistical mean based on one reported cost per drug per pharmacy. The average AAC determined by the department shall be published on the Iowa Medicaid enterprise Web site. If no current average AAC has been determined for a drug, the wholesale acquisition cost (WAC) published by Medi-Span shall be used as the average AAC.

~~h.~~ For purposes of this subrule, "equivalent products" shall be those that meet therapeutic equivalent standards as published in the federal Food and Drug Administration document, "Approved Prescription Drug Products With Therapeutic Equivalence Evaluations."

~~i.~~ Pharmacies and providers that are enrolled in the Iowa Medicaid program shall make available drug acquisition cost information, product availability information, and other information deemed necessary by the department to assist the department in monitoring and revising reimbursement rates subject to 79.1(8) "a"(3) and 79.1(8) "c" and for the efficient operation of the pharmacy benefit.

~~(1) Pharmacies and providers shall produce and submit the requested information in the manner and format requested by the department or its designee at no cost to the department or its designee.~~

~~(2) Pharmacies and providers shall submit information to the department or its designee within 30 days following receipt of a request for information unless the department or its designee grants an extension upon written request of the pharmacy or provider.~~

~~j.~~ Savings in Medicaid reimbursements attributable to the SMAC shall be used to pay costs associated with determination of the SMAC, before reversion to Medicaid.

~~k. h.~~ Payment to physicians for physician-administered drugs billed with Healthcare Common Procedure Coding System (HCPCS) Level II "J" codes, as a physician service, shall be pursuant to physician payment policy under subrule 79.1(2).

**ARC 0258C****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 237A.5, the Department of Human Services proposes to amend Chapter 109, “Child Care Centers,” and Chapter 110, “Child Development Homes,” Iowa Administrative Code.

These amendments eliminate the requirement for the Department to conduct repeat record check evaluations of transgressions already evaluated on individuals as they move from employer to employer. As employees move from employer to employer, they will still be required to undergo the record check process; however, transgressions that have already been evaluated will not need to be evaluated again as long as certain conditions are met.

Any interested person may make written comments on the proposed amendments on or before August 28, 2012. Comments should be directed to Harry Rossander, 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](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers because the amendments confer a benefit on all persons affected. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 237A.5 as amended by 2012 Iowa Acts, Senate File 2164, section 2.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subparagraph **109.6(6)“g”(4)**:

(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person’s involvement with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department’s previous evaluation. The exemption is subject to all of the following conditions:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.
2. Any restrictions placed on the person’s employment by the department in the previous evaluation shall remain applicable in the person’s subsequent employment.
3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person’s personnel file pursuant to the person’s authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.
4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

ITEM 2. Adopt the following **new** subparagraph **110.7(3)“c”(4)**:

(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person’s involvement with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The

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

person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.
2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.
3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.
4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

**ARC 0241C****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 156, “Payments for Foster Care,” Iowa Administrative Code.

These amendments provide an increase to the foster family daily reimbursement rate and adoption subsidy daily maintenance rates effective July 1, 2012.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 0240C**. 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 August 28, 2012. Comments should be directed to Harry Rossander, 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](mailto:policyanalysis@dhs.state.ia.us).

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).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 234.38 and 2012 Iowa Acts, Senate File 2336, section 34.

ARC 0257C

**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

These amendments will update eligibility criteria, including increasing minimum age for placement in supervised apartment living foster care and expansion of required services regarding the service plan for the Supervised Apartment Living (SAL) foster care program.

In addition, these amendments will clarify that youth participating in the Education Training Voucher (ETV) program are also part of the population served under Iowa’s Independent Living Program (ILP). ILP rules explain which programs are under the umbrella for Iowa’s program to transition youth from foster care to adulthood. ETV is a federally funded program to financially assist youth formerly in foster care obtain postsecondary training and education.

Any interested person may make written comments on the proposed amendments on or before August 28, 2012. Comments should be directed to Harry Rossander, 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](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, there will be an impact on private-sector jobs. The primary impact will be the better equipping of a population of youth with skill sets needed in today’s job market. Approximately 200 youth are served in the SAL foster care program annually.

These amendments are intended to implement Iowa Code section 234.6.

The following amendments are proposed.

ITEM 1. Rescind rule 441—202.9(234) and adopt the following **new** rule in lieu thereof:

**441—202.9(234) Supervised apartment living.** A supervised apartment living arrangement shall provide a child with an environment in which the child can experience living in the community with supervision and prepare for self-sufficiency. The child must have the capacity to live in the community with less supervision than that provided by a foster family or in a group care setting and must be able to follow the provisions of the case plan and participate in activities and services to achieve self-sufficiency.

**202.9(1) Living arrangements.**

*a.* The two types of supervised apartment living arrangements are as follows:

(1) A cluster setting, which provides support in a structured setting. Up to six children reside in apartments or bedrooms in one building (such as an apartment building or residential housing), supervised by one agency. The supervising agency must have an adult staff member present and available on-site in the living arrangement at any time when more than one child is present.

(2) A scattered-site setting, which is the less restrictive of the two types of living arrangements. Up to three children supervised by one agency may reside in individual housing arrangements, such as apartments or residential housing, located in one building. Children must be able to contact supervising agency staff 24 hours a day, seven days a week.

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

*b.* If an agency rents an apartment to the child, there shall be a signed lease between both parties that includes, but is not limited to:

- (1) Amount to be paid for the rental unit.
- (2) The term of the lease with both a beginning and an ending date.
- (3) Rights and responsibilities of the tenant.
- (4) Rights and responsibilities of the landlord.
- (5) Conditions under which the lease can be terminated.

**202.9(2) Eligibility.** To be eligible for supervised apartment living placement, a child shall meet all of the following conditions:

- a.* The child must be at least 16½ years old for placement in a cluster setting.
- b.* The child must be at least 17 years old for placement in a scattered-site setting.
- c.* If the child is under the age of 18, the child must:
  - (1) Satisfactorily attend school, in accordance with the school's attendance policies, with the objective of obtaining a high school diploma; or
  - (2) Satisfactorily attend an instructional program, pursuant to the program's policies, necessary to obtain a general equivalency diploma (GED); or
  - (3) Attend school to obtain postsecondary education or training on a full-time basis (based upon the institution's definition of full-time) or attend on a part-time basis and be either working or participating in a work training program leading to employment; or
  - (4) Work at least an average of 80 hours per month if not enrolled in school; or
  - (5) Participate in a work training program leading to employment if not enrolled in school.
- d.* If the child is aged 18 or older, the child must:
  - (1) Meet the definition of "child" in Iowa Code section 234.1; and
  - (2) Have been in foster care immediately before reaching the age of 18 and have continued in foster care since reaching the age of 18. The service area manager or designee may waive the requirement for continuous placement for a child who leaves foster care at age 18 and voluntarily returns before the child's twentieth birthday in order to complete high school or obtain a GED, consistent with Iowa Code sections 234.35(1) "f" and 234.35(3) "c"; and
  - (3) Attend school on a full-time basis leading to a high school diploma or attend an instructional program leading to a GED.
- e.* The child must need foster care placement and services, based on an assessment completed according to rule 441—202.2(234) and subrule 202.6(5).
- f.* The child must participate in services and activities to achieve self-sufficiency.
- g.* The child must have the capacity to live in the community with less supervision than that provided by a foster family or in a group care setting, as determined by an assessment that reviews available information on the child to identify the needs, strengths, and resources of the child, especially as they pertain to the child's ability to function in the community. To determine if a supervised apartment living foster care placement is suitable for the child, the department worker must complete Form 470-4063, Preplacement Screening for Supervised Apartment Living Foster Care.
- h.* The child must have an approved living situation that meets the following minimum standards:
  - (1) Comply with applicable state and local zoning, fire, sanitary and safety regulations.
  - (2) Be located so as to provide reasonably convenient access to schools, places of employment, and services and supports required by the child.
  - (3) Be reasonably priced so as to fit within the child's budget.
- i.* If supervised apartment living foster care is deemed suitable for the child, the worker shall complete Form 470-3186, Request for Approval of Supervised Apartment Living Foster Care Placement, to request that the service area manager or designee approve the placement. This form is also to be used to request that the service area manager or designee waive the requirement for continuous placement for a child who leaves foster care on or after the child's eighteenth birthday and voluntarily returns before the child's twentieth birthday in order to complete high school or obtain a GED.
- j.* The placement must have the approval of the juvenile court if the child is under court jurisdiction.

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

**202.9(3) Services to be provided.** To ensure that the supervised apartment living arrangement is meeting the child's needs, required services shall be provided directly by the department or purchased from an agency that has a contract with the department to provide supervised apartment living foster care services. The following services are required:

*a.* Development of a case or service plan (by either the department worker or the service provider, if contracted out) in consultation with the child and the child's family (unless a reason for noninvolvement is documented in the case record) and significant others whenever appropriate that documents the following:

(1) Goals, intended to meet the specific needs of the child to achieve self-sufficiency, with projected dates of accomplishment.

(2) Objectives (action steps) to be taken by the child, the child's support system, and staff, with projected dates of accomplishment.

(3) Services to be provided and activities to be undertaken, the frequency of such services, who will provide the services, the child's progress with the goals and objectives, and the child's compliance with the service plan.

(4) A budget, developed with the child, based upon the child's monthly maintenance payment, any start-up allowance, any earned or unearned incomes and financially related assistance (e.g., food assistance). Staff will work with the child to ensure payment of bills and receipt of necessary items as outlined in the budget.

*b.* Life skills training involving interpersonal and daily living skills training to prepare the child to maintain a safe, healthy, and stable lifestyle and achieve self-sufficiency. Life skills training includes training of "hard" skills (e.g., money management, self-care and hygiene, physical and mental health care, skills related to educational and employment goals, housing and home management, time management, accessing community resources) and training of "soft" skills (e.g., decision making, problem solving, developing healthy relationships, self-advocacy). Life skills training should be individualized to the needs of the child toward achieving self-sufficiency. If a child needs a specific life skills training service or services (e.g., parenting skill development, counseling services to reduce stress and social, emotional, or behavioral problems that affect the child's stability or ability to achieve self-sufficiency) in addition to basic life skills training services and services are purchased, the department worker will specify the necessary services under special provisions on Form 470-5081, Placement Agreement and Service Authorization for Supervised Apartment Living (SAL).

*c.* Through visits with the child and to the living situation, determination and documentation that:

(1) The living arrangement and mode of living are safe and suitable and is an environment that allows for the child's social and emotional needs to be met; and

(2) There is no reasonable cause to believe that the child's living situation or mode of living presents any unacceptable risks to the child's health or safety; and

(3) The child has access to a telephone; and

(4) There is an operating smoke alarm on each level of occupancy; and

(5) The child is receiving any necessary medical care; and

(6) The child is receiving appropriate and sufficient services and supports to achieve the child's goals and facilitate objectives according to the child's service plan.

*d.* Supervision to assist the child in developing the needed structure to live in the supervised apartment living setting and in locating and using other needed services. If the child is under the age of 18, supervision shall include a minimum of weekly face-to-face contacts. For a child aged 18 or older, supervision shall include a minimum of biweekly (every other week) face-to-face contacts. Supervision may include guidance, oversight, and behavior monitoring.

*e.* Ongoing assessment activities to monitor the child's ability to achieve self-sufficiency.

*f.* If services are purchased, visits by the department to the child according to subrule 202.11(2).

*g.* If services are purchased, compliance by the provider with all reporting requirements in 441—paragraph 150.3(3) "j," including requirements for the individual service plan, quarterly reports, and a termination summary.

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

*h.* A review of the case and case plan every six months, in accordance with subrules 202.6(4) and 202.6(5).

**202.9(4) Method of service provision.** Supervised apartment living services may be provided directly by the department or purchased from an agency that has a contract with the department to provide supervised apartment living foster care services. If services are purchased:

*a.* Department staff shall be responsible to determine the specific service components and the specific number of service units to be provided for required services. The department case permanency plan shall specify the goals and objectives (action steps) of the services that are being purchased. If services are purchased, the worker shall complete Form 470-5081, Placement Agreement and Service Authorization for Supervised Apartment Living (SAL), to place the child with the contractor and to authorize service codes (scattered-site or cluster setting; individual services or services provided with a group of children in supervised apartment living placement) and the specific number of units to be provided and billable.

*b.* Service billings for services shall be based on one hour (one unit equals one hour of service), or any portion thereof (with monthly cumulative units rounded up or down to the nearest whole unit), of:

(1) Direct face-to-face contact between the service provider and the child.

(2) Activities undertaken to assist the child in developing the needed structure and supports to live in the supervised apartment living setting.

(3) Activities undertaken to assist the child in locating and using other needed services, supports, and community resources and to consult and collaborate on service directions on behalf of the child with schools, employers, landlords, volunteers, extended family members, peer support groups, training resources, or other community resources.

*c.* Service billings for group services shall be based on one hour (one unit equals one hour of service), or any portion thereof (with monthly cumulative units rounded up or down to the nearest whole unit), for each child in the group.

*d.* Expenses of transporting the child, service management activities, and other administrative functions shall be allowable indirect costs subject to the restrictions set forth in rule 441—150.3(234) and are not billable units of service.

*e.* Contractors providing a cluster setting shall be paid \$500 per month per child in the setting for agency staffing costs, in addition to billable units of services provided to the child, but are eligible for this payment only when two or more children are in the setting. For a child who enters a cluster setting during the month, the prorated amount per day is \$16.44. If a child exits the setting on or before the last day of the month, the \$500 shall be prorated up to the date before the date of exit.

**202.9(5) Termination of services.**

*a.* Mandatory termination. Supervised apartment living services shall be terminated when the child:

(1) No longer meets eligibility criteria;

(2) No longer needs services or needs a more restrictive level of placement;

(3) Chooses to live in a nonapproved setting; or

(4) Refuses to follow the provisions of the case plan.

*b.* When services are purchased and the department plans to remove a child from the supervised apartment living placement, the department shall inform the provider in writing of the date of removal, the reason for the removal, the recourse available, if any, and that the contested case (appeal) proceeding does not apply to the removal.

*c.* The provider shall be informed ten days in advance of the removal, except when the court orders removal of the child from the placement or there is evidence of neglect or physical or sexual abuse.

This rule is intended to implement Iowa Code section 234.6.

ITEM 2. Amend paragraph **202.11(7)“a”** as follows:

*a. Eligibility.* To be eligible for the independent living program, a child ~~must be under the age of 21~~, must be or have been in foster care as defined by rule 441—202.1(234) or 45 Code of Federal

HUMAN SERVICES DEPARTMENT[441](cont'd)

Regulations 1355.20 as amended to October 1, 2008, and must meet at least one of the following eligibility requirements:

- (1) Is currently in foster care and is 16 years of age or older.
- (2) ~~Was Is~~ Is under the age of 21 and was adopted from foster care on or after October 7, 2008, and was at least 16 years of age at the time of adoption.
- (3) ~~Was Is~~ Is under the age of 21 and was placed in a subsidized guardianship arrangement from foster care on or after October 7, 2008, and was at least 16 years of age at the time of placement.
- (4) Was formerly in foster care and is eligible for and participating in Iowa's aftercare services program as described at 441—Chapter 187.
- (5) Was formerly in foster care and is eligible for and participating in Iowa's education and training voucher (ETV) program as described at 42 U.S.C. 677(a)(6-7).

**ARC 0244C**

## 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 16.133, the Iowa Finance Authority proposes to amend Chapter 26, “Water Pollution Control Works and Drinking Water Facilities Financing,” Iowa Administrative Code.

The purpose of this amendment is to eliminate the requirement that annual loan servicing fees for loans made from the Water Pollution Control State Revolving Fund and the Drinking Water State Revolving Fund be paid only at the time of each annual principal payment.

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

The Authority will receive written comments on the proposed amendment until 4:30 p.m. on August 28, 2012. 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](mailto:mark.thompson@iowa.gov).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 0245C**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code sections 16.5(1) and 16.133.

## LABOR SERVICES DIVISION

### Advance Notice of Proposed Rule Making

Pursuant to the authority of Iowa Code subsection 89A.3(3), the Elevator Safety Board is considering adoption of the American Society of Mechanical Engineers A17.3 “Safety Code for Existing Elevators and Escalators.” Currently, older elevators and escalators do not meet the same safety standards as new equipment. The A17.3 code would improve safety for older equipment, but generally would not require the same level of safety needed for new equipment. The cost of complying with the A17.3 code would vary widely depending on the installation. However, it is clear that for some owners the required changes would be expensive.

LABOR SERVICES DIVISION[875](cont'd)

In advance of filing a Notice of Intended Action, the Elevator Safety Board is seeking public comment on the A17.3 code. Please visit [www.iowaworkforce.org/elevator](http://www.iowaworkforce.org/elevator) for information about the A17.3 code and for instructions on commenting about the A17.3 code.

**ARC 0256C**

## **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 and 2011 Iowa Acts, chapter 63, section 36, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 8, “Universal Practice Standards,” Iowa Administrative Code.

Proposed rule 657—8.40(155A) was approved at the June 27, 2012, regular meeting of the Board of Pharmacy.

The proposed rule establishes the procedures to be followed for a pharmacy to apply for approval of a pilot or demonstration research project for innovative applications in the practice of pharmacy relating to the authority of prescription verification and the ability of a pharmacist to provide enhanced patient care. The proposed rule defines the scope and duration of a proposed pilot or demonstration research project, application requirements, Board review and approval or denial processes, and project reporting requirements.

The proposed rule establishes processes relating to waiver of Board rules for a specific purpose: implementation of a pilot or demonstration research project for innovative applications in the practice of pharmacy. The criteria for such a pilot or demonstration research project are clearly identified in the Iowa Code.

The provisions of this rule are not subject to waiver or variance.

Any interested person may present written comments, data, views, and arguments on the proposed rule not later than 4:30 p.m. on August 28, 2012. 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](mailto:terry.witkowski@iowa.gov).

After analysis and review of this rule making, no impact on jobs has been found.

This rule is intended to implement 2011 Iowa Acts, chapter 63, section 36, as amended by 2012 Iowa Acts, House File 2464, section 31.

The following amendments are proposed.

ITEM 1. Reserve rules **657—8.36** to **657—8.39**.

ITEM 2. Adopt the following **new** rule 657—8.40(155A,84GA,ch63):

**657—8.40(155A,84GA,ch63) Pharmacy pilot or demonstration research projects.** The purpose of this rule is to specify the procedures to be followed in applying for approval of a pilot or demonstration research project for innovative applications in the practice of pharmacy as authorized by 2011 Iowa Acts, chapter 63, section 36, as amended by 2012 Iowa Acts, House File 2464, section 31. In reviewing projects, the board will consider only projects that expand pharmaceutical care services that contribute to positive patient outcomes. The board will not consider any project intended only to provide a competitive advantage to a single applicant or group of applicants.

**8.40(1) Definitions.** For the purposes of this rule, the following definitions shall apply:

“*Act*” means Iowa Code chapter 155A, the Iowa pharmacy practice Act.

“*Board*” means the Iowa board of pharmacy.

## PHARMACY BOARD[657](cont'd)

“*Practice of pharmacy*” means the practice of pharmacy as defined in Iowa Code section 155A.3(34).

“*Project*” means a pilot or demonstration research project as described in this rule.

**8.40(2) *Scope of project.*** A project may not expand the definition of the practice of pharmacy. A project may include therapeutic substitution or substitution of medical devices used in patient care if such substitution is included under a collaborative drug therapy management protocol established pursuant to rule 657—8.34(155A).

**8.40(3) *Board approval of a project.*** Board approval of a project may include the grant of an exception to or a waiver of rules adopted under the Act or under any law relating to the authority of prescription verification and the ability of a pharmacist to provide enhanced patient care in the practice of pharmacy. Project approval, including exception to or waiver of board rules, shall be for a specified period of time not exceeding 18 months from commencement of the project.

**8.40(4) *Applying for approval of a project.*** A person who wishes the board to consider approval of a project shall submit to the board a petition for approval that contains at least the following information:

a. *Responsible pharmacist.* Name, address, telephone number, and pharmacist license number of each pharmacist responsible for overseeing the project.

b. *Location of project.* Name, address, and telephone number of each specific location and, if a location is a pharmacy, the pharmacy license number where the proposed project will be conducted.

c. *Project summary.* A detailed summary of the proposed project that includes at least the following information:

- (1) The goals, hypothesis, and objectives of the proposed project.
- (2) A full explanation of the project and how it will be conducted.
- (3) The time frame for the project including the proposed start date and length of study. The time frame may not exceed 18 months from the proposed start date of the project.
- (4) Background information or literature review to support the proposed project.
- (5) The rule or rules to be waived in order to complete the project and a request to waive the rule or rules.

(6) Procedures to be used during the project to ensure that the public health and safety are not compromised as a result of the waiver.

**8.40(5) *Review and approval or denial of a proposed project.***

a. *Staff review.* Upon receipt of a petition for approval of a project, board staff shall initially review the petition for completeness and appropriateness. If the petition is incomplete or inappropriate for board consideration, board staff shall return the petition to the requestor with a letter explaining the reason the petition is being returned. A petition that has been returned pursuant to this paragraph may be amended or supplemented as necessary and submitted for reconsideration.

b. *Board review.* Upon review by the board of a petition for approval of a project, the board shall either approve or deny the petition. If the board approves the petition, the approval:

- (1) Shall be specific for the project requested;
- (2) Shall approve the project for a specific time period; and
- (3) May include conditions or qualifications applicable to the project.

c. *Inspection.* The project site and project documentation shall be available for inspection and review by the board or its representative at any time during the project review and the approval or denial processes and, if a project is approved, throughout the approved term of the project.

d. *Documentation maintained.* Project documentation shall be maintained and available for inspection, review, and copying by the board or its representative for at least two years following completion or termination of the project.

**8.40(6) *Presentation of reports.*** The pharmacist responsible for overseeing a project shall be responsible for submitting to the board any reports required as a condition of a project, including the final project report.

a. *Final project report.* The final project report shall include a written summary of the results of the project and the conclusions drawn from those results. The final project report shall be submitted to the board within three months after completion or termination of the project.

PHARMACY BOARD[657](cont'd)

*b. Board review.* The board shall receive and review any report regarding the progress of a project and the final project report at a regularly scheduled meeting of the board. The report shall be an item on the open session agenda for the meeting.

## ARC 0262C

### PUBLIC EMPLOYMENT RELATIONS BOARD[621]

#### 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 20.6(5), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 1, “General Provisions,” Iowa Administrative Code.

Current rule 621—1.8(20,279) provides that qualified arbitrators and teacher termination adjudicators are entitled to charge a maximum of \$800 per day of service. This rate has not been updated in five years, and the Board believes this rate is insufficient.

This amendment does not provide for a waiver of its terms but is instead subject to the Board’s general waiver provisions, which are found at rule 621—1.9(17A,20).

Any interested person may make written suggestions or comments on this proposed amendment on or before August 28, 2012. Written suggestions or comments should be directed to James R. Riordan, Chairperson, Public Employment Relations Board, 510 E. 12th Street, Des Moines, Iowa 50319.

Persons who wish to convey their views orally should contact the office of the Public Employment Relations Board by telephone at (515)281-4414 or in person at the Board office at the address noted above.

Requests for a public hearing must be received by August 28, 2012.

After analysis and review of this proposed rule making, no adverse impact on jobs has been found.

This amendment is intended to implement Iowa Code section 20.6(3).

The following amendment is proposed.

Amend rule 621—1.8(20,279) as follows:

**621—1.8(20,279) Fees of neutrals.** Qualified arbitrators and teacher termination adjudicators appointed from lists maintained by the board may be compensated by a sum not to exceed ~~\$800~~ \$1,200 per day of service, plus their necessary expenses incurred.

## ARC 0253C

### REVENUE DEPARTMENT[701]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax and Tax

## REVENUE DEPARTMENT[701](cont'd)

Credits,” and Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

These amendments are proposed as a result of 2012 Iowa Acts, Senate File 2342, which amends Iowa Code section 422.33 and adds new Iowa Code sections 422.11I and 422.11L.

Item 1 amends 701—Chapter 42 by adding new rules 701—42.47(422) related to the geothermal heat pump tax credit and 701—42.48(422) related to the solar energy system tax credit for individual income tax.

Item 2 amends 701—Chapter 52 by adding new rule 701—52.44(422) related to the solar energy system tax credit for corporation income tax.

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

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than September 10, 2012, to the Policy Section, Policy and Communications 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 August 28, 2012. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications 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 August 28, 2012.

After analysis and review of this rule making, no adverse impact on jobs has been found. The tax credits may positively impact job and economic growth for businesses in the state of Iowa.

These amendments are intended to implement Iowa Code section 422.33 as amended by 2012 Iowa Acts, Senate File 2342, section 8, and 2012 Iowa Acts, Senate File 2342, sections 1 and 7.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rules 701—42.47(422) and 701—42.48(422):

**701—42.47(422) Geothermal heat pump tax credit.** For tax years beginning on or after January 1, 2012, a geothermal heat pump tax credit is available for residential property located in Iowa.

**42.47(1) Calculation of credit.** The credit is equal to 20 percent of the federal residential energy efficient tax credit allowed for geothermal heat pumps provided in Section 25D(a)(5) of the Internal Revenue Code. The federal residential energy efficient tax credit for geothermal heat pumps is currently allowed for installations that are completed on or before December 31, 2016. Therefore, the Iowa tax credit will be available for the 2012 to 2016 tax years. The geothermal heat pump must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a geothermal heat pump and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a \$6,000 geothermal tax credit on the 2011 federal return due to an installation that was completed in 2011. The taxpayer applied \$2,000 of the credit on the taxpayer’s 2011 federal return since the federal tax liability was \$2,000. The remaining \$4,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was completed before January 1, 2012.

## REVENUE DEPARTMENT[701](cont'd)

**42.47(2) Claiming the tax credit.** The geothermal heat pump tax credit will be claimed on Form IA 148, Tax Credit Schedule. The taxpayer must attach federal Form 5695, Residential Energy Credits, to any Iowa tax return claiming the geothermal heat pump credit. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

This rule is intended to implement 2012 Iowa Acts, Senate File 2342, section 1.

**701—42.48(422) Solar energy system tax credit.** For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for both residential property and business property located in Iowa.

**42.48(1) Property eligible for the tax credit.** The following property located in Iowa is eligible for the tax credit.

- a. Qualified solar water heating property described in Section 25D(d)(1) of the Internal Revenue Code.
- b. Qualified solar energy electric property described in Section 25D(d)(2) of the Internal Revenue Code.
- c. Equipment which uses solar energy to generate electricity, to heat or cool (or to provide hot water for use in) a structure, or to provide solar process heat (excepting property used to generate energy for the purposes of heating a swimming pool) and which is eligible for the federal energy credit as described in Section 48(a)(3)(A)(i) of the Internal Revenue Code.

d. Equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight and which is eligible for the federal energy credit as described in Section 48(a)(3)(A)(ii) of the Internal Revenue Code.

**42.48(2) Calculation of credit.** The credit is equal to the sum of the following federal tax credits:

- a. Fifty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code.
- b. Fifty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code.
- c. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.
- d. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(2)“a” and “b” cannot exceed \$3,000 for a tax year. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(2)“c” and “d” cannot exceed \$15,000 for a tax year.

The federal residential energy efficient tax credits and the federal energy tax credits for solar energy systems are currently allowed for installations that are completed on or before December 31, 2016. Therefore, the Iowa tax credit will be available for the 2012 to 2016 tax years. The solar energy system must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a solar energy system and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a \$9,000 residential energy efficient tax credit on the 2011 federal return due to an installation of a solar energy system that was completed in 2011. The taxpayer applied \$4,000 of the credit on the taxpayer’s 2011 federal return since the federal tax liability was \$4,000. The remaining \$5,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was completed before January 1, 2012.

**42.48(3) Application for the tax credit.** No more than \$1.5 million of tax credits for solar energy systems are allowed for each of the tax years 2012 to 2016. The \$1.5 million cap also includes the solar energy system tax credits provided in rule 701—52.44(422) for corporation income tax. Credits will be reserved on a first-come, first-served basis.

a. In order to reserve the tax credit, a taxpayer must complete an application for the solar energy tax credit. The application must contain the following information:

## REVENUE DEPARTMENT[701](cont'd)

- (1) Name, address and federal identification number of the taxpayer.
- (2) Date of installation of the solar energy system.
- (3) Copies of invoices or other documents showing the cost of the solar energy system.
- (4) Amount of federal income tax credit for the solar energy system.
- (5) Amount of Iowa tax credit to be reserved.

*b.* If the application is approved, the department will send a letter to the taxpayer reserving the amount of the tax credit and providing a tax credit certificate number. The solar energy system tax credit will be claimed on Form IA 148, Tax Credit Schedule. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier. The taxpayer must attach to any Iowa tax return claiming the solar energy system tax credit federal Form 5695, Residential Energy Credits, if claiming the residential energy credit or federal Form 3468, Investment Credit, if claiming the business energy credit.

If an application cannot be accepted because the annual cap of \$1.5 million has been reached, the taxpayer may submit an application for the next tax year. While preference will be given to applications that are submitted in the same year as the installation, a credit may be allowed for an installation in a prior year if the cap has not been met.

EXAMPLE: A taxpayer submitted an application for a \$2,500 tax credit on December 1, 2012, for an installation that occurred in 2012. The application was denied on December 15, 2012, because the \$1.5 million cap had already been reached for 2012. The taxpayer submits an application for 2013 on January 2, 2013, for the same \$2,500 credit that was previously denied. The department only receives applications for \$1.2 million of the tax credit during 2013. The tax credit for this taxpayer will be allowed for 2013, and any other similar applications will be allowed on a first-come, first-served basis until the remaining \$300,000 of credit for 2013 is depleted.

*c.* A taxpayer who is eligible to receive a renewable energy tax credit provided in rule 701—42.28(422) is not eligible for the solar energy system tax credit.

**42.48(4)** *Allocation of tax credit to owners of a business entity.* If the taxpayer claiming the tax credit based on a percentage of the federal energy credit under Section 48 of the Internal Revenue Code is a partnership, limited liability company, S corporation, estate or trust electing to have income taxed directly to the individual, the individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate or trust. The maximum amount of credit available to a partnership, limited liability company, S corporation, estate or trust shall be limited to \$15,000 for a single tax year.

This rule is intended to implement 2012 Iowa Acts, Senate File 2342, section 7.

ITEM 2. Adopt the following **new** rule 701—52.44(422):

**701—52.44(422) Solar energy system tax credit.** For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for business property located in Iowa.

**52.44(1)** *Property eligible for the tax credit.* The following property located in Iowa is eligible for the tax credit:

*a.* Equipment which uses solar energy to generate electricity, to heat or cool (or to provide hot water for use in) a structure, or to provide solar process heat (excepting property used to generate energy for the purposes of heating a swimming pool) and which is eligible for the federal energy credit as described in Section 48(a)(3)(A)(i) of the Internal Revenue Code.

*b.* Equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight and which is eligible for the federal energy credit as described in Section 48(a)(3)(A)(ii) of the Internal Revenue Code.

**52.44(2)** *Calculation of credit.* The credit is equal to the sum of the following federal tax credits:

*a.* Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

*b.* Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

## REVENUE DEPARTMENT[701](cont'd)

The amount of tax credit claimed by a taxpayer related to paragraphs 52.44(2) “a” and “b” cannot exceed \$15,000 for a tax year.

The federal energy tax credit for solar energy systems is currently allowed for installations that are completed on or before December 31, 2016. Therefore, the Iowa tax credit will be available for the 2012 to 2016 tax years for installations completed on or before December 31, 2016. The solar energy system must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a solar energy system and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

**EXAMPLE:** A taxpayer reported a \$9,000 energy credit on the 2011 federal return due to an installation of a solar energy system that was completed in 2011. The taxpayer applied \$4,000 of the credit on the taxpayer’s 2011 federal return since the federal tax liability was \$4,000. The remaining \$5,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was completed before January 1, 2012.

**52.44(3) Application for the tax credit.** No more than \$1.5 million of tax credits for solar energy systems are allowed for each of the tax years 2012 to 2016. The \$1.5 million cap also includes the solar energy system tax credits provided in rule 701—42.48(422) for individual income tax. Credits will be reserved on a first-come, first-served basis.

*a.* In order to reserve the tax credit, a taxpayer must complete an application for the solar energy tax credit. The application must contain the following information:

- (1) Name, address and federal identification number of the taxpayer.
- (2) Date of installation of the solar energy system.
- (3) Copies of invoices or other documents showing the cost of the solar energy system.
- (4) Amount of federal income tax credit for the solar energy system.
- (5) Amount of Iowa tax credit to be reserved.

*b.* If the application is approved, the department will send a letter to the taxpayer reserving the amount of the tax credit and providing a tax credit certificate number. The solar energy system tax credit will be claimed on Form IA 148, Tax Credit Schedule. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier. The taxpayer must attach federal Form 3468, Investment Credit, to any Iowa tax return claiming the solar energy system tax credit.

If an application cannot be accepted because the annual cap of \$1.5 million has been reached, the taxpayer may submit an application for the next tax year. While preference will be given to applications that are submitted in the same year as the installation, a credit may be allowed for an installation in a prior year if the cap has not been met.

**EXAMPLE:** A taxpayer submitted an application for a \$2,500 tax credit on December 1, 2012, for an installation that occurred in 2012. The application was denied on December 15, 2012, because the \$1.5 million cap had already been reached for 2012. The taxpayer submits an application for 2013 on January 2, 2013, for the same \$2,500 credit that was previously denied. The department only receives applications for \$1.2 million of the tax credit during 2013. The tax credit for this taxpayer will be allowed for 2013, and any other similar applications will be allowed on a first-come, first-served basis until the remaining \$300,000 of credit for 2013 is depleted.

*c.* A taxpayer who is eligible to receive a renewable energy tax credit provided in rule 701—52.27(422) is not eligible for the solar energy system tax credit.

**52.44(4) Allocation of tax credit to owners of a business entity.** If the taxpayer claiming the tax credit based on a percentage of the federal energy credit under Section 48 of the Internal Revenue Code is a partnership, limited liability company, S corporation, estate or trust electing to have income taxed directly to the individual, the individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, limited liability company, S corporation, estate or trust. The maximum amount of credit available to a partnership, limited liability company, S corporation, estate or trust shall be limited to \$15,000 for a single tax year.

This rule is intended to implement Iowa Code section 422.33 as amended by 2012 Iowa Acts, Senate File 2342, section 8.

**ARC 0271C****SECRETARY OF STATE[721]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” and Chapter 28, “Voter Registration File (I-Voters) Management,” Iowa Administrative Code.

These amendments are necessary to establish a formal procedure for investigating and resolving complaints and information received by the Secretary of State involving but not limited to the following subject matters: election administration, voter registration, absentee voting, fraudulent voting and electioneering. The Secretary of State is the chief state election official and has a legal obligation to oversee the conduct of elections in the state by county election commissioners. The Secretary of State is also the state registrar of voters and has a legal obligation to regulate the preparation, preservation and maintenance of voter registration records in the state. The Secretary of State is further authorized to issue notices of technical infractions when the Secretary becomes aware of an apparent violation of the election and voter registration provisions contained in Iowa Code chapters 39 through 53.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 28, 2012. Written suggestions or comments should be directed to Sarah Reisetter, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-0145 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by August 28, 2012.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 0272C**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 39 through 53.

**ARC 0239C****SECRETARY OF STATE[721]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, “Voting Systems,” Iowa Administrative Code.

These amendments are necessary due to the certification of a new voting system for use in the state of Iowa by the Board of Examiners for Voting Systems. Chapter 22 does not contain any standards for use of this system, and counties are in the process of proceeding with purchase of the newly certified

SECRETARY OF STATE[721](cont'd)

system. Iowa Code section 52.5, subsection 4, requires administrative rules to be adopted governing the development of vote counting programs and all procedures used in actual counting of votes by means of the new system before it can be used in an actual election.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 28, 2012. Written suggestions or comments should be directed to Sarah Reisetter, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office by telephone at (515)281-0145 or in person at the Secretary of State's office on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by August 28, 2012.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 0238C**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 49 and 52.

## **ARC 0269C**

### **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 Organization,” Chapter 9, “Requests for Waiver of Network Use by Certified Users,” and Chapter 15, “Advisory Councils, Committees and Groups,” Iowa Administrative Code.

The proposed amendments reflect changes made in the organizational structure of the Iowa Communications Network; in the definition of “certified user”; and in the requirements for posting advisory councils’, committees’ and groups’ agendas, meeting notices and minutes on the Iowa Communications Network Web site.

Any interested person may make written comments or suggestions on the proposed amendments on or before August 28, 2012. Such written comments should be directed to Tamara Fujinaka, Government Relations Officer, 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](mailto:tami.fujinaka@iowa.gov).

Also, there will be a public hearing on August 29, 2012, beginning at 11 a.m. in the ICN Thompson Conference Room, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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.

These amendments were approved at the July 19, 2012, meeting of the Iowa Telecommunications and Technology Commission.

After analysis and review of this rule making, no impact on jobs has been found.

## TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

These amendments are intended to implement Iowa Code sections 8D.1, 8D.6, and 8D.9 and chapter 17A.

The following amendments are proposed.

ITEM 1. Amend subrules 1.5(1) and 1.5(2) as follows:

**1.5(1) *Executive director.*** The executive director or the commission's designee administers the programs and services of the commission in compliance with the Iowa Code and the rules adopted by the commission. The executive director's office is responsible for providing legislative liaison and public information functions, as well as providing administrative support to the commission. The executive director's office provides information and education to the public about the commission and the fiberoptic network and maintains the commission's Web site.

**1.5(2) *Administrative elements.*** In order to carry out the functions of the commission, the following divisions have been established:

*a.* ~~The business and governmental services administrative division coordinates the activities between the engineers, individual sites, and authorized users. 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. The division is responsible for providing legislative liaison and public information functions as well as providing administrative support to the commission. The division provides information and education to the public about the commission and the fiberoptic network and maintains the commission's Web site. The division is also 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, as well as coordination with the attorney general's office for legal counsel.~~

*b.* ~~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, as well as coordination with the attorney general's office for legal counsel.~~

*c. b.* The network operations and engineering division is responsible for provisioning of video services, data/Internet services, and voice services for authorized users. The division is responsible for all operational aspects of the fiberoptic network. The division is responsible for the technical operation of the fiberoptic network, including research and development; network systems; agency information systems functions; and maintenance of a circuit database.

ITEM 2. Amend rule 751—9.1(8D), introductory paragraph, as follows:

**751—9.1(8D) Request for waiver.** A certified user is entitled to file a request for a waiver pursuant to Iowa Code section 8D.9(2). For the purposes of this chapter, "certified user" means an area education agency, community college, or regents institution, ~~or private college~~ that has certified with the commission that it is or will be a part of the network.

ITEM 3. Amend subrule 15.3(3) as follows:

**15.3(3) *Provide notices of meetings and minutes of meetings.***

*a.* Each advisory council, committee or group shall prepare minutes of its meetings and submit the minutes to the commission within ~~30~~ 60 days of the date of the meeting for posting on the Iowa communications network Web site.

*b.* Each advisory council, committee or group shall provide notice of its meetings to interested parties identified by the commission or the advisory council, committee or group. An advisory council, committee or group shall submit an electronic agenda and notice to the ICN one week prior to a scheduled meeting for posting on the Iowa communications network Web site.

## USURY

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

August 1, 2011 — August 31, 2011	5.00%
September 1, 2011 — September 30, 2011	5.00%
October 1, 2011 — October 31, 2011	4.25%
November 1, 2011 — November 30, 2011	4.00%
December 1, 2011 — December 31, 2011	4.25%
January 1, 2012 — January 31, 2012	4.00%
February 1, 2012 — February 29, 2012	4.00%
March 1, 2012 — March 31, 2012	4.00%
April 1, 2012 — April 30, 2012	4.00%
May 1, 2012 — May 31, 2012	4.25%
June 1, 2012 — June 30, 2012	4.00%
July 1, 2012 — July 31, 2012	3.75%
August 1, 2012 — August 31, 2012	3.50%

**ARC 0237C**

## UTILITIES DIVISION[199]

### 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 Iowa Code sections 17A.4, 17A.7, 476.1, 476.2, and 476.6(8), the Utilities Board (Board) gives notice that on July 9, 2012, the Board issued an order in Docket No. RMU-2012-0001, In re: Petition for Rule Making Regarding Recovering Certain Energy Related Costs Through An Automatic Adjustment Clause, “Order Granting Petition and Commencing Rule Making.” The Board is noticing for public comment proposed amendments to 199 IAC 20.1(3), 20.9(476), 20.13(476), and 20.17(476). The amendments impact the energy adjustment clause (EAC), contents of a utility’s fuel procurement plan, and ratemaking treatment of emission allowances and were proposed by Interstate Power and Light Company (IPL) in a petition for rule making filed with the Board on May 10, 2012.

In its petition, IPL pointed out that 199 IAC 29.9 allows utilities to recover certain energy-related costs through an automatic adjustment clause if those costs meet certain criteria. IPL said that 199 IAC 20 was amended in 1993 to accommodate environmental regulation and the rules were revised again in 2008 to accommodate the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule (CAMR). IPL said that new environmental requirements are changing the ways utilities must operate their generating units, evolving tax laws affect renewable generation costs, and changing emissions allowance requirements impact the overall cost of providing service. Rather than deal with these regulated areas issue-by-issue through applications for ongoing rule waivers, IPL believes this set of evolving regulatory actions presents an opportune time to evaluate the existing automatic adjustment clause rules to determine what changes may be needed to ensure the rules reflect the current environment in which utilities will operate.

## UTILITIES DIVISION[199](cont'd)

IPL submitted proposed amendments to address four specific items: chemical costs (needed for environmental compliance); allowances (needed for environmental compliance); renewable energy credits (RECs); and production tax credits (reflecting the output of renewable generation). With respect to the changes in the allowance rules, IPL said that the current rules do not address allowances that may be issued pursuant to the Cross-State Air Pollution (CSAPR) rule. While litigation is still pending, IPL said that these allowances could replace allowances issued under CAIR, which are currently covered under the EAC rules.

IPL stated that its proposal for the inclusion of chemical costs within the EAC rules is a logical progression as emission rules evolve and new technologies are deployed at power plants to continue their operation in compliance with various emission regulations. IPL argued that these costs are consistent with the Board's rule on the applicability of the electric automatic adjustment clause (199 IAC 20.9(1)) and are similar to what IPL currently includes within the EAC. IPL said that all of the proposed chemicals are injected into the coal generation process and the amount of chemicals used and allowances purchased have a direct relationship to the output of the plant. IPL maintained that it is incurring these costs in response to environmental regulations that are beyond the direct control of IPL management and that the costs are projected to be significant and can be separated in IPL's system of accounts.

IPL currently has a waiver (issued in Docket No. WRU-05-10-150) of 199 IAC 20.9(2)“2” in order to pass the benefit from the sales of RECs back to customers in a timely fashion. IPL said that it would be appropriate to incorporate this waiver into the rules while other changes to the EAC rules are being considered. With respect to production tax credits (PTCs), IPL currently factors these in its base rates and does not propose an immediate change because it is operating under a revenue freeze. IPL would like the option, however, of including these costs in its EAC after its next rate proceeding.

On May 25, 2012, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to IPL's petition for rule making. Consumer Advocate said that the proposed changes would dramatically expand the type of costs, and in some instances revenues, that could be automatically flowed through to customers via a utility's EAC rather than through base rates.

Consumer Advocate noted that IPL's REC revenues are currently flowed through the EAC pursuant to a Board-approved waiver. Consumer Advocate noted that while PTCs have principally been a source of revenues rather than costs for Iowa investor-owned utilities, Consumer Advocate is concerned about expanding the category of environmental compliance costs that the proposed rule making would automatically flow through to customers without further review or determination by the Board. Consumer Advocate also questions whether these costs and revenues meet the criteria contained in 199 IAC 20.9(1). For example, Consumer Advocate noted that chemical costs constitute only a small fraction of IPL's revenue requirement; fuel costs recoverable under the EAC, in contrast, constitute a large percentage of IPL's revenue requirement.

Consumer Advocate said it did not oppose including CSAPR allowance costs in the energy adjustment clause rules as IPL proposed. Consumer Advocate said that assuming CSAPR compliance costs are roughly equal to CAIR compliance costs, including CSAPR costs would be consistent with the current EAC rules.

Consumer Advocate maintained that the overriding issue in the proposed rule making is the appropriateness of increasing the scope of the costs recoverable automatically through the EAC versus through a utility's base rates. Consumer Advocate said this is important because the method of cost recovery can affect the incentives for Iowa's electric utilities to control costs and manage their companies as efficiently as possible for the ultimate benefit of the utilities' shareholders and customers.

Consumer Advocate said that an alternative approach exists that is consistent with IPL's proposal to expand the scope of the energy adjustment rules to include the costs of complying with federal laws and rules that are not yet known. Consumer Advocate stated that approach would be to add language to the proposed rules that would only allow environmental-type costs and revenues to be flowed through the energy adjustment clause after the Board has explicitly approved recovery in a rate case. Consumer Advocate said this would allow any utility seeking cost recovery to present convincing evidence that the item it seeks to flow through the energy adjustment clause meets the criteria established by 199 IAC

## UTILITIES DIVISION[199](cont'd)

20.9(1). Consumer Advocate noted that this alternative approach is similar to IPL's proposal concerning PTCs.

The Board believes it is appropriate in light of changes to federal law to notice IPL's proposed rules for comment to reexamine the types of costs that are appropriate for recovery pursuant to the EAC and to determine whether the costs IPL seeks to recover meet the criteria contained in 199 IAC 20.9(1). Commenters are invited to comment not only on IPL's proposal but also on Consumer Advocate's alternative that would allow EAC recovery only after specific types of costs are approved in a rate proceeding, similar to IPL's proposal for PTCs.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before August 28, 2012. The statement should be filed electronically through the Board's Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>.

Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on September 25, 2012, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Board at (515)725-7334 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these amendments.

After analysis and review of this rule making, the Board believes that if the proposed amendments are adopted, they may have a beneficial impact on job creation in Iowa by ensuring timely and accurate recovery of certain environmental compliance costs. The costs that IPL seeks to recover through the EAC generally are costs that, if found to be prudently incurred, historically have been recoverable either through a utility's EAC or base rates.

These amendments are intended to implement Iowa Code section 476.6(8).

The following amendments are proposed.

ITEM 1. Amend subrule **20.1(3)**, definitions of "Affected unit" and "Allowance," as follows:

*"Affected unit"* means a unit or source that is subject to any emission reduction requirement or limitation under the Clean Air Act (CAA) and its amendments including but not limited to the Acid Rain Program, the U.S. Environmental Protection Agency's (EPA) Clean Air Interstate Rule (CAIR),<sub>2</sub> Cross-State Air Pollution Rule (CSAPR) or the Clean Air Mercury Rule (CAMR), Mercury and Air Toxic Standards (MATS) Rule, Maximum Achievable Control Technology (MACT) standards for hazardous air pollutants (HAPs), or New Source Performance Standards (NSPS) for federal air emissions and greenhouse gases (GHGs), also including newly issued rules or any successors to these federal rules under CAA Sections 110, 111 or 112, or a unit or source that opts in under 40 CFR Part 74.

*"Allowance"* means an authorization, allocated by the United States Environmental Protection Agency (EPA) ~~under the Acid Rain Program~~, issued in a rule or regulation promulgated under the authorities of the Clean Air Act (CAA) or its amendments, to emit air emissions including but not limited to sulfur dioxide (SO<sub>2</sub>), any SO<sub>2</sub> and nitrogen oxide (NO<sub>x</sub>) emissions subject to the Clean Air Interstate Rule (CAIR), or mercury (Hg) emissions subject to the Clean Air Mercury Rule (CAMR), mercury, particulate matter, carbon dioxide, or other regulated greenhouse gases (GHGs) during or after a specified calendar year.

## UTILITIES DIVISION[199](cont'd)

ITEM 2. Adopt the following **new** definitions in subrule **20.1(3)**:

“*Chemical costs*” means consumable liquids or materials used in association with the operation of emission control equipment at electric generating facilities.

“*Cross-State Air Pollution Rule*” or “*CSAPR*” means the requirements EPA published in the Federal Register (76 Fed. Reg. 48208) on August 8, 2011.

“*Maximum Achievable Control Technology*” or “*MACT*” means rules for emissions sources that are issued pursuant to Section 112 of the Clean Air Act to reduce emissions of federal hazardous air pollutants (HAPs).

“*Mercury and Air Toxic Standards Rule*” or “*MATS*” means the requirements EPA published in the Federal Register (77 Fed. Reg. 9304) on February 16, 2012.

“*New Source Performance Standards*” or “*NSPS*” means rules for emissions sources that are issued pursuant to Section 111 of the Clean Air Act to reduce federal air emissions and greenhouse gases.

“*Production tax credits*” or “*PTCs*” means federal income tax credits associated with the generation output of renewable energy resources.

“*Renewable energy credits*” or “*RECs*” means tradable units formed by unbundling the environmental attributes of a unit of renewable energy from the underlying electricity.

ITEM 3. Adopt the following **new** subparagraphs **20.9(2)“b”(10)** to **(12)**:

(10) Chemical costs consumed in the operation of emission control equipment in the utility’s own plants and the utility’s share of similar costs in jointly owned or leased plants.

(11) Production tax credits associated with the energy production from renewable energy resources as entered into account 411.4 of the Uniform System of Accounts, to the extent explicitly granted such inclusion by the board in a rate case proceeding.

(12) Renewable energy credits associated with the energy production from renewable energy resources as entered into account 456 of the Uniform System of Accounts.

ITEM 4. Renumber subparagraphs **20.13(1)“b”(4)** to **(7)** as **20.13(1)“b”(5)** to **(8)**.

ITEM 5. Adopt the following **new** subparagraph **20.13(1)“b”(4)**:

(4) All contracts and arrangements for purchasing emission control chemicals;

ITEM 6. Amend paragraph **20.13(1)“f,”** introductory paragraph, as follows:

*f. Actual and projected costs.* The procurement plan shall include an accounting of the actual costs incurred in the purchase and transportation of fuel, chemical costs used in emission control equipment, and the purchase of allowances for use in generating electricity associated with each contract or arrangement filed in accordance with paragraph 20.13(1)“b” for the previous 12-month period.

ITEM 7. Amend subrule 20.17(1) as follows:

**20.17(1) Applicability and purpose.** This rule applies to all rate-regulated utilities providing electric service in Iowa. Under Title IV of the Clean Air Act Amendments of 1990, or under the Cross-State Air Pollution Rule, or both, each electric utility is required to hold sufficient emission allowances to offset emissions at all affected and new units. The acquisition and disposition of emission allowances will be treated for ratemaking purposes as defined in this rule.

ARC 0246C

**COLLEGE STUDENT AID COMMISSION[283]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby amends Chapter 36, "Governor Terry E. Branstad Iowa State Fair Scholarship Program," Iowa Administrative Code.

The rules in Chapter 36 describe the administration of the Governor Terry E. Branstad Iowa State Fair Scholarship Program. This amendment eliminates a sentence that restricts use of the fund.

Notice of Intended Action was published in the April 18, 2012, Iowa Administrative Bulletin as **ARC 0089C**. The adopted amendment is identical to that published under Notice.

This amendment was adopted during the July 13, 2012, meeting of the Iowa College Student Aid Commission.

The Commission finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 13, 2012. The Commission finds that this amendment confers a benefit on the public by allowing college scholarships to be made to participants in the Iowa State Fair. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

After analysis and review of this rule making, the Commission finds that there could be a positive impact on jobs. This rule making increases the dollar amount of scholarship dollars distributed to individuals who will attend higher education. Individuals will be able to attend higher education institutions and obtain good jobs.

This amendment is intended to implement Iowa Code chapter 261.

This amendment became effective July 13, 2012.

The following amendment is adopted.

Amend subrule 36.1(4) as follows:

**36.1(4) Monetary award.**

*a.* Up to four awards ranging from \$500 to \$1,000 will be awarded annually. No student shall receive more than the student's established financial need.

*b.* A scholarship of up to \$2,000 will be awarded each year to the Iowa state fair queen.

*c.* The Governor Terry E. Branstad Iowa state fair scholarship fund will be established in the office of the state treasurer. ~~Only the interest earned on the scholarship fund will be used for scholarship awards.~~

[Filed Emergency After Notice 7/13/12, effective 7/13/12]

[Published 8/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

ARC 0240C

**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6 and 2011 Iowa Acts, chapter 129, section 141(11), the Department of Human Services amends Chapter 156, "Payments for Foster Care," Iowa Administrative Code.

These amendments provide an increase to the foster family daily reimbursement rate and adoption subsidy daily maintenance rates effective July 1, 2012.

The Council on Human Services adopted these amendments on July 11, 2012.

The Department finds that notice and public participation are unnecessary because the Legislature mandated this change and impracticable because legislation directs the Department to implement changes by July 1, 2012. Therefore, the amendments are filed pursuant to Iowa Code section 17A.4(3).

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

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department further finds that the normal effective date of the amendments, 35 days after publication, should be waived because the amendments confer a benefit on the public. Licensed foster parents will receive a higher reimbursement rate for the children in their care as will adoptive parents who adopt children with special needs.

These amendments are also published herein under Notice of Intended Action as **ARC 0241C** to allow for public comment.

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).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 234.38 and 2012 Iowa Acts, Senate File 2336, section 34.

These amendments became effective July 11, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 156.6(1) as follows:

**156.6(1) Basic rate.** A Effective July 1, 2012, 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:

Age of child	Daily rate
0 through 5	\$15.74 <u>\$15.98</u>
6 through 11	\$16.37 <u>\$16.62</u>
12 through 15	\$17.92 <u>\$18.19</u>
16 or over	\$18.16 <u>\$18.43</u>

ITEM 2. Amend rule **441—156.6(234)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 234.38 and ~~2011 Iowa Acts, House File 649, section 28(4)~~ 2012 Iowa Acts, Senate File 2336, section 34.

[Filed Emergency 7/11/12, effective 7/11/12]

[Published 8/8/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0245C**

## 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 eliminate the requirement that annual loan servicing fees for loans made from the Water Pollution Control State Revolving Fund and the Drinking Water State Revolving Fund be paid only at the time of each annual principal payment.

The Authority does not intend to grant waivers under the provisions of this rule, 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 elimination of the annual servicing fee payment requirement is part of a set of related changes being made to the federally required Intended Use Plan (IUP) for the Water Pollution Control State Revolving Fund and the Drinking Water State Revolving Fund and to the applicable loan documents. The changes to the IUP and other applicable documents became effective July 1, 2012.

IOWA FINANCE AUTHORITY[265](cont'd)

The Authority finds that this amendment confers a benefit on the parties affected. Waiting to remove the annual service fee payment requirement from the rule until after a notice period could result in confusion or delays in the funding of loans. Accordingly, this amendment is Adopted and Filed Emergency pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

The Authority is also concurrently publishing this amendment herein under Notice of Intended Action as **ARC 0244C** to allow for public comment.

The Authority adopted this amendment on July 11, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code sections 16.5(1) and 16.133.

This amendment became effective on July 12, 2012.

The following amendment is adopted.

Amend paragraph **26.5(2)“c”** as follows:

*c. Annual loan servicing fee.* The annual loan servicing fee shall be established in the IUP. ~~The fee shall be due at the time of each annual principal repayment.~~

[Filed Emergency 7/12/12, effective 7/12/12]

[Published 8/8/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0272C**

## **SECRETARY OF STATE[721]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State amends Chapter 21, “Election Forms and Instructions,” and Chapter 28, “Voter Registration File (I-Voters) Management,” Iowa Administrative Code.

These amendments are necessary to establish a formal procedure for investigating and resolving complaints and information received by the Secretary of State involving but not limited to the following subject matters: election administration, voter registration, absentee voting, fraudulent voting and electioneering. The Secretary of State is the chief state election official and has a legal obligation to oversee the conduct of elections in the state by county election commissioners. The Secretary of State is also the state registrar of voters and has a legal obligation to regulate the preparation, preservation and maintenance of voter registration records in the state. The Secretary of State is further authorized to issue notices of technical infractions when the Secretary becomes aware of an apparent violation of the election and voter registration provisions contained in Iowa Code chapters 39 through 53.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are contrary to the public interest because a formal procedure is needed prior to the November 6, 2012, Presidential Election to ensure all complaints received by the Secretary of State are treated uniformly, investigated properly and, if necessary, forwarded to the appropriate officials for prosecution.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Secretary of State further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective upon filing. These amendments confer a benefit upon the voting public by ensuring that there is a legitimate procedure in place for investigating and resolving complaints involving but not limited to the following subject matters: election administration, voter registration, absentee voting, fraudulent voting and electioneering.

These amendments are also published herein under Notice of Intended Action as **ARC 0271C** to allow for public comment.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 39 through 53.

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These amendments became effective July 20, 2012.

The following amendments are adopted.

ITEM 1. Adopt the following new rule 721—21.100(39A,47):

**721—21.100(39A,47) Complaints concerning violations of Iowa Code chapters 39 through 53.**

**21.100(1)** *Complaint filed.* A person who wishes to file a complaint concerning an alleged violation of any provision of Iowa Code chapters 39 through 53 shall:

a. File a written complaint with the secretary of state, on the form provided by the secretary of state's office.

b. Include the complainant's signature and contact information. Complaints lacking this information may be dismissed by the secretary of state's office without further investigation.

**21.100(2)** *Complaints forwarded to appropriate Iowa agency for follow-up.* The complaint shall be forwarded to the appropriate Iowa agency for further investigation and follow-up as deemed necessary.

This rule is intended to implement Iowa Code chapters 39 through 53.

ITEM 2. Adopt the following new rule 721—28.5(47,48A):

**721—28.5(47,48A) Noncitizen registered voter identification and removal process.**

**28.5(1)** *Periodic matching of foreign national files and the voter registration list.* The state registrar of voters may periodically engage in obtaining lists of foreign nationals who are residing in Iowa from a federal or state agency. The list of foreign nationals may be matched against the voter registration records to determine likely matches based on predetermined search criteria.

**28.5(2)** *Confirming matches between the foreign national file and the voter registration list.* After producing a list of likely matches, the secretary of state's office shall turn the list of likely matches over to the appropriate Iowa agency for additional follow-up and a determination as to whether the voter registration record is an exact match to an individual listed on the foreign national file. The secretary of state's office shall also determine whether the registrant has obtained citizenship status subsequent to the date the record in the file was generated.

**28.5(3)** *Removing confirmed matches from the voter registration list.* Upon receipt of information indicating a noncitizen is registered to vote, the secretary of state's office shall take the following steps to ensure removal of the voter's name from the voter registration list.

a. *Voter notification.* The secretary of state's office shall notify the voter that the secretary of state's office has received information indicating the registered voter may not be a citizen of the United States and may be illegally registered to vote. The notice shall advise the registrant that illegally registering to vote is classified as a class "D" felony under Iowa law and shall further advise the registrant that if the information received by the secretary of state is correct, the voter should request cancellation of the voter registration record by sending a written notice to the county registrar of voters in the county where the registrant is currently registered to vote. The voter shall also be notified of the voter's right to dispute and respond to the information received by the secretary of state's office. The voter shall further be advised that failure to request removal from the voter registration list or respond to the notice within 14 days of the date of the notice may result in the commencement of a challenge to the voter's registration as set forth in Iowa Code section 48A.14. The notice from the secretary of state shall include a postage-paid envelope and response form.

b. *County registrar notification.* If a voter receives a notice from the secretary of state's office pursuant to paragraph 28.5(3) "a" and fails to respond to the notice within 14 days, the secretary of state's office shall also notify the county registrar that the secretary of state's office has received information indicating the registered voter may not be a citizen of the United States and may be illegally registered to vote. The county registrar shall notify the secretary of state's office when any voter who is the subject of one of these notices requests cancellation of the voter's record.

c. *Failure of registrant to request removal from voter registration list.* If a registered voter receives notice pursuant to this rule from the secretary of state's office and does not respond to the notice by either notifying the secretary of state's office that the registrant believes the secretary of state's information to

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be erroneous or by requesting removal of the registrant's name from the voter registration list, the voter's name may be removed pursuant to the process provided in Iowa Code sections 48A.14 through 48A.16.

*d. Noncitizen registrant with active absentee ballot request.* If a county registrar receives notice pursuant to this rule from the secretary of state's office for a registrant who has an active absentee ballot request on the voter's record, the commissioner shall attach the notice from the secretary of state's office regarding the registrant to the voter's absentee ballot affidavit envelope if the absentee ballot is returned to the auditor's office. The commissioner shall instruct the precinct election officials to challenge the voter's absentee ballot as provided in Iowa Code section 53.31.

*e. Noncitizen registrant with voting history on voter record.* If a county registrar receives notice pursuant to this rule from the secretary of state's office for a registrant who has previous voting history on the voter's record, the commissioner shall immediately print a copy of the voter's voting history, make copies of any signed election registers or absentee ballot affidavit envelopes that are still in the custody of the commissioner and make a copy of the notice received by the county registrar pursuant to this rule. The foregoing list of documents shall be forwarded to the secretary of state's office within 30 days of receipt of the notice.

This rule is intended to implement Iowa Code chapters 39A, 48A, 49 and 53.

[Filed Emergency 7/20/12, effective 7/20/12]

[Published 8/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0238C**

## **SECRETARY OF STATE[721]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State amends Chapter 22, "Voting Systems," Iowa Administrative Code.

These amendments are necessary due to the certification of a new voting system for use in the state of Iowa by the Board of Examiners for Voting Systems. Chapter 22 does not contain any standards for use of this system, and counties are in the process of proceeding with purchases of the newly certified system. Iowa Code section 52.5, subsection 4, requires administrative rules to be adopted governing the development of vote counting programs and all procedures used in actual counting of votes by means of the new system before it can be used in an actual election.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are unnecessary because these amendments are required to be adopted by Iowa law and the rules for the new system are based on existing standards for voting systems that are already in use within the state.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Secretary of State further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective upon filing. These amendments confer a benefit upon the voting public by ensuring that all voting systems used within the state are programmed and tested to ensure the tabulation of votes is accurate and in accordance with Iowa law.

These amendments are also published herein under Notice of Intended Action as **ARC 0239C** to allow for public comment.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 49 and 52.

These amendments became effective July 11, 2012.

The following amendments are adopted.

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ITEM 1. Adopt the following **new** paragraph **22.42(1)“d”**:

*d.* Mark at least one valid vote for each candidate and question on the ballot using the OVI unit (if applicable). The ballots marked by the OVI unit may be used as part of the systematic or straight party test deck (if applicable).

ITEM 2. Amend paragraph **22.42(4)“a”** as follows:

*a.* *Election Systems & Software and Unisyn OpenElect—overvote and blank ballot test.* For an overvote and blank ballot test, the commissioner shall:

(1) to (3) No change.

(4) Insert a blank ballot. When the blank ballot is rejected by the optical scan tabulator, override the rejection and include the ballot in the tally. This is a very important test of the accuracy of ballot printing. Printing errors sometimes put readable marks in the voting target area.

(5) No change.

ITEM 3. Amend rule 721—22.260(52) as follows:

**721—22.260(52) Specific precinct count systems.** Additional rules are provided for ~~the following systems~~ each voting system approved for use in Iowa. ~~Rule~~ The requirements in rules 721—22.261(52) through 721—22.265(52) apply only to the voting system systems indicated and is are in addition to the general provisions set forth in rules 721—22.200(52) through 721—22.250(52).

ITEM 4. Adopt the following **new** rule 721—22.264(52):

**721—22.264(52) Unisyn OpenElect OVO unit—preparation and use in elections.**

**22.264(1) Security.** The commissioner shall have a written security plan for the voting system. Access to equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

*a.* Passwords used at the polling places on election day shall be changed for each election.

*b.* For each election, the precinct chairperson shall be responsible for the custody and security of the keys for the voting equipment, the ballot boxes and the security of the voting system on election day.

**22.264(2) Configuration choices.** The following selections are mandatory for all elections:

*a.* *Access, messaging and tabulating selections.* In the Election Manager, “Election Options” menu, the following selections shall be made:

(1) “Allow Add Precinct” shall be checked.

(2) “Full Voter Ballot Review” shall not be checked.

(3) “Consolidate Splits” shall be checked.

(4) “Overvote by Voter” shall not be checked.

(5) “No Undervote Check” shall be selected in the Undervote Checking dropdown menu.

*b.* *Printing selections.* In the Election Manager, “Printing Options” menu, the following selection shall be made:

(1) “Auto Print Alerts” shall not be checked.

(2) “Voter Receipts” shall not be checked.

(3) “Display Contest Results on Summary” shall be checked.

*c.* *Ballot acceptance by the OVO unit.* In an official election, the commissioner shall not program the OVO for unconditional acceptance of all ballots and shall program the OVO unit to accept undervoted ballots. The system shall also be programmed to query the voter in each of the following situations:

(1) Overvoted ballot.

(2) Blank ballot.

(3) Unreadable ballot.

*d.* *Reports.* The following are required reports:

(1) Opening the polls. Print a zero vote totals report.

(2) Closing the polls. The poll report is the official record of the votes cast in the precinct on election day.

(3) Certification text. The following shall appear at the end of the poll report:

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We, the undersigned precinct election officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted on this tabulating device at this election.

(Include signature lines for each of the officials to sign.)

**22.264(3) Ballot layout.** Although the Unisyn OpenElect voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48.

*a. Format.* The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. All text and the “yes” and “no” choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot. For all elections, the voting target shall be printed on the left side of each choice on the ballot.

*b. Instructions for voters.* The ballots shall contain instructions for voters including:

- (1) How to mark the ballot;
- (2) Straight party voting instructions in general elections as required by Iowa Code section 49.37;
- (3) Where to find the judicial ballot (if any); and
- (4) Constitutional amendment (if any) as required by Iowa Code section 49.48 and notices to voters on ballots with public measures (if any) as required by Iowa Code section 49.47.

**22.264(4) System error message.** Precinct election officials shall be provided with a list of known system error messages and the appropriate responses. The officials shall be instructed to contact the commissioner or the commissioner’s designee for all other messages, errors or voting equipment malfunctions on election day.

**22.264(5) Preelection testing.** All voting equipment shall be tested pursuant to the provisions of Iowa Code section 52.30 and rule 721—22.42(52). At the commissioner’s discretion, additional logic and accuracy tests may be conducted.

ITEM 5. Adopt the following **new** rule 721—22.265(52):

**721—22.265(52) Unisyn OpenElect OVI unit.**

**22.265(1) Acceptance testing.** Upon receipt of the equipment from the vendor, the commissioner shall subject each OVI unit to an acceptance test. The test shall be in addition to any testing provided by the vendor and shall include a demonstration of the functionalities of the device.

**22.265(2) Audio ballot preparation.** Each candidate shall have an opportunity to provide a record of the proper pronunciation of the candidate’s name. The same voice shall be used for recording the entire ballot including instructions, office titles, candidate names and the full text of all public measures.

**22.265(3) Timeout value.** The OVI timeout value shall be set to 600 seconds. Precinct election officials shall monitor the use of the OVI unit to ensure that voting sessions are not automatically terminated due to inactivity. If a voter abandons a voting session initiated on the OVI unit without printing a ballot, the two precinct election officials designated to assist voters shall print the ballot without reviewing it or making any changes to the voter’s choices before the OVI unit times out due to inactivity, enclose the ballot in a secrecy folder, and immediately deposit the ballot in the tabulating device.

**22.265(4) Preelection testing.** Each OVI unit shall be tested before each election in which it will be used. The commissioner must use the OVI unit to prepare some ballots for the test decks as required by paragraph 22.42(1) “d.” In addition, the commissioner shall verify that:

- a.* The vote response fields on the screen align with the candidate names or choices.
- b.* All contests and candidates appear on the screen for each precinct.
- c.* All contests and candidates are included in the audio ballot for each precinct.
- d.* All voting positions in each race can be selected, then deselected, using the touchscreen and the keypad.
- e.* Selections on the printed ballots accurately reflect the voter’s choices.
- f.* Overvote and undervote functions are programmed correctly.

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g. The write-in function for each office is working correctly. All letters in the alphabet must be tested.

h. There is enough paper on the paper roll to print a minimum of ten ballots for the election in which the OVI unit is being used.

**22.265(5) *Availability at public test.*** The commissioner shall ensure that the OVI unit is available for demonstration at public tests.

**22.265(6) *TM.*** The TM device used with the OVI unit shall be installed before the OVI unit is locked, sealed and transported to the polling place for election day. The commissioner shall lock and seal the OVI unit, record the seal number and provide the number to the precinct election officials as required by rule 721—22.51(52). From the time the OVI unit is delivered to the polling place until the time the precinct officials arrive, the OVI unit shall be stored securely to prevent tampering. On election day, the precinct election officials shall inspect the seal and verify that the original numbered seal is present and undamaged.

**22.265(7) *Touchscreen and printer testing.*** The commissioner may provide for printer and touchscreen testing after delivery of the OVI unit to the polling place. If touchscreen testing is performed at the polling place, the delivery staff shall complete the testing before the polls open on election day. Staff shall keep a log for each OVI unit and record the machine serial number, precinct name or number, nature of the test, date and time of the test and name of the person performing the test.

**22.265(8) *OVI unit keys.*** Possession of the OVI unit keys shall be restricted to the precinct chairperson and authorized members of the commissioner's staff.

**22.265(9) *Table or voting booth.*** The table or voting booth used to support the OVI unit shall meet the following requirements:

- a. The table shall be sturdy enough to hold the OVI unit safely.
- b. Clearance shall be at least 27 inches high, 30 inches wide, and 26 inches deep.
- c. The top of the table shall be from 28 inches to 34 inches above the floor.

**22.265(10) *Privacy.*** The commissioner shall instruct the precinct election officials to position the OVI unit to provide maximum privacy and access to voters.

**22.265(11) *Abandoned ballots.*** If a voter or a precinct election official discovers that a voter has left the voter's ballot at the OVI unit, the two precinct election officials designated to assist voters shall enclose the ballot in a secrecy folder and immediately deposit the ballot in the tabulating device.

**22.265(12) *Extra paper rolls.*** Each precinct in which an OVI unit is being used shall be equipped with an extra paper roll for the OVI unit, and precinct election officials shall be instructed as to the method of replacing the paper roll.

[Filed Emergency 7/11/12, effective 7/11/12]

[Published 8/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0273C****ALCOHOLIC BEVERAGES DIVISION[185]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby amends Chapter 1, "Organization and Operation," Chapter 2, "Agency Procedure for Rule Making," Chapter 3, "Declaratory Orders," and Chapter 19, "Waivers from Rules," Iowa Administrative Code.

The amendments rescind obsolete language that pertains to state-owned liquor stores, rescind language that is redundant because the subject matter is specifically addressed in the Iowa Code, incorporate language from the Uniform Rules on Agency Procedure that was not originally adopted, update contact information for the Alcoholic Beverages Division, and correct Iowa Code citations.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0142C** on May 30, 2012. A public hearing was held on Tuesday, June 19, 2012, and no comments were received. Therefore, the amendments are identical to those published under Notice.

The Alcoholic Beverages Commission adopted these rules on July 19, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 123 and 17A.

These amendments will become effective September 12, 2012.

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 1 to 3, 19] is being omitted. These amendments are identical to those published under Notice as **ARC 0142C**, IAB 5/30/12.

[Filed 7/20/12, effective 9/12/12]

[Published 8/8/12]

[For replacement pages for IAC, see IAC Supplement 8/8/12.]

**ARC 0274C****ALCOHOLIC BEVERAGES DIVISION[185]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby amends Chapter 5, "License and Permit Division," and Chapter 12, "Forms," Iowa Administrative Code.

The amendments in Item 1 update citations to the Iowa Code. In addition, the amendments add language to describe the contents of the dramshop liability certificate of insurance and authorize the Division to request a duplicate copy of the policy, including endorsements. The contents of the dramshop liability certificate of insurance, including the provision allowing the Division to request a duplicate copy of the policy, are currently in Chapter 12 and are being relocated to Chapter 5 for accessibility.

The amendments in Item 2 further define occurrence-based policies. The amendments in Item 2 are a result of stakeholder consensus following a series of working meetings.

The amendment in Item 3 adds language to clarify and accurately reflect the current practices of the Division on acceptable methods for notifying the Division of a dramshop liability insurance policy cancellation. The amendment in Item 3 is a result of stakeholder consensus following a series of working meetings.

The amendment in Item 4 strikes the unnecessary word "all" in language that requires a dramshop policy to contain coverage to insure against civil tort liability of the insured. The amendment in Item 4 is a result of stakeholder consensus following a series of working meetings.

The amendments in Item 5 strike and add language to update the reference to a subrule and to accurately reflect the current practices of the Division. The amendments illustrate how the licensee or permittee provides proof of financial responsibility to the Division. The amendments in Item 5 are a result of stakeholder consensus following a series of working meetings.

## ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

The amendments in Item 6 add language to clarify the intent of the rule and strike language that is either unnecessary or redundant. The amendments clarify that a licensee or a permittee who owns and operates multiple licensed establishments may obtain a single dramshop insurance policy to cover all establishments. The amendments clarify that the single dramshop insurance policy that covers multiple licensed establishments must provide the minimum level of insurance coverage for all covered incidents that occur at each and every location during the license and policy term. The amendments clarify that the single dramshop insurance policy that covers multiple licensed establishments must meet all other provisions of the dramshop rule. The amendments in Item 6 are a result of stakeholder consensus following a series of working meetings.

The amendment in Item 7 rescinds subrule 12.2(12) containing the Dramshop Liability Certificate of Insurance form and its contents. The contents of the Dramshop Liability Certificate of Insurance form have been relocated to subrule 5.8(1) for accessibility.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0157C** on June 13, 2012. A public hearing was held on Tuesday, July 3, 2012, and no comments were received. Therefore, the amendments are identical to those published under Notice.

The Alcoholic Beverages Commission adopted these rules on July 19, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 123 and 17A.

These amendments will become effective September 12, 2012.

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 [5.8, 12.2(12)] is being omitted. These amendments are identical to those published under Notice as **ARC 0157C**, IAB 6/13/12.

[Filed 7/20/12, effective 9/12/12]

[Published 8/8/12]

[For replacement pages for IAC, see IAC Supplement 8/8/12.]

**ARC 0265C****DENTAL BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Dental Board hereby adopts amendments to Chapter 10, "General Requirements," Chapter 11, "Licensure to Practice Dentistry or Dental Hygiene," Chapter 12, "Dental and Dental Hygiene Examinations," Chapter 13, "Special Licenses," Chapter 14, "Renewal," Chapter 15, "Fees," Chapter 20, "Dental Assistants," Chapter 22, "Dental Assistant Radiography Qualification," Chapter 25, "Continuing Education," Chapter 29, "Sedation and Nitrous Oxide Inhalation Analgesia," and Chapter 51, "Contested Cases," Iowa Administrative Code.

These amendments:

- Update the rules to reflect changes related to a new licensing database system. The new system will offer online filing of all applications (e.g., initial licensure, registration, renewals, reinstatements, reactivation, and continuing education courses) and complaints; license verification; and other electronic services that will increase access to Board services. The amendments eliminate collection of unnecessary application information, streamline the application process and provide for a paperless process.

- Combine fee information currently located in nine chapters into one chapter to make the rules more user-friendly and understandable. These amendments consolidate renewal and reinstatement information currently located in multiple chapters into one chapter for ease of reference.

- Provide that users of the online system will pay a service charge in addition to regular fees for Board services. Service charges are costs charged by external entities for the online system (e.g., fees charged to banks for credit card processing, e-payment fees payable to DAS-ITE and the Treasurer of State, and a DAS-ITE charge for Enterprise Authentication for each person who logs on to the system).

## DENTAL BOARD[650](cont'd)

- Streamline the initial licensure process for applicants applying for a license within three months of the next renewal due date. Applicants applying close to a renewal cycle will pay the application fee and the renewal fee at the same time. Their licenses will be issued for a period of 24 months plus the amount of time remaining until the next renewal due date. This change will eliminate the need for applicants to submit two separate applications and fees within one three-month period. For example, under existing rules a dentist graduating in May 2012 who submits an application for an Iowa dental license will pay a \$200 application fee. Dental licenses are valid for a 24-month period and are renewed in even-numbered years. This newly licensed dentist must renew the license by August 31, 2012, and pay the renewal fee of \$315. This requires the submittal of two applications (one for initial licensure and one for the renewal application due by August 31, 2012) and two checks (a \$200 licensure application fee and a \$315 fee for renewal) within a very short period. These amendments allow the applicant in this example to submit one application and pay one combined fee of \$515 (a \$200 application fee plus the \$315 renewal fee due August 31, 2012). At the time the application for licensure is approved, the license would be issued and valid for a period of 27 months (24 months plus the 3 months remaining until the August 31, 2012, renewal). This change will impact only applicants who are applying within three months of a biennial renewal due date.

- Implement 2011 Iowa Acts, Senate File 438, regarding licensure by credentials. This recent statutory change directed the Board to establish by rule the regional clinical examinations that will be accepted for licensure by credentials. The amendments identify the following regional examinations as approved by the Board for purposes of applications for licensure by credentials: Central Regional Dental Testing Service, Inc. (CRDTS), the Western Regional Examining Board, Inc. (WREB), Southern Regional Testing Agency (SRTA), North East Regional Board of Dental Examiners (NERB), and Council of Interstate Testing Agencies (CITA).

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on May 16, 2012, as **ARC 0128C**. The amendments relating to application and renewal fees in rule 650—15.1(153) as published in the Notice were subsequently Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on June 13, 2012, as **ARC 0164C**.

A public hearing was held on June 5, 2012. There were no attendees at the public hearing and no written comments about the proposed amendments were received. These amendments have been modified since publication under Notice of Intended Action. Subparagraph 11.2(2)“e”(1) has been revised so that it matches the same language that occurs elsewhere in Chapter 11. Subparagraph 11.2(2)“e”(1) now reads as follows:

“(1) Successful passage of CRDTS. Evidence of having successfully completed in the last five years the examination administered by the Central Regional Dental Testing Service, Inc. (CRDTS).”

In addition, minor technical corrections have been made.

Finally, the Adopted and Filed Emergency amendments to rule 653—15.1(153), which is renumbered herein as 653—15.3(153), are no longer shown as underscored text in this rule making since those amendments were incorporated into the Iowa Administrative Code and published in the June 13, 2012, Iowa Administrative Bulletin as explained above.

These amendments were adopted by the Board on July 12, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 153.33.

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These amendments shall become effective September 12, 2012, at which time the Adopted and Filed Emergency amendments in **ARC 0164C** are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 10 to 15, 20, 22, 25, 29, 51] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0128C**, IAB 5/16/12.

[Filed 7/19/12, effective 9/12/12]

[Published 8/8/12]

[For replacement pages for IAC, see IAC Supplement 8/8/12.]

## **ARC 0260C**

### **ENVIRONMENTAL PROTECTION COMMISSION[567]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," Iowa Administrative Code.

The purpose of the amendments is to adopt changes to the federal regulations for Prevention of Significant Deterioration (PSD) into Iowa's administrative rules for air quality. The U.S. Environmental Protection Agency (EPA) finalized amendments to the PSD regulations over a three-year period to address the revised national ambient air quality standards (NAAQS) for fine particulate matter that is less than or equal to 2.5 micrometers in diameter (PM<sub>2.5</sub>). EPA issued the final regulation necessary for PM<sub>2.5</sub> implementation for the PSD program on December 21, 2010.

Through this rule making, the Department is also providing a mechanism to allow industry to request rescission of a PSD permit. The amendment matches federal regulations and will be a benefit to facilities that meet the qualifications for rescission of a PSD permit. Additionally, the Department is adopting an amendment to clarify under what circumstances facilities are required to keep records and the types of records that must be kept. The amendment matches federal regulations and will be a benefit to facilities that must meet record-keeping requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 18, 2012, as **ARC 0097C**. A public hearing was held on May 18, 2012. The Department did not receive any comments at the public hearing. The Department received one written comment before the close of the public comment period on May 18, 2012. The written comment was submitted by EPA Region VII. The submitted comment and the Department's response to the comment are summarized in the public responsiveness summary available from the Department. The Department made changes to the amendments in response to EPA's comments. The changes are described in the explanation of the amendments in Item 1.

To ensure that Iowans have clean air to breathe, the Department is required by federal and state law to develop state implementation plans that manage outdoor air resources so that existing, new, and modified sources of air pollution do not cause or contribute to violations of the NAAQS.

Community, business and industry, agriculture, and transportation activities all contribute to air pollution in the atmosphere. Appropriate plans and programs to address these contributions are the building blocks necessary to ensure that the air Iowans breathe meets health-based air quality standards. One of these building blocks is the federal PSD program that establishes requirements for very large sources of air pollution.

The PSD program is a component of New Source Review (NSR) that includes procedures to ensure that air quality standards are maintained. The NSR program was designed to allow economic growth in harmony with the preservation of existing clean air. Requirements and limits are specified

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in preconstruction permits to protect the public from the adverse effects which might occur if sources were allowed to operate unregulated.

There are three types of preconstruction air quality permitting that comprise NSR: minor, major, and nonattainment NSR. Minor source preconstruction permitting is for sources that emit less than either 100 or 250 tons per year (tpy) of any one air pollutant depending on the facility's source category. Major source preconstruction permitting is for sources whose plantwide emissions exceed the 100 or 250 tpy threshold for any one air pollutant. Major source preconstruction permitting entails issuance of either a PSD permit or a permit to avoid PSD applicability. Lastly, nonattainment NSR preconstruction permitting occurs within those areas of the state that are not meeting the ambient air quality standards. Iowa currently does not have any nonattainment areas for PM<sub>2.5</sub>.

The Department has administered an EPA-approved state PSD program since 1987. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control air emissions. The permit requires the facility to apply best available control technology (BACT), which is determined on a case-by-case basis, taking into account, among other factors, the cost and effectiveness of the control. Ambient air impact analyses are conducted to determine whether the proposed emission limits, controls, and operating conditions will be sufficient to prevent violations of the NAAQS and unacceptable levels of air quality deterioration.

The NAAQS for PM<sub>2.5</sub> establish limits on the acceptable exposure and public health impacts of PM<sub>2.5</sub>. PM<sub>2.5</sub> can easily bypass most of the body's defense mechanisms and become lodged deep in the lungs, where the particles can cause coughing, difficulty breathing, or aggravated asthma; development of chronic bronchitis; nonfatal heart attacks; and premature death in people with heart or lung disease.

EPA created an NAAQS in 1997 for this pollutant in order to better protect the public from the adverse impacts of PM<sub>2.5</sub> on human health. EPA strengthened the PM<sub>2.5</sub> NAAQS in 2006 based on reviews of the latest public health information and scientific data, reducing the acceptable level of PM<sub>2.5</sub> to which humans can be exposed from 65 micrograms per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ) to 35  $\mu\text{g}/\text{m}^3$ .

An important component to establishing the revised air quality standards for PM<sub>2.5</sub> is EPA's corresponding changes to the PSD program. EPA finalized the first of its PSD amendments for PM<sub>2.5</sub> implementation in May 2008 but did not finalize the last of the necessary updates until December 21, 2010. Now that EPA has completed the PSD amendments for PM<sub>2.5</sub>, the Department is proceeding with proposing necessary amendments to Iowa's air quality rules for the PSD program.

This rule making amends Iowa's air quality rules to implement changes to the federal PM<sub>2.5</sub> regulations that EPA finalized in a phased approach over three years. This rule making addresses two EPA actions:

- On May 16, 2008, EPA publication of final rules setting PSD significant emissions rates for PM<sub>2.5</sub> and addressing PM<sub>2.5</sub> precursors; and
- On October 20, 2010, EPA publication of final rules setting PSD increments, significant impact levels (SILs), and significant monitoring concentrations (SMCs) for PM<sub>2.5</sub>.

On December 21, 2010, EPA published federal rules establishing EPA stack testing methods for PM<sub>2.5</sub>. The Department has proposed adoption by reference of these federal rules in a separate rule making published under Notice of Intended Action as **ARC 0087C** in the April 18, 2012, Iowa Administrative Bulletin.

For industry to continue to receive federally acceptable PSD permits from the State, the Department must adopt these PM<sub>2.5</sub> requirements into administrative rules. On September 8, 2011, EPA published a finding of failure of the State of Iowa to submit a State Implementation Plan (SIP) for the NAAQS for PM<sub>2.5</sub>. EPA's finding became effective on October 11, 2011, and establishes a deadline for EPA to issue a Federal Implementation Plan for PM<sub>2.5</sub> if the outstanding SIP elements, including adoption of the PSD requirements in this rule making, are not completed. Failure to adopt PSD requirements for PM<sub>2.5</sub> may result in the loss of the State's PSD program, which would cause the EPA to become the permitting authority and would significantly increase the amount of time required for a facility to obtain a PSD permit.

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Additionally, two amendments included in the rule making, the permit rescission and record-keeping provisions, provide regulatory flexibility to affected facilities. Failure to adopt these amendments would have prevented the Department from providing these benefits to industry.

Item 1 amends subrule 33.3(1) to revise the definitions of “baseline area,” “baseline date,” “enforceable permit condition,” “federally enforceable,” “regulated NSR pollutant,” and “significant” to match the changes EPA made in 40 Code of Federal Regulations (CFR) 51.166 and 52.21 to implement the PM<sub>2.5</sub> NAAQS. The revised definitions match the federal definitions in 40 CFR 51.166 and 52.21. The Department is also revising references to specific sections of the Clean Air Act to match corrections that EPA made to the CFR.

Since the publication of the Notice of Intended Action, the Department has made changes to the amendment of the definition of “regulated NSR pollutant” based on comments received from EPA Region VII.

First, EPA requested in its comments that the Department make revisions to match the federal language to clarify that EPA has concurrent authority with the Department to make determinations for PM<sub>2.5</sub> precursors in areas of the state. The Department agrees that EPA has concurrent authority to make these determinations, and the Department has made the recommended change to numbered paragraph “1” of the definition.

Second, EPA commented on a portion of proposed language describing condensable particulate matter. EPA stated that, although the proposed language matched the federal amendments to the PSD regulations, the language is now obsolete and that, further, the federal provisions do not apply to Iowa’s federally approved PSD program. The Department agrees with EPA’s comments and has removed the language from numbered paragraph “6” of the definition as EPA suggested. No other changes from the Notice have been made.

Item 2 amends subrule 33.3(3) to adopt by reference EPA’s revisions to the ambient air increments to include thresholds for PM<sub>2.5</sub>.

Item 3 amends subrule 33.3(9) to adopt by reference EPA’s amendments to the PSD exemptions to incorporate PM<sub>2.5</sub>.

Item 4 amends subrule 33.3(11) to adopt by reference EPA’s revisions to the source impact analysis requirements to include PM<sub>2.5</sub>.

Item 5 amends subrule 33.3(16) to adopt by reference EPA’s revisions to the requirements for sources impacting federal Class I areas to include PM<sub>2.5</sub>.

Item 6 amends subrule 33.3(18) to revise the “source obligation” provisions to match current federal PSD regulations. This amendment clarifies under what conditions source owners and operators must keep records and the specific records that must be kept. The amendment also adds the federal definition of “reasonable possibility” for purposes of keeping records under subrule 33.3(18). This amendment will allow facilities additional record-keeping flexibility and reduce the record-keeping burden.

Item 7 amends subrule 33.3(20) to revise the provisions for the conditions for permit issuance to match EPA amendments that establish the PSD significance levels for PM<sub>2.5</sub>.

Item 8 adds new subrule 33.3(22) to establish provisions for rescinding a PSD permit. Currently, there is no mechanism in rules for the Department to rescind a PSD permit, even if PSD program requirements no longer apply to a facility. This provision was inadvertently excluded when the Department adopted amendments to PSD rules in 2006. This adopted amendment matches EPA’s regulations in 40 CFR 52.21(w).

The complete Jobs Impact Statement prepared by the Department is available from the Department upon request. The following is a summary of the Jobs Impact Statement.

After analysis and review of this rule making, there could be an impact on jobs. However, these amendments are mandated by EPA federal regulations, and the State of Iowa is not requiring additional regulations. The Department will continue to work with stakeholders to minimize any adverse impact on jobs and to maximize any positive impact on jobs.

One of Congress’s goals for PSD as set forth in the Clean Air Act was to allow economic growth in harmony with the preservation of existing clean air. Requirements and limits are specified in preconstruction permits to protect the public from adverse effects that might occur if sources were

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allowed to operate unregulated. The requirements in PSD permits help prevent areas of the state from becoming nonattainment areas. Major sources locating in or undergoing modifications in nonattainment areas must generally meet emissions requirements stricter than those called for under the PSD program. Communities in nonattainment areas attempting to meet the Clean Air Act requirements can face significant challenges that make it very difficult or impossible for businesses to locate or expand in that area. Currently, Iowa does not have any nonattainment areas for PM<sub>2.5</sub>, in part because of the success of the PSD program in preventing air quality from deteriorating. Companies may locate or expand in any area of the state without the significant barriers that would be imposed by PM<sub>2.5</sub> nonattainment, and this may create a positive jobs impact.

The Department estimated emissions control costs required for the PSD program's BACT provisions. These estimates are based on three companies' tax filings from 2009, 2010, and 2011. These costs ranged from \$30,000 to \$10 million and included all costs associated with equipment and installation. However, because BACT is also required for total particulate matter (PM) emissions and coarse particulate matter (PM<sub>10</sub>) emissions, only one-half to one-third of these very generally estimated costs can be attributed to PM<sub>2.5</sub>. Additionally, because EPA requires a PSD program for each state, these costs are not unique to Iowa and would likely vary little from state to state.

In addition, the Department estimated costs of preparing PSD permit applications, based on information from consultants that prepare PSD applications for their clients. Total application preparation costs ranged from \$25,000 to \$100,000. Typically, a project does not go through PSD review for just one pollutant. Costs attributed to PM<sub>2.5</sub> would be only a portion of the PSD application costs, likely ranging from 15 percent to 50 percent.

The PSD program is a national program imposed through the Clean Air Act, so any company locating a large, new facility or considering a major expansion in any state in the United States will be required to go through PSD review. Although PSD requirements are consistent across states, some of the variables include the cost to apply for a PSD permit and the turnaround time to get a PSD permit.

The Department does not charge a fee for submitting a PSD permit application. Application fees in other states range from several hundred dollars per project to tens of thousands of dollars per project. The Department's no-cost PSD application process may have a positive impact on jobs.

Because companies are allowed to conduct only very limited preparatory construction activities prior to obtaining the PSD permit, it is a significant incentive for the company to receive the PSD permit as quickly as possible. For this reason, the Department's no-cost application and relatively quick turnaround time may be incentives for companies to build or expand in Iowa. This may be a positive jobs impact for industrial jobs.

These amendments are intended to implement Iowa Code subsections 455B.133(1), 455B.133(4), and 455B.133(5) and the U.S. Clean Air Act (CAA) Title I, Part C (CAA §160-169b; U.S.C. §7470-7492).

These amendments will become effective on September 12, 2012.

The following amendments are adopted.

ITEM 1. Amend the following definitions in subrule **33.3(1)**:

*"Baseline area"* means:

1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section ~~407(d)(1)(D) or (E)~~ 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than ~~1 ug/m<sup>3</sup> (annual average) of the pollutant for which the minor source baseline date is established~~ for the pollutant for which the baseline date is established, as follows: equal to or greater than 1  $\mu\text{g}/\text{m}^3$  (annual average) for sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>) or PM<sub>10</sub>; or equal to or greater than 0.3  $\mu\text{g}/\text{m}^3$  (annual average) for PM<sub>2.5</sub>.

2. Area redesignations under Section ~~407(d)(1)(D) or (E)~~ 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a minor source baseline date or is subject to regulations specified in this rule, in 40 CFR 52.21 (PSD requirements), or in department rules approved by EPA under 40 CFR Part 51, Subpart I, and would be constructed in the same state as the state proposing the redesignation.

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3. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that such baseline area shall not remain in effect if the permitting authority rescinds the corresponding minor source baseline date in accordance with the definition of “baseline date” specified in this subrule.

“Baseline date” means:

1. Either “major source baseline date” or “minor source baseline date” as follows:

(a) The “major source baseline date” means, in the case of ~~particulate matter~~ PM<sub>10</sub> and sulfur dioxide, January 6, 1975, ~~and~~; in the case of nitrogen dioxide, February 8, 1988; and in the case of PM<sub>2.5</sub>, October 20, 2010.

(b) The “minor source baseline date” means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 as amended through ~~November 29, 2005,~~ October 20, 2010, or subject to this rule (PSD program requirements), or subject to a department rule approved by EPA under 40 CFR Part 51, Subpart I, submits a complete application under the relevant regulations. The trigger date for ~~particulate matter~~ PM<sub>10</sub> and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988. For PM<sub>2.5</sub>, the trigger date is October 20, 2011.

2. The “baseline date” is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section ~~107(d)(i)(D) or (E)~~ 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 as amended through ~~November 29, 2005,~~ October 20, 2010, or under regulations specified in this rule (PSD program requirements); and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions.

“Enforceable permit condition,” for the purpose of this chapter, means any of the following limitations and conditions: requirements ~~development~~ developed pursuant to new source performance standards, prevention of significant deterioration standards, emissions standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any permit requirements established pursuant to 40 CFR 52.21 or Part 51, Subpart I, as amended through ~~November 29, 2005,~~ October 20, 2010, or under conditional, construction or Title V operating permit rules.

“Federally enforceable” means all limitations and conditions which are enforceable by the Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR Parts 60, 61 and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through ~~November 29, 2005,~~ October 20, 2010, including operating permits issued under an EPA-approved program, that are incorporated into the SIP and expressly require adherence to any permit issued under such program.

“Regulated NSR pollutant” means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (~~e.g., volatile organic compounds and NO<sub>x</sub> are precursors for ozone~~):

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas;

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(c) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless the department demonstrates to EPA's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient PM<sub>2.5</sub> concentrations;

(d) Volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment and unclassifiable areas, unless the department demonstrates to EPA's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;

2. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;  
3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

4. Any pollutant that otherwise is subject to regulation under the Act as defined in 33.3(1), definition of "subject to regulation."

5. Notwithstanding paragraphs "1" through "4," the definition of "regulated NSR pollutant" shall not include any or all hazardous air pollutants that are either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act and that have not been delisted pursuant to Section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

6. Particulate matter (PM) emissions, PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.

*"Significant"* means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy of particulate matter emissions ~~or 15 tpy of PM<sub>10</sub> emissions~~
- PM<sub>10</sub>: 15 tpy
- PM<sub>2.5</sub>: 10 tpy of direct PM<sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions (unless the department demonstrates to EPA's satisfaction that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient PM<sub>2.5</sub> concentrations)
- Ozone: 40 tpy of volatile organic compounds or NO<sub>x</sub>
- Lead: 0.6 tpy
- Fluorides: 3 tpy
- Sulfuric acid mist: 7 tpy
- Hydrogen sulfide (H<sub>2</sub>S): 10 tpy
- Total reduced sulfur (including H<sub>2</sub>S): 10 tpy
- Reduced sulfur compounds (including H<sub>2</sub>S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans):  $3.2 \times 10^{-6}$  megagrams per year ( $3.5 \times 10^{-6}$  tons per year)
- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

2. "Significant" means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant not listed in paragraph "1," any emissions rate.

3. Notwithstanding paragraph "1," "significant," for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which

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would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup> (24-hour average).

ITEM 2. Amend subrule 33.3(3) as follows:

**33.3(3) Ambient air increments.** The provisions for ambient air increments as specified in 40 CFR 52.21(c) as amended through ~~November 29, 2005,~~ October 20, 2010, are adopted by reference.

ITEM 3. Amend subrule 33.3(9) as follows:

**33.3(9) Exemptions.** The provisions for allowing exemptions from certain requirements for PSD-subject sources as specified in 40 CFR 52.21(i) as amended through ~~May 1, 2007,~~ October 20, 2010, are adopted by reference.

ITEM 4. Amend subrule 33.3(11) as follows:

**33.3(11) Source impact analysis.** The provisions for a source impact analysis as specified in 40 CFR 52.21(k) as amended through ~~November 29, 2005,~~ October 20, 2010, are adopted by reference.

ITEM 5. Amend subrule 33.3(16) as follows:

**33.3(16) Sources impacting federal Class I areas—additional requirements.** The provisions for sources impacting federal Class I areas as specified in 40 CFR 51.166(p) as amended through ~~November 29, 2005,~~ October 20, 2010, are adopted by reference. The following phrases contained in 40 CFR 51.166(p) are not adopted by reference: “the plan may provide that,” “the plan shall provide that,” “the plan shall provide” and “mechanism whereby.”

ITEM 6. Amend subrule 33.3(18) as follows:

**33.3(18) Source obligation.**

*a.* Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

*b.* At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, the requirements of subrules 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

*c.* Any owner or operator who constructs or operates a source or modification not in accordance with the application pursuant to the provisions in rule 567—33.3(455B) or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the provisions in rule 567—33.3(455B) who commences construction after April 15, 1987 (the effective date of Iowa’s PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action.

*d.* Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The department may extend the 18-month period upon a satisfactory showing that an extension is justified. These provisions do not apply to the time between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

*e.* Reserved.

*f.* ~~The~~ Except as otherwise provided in subparagraph (8), the following specific provisions shall apply to with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances in which where there is a “reasonable possibility,” within the meaning of subparagraph (8), that a project that is not part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method for calculating projected actual emissions as specified in subrule 33.3(1), paragraphs “1” through “3” of the definition of “projected actual emissions.”

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

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2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions" in subrule 33.3(1), an explanation describing why such amount was excluded, and any netting calculations, if applicable.

(2) No less than 30 days before beginning actual construction, the owner or operator shall meet with the department to discuss the owner's or operator's determination of projected actual emissions for the project and shall provide to the department a copy of the information specified in paragraph "f." The owner or operator is not required to obtain a determination from the department regarding the project's projected actual emissions prior to beginning actual construction.

(3) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (1) to the department. The requirements in subparagraphs (1), (2) and (3) shall not be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(4) The owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (1);

2. Calculate the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations and maintain a record of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit (for purposes of this requirement, "regular" shall be determined by the department on a case-by-case basis); and

3. Maintain a written record containing the information required in this subparagraph.

(5) The written record containing the information required in subparagraph (4) shall be retained by the owner or operator for a period of ten years after the project is completed.

(6) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under subparagraph (4) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(7) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph (1), exceed the baseline actual emissions, as documented and maintained pursuant to subparagraph (4), by an amount that is "significant" as defined in subrule 33.3(1) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph (4). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source;

2. The annual emissions as calculated pursuant to subparagraph (4); and

3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(8) A "reasonable possibility" under this paragraph (paragraph 33.3(18) "f") occurs when the owner or operator calculates the project to result in either:

1. A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under subrule 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

2. A projected actual emissions increase that, when added to the amount of emissions excluded under subrule 33.3(1), paragraph "3" of the definition of "projected actual emissions," equals at least 50 percent of the amount that is a "significant emissions increase," as defined under subrule 33.3(1) (without

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reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this numbered paragraph, and not also within the meaning of numbered paragraph “1” of this subparagraph (subparagraph (8)), then the provisions of subparagraphs (3) through (7) do not apply to the project.

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph “f” available for review upon request for inspection by the department or the general public pursuant to the requirements for Title V operating permits contained in 567—subrule 22.107(6).

ITEM 7. Amend subrule 33.3(20) as follows:

**33.3(20) Conditions for permit issuance.** Except as explained below, a permit may not be issued to any new “major stationary source” or “major modification” as defined in subrule 33.3(1) that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major stationary source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Significant Impact Levels (SILs)					
	Averaging Time				
	Annual	24 hrs.	8 hrs.	3 hrs.	1 hr.
Pollutant	( $\mu\text{g}/\text{m}^3$ )				
SO <sub>2</sub>	1.0	5	—	25	—
PM <sub>10</sub>	1.0	5	—	—	—
PM <sub>2.5</sub>	0.3	1.2	—	—	—
NO <sub>2</sub>	1.0	—	—	—	—
CO	—	—	500	—	2000

A permit may be granted to a major stationary source or major modification as identified above if the major stationary source or major modification reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major stationary source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

ITEM 8. Adopt the following **new** subrule 33.3(22):

**33.3(22) Permit rescission.** Any permit issued under 40 CFR 52.21 or this chapter or any permit issued under rule 567—22.4(455B) shall remain in effect unless and until it is rescinded. The department will consider requests for rescission that meet the conditions specified under paragraphs “a” and “b” of this subrule. If the department rescinds a permit or a condition in a permit issued under 40 CFR 52.21, this chapter, or rule 567—22.4(455B), the public shall be given adequate notice of the proposed rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region 60 days prior to the proposed date for rescission shall be considered adequate notice.

a. The department may rescind a permit or a portion of a permit upon request from an owner or operator of a stationary source who holds a permit for a source or modification that was issued under 40 CFR 52.21 as in effect on July 30, 1987, or earlier, provided the application also meets the provisions in paragraph “b” of this subrule.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

b. If the application for rescission meets the provisions in paragraph “a” of this subrule, the department may rescind a permit if the owner or operator shows that the PSD provisions under 40 CFR 52.21 would not apply to the source or modification.

[Filed 7/19/12, effective 9/12/12]

[Published 8/8/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0261C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.105(3), the Environmental Protection Commission hereby adopts amendments to Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

These amendments to Chapter 64 reissue General Permit Nos. 1, 2 and 3, which authorize the discharge of storm water. General Permit Nos. 1, 2 and 3 were issued in 2007 for a five-year duration and expire October 1, 2012. This action will renew all three permits, extending their coverage another five years to October 1, 2017. General permits for storm water discharges are required to be adopted as rules and are effective for no more than five years as specified in the Iowa Administrative Code. These amendments also strike wording that was inserted in subrule 64.15(2) in error several years ago. The wording was intended by the Commission to be inserted into General Permit No. 2 but was instead inserted into the Iowa Administrative Code.

Several minor changes for clarification are being made in the general permits. Also, substantive changes in General Permit No. 2 are required to implement recent changes in federal regulations published in the Federal Register (FR), Volume 74, No. 229 (74 Fed. Reg. 63057) on December 1, 2009, and implemented in 40 CFR 450.21. Most of the measures published in the Federal Register notice are already included in General Permit No. 2. The substantive change being made in General Permit No. 2 involves topsoil preservation at construction sites. The Code of Federal Regulations as amended by the Federal Register notice now requires topsoil preservation “unless unfeasible” at construction sites required to have a permit. Topsoil preservation has not been defined in the federal regulations. For clarity, the Commission has defined “topsoil preservation” as retaining a minimum of 4 inches of topsoil at construction sites when this is consistent with land use practices after construction has been completed. This depth was chosen after consultation with developers and city officials and consultation of the Statewide Urban Design and Specifications manual that stipulates, among other things, design standards for city streets, driveways and sidewalks. The 4-inch topsoil depth requirement is consistent with these specifications and current development practices and will not impede the construction of these types of infrastructure. The Commission believes retention of this depth of topsoil satisfies the federal requirement to preserve topsoil.

The fee structure of the current permits has been retained.

It is not the intent of the Commission that the textual changes in the general permits be adopted in the Iowa Administrative Code but that these changes be made in the general permits themselves, which are adopted by reference into the Iowa Administrative Code.

Notice of Intended Action was published as **ARC 0118C** in the May 16, 2012, Iowa Administrative Bulletin. A public hearing was held on June 6, 2012. Comments were received through June 6, 2012. A responsiveness summary is available from the Department.

Following is a summary of the changes to be implemented in the general permits:

1. The storm water General Permit Nos. 1, 2 and 3 are readopted for another five-year period ending on October 1, 2017.
2. The provision contained in subrule 61.2(1) of the Iowa Administrative Code that requires implementation of the provisions of the “Iowa antidegradation implementation procedure” regarding

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

discharges to outstanding Iowa waters and to outstanding national resource waters is inserted in General Permit Nos. 1, 2 and 3.

3. A new provision which stipulates that both the previous and new owners are responsible for notifying the Department of the transfer of property covered by General Permit No. 2 and that the notification requirement is satisfied when one party makes the notification is added to General Permit No. 2.

4. A new provision that adds "uncontaminated groundwater" to the list of allowable non-storm water discharges covered under the general permits is added to General Permit Nos. 1, 2 and 3.

5. The amount of time in which permittees are allowed to make changes in the pollution prevention plan (PPP) after notification by the Department that changes are necessary is reduced from seven days to three business days.

6. New provisions which incorporate the requirements of 40 CFR (Code of Federal Regulations) 450 that include preservation of topsoil, minimizing soil compaction and other federally required provisions are added to General Permit No. 2.

7. Minor textual changes are incorporated to update and clarify wording of the general permits.

The proposed changes to the permits have been further modified since publication of the Notice of Intended Action. The proposed changes in General Permit No. 1 have been modified as a result of the changes in the Code of Federal Regulations (CFR) that became effective June 15, 2012, regarding discharges from certain airports with 1,000 or more annual non-propeller aircraft departures. As these requirements appear in the CFR as an effluent limitation guideline, airports meeting the described criteria are already required to meet the guideline. The guideline is being included in General Permit No. 1 to inform the permittees of the requirements.

Other modifications to the proposed changes in the general permits have resulted from both informal discussions with stakeholders and formal comments received.

One comment received regarding the reduction from seven days to three business days in the amount of time in which permittees are allowed to make changes in the pollution prevention plan after notification by the Department that changes are necessary (paragraph "5" above) indicated that this change was creating a mandate that exceeds federal EPA requirements. This comment is referencing EPA's Construction General Permit (CGP) that EPA issues to construction projects in areas that it administers. The Department is allowed to have different standards than those contained in the CGP and has elected to do so in this instance based upon input from the Department's field office inspectors and from municipal inspectors. The inspectors have often witnessed excessively lengthy periods of time elapsing from the time the Department or municipality instructs permittees and site managers to implement changes and the time that the changes are implemented, often extending past the time of the next major rain event. It was agreed by stakeholders that the three-business-day proposal by the Department is an acceptable period of time within which to make the required changes. This requirement is more stringent than the federally adopted general permit, which allows such modifications to be made within seven calendar days. By changing this requirement to apply to "business days" only, the Department intends that no additional costs will be related to this measure in that it will not require modifications to be undertaken on non-business days.

Specific changes in the general permits from the changes originally proposed in the Notice of Intended Action are indicated by underscored text and are as follows:

In General Permit No. 1, insert Part I.B.2.G. regarding those types of discharges not allowed to be authorized by the general permit. These new discharges will be permitted with individual permits.

G. "Storm water discharge associated with industrial activity" from airports that begin operations on or after October 1, 2012, and have 1,000 or more annual non-propeller aircraft departures.

In General Permit No. 1, insert Part III.D.:

D. AIRPORTS Airports with 1,000 or more annual non-propeller aircraft departures are prohibited from discharging storm water containing urea (diaminomethanal). All airports with 1,000 annual non-propeller aircraft departures or more must either certify annually that airfield deicing products using urea are not used or must collect a grab sample once each month of the undiluted storm water runoff from the areas where the deicing products using urea have been used and meet a maximum daily

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

limit of 14.7 mg/l of ammonia as nitrogen. Sampling is to be conducted each month from September through May. Annual certifications are to be kept with the pollution prevention plan.

In General Permit No. 1, insert Part V.B.8. as follows and renumber subsequent numbered sections:

8. AIRPORTS During the period beginning on the effective date and lasting through the expiration date of this permit, storm water discharge associated with industrial activity from areas at airports with 1,000 or more annual non-propeller aircraft departures on which urea (diaminomethanal) has been used in the current deicing season are subject to the following monitoring requirements in addition to any other applicable monitoring requirements:

A. PARAMETERS The parameters to be measured include:

\* ammonia as nitrogen (mg/l);

\* the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff;

\* the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and

\* an estimate of the total volume (in gallons) of the discharge sampled shall be provided;

B. FREQUENCY OF MONITORING Sampling shall be conducted at least monthly (1 time per calendar month) from September to May, inclusive, except as provided by paragraph V.B.13.;

In General Permit No. 2, change the proposed final sentence in Part IV.B.3. from “Unless otherwise provided by the Department, the permittee shall have 4 days after such notification to make the necessary changes” to “Unless otherwise provided by the Department, the permittee shall have 3 business days after such notification to make the necessary changes.”

In General Permit No. 2, add the following paragraphs to the end of proposed Part IV.D.2.A.(2).(c).:

For sites where less than 4.0 inches of topsoil is to be in place after soil disturbing activities have been completed and final stabilization achieved for the permitted activity, a soil survey conducted by properly qualified personnel who regularly conduct soil surveys as part of their normal job duties must be conducted prior to commencement of soil disturbing activities that are permitted under the current permit authorization for the site. The results of the soil survey shall become part of the Pollution Prevention Plan and shall indicate the depth of topsoil at a suitable number of points on the site commensurate with standard engineering practices established for the size of the site.

The topsoil preservation requirement described above shall be implemented for projects that have not received an authorization under this permit prior to October 1, 2012. The topsoil preservation requirements are not required to be implemented for projects that have been authorized prior to October 1, 2012. In residential and commercial developments, a plat is considered a project. For other large areas that have been authorized for multiple construction sites, including those to be started at a future date, such as those located at industrial facilities, military installations and universities, a new construction project not yet surveyed and platted out is considered a project. This stipulation is intended to be interpreted as requiring the topsoil preservation requirements on development plats and construction activities on other extended areas that may have several construction projects permitted under the same authorization to be implemented on those projects not yet surveyed and platted out prior to October 1, 2012, even if other plats and construction activities in the same development or other extended area were authorized prior to October 1, 2012.

Add or modify as indicated the following definitions in Part VIII. of General Permit No. 2:

“Uncontaminated groundwater” means water that is potable for humans, meets the narrative water quality standards in subrule 567—61.3(2) of the Iowa Administrative Code, contains no more than half the listed concentration of any pollutant in subrule 567—61.3(3) of the IAC, has a pH of 6.5-9.0 and is located in soil or rock strata.

“Construction site” means a site or common plan of development or sale on which construction activity, including clearing, grading and excavating, results in soil disturbance. A construction site is considered one site if all areas of the site are contiguous with one another and one entity owns or controls all areas of the site.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*“Final Stabilization”* means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% for the area has been established or equivalent stabilization measures have been employed or which has been returned to agricultural production.

In General Permit No. 3, replace the following proposed paragraph in Part III.C.2.B.:

The owner or operator of a facility with a storm water discharge covered by this permit shall make plans available within three hours of being requested by the Department ~~upon request to the Department~~ or in the case of a storm water discharge associated with industrial activity which discharges through a ~~large or medium~~ municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

With the following:

The owner or operator of a staffed facility with a storm water discharge covered by this permit shall make plans available within three hours of being requested by the Department ~~upon request to the Department~~ or in the case of a storm water discharge associated with industrial activity which discharges through a ~~large or medium~~ municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system. For an unstaffed facility, the owner or operator shall provide plans by the end of the business day following the request by the Department or the municipal operator of the municipal separate storm sewer system with an NPDES permit.

Add the following definition in Part VIII. of General Permit No. 3:

*“Staffed facility”* means a facility at which one or more employees of the permittee are currently located.

Copies of the revised General Permit Nos. 1, 2 and 3 as adopted by reference herein are available upon request. Such request may be made by writing to the Storm Water Coordinator, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; or by calling the Department’s Storm Water Coordinator at (515)281-7017.

After analysis and review of this rule making, no adverse impact on jobs has been found. The Department of Natural Resources reached out to the development and housing industry to narrowly tailor this rule making to minimize any adverse impact on jobs and maximize any positive impact on jobs. Stakeholders believe there could be a savings for developers and homebuilders in many instances because companies can use existing topsoil on site. A copy of the Jobs Impact Statement is also available upon request.

These amendments are intended to implement Iowa Code sections 455B.103A, 455B.183, and 455B.197.

These amendments shall become effective October 1, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 64.15(1) as follows:

**64.15(1)** Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1, effective October 1, ~~2007~~ 2012, to October 1, ~~2012~~ 2017. Facilities assigned Standard Industrial Classification 1442, 2951, or 3273, and those facilities assigned Standard Industrial Classification 1422 or 1423 which are engaged primarily in rock crushing are not eligible for coverage under General Permit No. 1.

ITEM 2. Amend subrule 64.15(2) as follows:

**64.15(2)** Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No.2, effective October 1, ~~2007~~ 2012, to October 1, ~~2012~~ 2017.

*a.*—~~Part I, provision B, section 1, paragraph A of General Permit No.2 is amended to read as follows:~~

~~Except for discharges identified under Parts I.B.2. and I.B.3., this permit may authorize the discharge of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale that will result in the disturbance of one or more acres of total land area),~~

*b.*—~~Part VIII, under the definition: Storm water discharge associated with industrial activity, paragraph (x) of General Permit No.2 is amended to read as follows:~~

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than one acre of total land area which is not part of a larger common plan of development or sale.~~

ITEM 3. Amend subrule 64.15(3) as follows:

**64.15(3)** Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective October 1, ~~2007~~ 2012, to October 1, ~~2012~~ 2017. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classification 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities which are classified under Standard Industrial Classification 1442. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

[Filed 7/19/12, effective 10/1/12]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0267C**

## **HISTORICAL DIVISION[223]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs hereby amends Chapter 35, "Administration," Iowa Administrative Code.

The rules in Chapter 35 set forth the general procedures by which the historic preservation program operates in order to implement the requirements of the Historic Preservation Fund Grants Manual, the National Historic Preservation Act, and Iowa Code chapter 303. The purpose of this amendment is to update rule 223—35.2(303), Definitions.

Notice of Intended Action for this amendment was published in the April 18, 2012, Iowa Administrative Bulletin as **ARC 0104C**.

One public hearing was held May 10, 2012, to receive comments on the Notice of Intended Action. In addition, representatives of the Department appeared before the Administrative Rules Review Committee (ARRC) on May 8, 2012. Written comments were received by the Department until May 10, 2012.

The Director received comments from the Advisory Council on Historic Preservation (ACHP) and the National Park Service (NPS), the principal federal agencies responsible for implementing and ensuring compliance with the National Historic Preservation Act; the federal agency Rural Utilities Service (RUS), a primary lender to Iowa's rural utilities; the National Trust for Historic Preservation (NTHP), a national, privately funded preservation organization; the state organization Preservation Iowa; the Iowa Tribe of Kansas and Nebraska; the Association of Iowa Archaeologists; and a number of archaeologists and interested persons.

Based upon the comments received, the Director has modified the amendment published under Notice of Intended Action to correct a number of the definitions.

In addition, three definitions no longer used were stricken from the chapter: "comprehensive historic preservation planning," "cultural resource" and "survey and planning grants." The definition of "review committee" was replaced with a definition for "state historic preservation review board."

This amendment is needed to conform Iowa's historic preservation program to that required under the National Historic Preservation Act and will ensure continued eligibility of the State for federal historic preservation program grant funds administered by the Secretary of the Interior. As a result, this rule making has a positive impact on jobs.

## HISTORICAL DIVISION[223](cont'd)

This amendment is intended to implement 2011 Iowa Code Supplement section 303.2, subsection 2, paragraph “c,” and section 303.18 and 16 U.S.C. §470 et seq.

This amendment shall become effective September 12, 2012.

The following amendment is adopted.

Amend rule 223—35.2(303) as follows:

**223—35.2(303) Definitions.** The definitions listed in Iowa Code section 17A.2 and rule 223—1.2(303), Iowa Administrative Code, shall apply for terms as they are used throughout Title V of these rules. In addition, the following definitions apply:

*“Act”* means the National Historic Preservation Act of 1966, Public Law 89-665, as amended through December 22, 2006 (16 U.S.C. §470 et seq.).

*“Advisory Council”* means the Advisory Council on Historic Preservation established under ~~Section 201 of the National Historic Preservation Act of 1966, Public Law 89-665~~ the Act.

*“Applicant”* means any individual or entity seeking funding, permitting, licensing or approval from a federal agency or funding or service for a historic preservation activity from the society.

*“Certified local government”* means a unit of local government which is certified by the National Park Service to carry out the purposes of the National Historic Preservation Act in accordance with ~~Section~~ Sections 101(c), 103(c) and 301 of the Act and 36 CFR Part 61, April 13, 1984, and August 30, 1985.

~~*“Comprehensive historic preservation planning”* means the ongoing planning process by the division or a local community that is consistent with technical standards issued by the U.S. Department of the Interior and which produces reliable, understandable, and up-to-date information for decision making related to the identification, evaluation, and protection or treatment of historic resources.~~

~~*“Considered eligible”* means those properties that both the state historic preservation officer and a state or federal agency agree may be considered eligible for listing in the National Register of Historic Places, but have not been forwarded to the National Park Service for a formal determination of eligibility properties formally determined as eligible in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.~~

~~*“Cultural resource”* means man-made components of the physical environment which represent or reflect the history and prehistory of the state.~~

~~*“Deputy state historic preservation officer”* means the designee of the state historic preservation officer who is responsible for the daily administration of the historic preservation program in the state.~~

~~*“Determination of eligibility”* means the finding by the National Park Service that a district, site, building, structure, or object meets the National Register criteria, but a formal nomination has not been forwarded to the National Park Service. A determination of eligibility does not make the property eligible for such benefits as grants, loans, or tax incentives that have listing on the National Register as a prerequisite process described in 36 CFR § 800.4(c) for evaluating the historic significance of identified properties.~~

~~*“Historical Historic Preservation Fund”* means the federal source from which moneys are appropriated to fund the program of matching grants-in-aid to the states and other authorized grant recipients for historic preservation programs, as authorized by Section ~~401(d)(1)~~ 108 of the National Historic Preservation Act ~~of 1966~~ as amended through December 22, 2006.~~

~~*“Historic context”* means a historical theme summary created for planning purposes that links historical information with related historic properties based on the minimal components of a shared theme, specific time period, and geographical area.~~

~~*“Historic preservation”* means the protection, rehabilitation, restoration, and appropriate adaptive reuse of historic properties significant in American history, architecture, archaeology, engineering, or culture includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities, or any combination of the foregoing activities.~~

## HISTORICAL DIVISION[223](cont'd)

“Historic property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on, the National Register of Historic Places. “Historic property” includes artifacts, records, and material remains that are related to such properties or resources.

“Investment tax credit” means a federal income tax credit for the substantial rehabilitation of historic buildings for commercial, industrial, and rental residential and nonresidential purposes.

“National Register of Historic Places” means the national list of historic properties significant in American history, architecture, archaeology, engineering, or culture, maintained by the Secretary of the Interior.

“National Trust for Historic Preservation” means the private, nonprofit organization chartered by legislation approved by Congress on October 26, 1949, with the responsibility for encouraging public participation in the preservation of districts, structures, sites, buildings, and objects significant in American history and culture.

“Property owner” means that individual who pays local property tax for a historic property that they either own or are purchasing by contract.

“Review and compliance” means the review of federal, state and local undertakings according to undertakings pursuant to Section 106 of the Act and its implementing regulations at 36 CFR Part 800: Protection of Historic Properties, September 21, 1986, and the regulations of the Advisory Council on Historic Preservation governing the Section 106 review process.

“Review committee” means the Iowa state national register nominations review committee, which is appointed by the state historic preservation officer.

“Secretary’s Standards and Guidelines” means the Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation (36 CFR Part 61), which provide technical information about archaeological and historic preservation activities and methods. The subjects covered include preservation planning; identification, evaluation, registration, historic research and documentation; architectural and engineering documentation; archaeological investigation; historic preservation projects; and preservation terminology.

“Section 106” means the section of the National Historic Preservation Act of 1966, Public Law 89-665, which that requires the federal agency head with jurisdiction over a federal undertaking or federally licensed undertaking agencies to take into account the effects of the agency’s undertakings on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council for Historic Preservation a reasonable opportunity to comment on the undertaking that the agencies carry out, fund, license, permit or approve on historic properties and afford the Advisory Council a reasonable opportunity to comment. The regulations of 36 CFR Part 800, September 21, 1986, define the process used by an agency to meet these responsibilities and the role of the state historic preservation officer in review and comment on these undertakings.

“State historic preservation officer” or “SHPO” means the governor’s appointee who is responsible for the management of the historic preservation program of the state and compliance of the state historic preservation program with federal statutes and regulations including those of the National Park Service.

“State historic preservation review board” means the Iowa state national register of historic places nominations review committee established as provided in Section 101(b)(1)(B) of the Act:

1. The members of which are appointed by the SHPO (unless otherwise provided for by state law);
2. A majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture; and
3. Which has the authority to:
  - Review National Register nominations and appeals from nominations;
  - Review appropriate documentation submitted in conjunction with the Historic Preservation Fund;
  - Provide general advice and guidance to the state historic preservation officer; and
  - Perform such other duties as may be appropriate.

HISTORICAL DIVISION[223](cont'd)

~~“Survey and planning grants” means the grants which result in the survey, evaluation, and nomination to the National Register of Historic Places of historic properties as well as the planning for these activities.~~

“Technical assistance” means services provided to the public for the development of skills or the provision of knowledge relative to the background, significance, operation, or implications of some aspect of the historic preservation program.

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**ARC 0268C**

## **HISTORICAL DIVISION[223]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs hereby amends Chapter 42, “Review and Compliance Program,” Iowa Administrative Code.

The amendments to Chapter 42 clarify the procedures the State Historic Preservation Office will follow to implement the Review and Compliance Program requirements in Section 106 of the National Historic Preservation Act and Iowa Code chapter 303, describe the level of effort required to identify historic properties, and establish a review and appeal procedure for the recommendations and decisions of the State Historic Preservation Officer.

Notice of Intended Action for these amendments was published in the April 18, 2012, Iowa Administrative Bulletin as **ARC 0103C**.

One public hearing was held on May 10, 2012, to receive comments on the Notice of Intended Action. In addition, representatives of the Department appeared before the Administrative Rules Review Committee (ARRC) on May 8, 2012. Written comments were received by the Department until May 10, 2012.

The Director received comments from the Advisory Council on Historic Preservation (ACHP) and the National Park Service (NPS), the principal federal agencies responsible for implementing and ensuring compliance with the National Historic Preservation Act; the federal agency Rural Utilities Service (RUS), a primary lender to Iowa’s rural utilities; the National Trust for Historic Preservation (NTHP), a national, privately funded preservation organization; the state organization Preservation Iowa; the Iowa Tribe of Kansas and Nebraska; the Association of Iowa Archaeologists; and a number of archaeologists and interested persons.

Based upon the comments received, the Director has modified the amendments published under Notice of Intended Action.

The definition of “adequate documentation” was proposed to be added to this chapter but was not adopted because, as stated by the commenters, the term does not appear in the chapter and because the standards for documentation are established by federal regulations, primarily 36 CFR §800.1.

In addition, the definitions of the terms “agreements” and “historic property” were modified to conform to federal agency comments, and a definition of “recommendations and decisions” was added.

Paragraph 42.5(2)“a” has been modified in response to comments by replacing the phrase “formal SHPO comment” with “the views of the SHPO” to distinguish the formal commenting authority that rests with the ACHP from the capacity to comment that the SHPO is afforded in the review process.

In response to comments, paragraph 42.5(2)“c” was not adopted because it duplicated rule 223—42.3(303), and subsequent paragraphs have been relettered.

Paragraph 42.5(2)“d” (now paragraph 42.5(2)“c”) has been modified in response to comments to clarify that the intent of the paragraph is to require the SHPO to respond to initial determinations submitted by applicants and groups of applicants authorized by the federal agency pursuant to 36 CFR §800.2(c)(4) to initiate the consultations process.

## HISTORICAL DIVISION[223](cont'd)

Paragraph 42.5(2)“e” (now paragraph 42.5(2)“d”) has been modified in response to comments to clarify that, in the process of listing a property on the National Register of Historic Places, the federal agency and not the SHPO is authorized to make final determinations as to National Register eligibility. The SHPO is one of a number of entities that are authorized to render an opinion on eligibility.

Paragraph 42.5(2)“f” (now paragraph 42.5(2)“e”) has been modified in response to comments to clarify that the intent of the paragraph is to require the SHPO, if the SHPO disagrees with a federal agency determination of eligibility, to explain why the SHPO disagrees and to base the SHPO’s opinion on federal criteria for listing.

Paragraph 42.5(2)“g” (now paragraph 42.5(2)“f”) has been modified in response to comments to clarify that the SHPO may comment or may elect not to comment on agency determinations and findings of effect.

Paragraph 42.5(2)“h” (now paragraph 42.5(2)“g”) has been modified in response to comments to refer to the Council as the Advisory Council and to replace the parenthetical reference to the CFR with the phrase “in accordance with 36 CFR §800.5(a).”

Paragraph 42.5(2)“i” (now paragraph 42.5(2)“h”) has been modified in response to comments by adding the following sentence: “The SHPO shall base any recommendations upon consideration of all of the factors enumerated in 36 CFR §800.4(b)(1).”

Paragraph 42.5(2)“k” (now paragraph 42.5(2)“j”) has been modified in response to comments to remove the 14-day limit on the extension of a comment period. Commenters expressed concerns that the 14-day extension may not be long enough if the situation to be reviewed is complicated. The paragraph has also been modified to replace the phrase “if the applicant agrees” with “upon advising the applicant.”

The National Park Service raised a concern regarding the lack of a provision allowing for waiver of these rules. Iowa Code section 17A.9A authorizes a state agency to waive its rules when it has adopted a process for evaluating waiver requests and establishing grounds for granting waivers. The Department has not adopted rules establishing such a process, however, and therefore cannot, by law, waive its rules. In the alternative, the following new subrule is adopted to address some aspect of the National Park Service’s concern:

“**42.5(4) *Emergency procedures.*** The SHPO shall abide by the procedures that govern an agency’s historic preservation responsibilities during any disaster or emergency in lieu of 36 CFR §§800.3 through 800.6.”

Subrule 42.6(1) has been modified in response to comments to incorporate guidance from the ACHP as additional factors to consider in determining the level of effort expected to identify historic properties.

Subrule 42.6(2) has been modified in response to comments to provide a clearer connection between recommendations for the identification of historic properties and the “reasonable and good faith” standard and all of the factors of that standard set forth in federal regulation 36 CFR §800.4(b)(1).

The NTHP commented that subrule 42.6(4), which establishes the level of effort to identify historic properties required of rural electric cooperatives, is not consistent with Iowa Code section 303.18 and that it is the federal agency’s and the SHPO’s responsibility to determine the level of effort. This subrule has been amended to clarify that Iowa Code section 303.18 pertains to “municipal utilities” and not “municipalities.” No other action was taken to modify the subrule because the federal agencies responsible for ensuring the compliance with the Act generally and the level of effort required to identify historic properties in particular had no objections to the subrule as written.

Subrule 42.7(1) has been modified in response to comments to clarify that the appeal process afforded by rule 223—42.7(303) is in addition to the federal appeal process afforded by 36 CFR Part 800.

Subrule 42.7(2) has been modified in response to comments to adopt, for purposes of the rule, the definition of “person” found in Iowa Code section 4.1(20).

Subrule 42.7(4) has been modified in response to comments to clarify that a decision of the director is a final action for State of Iowa appeal purposes and is not a final federal agency action.

In addition, the NPS, NTHP and a number of individuals commented that the rules do not include an effective date or “grandfather” provision or allow for waivers in the event of extraordinary or emergency situations.

HISTORICAL DIVISION[223](cont'd)

With respect to the effective date, one of the purposes of these amendments is to implement the provisions of 2011 Iowa Acts, House File 267, codified as 2011 Iowa Code Supplement section 303.2(2)“c.” Pursuant to section 3 of House File 267, the effective date of the Act was the day it was signed, March 29, 2011. 2011 Iowa Code Supplement section 303.2(2)“c” itself, however, has no “grandfather” or transitioning period. Given that the Legislature elected to authorize the Director to review the decisions of the SHPO, without limitation, the Director is not empowered to constrain that authority by rule.

A copy of the comments and the Director’s response may be requested by contacting Kristen Vander Molen, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)282-0502 or e-mail [Kristen.VanderMolen@iowa.gov](mailto:Kristen.VanderMolen@iowa.gov).

After analysis and review of this rule making, a positive impact on jobs exists. This rule making implements recent legislation by describing the purpose and the implementation of the state’s historic preservation Review and Compliance Program, defines the level of effort required by Iowa’s electric cooperatives and municipal utilities to identify historic properties, and sets forth the process for the Director’s review of the actions of the SHPO.

The rules have a direct impact on projects, activities, or programs funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out with federal financial assistance. For example, two federal agencies, the Rural Utilities Service (RUS) and the Federal Emergency Management Agency (FEMA) finance, through grants and loans, construction projects undertaken by Iowa’s electric cooperatives and municipal utilities. FEMA and RUS, as a condition of this financing, require these utilities to assist the agencies in taking into account the effect these projects may have on historic properties. The number of projects impacted by these rules is significant.

FEMA and the State of Iowa have approved 2,400 miles of line construction directly tied to the FEMA 404 Mitigation Program. Currently pending, there are another 1,300 miles of construction projects being evaluated and considered for approval by FEMA. The total cost of these projects is \$225 million. For each 100 miles of line constructed, which would take approximately 52 weeks to complete, approximately 18 to 20 construction personnel who will be utilizing three digger derrick trucks, three backset trucks, and four pick-up trucks are required. These rules, therefore, impact the work of as many as 740 job holders for a 52-week period for these approved and proposed FEMA hazard mitigation projects. In addition, the crews stay in local Iowa hotels and eat three meals a day at local Iowa restaurants. The majority of these projects take place in rural Iowa and greatly benefit small towns in Iowa. Also, each truck will use approximately 60 to 80 gallons of fuel per week. All fuel purchases will be made in Iowa. The total fuel purchases for 10 trucks for 52-week projects will be approximately 36,400 gallons per project.

Also, contractors rent space to park the ten vehicles used per project, storage for materials, and office space for contractors. Contractors utilize local Iowa mechanic shops for repairs on trucks. Further, the bulk of the construction materials are provided by distributors located in the state of Iowa. Multiple jobs will be created due to the sheer volume of materials required for each construction project. The transportation industry in Iowa will benefit because of the materials being shipped to Iowa. The state will receive a positive fiscal impact due to the significant amount of sales tax purchased on materials bought in Iowa.

In addition to these FEMA mitigation projects, these rules will also positively impact the expeditious completion of future storm recovery projects financed by FEMA and RUS and the hundreds of miles of critical infrastructure that are undertaken each year as part of planned facility replacement and upgrades.

These amendments are intended to implement 2011 Iowa Code Supplement section 303.2, subsection 2, paragraph “c,” and section 303.18.

These amendments shall become effective September 12, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 223—42.1(303) as follows:

**223—42.1(303) Purpose.** ~~The review and compliance program implements Section 106 of the National Historic Preservation Act of 1966 for the purpose of taking into account the effects of an agency’s~~

HISTORICAL DIVISION[223](cont'd)

undertaking on properties included in or eligible for the National Register of Historic Places state historic preservation program activities to advise and assist public (federal, state, and local government) agencies in carrying out their historic preservation responsibilities broadly described and established under the National Historic Preservation Act, particularly Sections 106 and 110, as well as other state and federal historic preservation laws and regulations.

ITEM 2. Amend rule 223—42.2(303) as follows:

**223—42.2(303) Regulations Federal regulations and requirements.** The Iowa review and compliance program shall operate in accordance with the ~~National Historic Preservation Act of 1966, Section 106; and 36 CFR Part 800, September 21, 1986.~~ following requirements:

42.2(1) The National Historic Preservation Act (16 U.S.C. 470 et seq.).

42.2(2) Title 36 of the Code of Federal Regulations Part 60 (36 CFR 60).

42.2(3) Title 36 of the Code of Federal Regulations Part 61 (36 CFR 61).

42.2(4) Title 36 of the Code of Federal Regulations Part 63 (36 CFR 63).

42.2(5) Title 36 of the Code of Federal Regulations Part 800 (36 CFR 800).

42.2(6) Contract requirements outlined in the state of Iowa's Historic Preservation Fund grant agreement with the National Park Service, including requirements described in the Historic Preservation Fund Grants Manual, special conditions attached to the grant agreement, and any other National Park Service requirement considered a condition of receiving the annual federal grant.

42.2(7) Nationwide Programmatic Agreements and other federal program alternatives executed or issued by the Advisory Council on Historic Preservation under 36 CFR §800.14, as applicable.

42.2(8) State-level programmatic agreements and memoranda of agreements executed under 36 CFR §§800.6 and 800.14.

42.2(9) Easements and covenants granted pursuant to the implementation of state historic preservation program activities.

42.2(10) Iowa Code chapter 303.

ITEM 3. Renumber rule ~~223—42.3(303)~~ as **223—42.5(303)**.

ITEM 4. Adopt the following **new** rules 223—42.3(303) and 223—42.4(303):

**223—42.3(303) Professional qualifications.** In keeping with federal Historic Preservation Fund grant requirements, the department shall employ a professionally qualified staff that meets the requirements set forth in 36 CFR §61.4(e).

**223—42.4(303) Definitions.** Unless the context requires otherwise, the definitions provided in the National Historic Preservation Act and its implementing regulations at 36 CFR Part 60, 36 CFR Part 61, and 36 CFR Part 800 shall apply to terms as they are used through this chapter. In addition, the following definitions apply:

*“Act”* means the National Historic Preservation Act (16 U.S.C. §470 et seq.).

*“Agency”* means federal agency.

*“Agreement”* means any agreement executed in accordance with the regulations implementing Section 106 at 36 CFR Part 800 and any agreement authorized by Iowa Code section 28E.4.

*“Area of potential effects”* or *“APE”* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR §800.16(d)).

*“Historic property”* means “historic property” as defined in Section 301(5) of the National Historic Preservation Act as amended through December 22, 2006 (16 U.S.C. §470w(5)).

*“Recommendations and decisions”* means the actions taken by the SHPO to advise and assist federal agencies in carrying out their Section 106 responsibilities.

## HISTORICAL DIVISION[223](cont'd)

“*Undertaking*” means, as defined in Section 301 of the National Historic Preservation Act, a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including (1) those carried out by or on behalf of the federal agency; (2) those carried out with federal financial assistance; (3) those requiring a federal permit, license or approval; and (4) those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

ITEM 5. Amend renumbered rule 223—42.5(303) as follows:

**223—42.5(303) Procedures.**

**42.5(1) *Technical assistance.*** ~~The state historic preservation officer, or designee, shall consult with agency officials expending federal funds to identify historic properties, assess effects of the undertaking on historic properties, and consider alternatives to avoid or reduce the effects. The state historic preservation office (SHPO) shall advise and assist federal agencies in carrying out their responsibilities under the Act (and other federal historic preservation laws) and shall cooperate with federal agencies, state agencies, local governments, or their applicants; organizations; and individuals to ensure historic properties are taken into consideration at all levels of planning and development.~~

**42.5(2) *SHPO review of federal undertakings.***

*a.* In accordance with applicable federal and state laws and regulations, agency officials and agency program applicants or recipients requesting the views of the SHPO on an undertaking shall submit documentation regarding the undertaking and potential effects to historic properties.

*b.* ~~Agency officials desiring a Section 106 review shall contact the review and compliance coordinator to obtain the appropriate forms required to evaluate the effects. Completion of the forms does not constitute clearance of the proposed projects, but is intended to assist the review and compliance staff in rendering an informed recommendation. The SHPO shall make available forms intended to assist agency officials and agency program applicants and recipients in organizing information and to allow the review and compliance program staff and other consulting parties to render informed advice on an undertaking. Forms will be made available on the state historical society of Iowa Web site. Inquiries may~~ Submittals shall be directed to Review and Compliance Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-4137.

*c.* The SHPO shall respond to initial determinations submitted by an applicant or groups of applicants authorized to initiate consultation by the agency pursuant to 36 CFR §800.2(c)(4) or to a final agency determination of eligibility.

*d.* The SHPO shall apply the National Register Criteria for Evaluation when opining on determinations of National Register eligibility.

*e.* With respect to the determination of whether a property is eligible for listing, in the event that the SHPO and the agency official do not agree as to the determination of eligibility, the SHPO shall include an explanation of its opinion which shall be based on the National Register criteria and relevant National Park Service guidelines for evaluation of historic properties.

*f.* The SHPO may respond to agency determinations and findings of effect.

*g.* A SHPO nonconurrence with an agency finding of effect shall include an explanation based upon the Advisory Council’s criteria of adverse effect in accordance with 36 CFR §800.5(a).

*h.* If the SHPO elects to consult, the SHPO shall respond within 30 calendar days of receipt of an agency’s request for review of a finding or determination in accordance with 36 CFR §800.3(c)(4) and the National Park Service’s applicable requirements. The SHPO shall base any recommendations upon consideration of all of the factors enumerated in 36 CFR §800.4(b)(1).

*i.* The recommendations and decisions of the SHPO are subject to the review and approval of the director. This review may be initiated by the director for any reason or may be requested in the manner described in rule 223—42.7(303). To facilitate this opportunity for review, the SHPO will generally submit its recommendation to the director within 14 calendar days of receipt.

*j.* If the director is unable to make a determination regarding the request for review within the federally mandated 30-day consultation period, the director may, upon advising the applicant, request that the federal agency extend the consultation period for such time as the director requires to make such a determination.

HISTORICAL DIVISION[223](cont'd)

42.5(3) Resolution of adverse effects. The SHPO shall participate in the consultation to develop and evaluate alternatives or modifications to undertakings that could avoid, minimize, or mitigate adverse effects on historic properties in accordance with the provisions of 36 CFR §800.6 or the terms of executed agreements, easements and covenants.

42.5(4) Emergency procedures. The SHPO shall abide by the procedures that govern an agency's historic preservation responsibilities during any disaster or emergency in lieu of 36 CFR §§800.3 through 800.6.

~~42.5(3) Responses to agency requests shall be made by the review and compliance staff within 30 days. Responses may indicate that no historic properties are located within the impact area, request the presentation of additional information and research, or that there is an effect. If an impact is indicated the review and compliance staff shall indicate the steps desired to mitigate the impact.~~

~~42.5(4) After initiating consultation, the state historic preservation officer or designee, the funding agency official, or the Advisory Council for Historic Preservation, at its discretion, may state that further consultation may not be productive and thereby terminate the consultation process. The agency official may then request the Council's comments in accordance with Section 800.6(b) of the National Historic Preservation Act of 1966 and notify all other consulting parties of the request.~~

ITEM 6. Adopt the following new rules 223—42.6(303) and 223—42.7(303):

**223—42.6(303) Level of effort required to identify historic properties.**

**42.6(1)** The level of effort required to meet the “reasonable and good faith” standard in Section 106 review is set forth in 36 CFR §800.4. The level of effort required shall be based on past planning, research and studies; the magnitude and nature of the undertaking and the degree of federal involvement; the nature and extent of potential effects on historic properties; and the likely nature and location of historic properties within the APE and may consist of any combination of background research, consultations, oral history interviews, sample field investigations and field surveys. In order to balance the mission and needs of a federal agency and its proposed project, the SHPO shall balance the level of effort and resources necessary to identify and preserve archaeological sites with the project benefits, costs, schedules and local issues that, in part, comprise the broader public interest.

**42.6(2)** In response to the agency's request for consultation, the SHPO shall base any recommendation for the identification of historic properties upon a review of the documentation provided by an agency pursuant to the reasonable and good-faith standard in conformance with the factors set forth in 36 CFR §800.4(b)(1).

**42.6(3)** It is the statutory obligation of the federal agency to fulfill the requirements of Section 106.

**42.6(4)** The level of effort required of rural electric cooperatives and municipal utilities shall be consistent with the requirements set forth in 2011 Iowa Code Supplement section 303.18.

**223—42.7(303) Review and appeal of the recommendations and decisions of the state historic preservation officer.**

**42.7(1)** In addition to any other review or appeal process afforded under federal or state law and regulations, the recommendations and decisions of the state historic preservation officer are subject to the review and approval of the director. This review may be initiated by the director for any reason or may be requested in the manner described in this rule.

**42.7(2)** A person, as defined in Iowa Code section 4.1(20), requesting the review of a recommendation or decision of the state historic preservation officer directly affecting that person shall provide the director with the following information, orally or in writing:

- a. Name and address of the requester.
- b. A description of the action of the SHPO requested to be reviewed.
- c. A short and plain statement of the reasons the review is requested.

**42.7(3)** Within 15 days following receipt of a request for review, the director shall notify the requester of the disposition of the request or of the need for additional information. Within 30 days following the receipt of the requested additional information, the director will notify the requester in writing of the disposition of the request for review.

HISTORICAL DIVISION[223](cont'd)

**42.7(4)** A decision of the director is final. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A.

[Filed 7/19/12, effective 9/12/12]

[Published 8/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0252C**

**INTERIOR DESIGN EXAMINING BOARD[193G]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 544C.3, the Interior Design Examining Board amends Chapter 8, "Renewal and Reinstatement," Iowa Administrative Code.

This amendment provides a provision for late renewal of a certificate of registration, which better aligns Interior Design Examining Board rules with the rules of the other professional licensing boards. This amendment also improves service to registrants.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 30, 2012, as **ARC 0141C**. A public hearing was held on Thursday, June 21, 2012, from 9 to 11 a.m. at the offices of the Professional Licensing Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa. No comments were received. This amendment is identical to that published under Notice of Intended Action.

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

This amendment was adopted by the Board on July 16, 2012.

After analysis and review of this rule making, no adverse impact on jobs has been found. While the amendment includes the addition of a new fee, the new fee is less than the amount (\$100) to reactivate an expired certificate of registration and therefore reduces the cost to the applicant. Although there should be no adverse impact on jobs and the amendment may motivate registrants to renew and therefore may have a positive impact on jobs, the Board will continue to work with stakeholders to minimize any negative impact and maximize any positive impact towards jobs.

This amendment is intended to implement Iowa Code section 544C.3.

This amendment will become effective September 12, 2012.

The following amendment is adopted.

Amend rule 193G—8.1(17A,272C,544C), introductory paragraph, as follows:

**193G—8.1(17A,272C,544C) Renewal of certificates of registration.** Certificates of registration expire biennially on June 30. Following the transition period described in 193G—subrule 2.1(4), certificates issued to registrants with last names beginning with A through K shall expire on June 30 of even-numbered years and certificates issued to registrants with last names beginning with L through Z shall expire on June 30 of odd-numbered years. In order to maintain authorization to practice in Iowa, a registrant is required to renew the certificate of registration prior to the expiration date. However, the board will accept an otherwise sufficient renewal application which is untimely if the board receives the application and late fee of \$25 within 30 days of the date of expiration. A registrant who fails to renew by the expiration date is not authorized to use the title of registered interior designer in Iowa until the certificate is reinstated as provided in rule 193G—3.2(17A,272C,544C).

[Filed 7/18/12, effective 9/12/12]

[Published 8/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0243C****PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 7, "Hospital Pharmacy Practice," Iowa Administrative Code.

The amendment provides that a medication order for administration of a Schedule II controlled substance in a hospital outpatient setting may authorize the administration of an appropriate amount of the substance within 90 days of the date the medication administration order is initially authorized by the prescriber.

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

Notice of Intended Action was published in the April 4, 2012, Iowa Administrative Bulletin as **ARC 0075C**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to the amendment published under Notice.

The amendment was approved during the June 27, 2012, meeting of the Board of Pharmacy.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code sections 124.308 and 155A.27.

This amendment will become effective on September 12, 2012.

The following amendment is adopted.

Amend paragraph **7.11(2)“c”** as follows:

*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 may authorize a single administration the administration of an appropriate amount of the prescribed substance for a period not to exceed 90 days from the date ordered.

(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.

[Filed 7/12/12, effective 9/12/12]

[Published 8/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0242C****PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 124.554, the Board of Pharmacy hereby amends Chapter 24, "Pharmacy Internet Sites," and Chapter 37, "Iowa Prescription Monitoring Program," Iowa Administrative Code.

The amendments:

- Change the definition of "dispenser" to include nonresident pharmacies that dispense prescriptions for controlled substances in Schedules II through IV of Iowa Code chapter 124;
- Amend the requirement for reporting of those substances, contained in Chapter 24 regarding pharmacy Internet sites, to ensure that all pharmacies dispensing Schedules II through IV controlled

## PHARMACY BOARD[657](cont'd)

substances to patients located in Iowa understand the requirement for reporting those prescriptions to the Iowa Prescription Monitoring Program (PMP);

- Identify those pharmacies that may be exempt from reporting to the Iowa PMP and establish processes for claiming such exemption; and
- Change prescription reporting frequency from twice monthly to weekly reporting and establish a timely reporting deadline.

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 4, 2012, Iowa Administrative Bulletin as **ARC 0074C**. The Board received written questions, comments, and suggestions from the National Association of Chain Drug Stores (NACDS) regarding the proposed amendments. As a result of those questions, comments, and suggestions, the Board has changed the definition of “dispenser” to clarify that the term applies to a pharmacy located outside Iowa only if the pharmacy dispenses prescription drugs to a patient physically located in Iowa. The Board has also changed subrule 37.3(3), reporting periods, to provide flexibility in pharmacy reporting schedules. The change provides that if a pharmacy is currently on an alternative schedule of weekly submission of prescription dispensing records to another state’s prescription monitoring program, the pharmacy may receive authorization from the PMP administrator to submit records to the Iowa PMP under that established schedule in lieu of the schedule defined by the subrule.

The amendments were approved during the June 27, 2012, meeting of the Board of Pharmacy.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 124.552.

These amendments will become effective on January 1, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 24.3(3) as follows:

**24.3(3) Iowa PMP.** A pharmacy, wherever located, ~~within Iowa~~ that provides any controlled substance included in Schedules II through IV of Iowa Code chapter 124 to any patient within Iowa, unless the pharmacy is exempt from reporting pursuant to 657—subrule 37.3(1), shall report those dispensed prescriptions to the Iowa PMP as provided in rule 657—37.3(124).

ITEM 2. Amend rule **657—37.2(124)**, definition of “Dispenser,” as follows:

“Dispenser” means a person who delivers to the ultimate user a substance required to be reported to the PMP database. “Dispenser” includes a pharmacy located outside the state of Iowa that is licensed by the board with a nonresident pharmacy license authorizing the pharmacy to dispense prescription drugs to patients physically located in Iowa. “Dispenser” does not include a person exempt from reporting pursuant to subrule 37.3(1).

ITEM 3. Amend rule 657—37.3(124) as follows:

**657—37.3(124) Requirements for the PMP.** Each dispenser, unless identified as exempt from reporting pursuant to subrule 37.3(1), shall submit to the PMP administrator a record of each reportable prescription dispensed during a reporting period. A dispenser located outside the state of Iowa, unless identified as exempt from reporting pursuant to subrule 37.3(1), shall submit to the PMP administrator a record of each reportable prescription dispensed during a reporting period to a patient located in Iowa.

**37.3(1) Exemptions.** The dispensing of a controlled substance as described in this subrule shall not be considered a reportable prescription. A dispenser engaged in the distribution of controlled substances solely pursuant to one or more of the practices identified in paragraphs 37.3(1) “a” or 37.3(1) “b” ~~of this subrule~~ shall so notify the PMP administrator and shall be exempt from reporting to the PMP.

a. A licensed hospital pharmacy shall not be required to report the dispensing of a controlled substance for the purposes of inpatient hospital care, the dispensing of a prescription for a starter supply of a controlled substance at the time of a patient’s discharge from such a facility, or the dispensing of a prescription for a controlled substance in a quantity adequate to treat the patient for a maximum of 72

PHARMACY BOARD[657](cont'd)

hours. A hospital pharmacy claiming exemption from reporting pursuant to this paragraph shall certify to the board that the hospital pharmacy dispenses only as provided by this paragraph.

*b.* A licensed pharmacy shall not be required to report the dispensing of a controlled substance for a patient residing in a long-term care facility or for a patient residing in an inpatient hospice facility. A pharmacy claiming exemption from reporting pursuant to this paragraph shall certify to the board that the pharmacy dispenses only to patients residing in a long-term care facility or to patients residing in an inpatient hospice facility.

*c.* and *d.* No change.

**37.3(2)** No change.

**37.3(3) Reporting periods.** A record of each reportable prescription dispensed shall be submitted by each dispenser pursuant to the following schedule at least weekly. Records may be submitted with greater frequency than required by this schedule. This schedule defines minimum report frequency subrule. Records of reportable prescriptions dispensed between Sunday and Saturday each week shall be submitted no later than the following Wednesday. However, a pharmacy that is currently submitting prescription dispensing records to another state's PMP on an alternative weekly reporting schedule may request authority to submit records to the Iowa PMP pursuant to that established schedule. The request shall be submitted in writing via e-mail, fax, or regular mail to the PMP administrator. The request shall identify the pharmacy by name, address, and Iowa pharmacy license number and shall define the alternative reporting period. The PMP administrator is hereby authorized to accept the pharmacy's alternative weekly reporting schedule.

*a.* Records of reportable prescriptions dispensed between the first and the fifteenth day of a month shall be submitted no later than the twenty-fifth day of the month.

*b.* Records of reportable prescriptions dispensed between the sixteenth and the last day of a month shall be submitted no later than the tenth day of the following month.

**37.3(4)** and **37.3(5)** No change.

[Filed 7/12/12, effective 1/1/13]

[Published 8/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0251C**

## **REVENUE DEPARTMENT[701]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 6, "Organization, Public Inspection," rescinds Chapter 7, "Practice and Procedure Before the Department of Revenue," and adopts a new Chapter 7 with the same title, and amends Chapter 8, "Forms and Communications," Chapter 11, "Administration," Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest," Chapter 38, "Administration," Chapter 40, "Determination of Net Income," Chapter 42, "Adjustments to Computed Tax and Tax Credits," Chapter 43, "Assessments and Refunds," Chapter 51, "Administration," Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Chapter 54, "Allocation and Apportionment," Chapter 57, "Administration," Chapter 59, "Determination of Net Income," Chapter 67, "Administration," Chapter 68, "Motor Fuel and Undyed Special Fuel," Chapter 70, "Replacement Tax and Statewide Property Tax," Chapter 81, "Administration," Chapter 84, "Unfair Cigarette Sales," Chapter 85, "Tobacco Master Settlement Agreement," Chapter 86, "Inheritance Tax," Chapter 89, "Fiduciary Income Tax," Chapter 103, "State-Imposed and Locally Imposed Hotel and Motel Taxes—Administration," and Chapter 104, "Hotel and Motel—Filing Returns, Payment of Tax, Penalty, and Interest," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXIV; No. 24, p. 1554, on May 30, 2012, as **ARC 0145C**.

## REVENUE DEPARTMENT[701](cont'd)

Item 4 rescinds existing Chapter 7 and adopts a new Chapter 7 in which obsolete rules regarding proceedings before the Department of Revenue that commenced prior to July 1, 1999, have been omitted and in which the remaining rules have been reorganized.

Items 1 through 3 and 5 through 44 amend various rules and subrules to correct cross references related to new Chapter 7.

There have been no substantive changes to the amendments published under Notice of Intended Action. However, an addition was made to the introductory paragraph of rule 701—7.8(17A) to reflect the mailing address for the clerk of the hearings section. The introductory paragraph now reads as follows:

**“701—7.8(17A) Protest.** Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding shall file a protest, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The protest must either be delivered to the department by electronic means or by United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section at P.O. Box 10472, Des Moines, Iowa 50306, or be personally delivered to the clerk of the hearings section or served on the clerk of the hearings section by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a protest, is considered filed on the date personal service or personal delivery to the office of the clerk of the hearings section for the department is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.”

After analysis and review of this rule making, no adverse impact on jobs has been found.

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

These amendments will become effective September 12, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [adopt Ch 7; amend Chs 6, 8, 11, 12, 38, 40, 42, 43, 51, 52, 54, 57, 59, 67, 68, 70, 81, 84 to 86, 89, 103, 104] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 0145C**, IAB 5/30/12.

[Filed 7/18/12, effective 9/12/12]

[Published 8/8/12]

[For replacement pages for IAC, see IAC Supplement 8/8/12.]

**ARC 0266C**

**SECRETARY OF STATE[721]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby amends Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

These amendments are necessary to establish uniformity throughout the state regarding the last day to receive timely postmarked absentee ballots in any election in which the United States post office is closed on the deadline for receipt of absentee ballots after an election. Currently, when the county canvass of votes is to be held on the Monday or Tuesday following an election, the statutory deadline for receiving absentee ballots that are timely postmarked is noon on the Monday after the election. Following the November 6, 2012, Presidential Election, the United States post office will be closed on Monday, November 12, 2012, in observance of the Veterans Day holiday. For this reason, the post office will not be delivering any absentee ballots to county auditors’ offices on the Monday following the election. County auditors are not required to close their offices on Monday, November 12, 2012, in observance

SECRETARY OF STATE[721](cont'd)

of Veterans Day, but some will choose to do so. If the county auditor's office is closed on Monday, November 12, 2012, in observance of Veterans Day, Iowa Code section 47.4 moves the deadline to receive absentee ballots to the next day on which the county auditor's office is open. If a county auditor's office is not closed on Monday, November 12, 2012, in observance of Veterans Day, then the deadline for receipt of absentee ballots in that county will be Friday, November 9, 2012, because even though the auditor's office will be open, the post office will not be delivering mail on that Monday. This creates the potential for some counties to accept final delivery of timely postmarked absentee ballots on Friday, November 9, 2012, while other counties will accept timely postmarked absentee ballots until noon on Tuesday, November 13, 2012. In the interest of uniformity across the state related to absentee ballot receipt deadlines and in an effort to ensure as many timely postmarked absentee ballots are counted in November 2012 as possible, amendments to Chapter 21 are adopted.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin as **ARC 0154C** on June 13, 2012. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 47.1, 47.4, 50.24 and 53.17.

These amendments will become effective September 12, 2012.

The following amendments are adopted.

ITEM 1. Adopt the following **new** rule 721—21.12(47,53):

**721—21.12(47,53) Absentee ballot receipt deadline when the United States post office is closed on the deadline for receipt of absentee ballots.** When the United States post office is closed in observance of a federal holiday and is not delivering mail on the deadline for receipt of absentee ballots as set forth in Iowa Code section 53.17, the deadline to receive mailed and timely postmarked absentee ballots shall move to the next business day on which mail delivery is available.

This rule is intended to implement Iowa Code sections 47.1, 47.4 and 53.17.

ITEM 2. Adopt the following **new** rule 721—21.13(47,50):

**721—21.13(47,50) Canvass date adjustment when the United States post office is closed on the deadline for receipt of absentee ballots.**

**21.13(1)** When the United States post office is closed on a Monday that is also the deadline for receipt of absentee ballots, the county board of canvassers may hold the canvass on the Tuesday or Wednesday following the election.

**21.13(2)** When the United States post office is closed on a Thursday that is also the deadline for receipt of absentee ballots, the county board of canvassers shall hold the canvass on the Friday after the election, no earlier than 1 p.m.

This rule is intended to implement Iowa Code sections 47.1, 47.4 and 50.24.

[Filed 7/19/12, effective 9/12/12]

[Published 8/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.

**ARC 0250C**

## **TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2012 Iowa Acts, Senate File 2218, section 5, the Iowa Department of Transportation, on July 18, 2012, adopted an amendment to Chapter 615, "Sanctions," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the June 13, 2012, Iowa Administrative Bulletin as **ARC 0158C**.

## TRANSPORTATION DEPARTMENT[761](cont'd)

2012 Iowa Acts, Senate File 2218, section 2, amended Iowa Code section 321.372 to increase penalties for illegally passing a stopped school bus. 2012 Iowa Acts, Senate File 2218, section 5, requires the Department to initiate rule making to establish that a violation of Iowa Code subsection 321.372(3) is a serious violation. The amendment imposes driver's license suspension periods of 30 days for a first conviction, 90 days for a second conviction, and 180 days for a third or subsequent conviction under Iowa Code subsection 321.372(3).

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.

This amendment is identical to that published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code subsection 321.372(3) and 2012 Iowa Acts, Senate File 2218.

This amendment will become effective September 12, 2012.

Rule-making action:

Amend rule 761—615.17(321) as follows:

**761—615.17(321) Suspension for a serious violation.**

**615.17(1)** No change.

**615.17(2)** “*Serious violation*” means that:

*a.* to *c.* No change.

*d.* The person was convicted of violating Iowa Code subsection 321.372(3). The suspension period shall be:

(1) 30 days for a first conviction under Iowa Code subsection 321.372(3).

(2) 90 days for a second conviction under Iowa Code subsection 321.372(3).

(3) 180 days for a third or subsequent conviction under Iowa Code subsection 321.372(3).

This rule is intended to implement Iowa Code sections 321.210, 321.372 as amended by 2012 Iowa Acts, Senate File 2218, sections 2 and 5, and 321.491.

[Filed 7/18/12, effective 9/12/12]

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