



IOWA ADMINISTRATIVE BULLETIN

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Pages 375 to 472

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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
Dec. 21 '11	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	***May 23***	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	***June 20***	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 6	July 25	Aug. 29	Nov. 26
May 23	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
June 20	July 11	July 31	Aug. 15	Aug. 17	Sep. 5	Oct. 10	Jan. 7 '13
July 6	July 25	Aug. 14	Aug. 29	***Aug. 29***	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
Aug. 29	Sep. 19	Oct. 9	Oct. 24	***Oct. 24***	Nov. 14	Dec. 19	Mar. 18 '13
Sep. 14	Oct. 3	Oct. 23	Nov. 7	***Nov. 7***	Nov. 28	Jan. 2 '13	Apr. 1 '13
Sep. 28	Oct. 17	Nov. 6	Nov. 21	***Nov. 21***	Dec. 12	Jan. 16 '13	Apr. 15 '13
Oct. 12	Oct. 31	Nov. 20	Dec. 5	***Dec. 5***	Dec. 26	Jan. 30 '13	Apr. 29 '13
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Dec. 5	Dec. 26	Jan. 15 '13	Jan. 30 '13	Feb. 1 '13	Feb. 20 '13	Mar. 27 '13	June 24 '13
Dec. 19	Jan. 9 '13	Jan. 29 '13	Feb. 13 '13	Feb. 15 '13	Mar. 6 '13	Apr. 10 '13	July 8 '13

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
7	Friday, September 14, 2012	October 3, 2012
8	Friday, September 28, 2012	October 17, 2012
9	Friday, October 12, 2012	October 31, 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*****

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Definition of “confidential employee,” 50.1 IAB 9/5/12 ARC 0327C	Room 7, A Level Hoover State Office Bldg. Des Moines, Iowa	September 25, 2012 9 to 10 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 ARC 0181C	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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EDUCATIONAL EXAMINERS BOARD[282]

Science teaching endorsement—content requirements, 13.28(17) IAB 9/5/12 ARC 0312C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 26, 2012 1 p.m.
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Renewal of administrator licenses, 19.7 IAB 9/5/12 ARC 0311C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 26, 2012 1 p.m.
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EDUCATION DEPARTMENT[281]

High school credit based on demonstration of competency, 12.5(15) IAB 8/22/12 ARC 0297C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 11, 2012 10 to 11 a.m.
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Use of online learning and telecommunications for instruction by schools, ch 15 IAB 8/22/12 ARC 0302C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 11, 2012 9 to 10 a.m.
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Senior year plus program career and technical coursework—proficiency requirements, 22.2 IAB 8/22/12 ARC 0298C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 11, 2012 11 a.m. to 12 noon
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Pretesting of candidates for admission to teacher preparation programs, 79.13(2)“c,” 79.15 IAB 8/22/12 ARC 0299C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 11, 2012 2 to 3 p.m.
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Teacher and administrator quality programs—frequency of performance reviews, 83.5(3)“c,” 83.11 IAB 8/22/12 ARC 0300C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 11, 2012 1 to 2 p.m.
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Financial incentives for national board certification, 84.1, 84.3(1), 84.4(1) IAB 8/22/12 ARC 0301C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 11, 2012 3 to 4 p.m.
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Wastewater construction and operation permits—disadvantaged community status, 64.3, 64.5(1), 64.7 IAB 8/8/12 ARC 0270C	Conference Rooms 4 East/West Wallace State Office Bldg. Des Moines, Iowa	September 5, 2012 10 a.m. to 12 noon
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Public Library 805 1st St. East Independence, Iowa	September 6, 2012 4 to 6 p.m.
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Public Library 104 West Adams St. Fairfield, Iowa	September 11, 2012 4 to 6 p.m.
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Low-income housing tax credit program—2013 qualified allocation plan, 12.1, 12.2 IAB 8/22/12 ARC 0284C	Authority Offices 2015 Grand Ave. Des Moines, Iowa	September 11, 2012 9 to 11 a.m.
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LABOR SERVICES DIVISION[875]

Boilers and pressure vessels—low-pressure boilers, code-stamp protocols, 90.1, 91.1(2) IAB 9/5/12 ARC 0322C	Capitol View Room 1000 East Grand Ave. Des Moines, Iowa	September 26, 2012 9 a.m. (If requested)
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PAROLE BOARD[205]

Parole and work release decisions, 8.15 IAB 9/5/12 ARC 0320C	Board Offices, Suite 3 Jessie Parker Bldg. 510 E. 12th St. Des Moines, Iowa	September 25, 2012 10 a.m.
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Massage therapists—licensure, education curriculum, 131.3(1), 132.2(6), 132.4(4) IAB 8/22/12 ARC 0288C	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 12, 2012 9:30 to 10 a.m.
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Supervision of physician assistants, 326.8 IAB 8/22/12 ARC 0283C	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 12, 2012 9 to 9:30 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Plumbing and mechanical systems board—petitions for rule making, ch 36 IAB 9/5/12 ARC 0314C (ICN Network)	Mississippi Bend AEA 9 729 21st St. Bettendorf, Iowa	September 25, 2012 11 a.m. to 12 noon
	Schindler 130A University of Northern Iowa Corner of Hudson Rd. and 23rd St. Cedar Falls, Iowa	September 25, 2012 11 a.m. to 12 noon
	State Room AEA 267 Regional Office 9184B 265th Street Clear Lake, Iowa	September 25, 2012 11 a.m. to 12 noon
	Department of Human Services 417 East Kanesville Blvd. Council Bluffs, Iowa	September 25, 2012 11 a.m. to 12 noon
	Second Floor, Department of Education Grimes State Office Bldg. Des Moines, Iowa	September 25, 2012 11 a.m. to 12 noon
	Room 206, Liberal Arts Building Iowa Central Community College 1 Triton Circle Fort Dodge, Iowa	September 25, 2012 11 a.m. to 12 noon
	Room 103 N., University of Iowa At the end of North Madison St. Iowa City, Iowa	September 25, 2012 11 a.m. to 12 noon
	Room D201, Building A Western Iowa Tech Community College 4647 Stone Ave. Sioux City, Iowa	September 25, 2012 11 a.m. to 12 noon
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Plumbing and mechanical systems board—agency procedure for rule making, ch 58 IAB 9/5/12 ARC 0316C (ICN Network)	See ARC 0314C above for public hearing locations	September 25, 2012 11 a.m. to 12 noon
Plumbing and mechanical systems board—fair information practices and public records, ch 59 IAB 9/5/12 ARC 0317C (ICN Network)	See ARC 0314C above for public hearing locations	September 25, 2012 11 a.m. to 12 noon
Plumbing and mechanical systems board—noncompliance regarding child support and student loan repayment, nonpayment of state debt, ch 60 IAB 9/5/12 ARC 0313C (ICN Network)	See ARC 0314C above for public hearing locations	September 25, 2012 11 a.m. to 12 noon

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Hearing Room
1375 East Court Ave.
Des Moines, Iowa

September 25, 2012
10 a.m.

VOLUNTEER SERVICE, IOWA COMMISSION ON[817]

Iowa youth mentoring program certification, amendments to ch 8
IAB 8/22/12 **ARC 0291C**

Iowa Tourism Conference Room
200 E. Grand Ave.
Des Moines, Iowa

September 13, 2012
1 to 2 p.m.

The following list will be updated as changes occur.

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

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

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

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ARC 0327C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

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 8A.104(5), the Department of Administrative Services (DAS) proposes to amend Chapter 50, “Human Resources Definitions,” Iowa Administrative Code.

The Department of Administrative Services is undertaking a comprehensive review of all existing DAS rules. Upon identification of the objection to rule 11—50.1(8A), DAS undertook an effort to address the objection filed by the Administrative Rules Review Committee in 1986.

Interested persons may make written comments on the proposed amendment until 4:30 p.m. on September 25, 2012. Comments should be directed to Caleb Hunter, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-6140 or by e-mail to Caleb.Hunter@iowa.gov.

A public hearing will be held on September 25, 2012, from 9 to 10 a.m. in Room 7, A Level, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact and advise the Department of Administrative Services of their specific needs by calling (515)281-3351.

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

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

This amendment is intended to implement Iowa Code chapter 8A.

The following amendment is proposed.

Amend rule **11—50.1(8A)**, definition of “Confidential employee” for purposes of merit system coverage, as follows:

“Confidential employee” means, for purposes of merit system coverage, the personal secretary of: an elected official of the executive branch or a person appointed to fill a vacancy in an elective office, the chair of a full-time board or commission, or the director of a state agency; as well as the nonprofessional staff in the office of the auditor of state, and the nonprofessional staff in the department of justice except those reporting to the administrator of the consumer advocate division. “Confidential employee” also means an employee who is in a confidential relationship with a director, chief deputy administrative officer, a division administrator, or a similar position, and at the same time is a part of the management team, legal team, or both of said director, chief deputy administrative officer, a division administrator, or similar position. For purposes of this rule, a confidential relationship means a relationship in which one person has a duty to the other not to disclose information.

ARC 0312C**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

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

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

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

This amendment is proposed because of input from the field and issues generated by the Basic Educational Data System (BEDS) reporting. The first change revises wording in paragraph 13.28(17)“e” and more specifically defines what is required to obtain the basic science endorsement. The second change removes the physical science endorsement option in paragraph 13.28(17)“f” that has been incorporated in other endorsement areas. The third change strikes paragraph 13.28(17)“h” to remove an outdated endorsement that should have been removed several years ago. The last change spells out in more detail the requirements for the all science endorsement in paragraph 13.28(17)“i” and also decreases the total number of hours needed for an all science endorsement from 48 to 36.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 26, 2012, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, September 28, 2012. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 13.28(17) as follows:

13.28(17) Science.

a. Science—basic. K-8.

(1) No change.

(2) Competencies Pedagogy competencies.

1. to 4. No change.

b. to d. No change.

e. General Basic science. 5-12. Completion of 24 semester hours in science to include coursework in biological science, chemistry, and physics. Completion of 24 semester hours of credit in science to include the following:

(1) Six semester hours of credit in earth and space science to include the following essential concepts and skills:

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

1. Understand and apply knowledge of energy in the earth system.
2. Understand and apply knowledge of geochemical cycles.
- (2) Six semester hours of credit in life science/biological science to include the following essential concepts and skills:
 1. Understand and apply knowledge of the cell.
 2. Understand and apply knowledge of the molecular basis of heredity.
 3. Understand and apply knowledge of the interdependence of organisms.
 4. Understand and apply knowledge of matter, energy, and organization in living systems.
 5. Understand and apply knowledge of the behavior of organisms.
- (3) Six semester hours of credit in physics/physical science to include the following essential concepts and skills:
 1. Understand and apply knowledge of the structure of atoms.
 2. Understand and apply knowledge of the structure and properties of matter.
 3. Understand and apply knowledge of motions and forces.
 4. Understand and apply knowledge of interactions of energy and matter.
- (4) Six semester hours of credit in chemistry to include the following essential concepts and skills:
 1. Understand and apply knowledge of chemical reactions.
 2. Be able to design and conduct scientific investigations.
- ~~f. *Physical science.* 5-12. Completion of 24 semester hours in physical sciences to include coursework in physics, chemistry, and earth science.~~
- ~~g. No change.~~
- ~~h. *All science I.* 5-8. The holder of this endorsement must also hold the middle school endorsement listed under rule 282—13.27(272).~~
- ~~(1) Required coursework. Completion of at least 24 semester hours in science to include 6 hours in chemistry, 6 hours in physics or physical sciences, 6 hours in biology, and 6 hours in the earth/space sciences.~~
- ~~(2) Competencies:~~
 - ~~1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.~~
 - ~~2. Understand the fundamental facts and concepts in major science disciplines.~~
 - ~~3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.~~
 - ~~4. Be able to use scientific understanding when dealing with personal and societal issues.~~
- ~~i. *All science II.* 9-12.~~
- ~~(1) Required coursework:~~
 - ~~1. Completion of one of the following endorsement areas listed under subrule 13.28(17): biological science 5-12 or chemistry 5-12 or earth science 5-12 or physics 5-12.~~
 - ~~2. Completion of at least 12 hours in each of the other three endorsement areas.~~
- ~~(1) Completion of 36 semester hours of credit in science to include the following:~~
 1. Nine semester hours of credit in earth and space science to include the following essential concepts and skills:
 - Understand and apply knowledge of energy in the earth system.
 - Understand and apply knowledge of geochemical cycles.
 - Understand and apply knowledge of the origin and evolution of the earth system.
 - Understand and apply knowledge of the origin and evolution of the universe.
 2. Nine semester hours of credit in life science/biological science to include the following essential concepts and skills:
 - Understand and apply knowledge of the cell.
 - Understand and apply knowledge of the molecular basis of heredity.
 - Understand and apply knowledge of the interdependence of organisms.
 - Understand and apply knowledge of matter, energy, and organization in living systems.
 - Understand and apply knowledge of the behavior of organisms.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- Understand and apply knowledge of biological evolution.
 - 3. Nine semester hours of credit in physics/physical science to include the following essential concepts and skills:
 - Understand and apply knowledge of the structure of atoms.
 - Understand and apply knowledge of the structure and properties of matter.
 - Understand and apply knowledge of motions and forces.
 - Understand and apply knowledge of interactions of energy and matter.
 - Understand and apply knowledge of conservation of energy and increase in disorder.
 - 4. Nine semester hours of credit in chemistry to include the following essential concepts and skills:
 - Understand and apply knowledge of chemical reactions.
 - Be able to design and conduct scientific investigations.
- (2) ~~Competencies~~ Pedagogy competencies.
1. to 4. No change.

ARC 0311C

EDUCATIONAL EXAMINERS BOARD[282]**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 19, “Evaluator Endorsement and License,” Iowa Administrative Code.

The proposed amendment to rule 282—19.7(272) modifies the language to make the rule’s meaning clearer and changes the term “will” to “may.” Paragraph 19.7(2)“c” is stricken because the provision is no longer needed as the sunset date has passed.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 26, 2012, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, September 28, 2012. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Amend rule 282—19.7(272) as follows:

282—19.7(272) Renewal of administrator licenses.

19.7(1) Each applicant for renewal of an administrator license shall have completed the evaluator endorsement requirements. A waiver of this requirement may apply if a person submits appropriate documentation of either of the following:

- a. A person is engaged in active duty in the military service of this state or of the United States.
- b. A person is practicing as a licensed profession professional educator outside this state.

19.7(2) Extension of an administrator license:

- a. ~~Will~~ May be granted to an applicant who has not completed the new evaluator renewal training course before the expiration date on the applicant's license; and
- b. ~~Will~~ May be granted for a one-year period; ~~and~~
- c. ~~Will not be issued, pursuant to this subrule, on or after July 1, 2008.~~

ARC 0325C**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 235A.18, subsection 3, and 2012 Iowa Acts, House File 2226, the Department of Human Services proposes to amend Chapter 7, “Appeals and Hearings,” and Chapter 175, “Abuse of Children,” Iowa Administrative Code.

These amendments require a perpetrator's name to be removed from the child abuse registry after ten years so long as the perpetrator has had no subsequent founded child abuse report within that ten-year period.

These amendments will allow only a person alleged responsible for the abuse to file an appeal regarding a child abuse report. If a person alleged responsible files an appeal, then all other subjects are notified of their right to file a motion to intervene in the appeal proceedings. All parties have the right to request that the Administrative Law Judge (ALJ) stay the hearing if adjudication or district court decisions related to the data or findings are pending. All parties have the right to appeal the ALJ's decision to the Director of the Department within ten days of the proposed decision. Only a person alleged responsible for the abuse may appeal the final decision to the higher courts.

Any interested person may make written comments on the proposed amendments on or before September 25, 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.

These amendments do not provide for waivers in specified situations because no waiver provisions are necessary. 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 235A.18, subsection 3, and 2012 Iowa Acts, House File 2226.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend rule **441—7.1(17A)**, definition of “Aggrieved person,” as follows:

“*Aggrieved person*” means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. to 7. No change.

8. For the child or dependent adult abuse registry, juvenile sex offender registry or criminal record check evaluation, a person:

- Who is a person alleged responsible for child abuse.

- Who has requested correction of ~~child abuse~~ or dependent adult abuse information.

- Who has been restricted from or denied employment in a health care facility, state institution, or other facility based on a record check. “Employment” includes, but is not limited to, service as an employee, a volunteer, a provider, or a contractor. “Facilities” include, but are not limited to, county or multicounty juvenile detention homes and juvenile shelter care homes, child-placing agencies, substance abuse treatment programs, group living foster care facilities, child development homes, child care centers, state resource centers, mental health institutes, and state training schools.

- Who is contesting a risk assessment decision as provided in rule 441—103.34(692A) by alleging that the risk assessment factors have not been properly applied, the information relied upon to support the assessment findings is inaccurate, or the procedures were not correctly followed.

9. to 12. No change.

ITEM 2. Amend subrule 7.5(4) as follows:

7.5(4) *Time limit for granting hearing to an appeal.* Subject to the provisions of subrule 7.5(1), when an appeal is made, the granting of a hearing to that appeal shall be governed by the following timeliness standards:

a. to c. No change.

d. *Abuse standard.*

(1) For appeals regarding dependent adult abuse, a hearing shall be held if the appeal is made within six months after official notification of the action as provided in Iowa Code section 235B.10.

(2) For appeals regarding child abuse, a hearing shall be held if the appeal is made by a person alleged responsible for the abuse within 90 days after official notification of the action as provided in 2011 Iowa Code Supplement section 235A.19 as amended by 2011 Iowa Acts, House File 562 2012 Iowa Acts, House File 2226. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the hearing within 10 calendar days after the appeal notification.

(3) The day after the official notice is mailed is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

e. and f. No change.

ITEM 3. Amend subrule 7.8(4) as follows:

7.8(4) *Prehearing conference.* When ~~desired~~ requested by the appellant or department, a prehearing conference with a representative of the local office or the office which took the action appealed shall be held as soon as possible after the appeal has been filed. An appellant’s representative shall be allowed to attend and participate in the conference, unless precluded by federal rule or state statute.

The purpose of the prehearing conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action, to provide an opportunity for the appellant to explain the appellant’s action or position, and to provide an opportunity for the appellant to examine the contents of the case record plus all documents and records to be used by the department at the hearing in accordance with 441—Chapter 9. A conference need not be requested for the appellant to have access to the records as provided in subrule 7.13(1) and 441—Chapter 9 discuss the appealed issue, to inquire as to voluntary settlement potential, to establish the hearing date, to establish the location of the hearing including whether the hearing will be by telephone or in person, and to discuss procedural matters relevant to the case.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Amend subrule 7.8(6) as follows:

7.8(6) *Right of the department to deny or dismiss an appeal.* The department or the department of inspections and appeals has the right to deny or dismiss the appeal when:

- a. It has been withdrawn by the appellant in writing.
- b. The sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients.
- c. It has been abandoned.
- d. The agency, by written notice, withdraws the action appealed and restores the appellant's status which existed before the action appealed was taken.
- e. The agency implements action and issues a notice of decision to correct an error made by the agency which resulted in the appeal.

Abandonment may be deemed to have occurred when the appellant, or the appellant's authorized representative fails, without good cause, to appear at the prehearing or hearing.

ITEM 5. Amend rule 441—7.10(17A) as follows:

441—7.10(17A) Procedural considerations. Upon receipt of the notice of appeal, the department shall:

7.10(1) *Registration.* Register Upon receipt of the notice of appeal, the department shall register the appeal.

7.10(2) *Acknowledgment.*

a. Send Upon receipt of the notice of appeal, the department shall send an acknowledgment of receipt of the appeal to the appellant, representative, or both. A copy of the acknowledgment of receipt of appeal will be sent to the appropriate departmental office.

b. For an appeal regarding child abuse, all subjects other than the person alleged responsible (appellant) will be notified of the opportunity to file a motion to intervene as provided in 2011 Iowa Code Supplement section 235A.19 as amended by 2012 Iowa Acts, House File 2226.

7.10(3) to 7.10(7) No change.

ITEM 6. Amend subrule 7.13(2) as follows:

7.13(2) *Conduct of hearing.*

a. The hearing shall be conducted by an administrative law judge designated by the department of inspections and appeals. It shall be an informal rather than a formal judicial procedure, and shall be designed to serve the best interest of the appellant. The appellant shall have the right to introduce any evidence on points at issue believed necessary, and to challenge and cross-examine any statement made by others, and to present evidence in rebuttal. A verbatim record shall be kept of the evidence presented.

b. For an appeal hearing regarding child abuse, the administrative law judge, upon request of any party to the hearing, may stay the hearing until the conclusion of the adjudicatory phase of a pending juvenile or district court case relating to the data or findings as provided in 2011 Iowa Code Supplement section 235A.19 as amended by 2012 Iowa Acts, House File 2226.

ITEM 7. Amend rule 441—7.14(17A) as follows:

441—7.14(17A) Limitation of persons attending.

7.14(1) The hearing shall be limited in attendance to the following persons, unless otherwise specified by statute or federal regulations: appellant, appellant's representative, agency employees, agency's legal representatives, other persons present for the purpose of offering testimony pertinent to the issues in controversy, and others upon mutual agreement of the parties. The administrative law judge may sequester witnesses during the hearing. Nothing in this rule shall be construed to allow members of the press, news media, or any other citizens' group to attend the hearing without the written consent of the appellant.

7.14(2) For an appeal hearing regarding child abuse:

a. Subjects who file a motion to intervene, as provided in 2011 Iowa Code Supplement section 235A.19 as amended by 2012 Iowa Acts, House File 2226, will have the opportunity to appear at the

HUMAN SERVICES DEPARTMENT[441](cont'd)

prehearing conference. Any motion to intervene shall be considered by the administrative law judge at the prehearing conference.

b. The department shall not be considered to be a party who can adequately represent the interests of any other subject.

c. Subjects allowed to intervene as specified in subrule 7.5(4) will be considered parties to the hearing and will be allowed to attend the proceedings as provided in 2011 Iowa Code Supplement section 235A.19 as amended by 2012 Iowa Acts, House File 2226.

ITEM 8. Amend subrule 7.16(4) as follows:

7.16(4) Appeal of the proposed decision. After issuing a proposed decision, the administrative law judge shall submit it to the department with copies to the appeals advisory committee.

a. The appellant, appellant's representative, a subject allowed to intervene as specified in subrule 7.5(4), the representative of a subject allowed to intervene as specified in subrule 7.5(4), or the department may appeal for the director's review of the proposed decision.

b. When the appellant, a subject allowed to intervene as specified in subrule 7.5(4), or the department has not appealed the proposed decision or when an appeal for the director's review of the proposed decision is not granted, the proposed decision shall become the final decision.

c. The director's review on appeal of the proposed decision shall be on the basis of the record as defined in subrule 7.16(1), except that the director need not listen to the verbatim record of the hearing in a review or appeal. The review or appeal shall be limited to issues raised prior to that time and specified by the party requesting the appeal or review. The director may designate another to act on the director's behalf in making final decisions.

ITEM 9. Amend subrule 7.16(9) as follows:

7.16(9) Time limits. A final decision on the appeal shall be issued within 90 days from the date of the appeal on all decisions except food assistance and vendors. Food assistance-only decisions shall be rendered in 60 days. PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee. Failure to reach a decision within these time frames shall not affect the merits of the appellant's appeal.

a. Time frames may be extended based on continuances or additional time frames as approved by the presiding officer. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed 30 days except with the approval of the administrative law judge, shall be granted and the extra time shall be added to the maximum for final administrative action.

b. For an appeal regarding child abuse, if the proposed decision is not appealed within 10 days from the date of the proposed decision, the proposed decision shall be the final agency action. If a party files an appeal within 10 days from the date of the proposed decision, the director has 45 days from the date of the proposed decision to issue a ruling. If the director does not rule within that 45-day period, the proposed decision becomes the final decision as provided in 2011 Iowa Code Supplement section 235A.19 as amended by 2012 Iowa Acts, House File 2226.

~~b. c.~~ c. The department shall take prompt, definite and final administrative action to carry out the decision rendered within 7 calendar days of receipt of a copy of the final decision. When the final decision is favorable to the appellant, or when the department decides in favor of the appellant before the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.

ITEM 10. Amend subrule 175.31(2) as follows:

175.31(2) Notification of completion of assessment and right to request correction. Written notice which indicates that the child abuse assessment is completed shall be provided to all subjects of a child abuse assessment and to the mandatory reporter who made the report of child abuse ~~which indicates that the child abuse assessment is completed~~. Both custodial and noncustodial parents shall be notified if their whereabouts are known.

a. The notice shall contain the following information concerning the subject's rights to request correction and appeal rights. The subject may request correction of the information contained within

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~the child protective assessment summary if the subject disagrees with the information.~~ pursuant to 2011 Iowa Code Supplement section 235A.19 as amended by 2012 Iowa Acts, House File 2226:

(1) A subject may request correction of the information contained within the child protection assessment summary if the subject disagrees with the information.

(2) A person alleged responsible for the abuse has the right to appeal if the department does not correct the data or findings as requested.

(3) A subject, other than the person alleged responsible for the abuse, has the opportunity to file a motion to intervene in an appeal hearing.

b. If the child protective assessment results in a determination that abuse is confirmed, the notice shall indicate the type of abuse, name of the child and name of the person responsible for the abuse and whether the report has been placed on the registry.

ITEM 11. Amend rule 441—175.39(232) as follows:

441—175.39(232) Founded child abuse. Reports of child abuse where abuse has been confirmed shall be placed on the central abuse registry as founded child abuse for ten years under any of the circumstances specified by 2011 Iowa Code Supplement section 232.71D as amended by 2011 Iowa Acts, House File 562. ~~Reports~~ When none of the placement criteria listed in 2011 Iowa Code Supplement section 232.71D(3) “b” are applicable, reports of denial of critical care by failure to provide adequate clothing or failure to provide adequate supervision and physical abuse where abuse has been confirmed and determined to be minor, isolated, and unlikely to reoccur shall not be placed ~~in~~ on the central abuse registry as a case of founded child abuse ~~as specified by Iowa Code section 232.71D as amended by 2011 Iowa Acts, House File 562.~~ The confirmed abuse shall be placed on the registry unless all three conditions are met.

175.39(1) Confidentiality of founded child abuse report and data. The confidentiality of report and disposition data pertaining to founded child abuse shall be maintained as provided in Iowa Code chapter 235A. Access to the report and disposition data on founded child abuse is authorized only as provided in Iowa Code section 235A.15.

175.39(2) Sealing and expungement of founded child abuse report and data. Report and disposition data pertaining to founded child abuse shall be sealed and expunged as provided in Iowa Code section 235A.18.

ARC 0324C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 119, “Record Check Evaluations for Health Care Programs,” Iowa Administrative Code.

The proposed amendments change the chapter title to more accurately reflect the requirements for record check evaluations by employers and training programs. The amendments also clarify when evaluation must be requested for current employees or students and persons who have been previously evaluated.

The proposed amendments revise documents that are to be included with requests for child abuse checks. In addition, the amendments add a new subrule regarding possible restrictions as a result of an evaluation and revise procedures for notification of persons being evaluated.

Any interested person may make written comments on the proposed amendments on or before September 25, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination,

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Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because there is no provision for implementation of waiver in the law. 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 217.6 and 2012 Iowa Acts, Senate File 2164.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 119**, title, as follows:

**RECORD CHECK EVALUATIONS FOR ~~HEALTH CARE PROGRAMS~~
CERTAIN EMPLOYERS AND EDUCATIONAL TRAINING PROGRAMS**

ITEM 2. Amend **441—Chapter 119**, preamble, as follows:

PREAMBLE

These rules establish procedures for the performance of record check evaluations by the department of human services for personnel employed by health care facilities and other ~~health care~~ programs ~~listed in Iowa Code section 135C.33~~ and for students in educational training programs for nurses and certified nurse aides. Record check evaluations are performed, at the request of a prospective employer or training program, on persons who have been found to have been convicted of a crime under a law of any state or have a record of founded child or dependent adult abuse, to determine whether the crimes or founded abuses warrant prohibition of employment or enrollment in a training program.

ITEM 3. Amend rule 441—119.1(135C) as follows:

441—119.1(135C) Definitions.

“Department” means the department of human services.

~~*“Health care program”* means any of the facilities and programs listed in Iowa Code chapter 135C that are subject to record check evaluations.~~

“Requesting entity” means an entity covered by these rules that is requesting an evaluation to determine if the person being evaluated can be employed by the entity or participate in an educational training program and includes the following:

1. Health care facilities as defined in Iowa Code section 135C.1.
2. Programs in which the provider is regulated by the state or receives any state or federal funding and the employee being evaluated provides direct services to consumers including but not limited to programs that employ homemakers or home health aides, programs that provide adult day services, hospices, federal home- and community-based waiver service providers, elder group homes, and assisted living programs.
3. Substance abuse programs for juveniles as described in Iowa Code section 125.14A.
4. Hospitals as defined in Iowa Code section 135B.1.
5. Psychiatric medical institutions for children as defined in Iowa Code section 135H.1.
6. The department as described in Iowa Code section 217.44.
7. Department institutions as defined in Iowa Code section 218.13.
8. Child foster care facilities as defined in Iowa Code section 237.1.
9. Medicaid home- and community-based services waiver providers as defined in Iowa Code section 249A.29.
10. Certified nursing aide training programs as defined in Iowa Code section 135C.33(8).
11. Nursing training programs as described in Iowa Code chapter 152.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Amend rule 441—119.2(135C) as follows:

441—119.2(135C) When record check evaluations are requested.

119.2(1) *Record check evaluations on prospective employees and students.* ~~Health care programs~~ A requesting entity shall request a record check evaluation ~~when they decide to consider for employment~~ prior to employment or enrollment of a person whose background check indicates a criminal or dependent adult abuse or child abuse record. Criminal, child abuse and dependent adult abuse background checks are required on all prospective employees or students, including employees or students who have terminated employment or participation in a training program for any reason or any length of time and wish to return to the same ~~health care program~~ employment or training program, unless an exemption is provided in these rules.

119.2(2) *Record check evaluations on current employees and students.* ~~Employers may~~ A requesting entity shall request a record check evaluation on current employees and students when a current ~~employee's~~ employee or student background check indicates a criminal or dependent adult or child abuse record and the requesting entity intends to continue to employ the employee or to continue the student's enrollment in a training program. ~~An employer may~~ The requesting entity shall request a current criminal or dependent adult or child abuse record check when the ~~employer~~ entity learns from any source that a current employee or student has a criminal or dependent adult or child abuse record that has not been previously evaluated at the ~~health care program~~ considered by the requesting entity.

119.2(3) *Transfer of employment employee between facilities.* If a person owns or operates more than one facility, and an employee of one of the facilities is transferred to another facility without a lapse in employment, the facility is not required to request additional criminal or abuse record checks of the employee or obtain a new record check evaluation.

119.2(4) *Exceptions to record check evaluation requirements for employment or participation in a training program in facilities licensed under Iowa Code chapter 135C.* If an evaluation was previously performed by the department and the department determined the person's criminal and abuse background did not warrant prohibition of employment, the person may commence employment with a different licensed facility covered by Iowa Code section 135C.33 without further action by the department subject to the following conditions:

a. The record check performed by the subsequent employer does not indicate that a crime was committed or that a founded abuse record was entered subsequent to the previous evaluation.

b. 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.

c. Any restriction placed on the person's employment in the previous evaluation by the department shall remain applicable in the person's subsequent employment.

d. The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer, or the previous employer provides 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, a current record check evaluation shall be performed.

e. Although an authorized new evaluation is not required, the subsequent employer may choose to request a reevaluation of the person's criminal and abuse background and may employ the person while the reevaluation is being performed.

f. The subsequent employer must maintain the previous evaluation in the employee's or student's personnel file for verification of the exception to the requirement for a record check evaluation.

ITEM 5. Amend rule 441—119.3(135C) as follows:

441—119.3(135C) Request for evaluation.

119.3(1) *Required documentation.* The ~~employer~~ requesting entity and the prospective employee or student shall complete and ~~the employer shall~~ submit Form 470-2310, Record Check Evaluation, to the department to request an evaluation. The ~~employer~~ requesting entity shall submit the form and required documentation to the Department of Human Services, Central Abuse Registry, ~~1305 East Walnut~~ P.O.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~Box 4826, Des Moines, Iowa 50319-0114 50305-4826.~~ The department shall not process evaluations that are not signed by the prospective employee or student. The position sought or held must be clearly written on the first page of Form 470-2310, Record Check Evaluation. Form 470-2310 shall be accompanied by the following documents:

a. A copy of the documentation of the ~~applicant's~~ person's status on the DCI criminal history database generated within 30 days of the ~~time that~~ date on which the request for evaluation is submitted to the department.

b. A copy of the Iowa criminal history data, if there is a history, as provided to the ~~employer requesting entity~~ by the division of criminal ~~investigations~~ investigation.

c. A copy of the documentation of the ~~applicant's~~ person's status on the dependent adult abuse registry generated within 30 days of the ~~time that~~ date on which the request for evaluation is submitted to the department.

d. A copy of the documentation of the person's status on the child abuse registry generated within 30 days of the date on which the request for evaluation is submitted to the department.

e. A copy of the documentation of the person's previous evaluation if exemption is requested.

119.3(2) Additional documentation.

a. The ~~employer requesting entity~~ may provide or the department may request from the prospective employee or ~~employer student~~ or from the requesting entity information to assist in performance of the evaluation that includes, but is not limited to, the following:

- (1) Documentation of criminal justice proceedings.
- (2) Documentation of rehabilitation.
- (3) Written employment references or applications.
- (4) Documentation of substance abuse education or treatment.
- (5) Criminal history records, child abuse information, and dependent adult abuse information from other states.

(6) Documentation of the applicant's prior residences.

b. Any person or agency that might have pertinent information regarding the criminal or abuse history and rehabilitation of a prospective employee or student may be contacted.

~~*e.* The department may check the child abuse registry during a record check evaluation. If there is a record of child abuse, the department shall consider the information in the child abuse record in reaching a decision regarding employability.~~

ITEM 6. Amend rule 441—119.4(135C) as follows:

441—119.4(135C) Completion of evaluation.

119.4(1) No change.

~~**119.4(2) Notice of decision.** The department shall issue a notice of decision in writing to the employer that requested the record check evaluation. The department shall send a copy of the notice of decision to the person who has applied for employment, if the person's address is available. If the address is not available, the department shall send the prospective employee's copy of the notice to the employer.~~

~~*a.* The notice shall be valid only for employment with the employer that requested the record check evaluation.~~

~~*b.* The notice shall not be valid for employment with any other prospective employer.~~

~~*c.* Record check evaluations are valid for employment that commences within 30 days from the date of notice of decision.~~

~~*d.* The notice of decision shall contain the notice of right to appeal.~~

119.4(2) Evaluation conclusions.

a. The department may determine the following:

(1) The person may be employed by the entity or enroll in the training program with no restrictions.

(2) The person may be employed by the entity or enroll in the training program with restrictions.

(3) The person may be employed by the entity or enroll in the training program with restrictions specific to a position within the program.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (4) The person may not be employed by the entity or enroll in the training program.
- b. Restrictions on a person's employment or enrollment status shall be based upon what is necessary for the protection of the person or persons receiving care.
- c. Medicaid waiver consumer-directed attendant care evaluations shall determine that either the person may work or the person may not work pursuant to Medicaid law.
- 119.4(3) Notice of decision. The department shall issue a notice of decision in writing to the requesting entity. The requesting entity is responsible for providing a copy of the notice to the prospective employee or student.
- a. The notice shall be valid only for employment with the employer or enrollment in a training program that requested the record check evaluation.
- b. The notice shall not be valid for employment with any other prospective employer or enrollment in another training program.
- c. Record check evaluations are valid for 30 days from the date the notice of decision is issued. If the person does not start employment or attend the training program within the 30-day time period, the requesting entity shall request another evaluation. "Start employment or attend the training program" means to begin to receive a salary or take classes.
- d. The notice of decision shall contain the notice of right to appeal.

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.

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 for information about the A17.3 code and for instructions on commenting about the A17.3 code.

ARC 0322C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby gives Notice of Intended Action to amend Chapter 90, "Administration of the Boiler and Pressure Vessel Program," and Chapter 91, "General Requirements for All Objects," Iowa Administrative Code.

The proposed amendment to rule 875—90.1(89) excludes from regulation an object that was intended by the manufacturer to operate at 3 pounds per square inch or less if the object is in fact operating at 3 pounds per square inch or less. The proposed amendment to subrule 91.1(2) makes Iowa's regulations current with the most recent developments regarding American Society of Mechanical Engineers' code stamps.

LABOR SERVICES DIVISION[875](cont'd)

The purposes of these amendments are to update the rules and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on September 25, 2012, a public hearing will be held on September 26, 2012, at 9 a.m. in the Capitol View Room, 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than September 26, 2012, to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

After analysis and review of this rule making, a positive impact on jobs could exist. These amendments limit regulation on objects with extremely low pressure.

These amendments are intended to implement Iowa Code chapter 89.

The following amendments are proposed.

ITEM 1. Amend rule 875—90.1(89) as follows:

875—90.1(89) Purpose and scope. These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89. An object shall not be considered “under pressure” and shall not be within the scope of Iowa Code chapter 89 when there is clear evidence that the manufacturer did not intend it to be operated at more than 3 psi and the object is operating at 3 psi or less.

ITEM 2. Amend subrule 91.1(2) as follows:

91.1(2) ASME code cases. If the manufacturer of an object listed ASME Code Case 2529, 2568, 2571, ~~or 2571-1, 2710, or 2714~~ on the manufacturer’s data report for the object and the object is otherwise in compliance with all applicable provisions, the object is in compliance with these rules.

ARC 0320C

PAROLE BOARD[205]

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 906.3, the Board of Parole proposes to amend Chapter 8, “Parole and Work Release Considerations,” Iowa Administrative Code.

Under current rules, an inmate with a risk assessment score of one through six requires three affirmative votes for a release, a score of seven or eight requires four affirmative votes, and a score of nine requires all five members to cast an affirmative vote to grant a release. The Board’s current risk assessment tool is undergoing a periodic revision. Additionally, a number of other risk assessment tools have been or are being developed and validated for the Board to utilize to ensure public safety in the making of releasing decisions for paroles and work releases. The proposed amendments rescind the language tying a specific risk assessment score to the number of affirmative votes needed for a parole or work release. The amendments also change the requirement that four or five affirmative votes are needed to release certain high-risk inmates. With these changes, three affirmative votes are the most required for release of any single inmate.

Consideration will be given to all written suggestions or comments received on the proposed amendments on or before September 25, 2012. Written comments should be sent to Andrea Muelhaupt, Iowa Board of Parole, 510 East 12th Street, Des Moines, Iowa 50319.

PAROLE BOARD[205](cont'd)

Also, there will be a public hearing on September 25, 2012, at 10 a.m. in the conference room of the Board of Parole's offices located in the Jesse M. Parker State Office Building, 510 East 12th Street, Suite 3, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the public hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

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

These amendments are intended to implement Iowa Code sections 906.3, 906.4, and 906.5.

The following amendments are proposed.

ITEM 1. Rescind subrule 8.15(2) and adopt the following new subrule in lieu thereof:

8.15(2) The board shall grant parole or work release to an inmate if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate. If three members do not agree, the board shall deny parole or work release.

ITEM 2. Rescind and reserve subrule **8.15(3)**.

ITEM 3. Rescind and reserve subrule **8.15(4)**.

ARC 0314C

PUBLIC HEALTH DEPARTMENT[641]

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 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to rescind Chapter 36, “Plumbing and Mechanical Systems Board—Petitions for Rule Making,” Iowa Administrative Code, and to adopt new Chapter 36 with the same title.

The rules in proposed Chapter 36 describe the process that the Iowa Plumbing and Mechanical Systems Board will follow when receiving and responding to a petition for rule making. The rules do not change the process; they simply provide the Uniform Rules on Agency Procedure language for Petitions for Rule Making in its entirety, with the amendments previously adopted incorporated into the rules. The intent is to make it easier for the general public to locate and understand the process.

Consideration will be given to all written suggestions or comments received on the proposed rules on or before September 25, 2012. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-6114 or by e-mail to cindy.houlson@idph.iowa.gov.

There will be a public hearing on September 25, 2012, from 11 a.m. to 12 noon, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- Bettendorf — Mississippi Bend Area Education Agency 9, 729 21st Street
- Cedar Falls — University of Northern Iowa, Schindler 130A, Corner of Hudson Road and 23rd Street
- Clear Lake — Area Education Agency 267 Regional Office, 9184B 265th Street, State Room
- Council Bluffs — Department of Human Services, 417 East Kanesville Boulevard
- Des Moines — Department of Education, Grimes Building, E. 14th & Grand Avenue, Second Floor
- Fort Dodge — Iowa Central Community College, 1 Triton Circle, Liberal Arts Building, Room 206
- Iowa City — University of Iowa, At the end of North Madison Street, Room 103 North
- Sioux City — Western Iowa Tech Community College, 4647 Stone Avenue, Building A, Room D201

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

After analysis and review of this rule making, no impact on jobs has been found. These rules are intended to implement Iowa Code sections 17A.7 and 105.4. The following amendment is proposed.

Rescind 641—Chapter 36 and adopt the following **new** chapter in lieu thereof:

CHAPTER 36
 PLUMBING AND MECHANICAL SYSTEMS BOARD—
 PETITIONS FOR RULE MAKING

641—36.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. A petition is deemed filed when it is received by the board. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly hand-written in ink and must substantially conform to the following form:

THE IOWA PLUMBING AND MECHANICAL SYSTEMS BOARD		
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendments to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board’s authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner’s arguments in support of the action urged in the petition.
4. A brief summary of the data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 641—36.4(17A).

36.1(1) The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

36.1(2) The board may deny a petition because it does not substantially conform to the required form.

641—36.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

641—36.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

641—36.4(17A) Board consideration.

36.4(1) Within 14 days after the filing of a petition, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

36.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

36.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code sections 17A.7 and 105.4.

ARC 0315C

PUBLIC HEALTH DEPARTMENT[641]

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 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt new Chapter 57, “Plumbing and Mechanical Systems Board—Declaratory Orders,” Iowa Administrative Code.

The proposed rules in Chapter 57 describe the process that the Iowa Plumbing and Mechanical Systems Board will follow when a petition for declaratory order is received by the Board.

Consideration will be given to all written suggestions or comments received on the proposed rules on or before September 25, 2012. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by e-mail to cindy.houlson@idph.iowa.gov.

There will be a public hearing on September 25, 2012, from 11 a.m. to 12 noon, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their

PUBLIC HEALTH DEPARTMENT[641](cont'd)

names and addresses for the record and to confine their remarks to the subject of the proposed rules. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

- Bettendorf — Mississippi Bend Area Education Agency 9, 729 21st Street
- Cedar Falls — University of Northern Iowa, Schindler 130A, Corner of Hudson Road and 23rd Street
- Clear Lake — Area Education Agency 267 Regional Office, 9184B 265th Street, State Room
- Council Bluffs — Department of Human Services, 417 East Kanesville Boulevard
- Des Moines — Department of Education, Grimes Building, E. 14th & Grand Avenue, Second Floor
- Fort Dodge — Iowa Central Community College, 1 Triton Circle, Liberal Arts Building, Room 206
- Iowa City — University of Iowa, At the end of North Madison Street, Room 103 North
- Sioux City — Western Iowa Tech Community College, 4647 Stone Avenue, Building A, Room D201

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

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

These rules are intended to implement Iowa Code section 17A.9.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 57:

CHAPTER 57
 PLUMBING AND MECHANICAL SYSTEMS BOARD—
 DECLARATORY ORDERS

641—57.1(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board, at Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA PLUMBING AND MECHANICAL SYSTEMS BOARD	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	} PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by 641—57.7(17A).

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

641—57.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 641—57.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

641—57.3(17A) Intervention.

57.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

57.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

57.3(3) A petition for intervention shall be filed with the Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA PLUMBING AND MECHANICAL SYSTEMS BOARD		
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor’s standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor’s interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—57.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

641—57.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the board's executive officer at Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

641—57.6(17A) Service and filing of petitions and other papers.

57.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

57.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

57.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by 641—33.14(17A).

641—57.7(17A) Consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

641—57.8(17A) Action on petition.

57.8(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board's executive officer or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

57.8(2) The date of issuance of an order or of a refusal to issue an order means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

641—57.9(17A) Refusal to issue order.

57.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

57.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

57.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

641—57.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

641—57.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

641—57.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9.

ARC 0316C

PUBLIC HEALTH DEPARTMENT[641]

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 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt new Chapter 58, “Plumbing and Mechanical Systems Board—Agency Procedure for Rule Making,” Iowa Administrative Code.

The proposed rules in Chapter 58 describe the process that the Iowa Plumbing and Mechanical Systems Board will follow when a petition for rule making is received by the Board.

Consideration will be given to all written suggestions or comments received on the proposed rules on or before September 25, 2012. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by e-mail to cindy.houlson@idph.iowa.gov.

There will be a public hearing on September 25, 2012, from 11 a.m. to 12 noon, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Bettendorf — Mississippi Bend Area Education Agency 9, 729 21st Street
 Cedar Falls — University of Northern Iowa, Schindler 130A, Corner of Hudson Road and 23rd Street
 Clear Lake — Area Education Agency 267 Regional Office, 9184B 265th Street, State Room
 Council Bluffs — Department of Human Services, 417 East Kanesville Boulevard
 Des Moines — Department of Education, Grimes Building, E. 14th & Grand Avenue, Second Floor
 Fort Dodge — Iowa Central Community College, 1 Triton Circle, Liberal Arts Building, Room 206
 Iowa City — University of Iowa, At the end of North Madison Street, Room 103 North
 Sioux City — Western Iowa Tech Community College, 4647 Stone Avenue, Building A, Room D201

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

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

These rules are intended to implement Iowa Code section 17A.4.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 58:

CHAPTER 58
 PLUMBING AND MECHANICAL SYSTEMS BOARD—
 AGENCY PROCEDURE FOR RULE MAKING

641—58.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

641—58.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the board by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

641—58.3(17A) Public rule-making docket.

58.3(1) Docket maintained. The board shall maintain a current public rule-making docket.

58.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the board. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of board personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects upon which public comment is desired.

58.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule;

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- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any board determinations with respect thereto;
- h. Any known timetable for board decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The date of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

641—58.4(17A) Notice of proposed rule making.

58.4(1) Contents. At least 35 days before the adoption of a rule, the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the board shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the board for the resolution of each of those issues.

58.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 58.12(2) of this chapter.

58.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the board a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the board for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one calendar year.

641—58.5(17A) Public participation.

58.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075, or the person designated in the Notice of Intended Action.

58.5(2) Oral proceedings. The board may, at any time, schedule an oral proceeding on a proposed rule. The board shall schedule an oral proceeding on a proposed rule if, within 20 days after the published

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Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

58.5(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) "b" or this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The board, a member of the board, or another person designated by the board who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the board at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the board.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and

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permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

58.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

58.5(5) Accessibility. The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the board's executive officer at (515)281-6881 in advance to arrange access or other needed services.

641—58.6(17A) Regulatory analysis.

58.6(1) Definition of small business. A "small business" is defined in Iowa Code section 17A.4A(8).

58.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the board's small business impact list by making a written application addressed to: Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The board may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The board may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

58.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rulemaking. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(3), the board shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

58.6(4) Qualified requesters for regulatory analysis—economic impact. The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)"a" after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

58.6(5) Qualified requesters for regulatory analysis—business impact. The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)"b" after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

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58.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the board shall adhere to the time lines described in Iowa Code sections 17A.4A(4) and 17A.4A(5).

58.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A.

58.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A.

58.6(9) *Publication of a concise summary.* The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A.

58.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “a,” unless a written request expressly waives one or more of the items listed in the section.

58.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

641—58.7(17A) Fiscal impact statement.

58.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

58.7(2) If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

641—58.8(17A) Time and manner of rule adoption.

58.8(1) *Time of adoption.* The board shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

58.8(2) *Consideration of public comment.* Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

58.8(3) *Reliance on board expertise.* Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

641—58.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

58.9(1) The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

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58.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

58.9(3) The board shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

58.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

641—58.10(17A) Exemptions from public rule-making procedures.

58.10(1) *Omission of notice and comment.* To the extent the board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

58.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by either state or federal law.

58.10(3) *Public proceedings on rules adopted without them.* The board may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 58.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 58.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 58.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

641—58.11(17A) Concise statement of reasons.

58.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

58.11(2) *Contents.* The concise statement of reasons shall contain:

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- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the board's reasons for overruling the arguments made against the rule.

58.11(3) *Time of issuance.* After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

641—58.12(17A) Contents, style, and form of rule.

58.12(1) *Contents.* Each rule adopted by the board shall contain the text of the rule and, in addition:

- a. The date the board adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(2) or the board in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(2) or the board in its discretion decides to include such reasons; and
- g. The effective date of the rule.

58.12(2) *Incorporation by reference.* The board may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board finds that the incorporation of its text in the board proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this board, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

If the board adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

58.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board. The board will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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At the request of the administrative code editor, the board shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

58.12(4) *Style and form.* In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

641—58.13(17A) Agency rule-making record.

58.13(1) *Requirement.* The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

58.13(2) *Contents.* The board rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of board submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the board's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the board, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board and considered by the board, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the board is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the board shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(3) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(6), and any board response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

58.13(3) *Effect of record.* Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

58.13(4) *Maintenance of record.* The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 58.13(2) "g," "h," "i," or "j."

641—58.14(17A) Filing of rules. The board shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement

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is issued. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.

641—58.15(17A) Effectiveness of rules prior to publication.

58.15(1) *Grounds.* The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

58.15(2) *Special notice.* When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 58.15(2).

641—58.16(17A) General statements of policy.

58.16(1) *Compilation, indexing, public inspection.* The board shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11)“a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11)“f;” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

58.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this rule shall not be relied on by the board to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 58.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

641—58.17(17A) Review by agency of rules.

58.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The board may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

58.17(2) In conducting the formal review, the board shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the board’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the board or granted by the board. The report

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shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code section 17A.4.

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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 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt new Chapter 59, “Plumbing and Mechanical Systems Board—Fair Information Practices and Public Records,” Iowa Administrative Code.

The proposed rules in Chapter 59 describe the process that the Iowa Plumbing and Mechanical Systems Board will follow when a request for access to open records is received, specify how to handle confidential records, and implement the Fair Information Practices Act.

Consideration will be given to all written suggestions or comments received on the proposed rules on or before September 25, 2012. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by e-mail to cindy.houlson@idph.iowa.gov.

There will be a public hearing on September 25, 2012, from 11 a.m. to 12 noon, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Bettendorf — Mississippi Bend Area Education Agency 9, 729 21st Street

Cedar Falls — University of Northern Iowa, Schindler 130A, Corner of Hudson Road and 23rd Street

Clear Lake — Area Education Agency 267 Regional Office, 9184B 265th Street, State Room

Council Bluffs — Department of Human Services, 417 East Kanesville Boulevard

Des Moines — Department of Education, Grimes Building, E. 14th & Grand Avenue, Second Floor

Fort Dodge — Iowa Central Community College, 1 Triton Circle, Liberal Arts Building, Room 206

Iowa City — University of Iowa, At the end of North Madison Street, Room 103 North

Sioux City — Western Iowa Tech Community College, 4647 Stone Avenue, Building A, Room D201

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

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

These rules are intended to implement Iowa Code section 22.11.

The following amendment is proposed.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Adopt the following new 641—Chapter 59:

CHAPTER 59
PLUMBING AND MECHANICAL SYSTEMS BOARD—FAIR INFORMATION
PRACTICES AND PUBLIC RECORDS

641—59.1(17A,22) Definitions. As used in this chapter:

“Agency” or “board” means the Iowa plumbing and mechanical systems board.

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

“Custodian” means the board, or a person lawfully delegated authority by the board to act for the board in implementing Iowa Code chapter 22.

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

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

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the board.

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

641—59.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and sound board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22; board staff shall cooperate with members of the public in implementing the provisions of that chapter.

641—59.3(17A,22) Requests for access to records.

59.3(1) Location of record. A request for access to a record should be directed to the board’s executive officer or the board office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. If a request for access to a record is misdirected, board personnel will promptly forward the request to the appropriate person within the agency.

59.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. excluding Saturdays, Sundays, and legal holidays.

59.3(3) Request for access. Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the records. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

59.3(4) Response to requests. Access to an open record shall be provided promptly by the custodian upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the

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requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 641—59.4(17A,22) and other applicable provisions of law.

59.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

59.3(6) *Copying.* A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available in the board office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

59.3(7) *Fees.*

a. When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board shall be prominently posted in the board office. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and posted in the board office by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Search and supervisory fee. An hourly fee may be charged for actual board expenses in searching for and supervising the examination and copying of requested records when the time required is in excess of one hour. The custodian shall prominently post in the board office the hourly fee to be charged for search and supervision of records. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

641—59.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 641—59.3(17A,22).

59.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

59.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

59.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified

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in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

59.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

59.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

641—59.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

59.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

59.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the board by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

59.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the board does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

59.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

59.5(5) Request granted or deferred. If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify

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any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

59.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

641—59.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

641—59.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel before the board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the board to disclose records about that person to the person's attorney.

641—59.8(17A,22) Notice to suppliers of information. When the board requests a person to supply information about that person, the board shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

641—59.9(17A,22) Disclosures without the consent of the subject.

59.9(1) Open records are routinely disclosed without the consent of the subject.

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59.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 641—59.10(17A,22) or in the notice for a particular record system.
- b.* To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.* Investigative information in the possession of the board or its employees or agents which relates to license discipline may be disclosed to appropriate licensing authorities within the state, the appropriate licensing authority in another state, the District of Columbia, or territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of the board or its employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency.
- d.* To the legislative services agency under Iowa Code section 2A.3.
- e.* Disclosures in the course of employee disciplinary proceedings.
- f.* In response to a court order or subpoena.
- g.* To the office of citizens' aide pursuant to Iowa Code section 2C.9.

641—59.10(17A,22) Routine use.

59.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. "Routine use" includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

59.10(2) To the extent allowed by law, the following uses are considered routine use of all board records:

- a.* Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any office or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.
- b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c.* Disclosure to the department of inspections and appeals and the attorney general's office for the matters in which they are performing services or functions on behalf of the board.
- d.* Transfers of information within the board office and among board members, to other state boards and departments, or to local units of government as appropriate to carry out the board's statutory authority.
- e.* Disclosure of information relating to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.
- f.* Any disclosure specifically authorized by the statute or rule under which the record was collected and maintained.
- g.* Disclosures to the public and news media of pleadings, motions, orders, final decisions, and informal settlements filed in licensee disciplinary proceedings.
- h.* Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

641—59.11(17A,22) Consensual disclosure of confidential records.

59.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 641—59.7(17A,22).

59.11(2) *Complaints to public officials.* A letter from the subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board

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may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

641—59.12(17A,22) Release to subject.

59.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 641—59.6(17A,22). However, the board need not release the following records to the subject:

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

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

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.

d. As otherwise authorized by law.

59.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the board shall take reasonable steps to protect confidential information relating to another subject.

641—59.13(17A,22) Availability of records.

59.13(1) *General.* Board records are open for public inspection and copying unless otherwise provided by rule or law.

59.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. All information in complaint and investigation files maintained by the board, or peer review committee acting under the authorization of the board, for purposes of license discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing.

b. The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders.

c. Minutes and tape recordings of portions of board meetings held in closed session, pursuant to Iowa Code section 21.5(4).

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

e. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "e."

f. Those portions of board staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by board staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements pursuant to Iowa Code sections 17A.2 and 17A.3 would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the board.

g. Information in nonlicensee and investigation files maintained by the board which is otherwise exempt from disclosure under Iowa Code section 22.7 or other provision of law.

59.13(3) *Authority to release confidential records.* The board may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other provision of law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited discretionary disclosure as provided in rule 641—59.4(17A,22). If the board

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initially determines that it will release such records, the board may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 59.4(3).

641—59.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 641—59.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, and the means of storage of that information. The board does not use a data processing system to match, collate, or permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the board are as follows:

59.14(1) Records of board disciplinary hearings. These records contain information about licensees who are the subject of a board disciplinary proceeding or other action. This information is stored on paper, and electronically in the event the hearing is tape-recorded.

59.14(2) Complaint reports. These records contain information about licensees and the people they serve. This information is collected pursuant to Iowa Code sections 272C.3 and 272C.4. This information is stored on paper only.

59.14(3) Investigative reports. These records contain information about the subjects of board investigations and the activities of board investigators. The records may include a variety of attachments such as interviews, audits, medical records, exhibits, police reports, and investigators' comments, conclusions, and recommendations. This information is collected pursuant to Iowa Code sections 272C.3, 272C.4, and 272C.5. This information is stored on paper and electronically.

59.14(4) Declaratory rulings.

59.14(5) Licensure records. These records contain information about the licensee including any or all of the following: applications for examination, collected pursuant to Iowa Code section 105.5; applications for licensure, collected pursuant to Iowa Code section 105.8; references, collected pursuant to Iowa Code section 105.18; examination scores, collected pursuant to Iowa Code section 105.18; past felony records, collected pursuant to Iowa Code section 105.18; and continuing education records, collected pursuant to Iowa Code section 272C.2. This information is stored on paper and electronically.

59.14(6) Information on nonlicensee complaint and nonlicensee investigation files maintained by the board. This information is collected pursuant to Iowa Code chapter 105. This information is stored on paper.

641—59.15(17A,22) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the board other than record systems as defined in rule 641—59.2(17A,22). These records are not maintained or retrieved by personal identifiers. These records are routinely available to the public. However, the board's files of these records listed in subrules 59.14(1) to 59.14(6) may contain information about individuals. The information stored electronically includes names, business addresses, current status of licenses, licensee number, and statistical information pertaining to individuals. All other information is stored on paper and electronically. Other groups of records routinely available for public inspection include:

59.15(1) Records of board rule-making procedures. Rule-making records may contain information about individuals making written or oral comments on proposed rules.

59.15(2) Agendas, minutes, and materials presented to the board are available from the office of the board, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Records which are exempt from disclosure may contain information about individuals who participate in board meetings.

59.15(3) Publications. News releases, annual reports, project reports, and board newsletters are available from the office of the board. Brochures describing various board programs are available at the office of the board.

Board news releases, project reports, and newsletters may contain information about individuals, including board members or staff.

59.15(4) Statistical reports. Statistical reports do not contain personally identifiable information.

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59.15(5) Board decisions, final orders or agreements, advisory opinions, and other statements of law or policy issued by the board in the performance of its functions. These records are open pursuant to Iowa Code section 272C.6(4) except for information that is confidential pursuant to paragraph 59.13(2) "c."

59.15(6) Financial reports pertaining to the board's budget including its revenues and expenses. This information is stored electronically and on paper.

59.15(7) Blank forms utilized by the board and its staff in the performance of its function. This information is stored on paper only.

59.15(8) A record inventory of all categories of information and records kept by or on behalf of the board. This inventory is stored on paper only.

59.15(9) All other records that are not exempt from disclosure by law.

641—59.16(17A,22) Applicability. This chapter does not:

1. Require the board to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the board which are governed by the rules of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any individual or party subject to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.

These rules are intended to implement Iowa Code section 22.11.

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PUBLIC HEALTH DEPARTMENT[641]

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 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt new Chapter 60, "Plumbing and Mechanical Systems Board—Noncompliance Regarding Child Support, Nonpayment of State Debt, and Noncompliance Regarding Student Loan Repayment," Iowa Administrative Code.

The rules in proposed Chapter 60 adopt by reference 641—Chapters 192, 194 and 195. These chapters describe the process that the Iowa Plumbing and Mechanical Systems Board will follow when denying the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the Department of Human Services for child support, the College Student Aid Commission for student loan default or the Department of Revenue for nonpayment of state debt.

Consideration will be given to all written suggestions or comments received on the proposed rules on or before September 25, 2012. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by e-mail to cindy.houlson@idph.iowa.gov.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

There will be a public hearing on September 25, 2012, from 11 a.m. to 12 noon, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Bettendorf — Mississippi Bend Area Education Agency 9, 729 21st Street
 Cedar Falls — University of Northern Iowa, Schindler 130A, Corner of Hudson Road and 23rd Street
 Clear Lake — Area Education Agency 267 Regional Office, 9184B 265th Street, State Room
 Council Bluffs — Department of Human Services, 417 East Kanesville Boulevard
 Des Moines — Department of Education, Grimes Building, E. 14th & Grand Avenue, Second Floor
 Fort Dodge — Iowa Central Community College, 1 Triton Circle, Liberal Arts Building, Room 206
 Iowa City — University of Iowa, At the end of North Madison Street, Room 103 North
 Sioux City — Western Iowa Tech Community College, 4647 Stone Avenue, Building A, Room D201

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

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

These rules are intended to implement Iowa Code chapters 272D and 252J and section 261.126.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 60:

CHAPTER 60
 PLUMBING AND MECHANICAL SYSTEMS BOARD—
 NONCOMPLIANCE REGARDING CHILD SUPPORT, NONPAYMENT OF STATE DEBT,
 AND NONCOMPLIANCE REGARDING STUDENT LOAN REPAYMENT

641—60.1(252J) Child support noncompliance. The board hereby adopts by reference 641—Chapter 192, “Child Support Noncompliance,” Iowa Administrative Code.

641—60.2(272D) Nonpayment of state debt. The board hereby adopts by reference 641—Chapter 194, “Nonpayment of State Debt,” Iowa Administrative Code.

641—60.3(261) Student loan repayment noncompliance. The board hereby adopts by reference 641—Chapter 195, “Student Loan Default/Noncompliance with Agreement for Payment of Obligation,” Iowa Administrative Code.

These rules are intended to implement Iowa Code chapters 252J and 272D and section 261.126.

ARC 0323C

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 12, “Filing Returns, Payment of Tax, Penalty and Interest,” Iowa Administrative Code.

Iowa Code section 15.331A provides for a sales and use tax refund for eligible businesses approved by the Iowa Economic Development Authority under the High Quality Jobs Program, Enterprise Zone (EZ) Program, or Housing Enterprise Zone Program. This amendment makes changes to 701—Chapter 12 by adding new rule 701—12.19(15) to provide clarification on how eligible businesses can claim this sales and use tax refund.

The proposed amendment 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 this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that the proposed amendment 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 October 8, 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 the proposed amendment on or before September 25, 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 September 25, 2012.

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

This amendment is intended to implement Iowa Code section 15.331A.

The following amendment is proposed.

Adopt the following **new** rule 701—12.19(15):

701—12.19(15) Sales and use tax refund for eligible businesses. For eligible businesses approved under the high quality jobs program, enterprise zone program, or housing enterprise zone program by the Iowa economic development authority, a refund of sales and use tax is available.

12.19(1) Sales and use tax eligible for refund. The sales and use tax for which the eligible business can receive a refund consists of the following:

a. Sales and use tax paid for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and

REVENUE DEPARTMENT[701](cont'd)

used in the fulfillment of a written contract relating to the construction or equipping of a facility of the eligible business.

b. If the eligible business is involved in a warehouse or a distribution center, sales and use tax attributable to racks, shelving and conveyor equipment.

12.19(2) *Sales and use tax ineligible for refund.* The sales and use tax for which the eligible business cannot receive a refund consists of the following:

a. Any local option sales tax paid is not eligible for the refund. The refund is limited to the state sales and use tax paid.

b. Any sales and use tax attributable to intangible property and furniture and fixtures is not eligible for the refund.

12.19(3) *Claiming the refund.* To receive the refund, the eligible business must file a claim for refund within one year of project completion. For a manufacturing facility, project completion is the first date upon which the average annualized production of finished project for the preceding 90-day period at the manufacturing facility is at least 50 percent of the initial design capacity of the facility. For all other facilities, project completion is the date of completion of all improvements necessary for the start-up, location, expansion or modernization of the business.

a. To request a refund of the sales and use tax paid for gas, electric, water or sewer utility services used during construction, the eligible business must file Form IA 843, Claim for Refund, with the department of revenue. The claim shall include the agreement number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

b. To request a refund of the sales and use tax paid on goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor relating to the construction or equipping of a facility, the eligible business must file the Construction Contract Claim for Refund form, along with the Iowa Contractor's Statement, with the department of revenue. It is not necessary to attach invoices to the Construction Contract Claim for Refund form.

c. To request a refund of the sales and use tax attributable to racks, shelving and conveyor equipment, the eligible business must file Form IA 843, Claim for Refund, with the department of revenue. The claim shall include the agreement number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount. The combined amount of refunds attributable to sales and use tax paid on racks, shelving and conveyor equipment, along with tax credit certificates issued for sales and use tax paid on racks, shelving and conveyor equipment provided in 701—subrule 52.10(5), shall not exceed \$500,000 during a fiscal year. The requests for refunds or tax credit certificates will be processed in the order the requests are received on a first-come, first-served basis until the amount of refunds or credits authorized for issuance has been exhausted. If applications for refunds or tax credit certificates exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

ARC 0326C

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 240, “Rules Necessary to Implement the Streamlined Sales and Use Tax Agreement,” Iowa Administrative Code.

The subject matter of rule 701—240.7(423) is the effective dates of taxation rate increases or decreases when certain services are furnished. The proposed amendment to the rule implements the

REVENUE DEPARTMENT[701](cont'd)

amendment made by the Streamlined Sales Tax Governing Board to the Streamlined Sales and Use Tax Agreement (SSUTA), as required by the SSUTA, which is adopted under 2011 Iowa Code chapter 423. The Department must amend the rule in order to maintain compliance with the Agreement. Compliance with the Agreement enables the Department to collect upwards of \$13 million a year from remote sellers.

The amendment to rule 701—240.7(423), in the case of an increase of tax rate, changes the beginning date of the rate change to the first day of the billing period occurring “on or after,” rather than “after,” the effective date of the tax rate increase. For tax rate decreases, the new rate applies to bills rendered on or after the effective date of the tax rate decrease.

The proposed amendment 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 this amendment 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 this proposed amendment will not 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 October 8, 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 the proposed amendment on or before September 25, 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)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 25, 2012.

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

This amendment is intended to implement 2011 Iowa Code chapter 423.

The following amendment is proposed.

Amend rule 701—240.7(423) as follows:

701—240.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished. Certain taxable services are usually furnished over an extended period of time (e.g., utilities, janitorial, and ministorage services), and the user of such a service is billed at regular intervals (e.g., monthly or quarterly). The beginning date when a rate change is imposed on the sales price of this type of service differs, depending upon whether a rate increase or rate decrease is involved. If the rate of taxation has been increased, the beginning date of the rate change shall be the first day of the first billing period occurring on or after the effective date of the rate increase. If the rate of taxation has been decreased, ~~the beginning date of the rate change shall be the date on which the first bill for furnishing the service is rendered for payment, subsequent to~~ the new rate shall apply to bills rendered on or after the effective date of the rate decrease.

This rule is intended to implement ~~2005~~ 2011 Iowa Code chapter 423, subchapter IV.

USURY

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

USURY(cont'd)

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%
September 1, 2012 — September 30, 2012	3.50%

ARC 0307C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 455A.5(6), 481A.38, 481A.39, and 481A.48, the Natural Resource Commission hereby amends Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules give the regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting. In addition to the existing north and south zones, these amendments create a new zone for duck and goose hunting, referred to as the Missouri River zone, which includes all the lands and waters in the state of Iowa west of Interstate 29 and north of State Highway 175. The amendments also adjust the season dates and bag limits to comply with federal regulations and to ensure the seasons open on weekends, as well as establish duck and goose hunting season dates for the new Missouri River zone.

The advantage of the new zone is that hunters will have the opportunity to hunt a week later in this zone than in the south zone. The establishment of a third zone also increases flexibility for adjusting duck hunting season dates if duck seasons are shortened to 30 or 45 days. A shortened season could occur under the current federal regulatory framework if habitat conditions or duck population surveys decline. These zones and season dates keep the five-day September duck season in place, which is highly valued by many hunters, while providing different opening and closing dates for the second segments of the duck season in each zone.

The amendments also reduce the size of areas closed to Canada goose hunting and permit landowner hunting in all Canada goose closed hunting zones.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 2, 2012, as **ARC 0116C**. A public hearing was held on May 23, 2012. Eleven comments were received about the dates or seasons. All comments supported the proposed dates. The following changes have been made to the amendments since publication of the Notice of Intended Action:

- The zone boundaries for the Missouri River zone were moved to Highway 175 based upon comment from the public.
- A bag limit increase for scaup was approved by the U.S. Fish and Wildlife Service after analysis of harvest and population data. Consequently, a new Item 4 has been added to amend subrule 91.1(5) to increase the bag limit for scaup. Subsequent items have been renumbered accordingly.
- Nonsubstantive revisions have been made to Items 6 and 8 to adjust the subrule renumbering because a previously rescinded subrule was unnecessarily renumbered in the Notice.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and that these amendments should be made effective August 15, 2012, as the amendments confer a benefit by establishing a September 1 start date for the goose season in the urban zones.

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

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48. These amendments became effective August 15, 2012.

The following amendments are adopted.

ITEM 1. Amend subrules 91.1(1) to 91.1(3) as follows:

91.1(1) Zone boundaries. The north duck hunting zone is that part of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to ~~Woodbury County Road D38, east to Woodbury County Road K45, southeast to State Highway 175, east to State Highway 37, southeast to State Highway 183, northeast to State Highway 141, east to U.S. Highway 30, and along U.S. Highway 30 to the Iowa-Illinois border.~~ The Missouri River duck hunting zone is that part of Iowa west of Interstate 29 and north of State Highway 175. The south duck hunting zone is the remainder of the state.

NATURAL RESOURCE COMMISSION[571](cont'd)

91.1(2) Season dates - north zone. For all ducks: September ~~17~~ 22 through September ~~24~~ 26 and October ~~15~~ 13 through December ~~8~~ 6.

91.1(3) Season dates - south zone. For all ducks: September ~~17~~ 22 through September ~~24~~ 26 and October ~~22~~ 20 through December ~~15~~ 13.

ITEM 2. Renumber subrules **91.1(4)** to **91.1(6)** as **91.1(5)** to **91.1(7)**.

ITEM 3. Adopt the following **new** subrule 91.1(4):

91.1(4) Season dates - Missouri River zone. For all ducks: September 22 through September 26 and October 27 through December 20.

ITEM 4. Amend renumbered subrule 91.1(5) as follows:

91.1(5) Bag limit. The daily bag limit of ducks is 6, and may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, 3 wood ducks, 2 pintails, 1 mottled duck, 1 canvasback, 2 redheads, and ~~2~~ 4 scaup. The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers.

ITEM 5. Amend subrules 91.3(1) to 91.3(3) as follows:

91.3(1) Zone boundaries. The north goose hunting zone is that part of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to Woodbury County Road D38, east to Woodbury County Road K45, southeast to State Highway 175, east to State Highway 37, southeast to State Highway 183, northeast to State Highway 141, east to U.S. Highway 30, and along U.S. Highway 30 to the Iowa-Illinois border. The Missouri River goose hunting zone is that part of Iowa west of Interstate 29 and north of State Highway 175. The south goose hunting zone is the remainder of the state.

91.3(2) Season dates - north zone. Canada geese and brant: September ~~24~~ 29 through ~~October 9 and October 15~~ through January 4, ~~2012~~ 2013. White-fronted geese: September ~~24~~ 29 through December ~~6~~ 11. Light geese (white and blue-phase snow geese and Ross' geese): September ~~24~~ 29 through January ~~8, 2012~~ 13, 2013.

91.3(3) Season dates - south zone. Canada geese and brant: October ~~4~~ 6 through ~~October 16 and October 22~~ through January 11, ~~2012~~ 2013. White-fronted geese: October ~~4~~ 6 through December ~~13~~ 18. Light geese (white and blue-phase snow geese and Ross' geese): October ~~4~~ 6 through January ~~13, 2012~~ 18, 2013.

ITEM 6. Renumber subrules **91.3(4)** to **91.3(7)** as **91.3(5)** to **91.3(8)**.

ITEM 7. Adopt the following **new** subrule 91.3(4):

91.3(4) Season dates - Missouri River zone. Canada geese and brant: October 13 through January 18, 2013. White-fronted geese: October 13 through December 25. Light geese (white and blue-phase snow geese and Ross' geese): October 13 through January 18, 2013.

ITEM 8. Amend renumbered subrule 91.3(8) and subrules 91.3(9) to 91.3(11) as follows:

91.3(8) Light goose conservation order season. Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service from January ~~14, 2012~~ 19, 2013, through April 15, ~~2012~~ 2013.

a. to e. No change.

91.3(9) Cedar Rapids/Iowa City goose hunting zone.

a. Season dates. September ~~3~~ 1 through September ~~11~~ 9.

b. to d. No change.

91.3(10) Des Moines goose hunting zone.

a. Season dates. September ~~3~~ 1 through September ~~11~~ 9.

b. to d. No change.

91.3(11) Cedar Falls/Waterloo goose hunting zone.

a. Season dates. September ~~3~~ 1 through September ~~11~~ 9.

b. to d. No change.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 9. Amend subrule 91.4(2) as follows:

91.4(2) Canada geese. There shall be no open season on Canada geese in certain areas described as follows:

a. to c. No change.

d. Area four. Portions of Winnebago and Worth Counties bounded as follows: Beginning at the junction of U.S. Highway 69 and County Road 105 in the city of Lake Mills; thence east along County Road 105 (including the right-of-way and all other road right-of-ways identified in this description) approximately 5 2 miles to Dogwood Apple Ave.; thence south along Dogwood Apple Ave. to 440th 448th St.; thence east two and one-fourth mile miles on 440th 448th St. to Dove Ave.; thence south on Dove Ave. one-half mile to 435th St.; thence east one-fourth mile on 435th St. to Dove Ave.; thence south on Dove Ave. to County Road A34; thence east one mile on County Road A34 (also named 430th St.) to Evergreen Ave.; thence south one mile to 420th St.; thence west along 420th St. to Cedar Ave. Cardinal Ave.; thence south one-fourth mile to 445th St.; thence east one-fourth mile to Cedar Ave.; thence south one-half mile on Cedar Ave. to the intersection of Cedar Ave. and 440th St.; thence south one-half mile across the north half of section 16, township 99 north, range 22 west, to the intersection of Cedar Ave. and 435th St.; thence south one-half mile 2 miles along Cedar Ave. to Lake St.; thence west one-fourth mile along Lake St. to Front St.; thence southeast one-half mile along Front St. to County Road A38 (also named 410th St.); thence west along County Road A38 to County Road R74 (also named 225th Ave.); thence north along County Road R74 to 420th St.; thence west along 420th St. to County Road R72 (also named 210th Ave.) 220th Ave.; thence north along County Road R72 to U.S. Highway 69; thence east along U.S. Highway 69 220th Ave. to 430th St.; thence west along 430th St. one-half mile; thence north one mile across section 15, township 99 north, range 23 west, to the intersection of 440th St. and 215th Ave.; thence north one-fourth mile on 215th Ave. to 445th St.; thence east and northeast on 445th St. to South 12th Ave. West in Lake Mills; thence east on South 12th Ave. West to South Lake St.; thence north on South Lake St. to point of beginning.

e. to h. No change.

i. Area nine. Portions of Monona and Woodbury Counties bounded as follows: For the portion in Monona County, beginning at the junction of County Road K42 and 120th Street; thence south along County Road K42 (including the right-of-way and all other road right-of-ways identified in this description) approximately 4 miles; thence south on Berry Avenue approximately 1 mile to 170th Street; thence east along 170th Street to Cashew Cork Avenue; thence south north along Cashew Cork Avenue to 190th Street; thence east along 190th Street to County Road K45; thence north and northwest approximately 7 2 miles along Monona County Road K45 to 120th Street; thence west along 120th Street to the point of beginning; and for the portion in Woodbury County, beginning at the junction of County Road K45 K42 and State Highway 144 Interstate 29; thence northwest along County Road K45 Interstate 29 approximately 6 miles to the intersection with Woodbury County Road K25; thence west approximately 3 2 miles along Woodbury County Road K25 to the intersection with Port Neal Road; thence continuing along the same westerly line approximately 1 mile on the north border of section 6, township 86 north, range 47 west, to the center of the Missouri River; thence southerly along the Missouri River channel approximately 8 miles to a point where 340th Street meets the Iowa-Nebraska state line on the Missouri River except that portion of Nebraska lying on the east side of the Missouri River; thence east to and along 340th Street approximately 5.5 miles to County Road K42; thence north and east along County Road K42 approximately 2.5 1.5 miles to the point of beginning.

j. to l. No change.

m. Area thirteen. Portions of Van Buren County bounded as follows: Beginning at the junction of Hawk Drive and State Highway 98; thence east and south along Hawk Drive (including the right-of-way and all other road right-of-ways identified in this description) to Lark Avenue; thence north along Lark Avenue to 170th Street; thence east along 170th Street to State Highway 1; thence south along State Highway 1 to State Highway 2; thence west along State Highway 2 to County Road V56; thence north along County Road V56 to County Road J40; thence east along County Road J40 to County Road V64; thence north along County Road V64 to State Highway 98; thence north along State Highway 98 to the point of beginning. Beginning at the junction of State Highway 2 and State Highway 1; thence west

NATURAL RESOURCE COMMISSION[571](cont'd)

on State Highway 2 to County Road V64 (including the right-of-way and all other road right-of-ways identified in this description); thence north on County Road V64 to County Road J40; thence east on County Road J40 to State Highway 1; thence south on State Highway 1 to the point of beginning.

n. Area fourteen. Portions of Bremer County bounded as follows: Beginning at the intersection of ~~County Road V56 Tahoe Avenue and 140th Street (also named State Highway 93) (also named 140th Street)~~; thence south along ~~County Road V56 Tahoe Avenue~~ (including the right-of-way and all other road right-of-ways identified in this description) to County Road C33; thence west along County Road C33 to Navaho Avenue; thence north along Navaho Avenue to State Highway 93; thence west along State Highway 93 to U.S. Highway 63; thence north ~~7 3~~ miles along U.S. Highway 63 to ~~the Bremer-Chickasaw County line~~; thence east ~~3 miles along the Bremer-Chickasaw County line road to Oakland Avenue~~; thence south along ~~Oakland Avenue to 120th Street~~; thence east along ~~120th Street to Piedmont Avenue~~; thence south along ~~Piedmont Avenue to 140th Street~~; thence east along 140th Street, for 2 miles and continuing on a similar east line for 2 more miles along the north borders of sections 28 and 29, township 93 north, range 12 west, to County Road V5C (also named 140th Street); thence east about one-half mile on County Road V5C to which becomes State Highway 93; thence east on State Highway 93 to the point of beginning.

o. Area fifteen. Portions of Butler County bounded as follows: Beginning at the junction of State Highway 14 and 245th Street; thence south along State Highway 14 (including the right-of-way and all other road right-of-ways identified in this description) to 280th Street; thence west along 280th Street for 3 miles; continuing on a similar westerly line along the south borders border of sections 31, section 32, and 33, township 91 north, range 17 west; thence west along 280th Street for 1.5 miles to Evergreen Avenue; thence north along Evergreen Avenue to 270th Street; thence east along 270th Street to Forest Avenue; thence north along Forest Avenue to 230th Street; thence east along 230th Street to Fir Avenue; thence north along Fir Avenue to 225th Street; thence east along 225th Street to County Road T25 (also named Hickory Avenue); thence south north along County Road T25 to 230th Street; thence east along 230th Street to Jackson Avenue; thence south along Jackson Avenue to 240th Street; thence east along 240th Street to Jackson Avenue; thence south on Jackson Avenue to 245th Street; thence east along 245th Street to the point of beginning.

p. and q. No change.

ITEM 10. Amend subrule 91.5(1) as follows:

91.5(1) Closed areas. ~~Area one (Emmet Co.), Area two (Clay and Palo Alto Cos.), Area three (Dickinson Co.), Area four (Winnebago and Worth Cos.), Area eleven (Jackson Co.), and Area fifteen (Butler Co.)~~ as All areas described in subrule 91.4(2).

a. to c. No change.

ITEM 11. Amend rule 571—91.6(481A) as follows:

571—91.6(481A) Youth waterfowl hunt. A special youth waterfowl hunt will be held on October 4 ~~6~~ and ~~2, 2011 7, 2012~~, in the north duck hunting zone and October 8 ~~13~~ and ~~9, 2011 14, 2012~~, in the south duck hunting zone and October 20 and 21, 2012, in the Missouri River duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any other game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

[Filed Emergency After Notice 8/13/12, effective 8/15/12]

[Published 9/5/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/5/12.

ARC 0309C**TRANSPORTATION DEPARTMENT[761]****Adopted and Filed Emergency After Notice**

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 August 14, 2012, adopted an amendment to Chapter 615, "Sanctions," Iowa Administrative Code.

2012 Iowa Acts, Senate File 2218, section 2, amends 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).

Notice of Intended Action for this amendment was published in the June 13, 2012, Iowa Administrative Bulletin as **ARC 0158C**. The amendment was Adopted and Filed and published in the August 8, 2012, Iowa Administrative Bulletin as **ARC 0250C**, effective September 12, 2012. However, because of public comment, the Department determined that the amendment should become effective prior to the beginning of the 2012-2013 school year. This rule making changes the effective date from September 12, 2012, to August 15, 2012.

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 the one published under Notice of Intended Action and Adopted and Filed.

The Department finds that this amendment confers a benefit on the public by increasing the safety of students boarding and departing Iowa school buses and should be effective prior to the beginning of the 2012-2013 school year. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and became effective August 15, 2012.

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 became effective on August 15, 2012, at which time the Adopted and Filed amendment was rescinded.

The following amendment is adopted.

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 Emergency After Notice 8/15/12, effective 8/15/12]

[Published 9/5/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/5/12.

ARC 0328C

ATTORNEY GENERAL[61]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261F.4(6), the Attorney General adopts new Chapter 37, “Required Disclosures for Philanthropic Contributions Made by Certain Student Loan Lenders to Certain Educational Institutions,” Iowa Administrative Code.

The provisions of Iowa Code chapter 261F govern educational loans. Iowa Code section 261F.4(6) requires the Attorney General to adopt rules providing for disclosures relating to philanthropic contributions made as specified in Iowa Code section 261F.1(5)(d). The new rule includes the disclosure requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 30, 2012, as **ARC 0147C**. Oral comments were received from representatives of one lending industry member suggesting that the proposed rule be amended to delete disclosure requirements for lenders. The adopted rule does not include proposed subrule 37.1(3), which contained disclosure requirements for lending institutions. The remaining disclosure requirements for educational institutions will suffice to make the information about philanthropic contributions easily accessible without imposing unnecessary costs on lending institutions. The deletion of proposed subrule 37.1(3) further necessitated the deletion of the definition of “borrower” in subrule 37.1(1). In addition, paragraph 37.1(1)“b” has been revised to remove the requirement that “the contributor” consider all the facts and circumstances relating to the determination of the “monetary value” of nonmonetary philanthropic contributions as in the context of this rule it is the duty of the educational institution to publicly disclose the monetary value of each philanthropic contribution received. A requirement that certain educational institution Web site “hyperlinks” mandated by the rule be “clear and conspicuous” has been added as well. Also, proposed subrule 37.1(4) has been renumbered as 37.1(3) in the adopted rule, and a new subrule 37.1(4) has been added to the adopted rule to include a provision to attempt to ensure that the rule is not interpreted to affect the Attorney General’s existing civil subpoena or other investigative authority pursuant to Iowa Code section 714.16.

The rule was adopted by the Attorney General on August 16, 2012.

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

This rule is intended to implement Iowa Code section 261F.4(6).

This rule shall become effective October 10, 2012.

The following amendment is adopted.

Adopt the following **new** 61—Chapter 37:

CHAPTER 37

REQUIRED DISCLOSURES FOR PHILANTHROPIC CONTRIBUTIONS MADE BY CERTAIN STUDENT LOAN LENDERS TO CERTAIN EDUCATIONAL INSTITUTIONS

61—37.1(261F) Required disclosures by covered institutions relating to certain philanthropic contributions.

37.1(1) Definitions. The terms “covered institution,” “educational loan,” “gift,” “lender,” “lending institution,” “preferred lender arrangement,” and “preferred lender list” have the same meaning as those terms are defined in Iowa Code section 261F.1.

a. The term “de minimis” means a monetary amount or fair market value of \$100 or less, as applicable. For the purposes of this chapter, a gift from a lending institution is not de minimis if the cumulative sum of all such monetary and other gifts from the lending institution to the covered institution exceeds \$100 in the same calendar year.

b. The term “monetary value” relating to a nonmonetary philanthropic contribution means the fair market value of the contribution. All the facts and circumstances connected with the contribution must be considered in the determination of fair market value, including but not limited to the use, desirability

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to the recipient, scarcity of the contributed product or service and the average price the recipient would pay to purchase the contributed product or service.

c. The term “philanthropic contribution” means a charitable contribution that is unrelated to educational loans from a lending institution to a covered institution and is not de minimis.

37.1(2) A covered institution with a preferred lender list that has received a philanthropic contribution from a preferred lender during the current calendar year or either of the two prior calendar years shall do each of the following:

a. Include one of the following on all preferred lender lists:

(1) A clear and conspicuous statement of all philanthropic contributions received from preferred lenders during the current calendar year and the two prior calendar years, including the monetary value and nature of each contribution.

(2) A clear and conspicuous hyperlink to the covered institution’s primary public Web site related to private educational loans to the statement required pursuant to paragraph 37.1(2) “b.”

b. Post for public viewing on the covered institution’s primary public Web site related to private educational loans a clear and conspicuous statement of all philanthropic contributions received from preferred lenders during the current calendar year and the two prior calendar years, including the monetary value and nature of each contribution, or maintain a clear and conspicuous hyperlink displayed on that Web site that links the reader to the required statement.

37.1(3) A charitable contribution unrelated to educational loans that is made by an employee or member of the board of directors of a lending institution to a covered institution is not a philanthropic contribution pursuant to Iowa Code chapter 261F and this rule so long as the lending institution does not represent the donor as being the lending institution or as an employee or member of the board of directors of the lending institution, as applicable, unless required by law.

37.1(4) Nothing in this rule shall affect the Attorney General’s civil subpoena or other investigative authority pursuant to Iowa Code section 714.16 regarding a covered institution or a lending institution.

This rule is intended to implement Iowa Code section 261F.4(6).

[Filed 8/20/12, effective 10/10/12]

[Published 9/5/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/5/12.

ARC 0304C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

The amendments change terminology in Chapter 7 to eliminate references to “mental retardation” in accordance with 2012 Iowa Acts, Senate File 2247.

The amendments also update rules to explain that a motion to vacate an appeal decision must state all facts relied upon by the moving party and that each fact shall be substantiated by a sworn affidavit or other documentation from a disinterested third party that substantiates the claim of good cause. The definition of “good cause” has been expanded to include examples of good cause and to include examples of when good cause does not exist.

Notice of Intended Action on these amendments was published in the May 30, 2012, Iowa Administrative Bulletin as **ARC 0132C**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

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 chapter 17A.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments will become effective November 1, 2012.

The following amendments are adopted.

ITEM 1. Amend rule ~~441—7.1(17A)~~, definitions of “Aggrieved person” and “Reconsideration,” as follows:

“*Aggrieved person*” means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. to 8. No change.

9. For mental health and developmental disabilities, a person:

- Whose application for state ~~community mental health or mental retardation service funds~~ payment under 441—Chapter 153, Division IV, has been denied or has not been acted upon in a timely manner.

- Who has been notified that there will be a reduction or cancellation of services under the state community mental health or mental retardation service funds payment program.

10. to 12. No change.

“*Reconsideration*” means a review process that must be exhausted before an appeal hearing is granted. Such review processes include, but are not limited to, a reconsideration request through the Iowa Medicaid enterprise or its subcontractors, Magellan Behavioral Health Care, a health maintenance organization, a prepaid health plan, medical assistance patient management services, the managed health care review committee, a division or bureau within the department, the mental health, ~~mental retardation,~~ and developmental disabilities, ~~and brain injury~~ commission, or a licensed health care professional as specified in 441—paragraph 9.9(1) “i.” Once the reconsideration process is complete, a notice of decision will be issued with appeal rights.

ITEM 2. Amend paragraph 7.5(2)“g” as follows:

g. The appellant is an “aggrieved party” as defined in rule 441—22.1(225C) and is eligible for a compliance hearing with the mental health, ~~mental retardation,~~ and developmental disabilities, ~~and brain injury~~ commission in accordance with rule 441—22.5(225C).

ITEM 3. Amend subrule 7.13(4) as follows:

7.13(4) Default. If a party to the appeal fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing pursuant to subrules 7.13(1), 7.13(2) and 7.13(3) and render a proposed decision on the merits in the absence of the defaulting party.

a. Where appropriate and not contrary to law, any party may move for a default decision ~~or against a party who has failed to file a required pleading or has failed to appear after proper service for a hearing~~ and a proposed decision on the merits may be issued in the absence of a defaulting party.

b. A default decision or a proposed decision rendered on the merits in the absence of the defaulting party may award any relief against the defaulting party consistent with the relief requested ~~prior to before~~ the default, but the relief awarded against the defaulting party may not exceed the requested relief ~~prior to before~~ the default.

c. Proceedings after a default decision are specified in subrule 7.13(5).

d. Proceedings after a hearing and a proposed decision on the merits in the absence of a defaulting party are specified in subrule 7.13(6).

ITEM 4. Amend subrule 7.13(5) as follows:

7.13(5) Proceedings after default decision.

a. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless a motion to vacate the decision is filed within the time allowed for an appeal of a proposed decision by subrule 7.16(5).

b. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party’s failure to appear or participate at the contested case proceeding and must be filed with the Department of Human Services, Appeals Section, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Each fact so stated must be substantiated by at least one sworn

HUMAN SERVICES DEPARTMENT[441](cont'd)

affidavit of a person with personal knowledge of each such fact. Each affidavit must be attached to the motion. In lieu of an affidavit, the moving party may submit business records or other acceptable documentation from a disinterested third party that substantiates the claim of good cause.

(1) The appeals section shall be responsible for serving all parties with the motion to vacate. All parties to the appeal shall have ten days from service by the department to respond to the motion to vacate. All parties to the appeal shall be allowed to conduct discovery as to the issue of good cause and shall be allowed to present evidence on the issue before a decision on the motion, if a request to do so is included in that party's response. If the department responds to any party's motion to vacate, all parties shall be allowed another ten days to respond to the department.

(2) The appeals section shall certify the motion to vacate to the department of inspections and appeals for the presiding officer to review the motion, hold any additional proceedings, as appropriate, and determine if good cause exists to set aside the default.

c. ~~Timely~~ Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party.

d. ~~"Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.~~ is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing.

(1) Examples of good cause include, but are not limited to:

1. Sudden, severe illness or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling).

2. Death or serious illness in the party's immediate family.

3. Other circumstances evidencing an emergency situation which was beyond the party's control and was not reasonably foreseeable.

(2) Examples of circumstances that do not constitute good cause include, but are not limited to:

1. A lost or misplaced notice of hearing.

2. Confusion as to the date and time for the hearing.

3. Failure to follow the directions on the notice of hearing.

4. Oversleeping.

5. Other acts demonstrating a lack of due care by the party.

e. Upon determining whether good cause exists, the presiding officer shall issue a proposed decision on the motion to vacate, which shall be subject to review by the director pursuant to rule 441—7.16(17A).

f. Upon a final decision granting a motion to vacate, the contested case hearing shall proceed accordingly, after proper service of notice to all parties. The situation shall be treated as the filing of a new appeal for purposes of calculating time limits, with the filing date being the date the decision granting the motion to vacate became final.

g. Upon a final decision denying a motion to vacate, the default decision becomes final agency action.

ITEM 5. Amend subrule 7.13(6) as follows:

7.13(6) *Proceedings after hearing and proposed decision on the merits in the absence of a defaulting party.*

a. Proposed decisions on the merits after a party has failed to appear or participate in a contested case become final agency action unless:

(1) A motion to vacate the proposed decision is filed by the defaulting party based on good cause for the failure to appear or participate, within the time allowed for an appeal of a proposed decision by subrule 7.16(5); or

(2) Any party requests review on the merits by the director pursuant to rule 441—7.16(17A).

b. If a motion to vacate and a request for review on the merits are both made in a timely manner after a proposed decision on the merits in the absence of a defaulting party, the review by the director on the merits of the appeal shall be stayed pending the outcome of the motion to vacate.

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c. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate at the contested case proceeding and must be filed with the Department of Human Services, Appeals Section, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

(1) The appeals section shall be responsible for serving all parties with the motion to vacate. All parties to the appeal shall have ten days from service by the department to respond to the motion to vacate. All parties to the appeal shall be allowed to conduct discovery as to the issue of good cause and shall be allowed to present evidence on the issue before a decision on the motion, if a request to do so is included in that party's response. If the department responds to any party's motion to vacate, all parties shall be allowed another ten days to respond to the department.

(2) The appeals section shall certify the motion to vacate to the department of inspections and appeals for the presiding officer to review the motion, hold any additional proceedings, as appropriate, and determine if good cause exists to set aside the default.

d. ~~Timely~~ Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party.

e. "Good cause" for purposes of this rule ~~shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.~~ is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing.

(1) Examples of good cause include, but are not limited to:

1. Sudden, severe illness or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling).

2. Death or serious illness in the party's immediate family.

3. Other circumstances evidencing an emergency situation which was beyond the party's control and was not reasonably foreseeable.

(2) Examples of circumstances that do not constitute good cause include, but are not limited to:

1. A lost or misplaced notice of hearing.

2. Confusion as to the date and time for the hearing.

3. Failure to follow the directions on the notice of hearing.

4. Oversleeping.

5. Other acts demonstrating a lack of due care by the party.

f. to j. No change.

[Filed 8/8/12, effective 11/1/12]

[Published 9/5/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/5/12.

ARC 0305C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

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

The amendments:

- Clarify coverage criteria and allow for coverage of lenses manufactured outside the United States.
- Increase the upper age limit for annual replacement of frames for children from six to seven years of age.

- Change reimbursement for polycarbonate lenses from an invoice to a fee schedule amount.
- Allow for prior authorization of photochromatic (transition) lenses and press-on prisms.
- Remove obsolete references for therapeutically certified optometrists.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on May 30, 2012, as **ARC 0144C**. The Department received one comment on the Notice of Intended Action. In response, the Department has made the following changes to the amendments as published under Notice of Intended Action:

- The inclusion of high myopia, anisometropia, trauma, severe ocular surface disease and irregular astigmatism as qualifying conditions for coverage of contact lenses add further clarity to the rule. The Department has modified paragraph 78.6(1)“i” accordingly.
- Gas permeable contact lenses and soft contact lenses require replacement at differing intervals. The Department has modified subparagraphs 78.6(1)“i”(1) to (4) and added subparagraph 78.6(1)“i”(5) to distinguish between the two kinds.
- The upper age limits for replacement of lenses for children were established in 2002 upon request of the University of Iowa. Medical documentation supporting the current frequencies was provided at that time. After review of the suggestion to expand the upper age limits for children one year of age to two years of age and for children three years of age to seven years of age, the Department has not identified a compelling reason to alter the noticed amendments.

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 249A.4.

These amendments will become effective November 1, 2012.

The following amendments are adopted.

ITEM 1. Amend paragraph **78.1(1)“a”** as follows:

- a.* Drugs dispensed by a physician or other legally qualified practitioner (dentist, podiatrist, ~~therapeutically certified~~ optometrist, physician assistant, or advanced registered nurse practitioner) unless it is established that there is no licensed retail pharmacy in the community in which the legally qualified practitioner’s office is maintained. Rate of payment shall be established as in subrule 78.2(2), but no professional fee shall be paid. Payment will not be made for biological supplies and drugs provided free of charge to practitioners by the state department of public health. ~~Rate of payment shall be established as in subrule 78.2(2), but no professional fee shall be paid.~~

ITEM 2. Amend subrule 78.2(1) as follows:

- 78.2(1) *Qualified prescriber.*** All drugs are covered only if prescribed by a legally qualified practitioner (physician, dentist, podiatrist, ~~therapeutically certified~~ optometrist, physician assistant, or advanced registered nurse practitioner).

ITEM 3. Amend subrule 78.6(1) as follows:

78.6(1) *Payable professional services.* Payable professional services are:

- a.* and *b.* No change.
- c.* Auxiliary procedures. The following auxiliary procedures and special tests are payable when performed by an optometrist. Auxiliary procedures and special tests are reimbursed as a separate procedure only when warranted by case history or diagnosis.
- (1) to (6) No change.
- (7) Retinal integrity evaluation with a three-mirror lens.
- d.* Single vision and multifocal spectacle lens service, verification and subsequent service. When lenses are necessary, the following enumerated professional and technical optometric services are to be provided:
- (1) When spectacle lenses are necessary, the following enumerated professional and technical optometric services are to be provided:
1. to 3. No change.
- (2) New spectacle lenses are subject to the following limitations:
1. to 4. No change.
- (3) ~~Protective lenses~~ Spectacle lenses made from polycarbonate or equivalent material are allowed

for:

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1. to 3. No change.
- e. No change.
- f. Frame service.
 - (1) No change.
 - (2) New frames are subject to the following limitations:
 1. One frame every six months is allowed for children through three years of age.
 2. One frame every 12 months is allowed for children four through ~~six~~ seven years of age.
 3. When there is a ~~prescribed~~ covered lens change and the new lenses cannot be accommodated by the current frame.
 - (3) Safety frames are allowed for:
 1. Children through seven years of age.
 2. Members with a diagnosis-related disability or illness where regular frames would pose a safety risk or result in frequent breakage.
- g. No change.
- h. Repairs or replacement of frames, lenses or component parts. Payment shall be made for service in addition to materials. The service fee shall not exceed the dispensing fee for a replacement frame. Payment shall be made for replacement of glasses when the original glasses have been lost or damaged beyond repair. Replacement of lost or damaged glasses is limited to one pair of frames and two lenses once every 12 months for adults aged 21 and over, except for people with a mental or physical disability.
- i. Fitting of contact lenses, when required following cataract surgery, Payment shall be made for documented keratoconus, aphakia, high myopia, anisometropia, trauma, severe ocular surface disease, irregular astigmatism, or for treatment of acute or chronic eye disease, or when the member's vision cannot be adequately corrected with spectacle lenses. Up to eight pairs of contact lenses are allowed for children up to one year of age with aphakia. Up to four pairs of contact lenses per year are allowed for children one to three years of age with aphakia. Contact lenses are subject to the following limitations:
 - (1) Up to 16 gas permeable contact lenses are allowed for children up to one year of age.
 - (2) Up to 8 gas permeable contact lenses are allowed every 12 months for children one through three years of age.
 - (3) Up to 6 gas permeable contact lenses are allowed every 12 months for children four through seven years of age.
 - (4) Two gas permeable contact lenses are allowed every 24 months for members eight years of age or older.
 - (5) Soft contact lenses and replacements are allowed when medically necessary.

ITEM 4. Amend subrule 78.6(2) as follows:

78.6(2) Ophthalmic materials. Ophthalmic materials which are provided in connection with any of the foregoing professional optometric services shall provide adequate vision as determined by the optometrist and meet the following standards:

- a. Corrected curve lenses, unless clinically contraindicated, ~~manufactured by reputable American manufacturers.~~
- b. Standard plastic, plastic and metal combination, or metal frames ~~manufactured by reputable American manufacturers, if available.~~
- c. Prescription standards according to the American National Standards Institute (ANSI) standards and tolerance.

ITEM 5. Amend subrule 78.6(3) as follows:

78.6(3) Reimbursement. The reimbursement for allowed ophthalmic material is subject to a fee schedule established by the department or to actual laboratory cost as evidenced by an attached invoice. Reimbursement for rose tint is included in the fee for the lenses.

- a. Materials payable by fee schedule are:
 - (1) ~~Lenses~~ Spectacle lenses, single vision and multifocal.
 - (2) Frames.

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- (3) Case for glasses.
- b. Materials payable at actual laboratory cost as evidenced by an attached invoice are:
- (1) Contact lenses.
 - (2) Schroeder shield.
 - (3) Ptosis crutch.
 - (4) ~~Protective lenses and safety~~ Safety frames.
 - (5) Subnormal visual aids.
 - (6) Photochromatic lenses.

ITEM 6. Amend subrule 78.6(4) as follows:

78.6(4) Prior authorization. Prior authorization is required for the following:

a. and b. No change.

c. Subnormal visual aids where near visual acuity is at or better than 20/100 at 16 inches, 2M print. Prior authorization is not required if near visual acuity as described above is less than 20/100. Subnormal visual aids include, but are not limited to, hand magnifiers, loupes, telescopic spectacles, or reverse Galilean telescope systems. Payment shall be actual laboratory cost as evidenced by an attached invoice.

d. Approval for photochromatic tint shall be given when the member has a documented medical condition that causes photosensitivity and less costly alternatives are inadequate.

e. Approval for press-on prisms shall be granted for members whose vision cannot be adequately corrected with other covered prisms.

(Cross-reference 78.28(3))

ITEM 7. Amend subrule 78.6(5) as follows:

78.6(5) Noncovered services. Noncovered services include, but are not limited to, the following services:

- a. Glasses with cosmetic gradient tint lenses or other eyewear for cosmetic purposes.
- b. ~~Glasses for protective purposes including glasses for occupational eye safety, sunglasses, or glasses with photogray lenses. An exception to this is in 78.6(3) "b"(4).~~
- c. A second pair of glasses or spare glasses.
- d. Cosmetic surgery and experimental medical and surgical procedures.
- e. ~~Contact lenses if vision is correctable with noncontact lenses except as found at paragraph 78.6(1) "i."~~
- e. Sunglasses.
- f. Progressive bifocal or trifocal lenses.

ITEM 8. Rescind and reserve subrule **78.6(6)**.

ITEM 9. Amend subrule 78.28(3) as follows:

78.28(3) Optometric services and ophthalmic materials which must be submitted for prior approval are as follows:

a. to c. No change.

d. Photochromatic tint. Approval shall be given when the member has a documented medical condition that causes photosensitivity and less costly alternatives are inadequate.

e. Press-on prisms. Approval shall be granted for members whose vision cannot be adequately corrected with other covered prisms.

For all of the above, the optometrist shall furnish sufficient information to clearly establish that these procedures are necessary in terms of the visual condition of the patient. (Cross-references 78.6(4), 441—78.7(249A), and 78.1(18))

[Filed 8/8/12, effective 11/1/12]

[Published 9/5/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/5/12.

ARC 0306C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

The amendments update the procedures for home- and community-based services waivers to reflect:

- The use of a streamlined form for gathering information to determine the applicant's level of care in the waivers for which the criteria are essentially medical. Form 470-4392, Level of Care Certification for HCBS Waiver Program, provides a one-page summary of the essential factors to be completed by the applicant's primary care provider. The form is used in the AIDS/HIV, elderly, ill and handicapped, and physical disability waivers.

- The merger of separate assessment forms used for different waivers into two forms: Form 470-4694, Case Management Comprehensive Assessment, used in waivers that require Medicaid case management services governed by 441—Chapter 90, "Targeted Case Management" (the brain injury, elderly, intellectual disability, and children's mental health waivers); and Form 470-5044, Service Worker Comprehensive Assessment, used in waivers that do not require services governed by 441—Chapter 90 (the AIDS/HIV, ill and handicapped, and physical disability waivers). The assessment forms include documentation of the applicant's choice of waiver services over institutional care.

- The elimination of the requirement for a reconsideration review by the Iowa Medicaid Enterprise before an applicant is allowed to appeal a level-of-care decision. This change streamlines the eligibility determination process.

- Changes in the rules for obtaining a waiver slot to reflect current procedures, including electronic applications, and to make the rules more uniform across waivers.

- Changes in terminology pursuant to 2012 Iowa Acts, Senate File 2247, which changes the term "mental retardation" to "intellectual disability."

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on May 30, 2012, as **ARC 0143C**. The Department received one comment on the Notice of Intended Action. The Department has made the following changes to the amendments as published under Notice of Intended Action:

- In response to the comment received, the addition of physician assistants to the list of qualified professionals was determined to be appropriate and adds clarity to the amendments. Consequently, the Department has added a new Item 19 to amend the definition of "qualified brain injury professional" in rule 441—83.81(249A) and has added an amendment to subparagraph 83.2(1)"e"(4) in Item 2 to include physician assistants.

- The amendments in Items 4, 20 and 23 have been revised to reflect the changes to Chapter 83 that were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 0191C** on July 11, 2012. In addition, because rule 441—83.70(249A) was rescinded in **ARC 0191C**, the proposed amendment updating terminology in subrule 83.70(2) in Item 19 of the Notice was not adopted.

These amendments do not provide for waivers in specified situations because the Department requires adherence to uniform procedures in order to make reliable judgments about applicants' needs. 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 sections 249A.3 and 249A.4.

These amendments will become effective November 1, 2012.

The following amendments are adopted.

ITEM 1. Strike "intermediate care facility for the mentally retarded" wherever it appears in rule **441—83.1(249A)**, definition of "Medical institution," paragraph **83.8(2)"c,"** rule **441—83.81(249A)**, definition of "Medical institution," paragraph **83.82(1)"f,"** rule **441—83.101(249A)**, definition of

HUMAN SERVICES DEPARTMENT[441](cont'd)

“Medical institution,” and rule ~~441—83.121(249A)~~, definition of “Medical institution,” and insert “intermediate care facility for persons with an intellectual disability” in lieu thereof.

ITEM 2. Amend subrule 83.2(1) as follows:

83.2(1) Eligibility criteria.

a. to c. No change.

d. The person must be certified as being in need of nursing facility or skilled nursing facility level of care or as being in need of care in an intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability, based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person’s condition, and annually for reassessment of the person’s level of care.

(2) The IME medical services unit shall be responsible for approval of the certification of the level of care.

(3) Ill and handicapped waiver services will not be provided when the ~~individual~~ person is an inpatient in a medical institution.

e. To be eligible for interim medical monitoring and treatment services the consumer must be:

(1) to (3) No change.

(4) In need of interim medical monitoring and treatment as ordered by a physician or a physician assistant.

f. to h. No change.

ITEM 3. Amend subparagraph **83.2(2)“a”(1)** as follows:

(1) This service plan shall be based, in part, on information in the completed ~~Home and Community-Based Services Assessment or Reassessment~~ Service Worker Comprehensive Assessment, Form 470-0659 470-5044. Form 470-0659 is 470-5044 shall be completed annually, or more frequently upon request or when there are changes in the consumer’s condition. The service worker shall have a face-to-face visit with the ~~consumer~~ member at least annually.

ITEM 4. Strike “ICF/MR” wherever it appears in paragraphs **83.2(2)“b”** and **83.61(1)“c”** and **“h,”** subparagraph **83.61(1)“k”(3)**, and paragraphs **83.62(3)“c”** and **83.82(1)“f”** and insert “ICF/ID” in lieu thereof.

ITEM 5. Amend paragraphs **83.3(2)“a”** and **“b”** as follows:

a. The county department office shall ~~contact the bureau of long term care for all applicants for the waiver~~ enter all waiver applications into the individualized services information system (ISIS) to determine if a payment slot is available.

(1) For applicants not currently receiving Medicaid, the county department office shall ~~contact the bureau~~ make the entry by the end of the fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.

(2) For current Medicaid ~~recipients~~ members, the county department office shall ~~contact the bureau~~ make the entry by the end of the fifth working day after receipt of ~~either Form 470-0659, Home and Community-Based Services Assessment or Reassessment,~~ with the choice of HCBS waiver indicated by signature of the consumer or a written request signed and dated by the consumer applicant.

(3) and (4) No change.

b. If no payment slot is available, the ~~bureau of long term care~~ department shall enter persons on a waiting list according to the following:

(1) Consumers Applicants not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is ~~date stamped in the county~~ received by the department office or upon ~~the county department office’s~~ receipt of disability determination, whichever is later.

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(2) ~~Consumers~~ Applicants currently eligible for Medicaid shall be added to the waiting list on the basis of the date a request as specified in 83.3(2)“a”(2) is ~~date-stamped in the county~~ received by the department office.

(3) to (5) No change.

ITEM 6. Amend subparagraphs **83.3(3)“a”(4)** and **(5)** as follows:

(4) The application is pending because a level of care determination has not been made although the completed assessment, Form 470-0659, ~~Home and Community-Based Services Assessment or Reassessment~~ 470-4392, Level of Care Certification for HCBS Waiver Program, has been submitted to the IME medical services unit.

(5) The application is pending because the assessment, Form ~~470-0659~~ 470-4392, or the service plan has not been completed. When a determination is not completed 90 days from the date of application due to the lack of a completed assessment, Form ~~470-0659~~ 470-4392, or service plan, the application shall be denied. ~~The consumer shall have the right to appeal.~~

ITEM 7. Amend paragraph **83.3(3)“c”** as follows:

c. ~~A consumer~~ An applicant must be given the choice between HCBS ill and handicapped waiver services and institutional care. ~~The income maintenance or service worker shall have the consumer applicant,~~ parent, guardian, or attorney in fact under a durable power of attorney for health care ~~complete and shall sign Form 470-0659, Home and Community-Based Services Assessment or Reassessment, indicating~~ 470-5044, Service Worker Comprehensive Assessment, and indicate that the consumer’s choice of applicant has elected home- and community-based services or institutional care.

ITEM 8. Amend paragraph **83.22(1)“d”** as follows:

d. Certified as being in need of the intermediate or skilled level of care based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person’s condition, and annually for reassessment of the person’s level of care.

(2) The IME medical services unit shall be responsible for approval of the certification of the level of care.

(3) Elderly waiver services will not be provided when the person is an inpatient in a medical institution.

ITEM 9. Amend paragraph **83.23(3)“c”** as follows:

c. An applicant must be given the choice between elderly waiver services and institutional care. The consumer applicant, guardian, or attorney in fact under a durable power of attorney for health care shall sign the service plan Form 470-4694, Case Management Comprehensive Assessment, indicating the consumer’s choice of caregiver that the applicant has elected waiver services.

ITEM 10. Amend rule 441—83.29(249A) as follows:

441—83.29(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.~~

ITEM 11. Amend paragraph **83.42(1)“b”** as follows:

b. Be certified in need of the level of care that, but for the waiver, would otherwise be provided in a nursing facility or hospital based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person’s condition, and annually for reassessment of the person’s level of care.

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(2) The IME medical services unit shall be responsible for approval of the certification of the level of care.

(3) AIDS/HIV waiver services shall not be provided when the person is an inpatient in a medical institution.

ITEM 12. Amend paragraph **83.42(2)“a”** as follows:

a. The ~~county social~~ department service worker shall perform an assessment of the person's need for waiver services and determine the availability and appropriateness of services. This assessment shall be based, in part, on information in the completed ~~Home and Community Based Services Assessment or Reassessment~~ Service Worker Comprehensive Assessment, Form 470-0659 470-5044. Form 470-0659 470-5044 shall be completed annually.

ITEM 13. Amend subparagraph **83.43(3)“a”(2)** as follows:

(2) The application is pending because a level of care determination has not been made ~~or pending~~ although the completed ~~assessment~~, Form 470-0659 470-4392, Level of Care Certification for HCBS Waiver Program, has been submitted to the IME medical services unit.

ITEM 14. Amend paragraph **83.43(3)“c”** as follows:

c. ~~A consumer~~ An applicant must be given the choice between HCBS AIDS/HIV waiver services and institutional care. The ~~income maintenance or service worker shall have the consumer~~ applicant, parent, guardian, or attorney in fact under a durable power of attorney for health care ~~complete and shall~~ sign Form 470-0659, ~~Home and Community Based Services Assessment or Reassessment~~, indicating ~~the consumer's choice of 470-5044, Service Worker Comprehensive Assessment~~, and indicate that the applicant has elected home- and community-based services ~~or institutional care~~.

ITEM 15. Amend rule 441—83.49(249A) as follows:

441—83.49(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, an appeal may be filed with the department.~~

ITEM 16. Amend rule **441—83.60(249A)**, definitions of “Adult,” “Child,” “Counseling,” “Intermediate care facility for the mentally retarded (ICF/MR),” “Medical institution,” “Mental retardation,” “Qualified mental retardation professional” and “Related condition,” as follows:

“*Adult*” means a person with ~~mental retardation~~ an intellectual disability aged 18 or over.

“*Child*” means a person with ~~mental retardation~~ an intellectual disability aged 17 or under.

“*Counseling*” means face-to-face mental health services provided to the consumer and caregiver by a qualified ~~mental retardation~~ intellectual disability professional (QMRP QIDP) to facilitate home management of the consumer and prevent institutionalization.

“*Intermediate care facility for the mentally retarded persons with an intellectual disability (ICF/MR ICF/ID)*” means an institution that is primarily for the diagnosis, treatment, or rehabilitation of persons ~~who are mentally retarded~~ with an intellectual disability or persons with related conditions and that provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination and integration of health or related services to help each person function at the greatest ability and is an approved Medicaid vendor.

“*Medical institution*” means a nursing facility, intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability, or hospital which has been approved as a Medicaid vendor.

“*Mental retardation Intellectual disability*” means a diagnosis of mental retardation ~~under this division~~ which shall be made only when the onset of the person's condition was ~~prior to~~ before the age of 18 years and shall be based on an assessment of the person's intellectual functioning and level of adaptive skills. The diagnosis shall be made by a person who is a psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person's adaptive skills. A diagnosis of mental retardation shall be made in accordance with the criteria

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provided in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, published by the American Psychiatric Association.

“Qualified ~~mental retardation~~ intellectual disability professional” means a person who has at least one year of experience working directly with persons with ~~mental retardation~~ an intellectual disability or other developmental disabilities and who is one of the following:

1. to 10. No change.

“Related condition” means a severe, chronic disability that meets all the following conditions:

1. It is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to ~~mental retardation~~ intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of a ~~mentally retarded~~ person with an intellectual disability and requires treatment or services similar to those required for a ~~mentally retarded~~ person with an intellectual disability.

2. to 4. No change.

ITEM 17. Amend paragraph **83.61(2)“a”** as follows:

a. Applicants currently receiving Medicaid case management or services of a department-qualified ~~mental retardation~~ intellectual disability professional (QMRP QIDP) shall have the applicable coordinating staff and other interdisciplinary team members complete Form 470-4694, Case Management Comprehensive Assessment, and identify the applicant’s needs and desires as well as the availability and appropriateness of the services.

ITEM 18. Amend rule 441—83.69(249A), introductory paragraph, as follows:

441—83.69(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or consumer is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.~~

ITEM 19. Amend rule **441—83.81(249A)**, definition of “Qualified brain injury professional,” as follows:

“Qualified brain injury professional” means one of the following who meets the educational and licensure or certification requirements for the profession as required in the state of Iowa and who has two years’ experience working with people living with a brain injury: a psychologist; psychiatrist; physician; physician assistant; registered nurse; certified teacher; social worker; mental health counselor; physical, occupational, recreational, or speech therapist; or a person with a bachelor of arts or science degree in psychology, sociology, or public health or rehabilitation services.

ITEM 20. Amend subrule 83.82(4) as follows:

83.82(4) Securing a state payment slot.

a. The county department office shall ~~contact the bureau of long-term care~~ enter all waiver applications into the individualized services information system (ISIS) to determine if a payment slot is available for all new ~~applications~~ applicants for the HCBS BI waiver program.

(1) For applicants not currently receiving Medicaid, the county department office shall ~~contact the bureau~~ make the entry by the end of the ~~second~~ fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, or within five working days after receipt of disability determination, whichever is later.

(2) For current Medicaid ~~recipients~~ members, the county department office shall ~~contact the bureau~~ make the entry by the end of the ~~second~~ fifth working day after receipt of ~~either Form 470-3349, Brain Injury Functional Assessment, with the choice of the HCBS waiver indicated by the consumer’s signature, or a written request signed and dated by the consumer waiver applicant.~~

b. ~~On the third day after the receipt of the completed Form 470-2927 or 470-2927(S), if~~ If no payment slot is available, the ~~bureau of long-term care~~ department shall enter the ~~consumer~~ applicant on a waiting list according to the following:

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(1) ~~Consumers Applicants~~ not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is ~~date-stamped in the county received by the department office or upon receipt of disability determination,~~ whichever is later. ~~Consumers Applicants~~ currently eligible for Medicaid shall be added to the waiting list on the basis of the date the ~~consumer~~ applicant requests HCBS BI program services as ~~documented by the date of the consumer's signature on Form 470-2927 or 470-2927(S).~~

(2) In the event that more than one application is received at one time, ~~consumers applicants~~ shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number.

~~(2) c.~~ Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the waiting list. As slots become available, persons shall be selected from the waiting list to maintain the number of approved persons on the program based on their order on the waiting list.

ITEM 21. Amend paragraph **83.83(2)“c”** as follows:

c. ~~A consumer~~ An applicant shall be given the choice between waiver services and institutional care. The ~~consumer applicant~~ or legal representative shall complete and sign Form ~~470-3349, Brain Injury Functional Assessment~~ 470-4694, Case Management Comprehensive Assessment, indicating that the ~~consumer's choice of caregiver~~ applicant has elected home- and community-based services. This shall be arranged by the medical facility discharge planner or case manager.

ITEM 22. Amend subrule 83.87(3) as follows:

83.87(3) Annual assessment. The IME medical services unit shall assess the ~~consumer member~~ annually and certify the ~~consumer's member's~~ need for long-term care services. The IME medical services unit shall be responsible for determining the level of care based on the completed ~~Brain Injury Waiver Functional Assessment, Form 470-3283~~ 470-4694, Case Management Comprehensive Assessment, and supporting documentation as needed.

ITEM 23. Amend rule 441—83.89(249A) as follows:

441—83.89(249A) Appeal rights. Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~The applicant or consumer is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.~~

ITEM 24. Amend paragraph **83.102(1)“h”** as follows:

h. Be in need of skilled nursing or intermediate care facility level of care based on information submitted on Form 470-4392, Level of Care Certification for HCBS Waiver Program.

(1) A physician, doctor of osteopathy, registered nurse practitioner, or physician assistant shall complete Form 470-4392 when the person applies for waiver services, upon request to report a change in the person's condition, and annually for reassessment of the person's level of care.

(2) Initial decisions on level of care shall be made for the department by the IME medical services unit within two working days of receipt of medical information. ~~After notice of an adverse decision by the IME medical services unit, the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by the IME medical services unit pursuant to subrule 83.109(2). On initial and reconsideration decisions, the~~ The IME medical services unit determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2).

(3) Adverse decisions by the IME medical services unit ~~on reconsiderations~~ may be appealed to the department pursuant to 441—Chapter 7 and rule 441—83.109(249A).

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 25. Amend paragraph **83.102(2)“a”** as follows:

a. The ~~consumer applicant~~ shall have a service plan which is developed by the ~~consumer applicant~~ and a department service worker. ~~This~~ The plan must be completed and approved prior to before service provision and at least annually thereafter.

(1) The service worker shall identify the need for service based on the needs of the ~~consumer applicant~~, as documented in Form 470-5044, Service Worker Comprehensive Assessment, as well as the availability and appropriateness of services.

(2) The service worker shall have a face-to-face visit with the member at least annually.

ITEM 26. Amend subrule 83.102(5) as follows:

83.102(5) Securing a slot.

a. The county department office shall ~~contact the bureau of long-term care for all cases~~ enter all waiver applications into the individualized services information system (ISIS) to determine if a slot is available for all new applications applicants for the HCBS physical disability waiver program.

(1) For applicants not currently receiving Medicaid, the county department office shall ~~contact the bureau~~ make the entry by the end of the ~~second~~ fifth working day after receipt of a completed Form 470-2927 or 470-2927(S), Health Services Application, ~~submitted on or after April 1, 1999 or within five working days after receipt of disability determination, whichever is later.~~

(2) For current Medicaid ~~recipients members~~, the county department office shall ~~contact the bureau~~ make the entry by the end of the ~~second~~ fifth working day after receipt of Form 470-3502, Physical Disability Waiver Assessment Tool, ~~with the choice of HCBS waiver indicated by the signature of the consumer or a written request signed and dated by the consumer waiver applicant.~~

b. ~~On the third day after the receipt of the completed Form 470-2927 or 470-2927(S), Health Services Application, if~~ If no slot is available, the bureau of long-term care department shall enter consumers applicants on the HCBS physical disabilities waiver waiting list according to the following:

(1) ~~Consumers Applicants~~ not currently eligible for Medicaid shall be entered on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is ~~submitted on or after April 1, 1999, and date stamped in the county received by the department office or upon receipt of disability determination, whichever is later.~~ Consumers Applicants currently eligible for Medicaid shall be added on the basis of the date the ~~consumer applicant~~ requests HCBS physical disability program services as ~~documented by the date of the consumer's signature on Form 470-2927 or 470-2927(S).~~ In the event that more than one application is received on the same day, ~~consumers applicants~~ shall be entered on the waiting list on the basis of the day of the month of their birthday, the lowest number being first on the list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) No change.

ITEM 27. Amend subrule 83.103(2) as follows:

83.103(2) Approval of application for eligibility.

a. Applications for this waiver shall be initiated on behalf of the applicant who is a resident of a medical institution with the applicant's consent or with the consent of the applicant's legal representative by the discharge planner of the medical facility where the applicant resides at the time of application.

(1) The discharge planner shall have the applicant's primary care provider complete Form 470-3502, Physical Disability Waiver Assessment Tool 470-4392, Level of Care Certification for HCBS Waiver Program, and submit it to the IME medical services unit.

(2) After completing the determination of the level of care needed by the applicant, the IME medical services unit shall inform the income maintenance worker and the discharge planner of the IME medical services unit's decision.

b. Applications for this waiver shall be initiated by the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care on behalf of the applicant who is residing in the community.

(1) ~~The applicant, the applicant's parent, the applicant's legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care~~ primary care provider shall complete Form

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~~470-3502, Physical Disability Waiver Assessment Tool 470-4392, Level of Care Certification for HCBS Waiver Program~~, and submit it to the IME medical services unit.

(2) After completing the determination of the level of care needed by the applicant, the IME medical services unit shall inform the income maintenance worker and the applicant, the applicant's parent or legal guardian, or the applicant's attorney in fact under a durable power of attorney for health care.

c. No change.

d. An applicant shall be given the choice between waiver services and institutional care. The applicant or the applicant's parent, legal guardian, or attorney in fact under a durable power of attorney for health care shall sign Form ~~470-3502, Physical Disability Waiver Assessment Tool 470-5044, Service Worker Comprehensive Assessment~~, indicating that the applicant's choice of caregiver applicant has elected home- and community-based services.

e. to g. No change.

ITEM 28. Amend subrule 83.107(2) as follows:

83.107(2) Annual assessment. The IME medical services unit shall review the ~~consumer's member's~~ need for continued care annually and recertify the ~~consumer's member's~~ need for long-term care services, pursuant to ~~the standards and subject to the reconsideration and appeal processes at~~ paragraph 83.102(1) "h" and the appeal process at rule 441—83.109(249A), based on the completed Form ~~470-3502, Physical Disability Waiver Assessment Tool 470-4392, Level of Care Certification for HCBS Waiver Program~~, and supporting documentation as needed. ~~Form 470-3502 is completed by the service worker at the time of recertification.~~

ITEM 29. Rescind and reserve subrule **83.109(2)**.

ITEM 30. Amend subrule 83.122(3) as follows:

83.122(3) Level of care. The ~~consumer applicant~~ must be certified as being in need of a level of care that, but for the waiver, would be provided in a psychiatric hospital serving children under the age of 21. The IME medical services unit shall certify the ~~consumer's applicant's~~ level of care annually based on Form ~~470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment~~.

ITEM 31. Amend subrule 83.122(5) as follows:

83.122(5) Choice of program. The ~~consumer applicant~~ must choose HCBS children's mental health waiver services over institutional care, as indicated by the signature of the ~~consumer's applicant's~~ parent or legal guardian on Form ~~470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment~~.

ITEM 32. Amend subparagraph **83.123(1)"a"(2)** as follows:

(2) Form ~~470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment~~, with HCBS waiver choice indicated by signature of a Medicaid member's parent or legal guardian; or

ITEM 33. Amend subparagraphs **83.123(1)"c"(1)** and **(2)** as follows:

(1) The names of ~~consumers applicants~~ not currently eligible for Medicaid shall be entered on the waiting list on the basis of the date a completed Form 470-2927 or 470-2927(S), Health Services Application, is ~~submitted and date-stamped in the local office~~ received by the department;

(2) The names of Medicaid members shall be added to the waiting list on the date ~~Form 470-4211, Children's Mental Health Waiver Assessment, or a written request as specified in 83.123(2)"a"(3) is date-stamped in the local office.~~ paragraph 83.123(1)"a."

ITEM 34. Amend subrule 83.127(3) as follows:

83.127(3) The service plan shall be based on information in Form ~~470-4211, Children's Mental Health Waiver Assessment 470-4694, Case Management Comprehensive Assessment~~.

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ITEM 35. Amend rule 441—83.129(249A) as follows:

441—83.129(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). ~~An applicant or consumer may obtain a review of the IME medical services unit's level-of-care determination by sending a letter requesting a review to the IME Medical Services Unit, P.O. Box 36478, Des Moines, Iowa 50315. If dissatisfied with the IME medical services unit's review decision, the applicant or consumer may file an appeal with the department in accordance with 441—Chapter 7.~~

[Filed 8/8/12, effective 11/1/12]

[Published 9/5/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/5/12.

ARC 0318C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby amends Chapter 71, "Administration of the Conveyance Safety Program," Iowa Administrative Code.

These amendments relate to an elevator that is temporarily removed from service when a building is not occupied. The two options for meeting safety requirements that are currently available to the owner of an unoccupied building are costly during a time when no income is generated by the building. These amendments create a third option that is less costly but will still protect public safety.

The purposes of these amendments are to protect the health and safety of the public and implement legislative intent.

No variance procedures are included in this rule making. Applicable variance procedures are set forth in 875—Chapter 66.

Notice of Intended Action was published in the June 13, 2012, Iowa Administrative Bulletin as **ARC 0171C**. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, a positive impact on jobs could exist. These amendments create an easier, cheaper method for owners of elevators located in unoccupied buildings to meet safety requirements on a temporary basis.

These amendments are intended to implement Iowa Code chapter 89A.

These amendments shall become effective on October 10, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 71.7(1) as follows:

71.7(1) Operation of equipment covered by this chapter without a current operating permit is prohibited, except as authorized by rules 875—71.6(89A)₂ and 875—71.8(89A)₂ and 875—71.20(89A).

ITEM 2. Renumber subrule **71.16(13)** as **71.16(14)**.

ITEM 3. Adopt the following **new** subrule 71.16(13):

71.16(13) *Inspection for temporary removal from service.* The inspection fee for temporary removal from service pursuant to rule 875—71.20(89A) shall be \$100.

ITEM 4. Adopt the following **new** rule 875—71.20(89A):

875—71.20(89A) Temporary removal from service. The requirements for an annual inspection, annual inspection fee, safety test, operating permit, and operating permit fee shall be temporarily suspended for up to three years for an elevator in an unoccupied building if the requirements of this rule are met.

LABOR SERVICES DIVISION[875](cont'd)

71.20(1) All elevator doors in unoccupied buildings shall be closed and locked. Hydraulic elevators shall be parked at the bottom of the hoistway. Traction elevators shall be parked at the top of the hoistway.

71.20(2) Upon request by the owner of an elevator in an unoccupied building, the labor commissioner shall send an inspector who is a state employee to confirm that the building is unoccupied and that the car and doors of the elevator have been properly secured. If the conditions set forth in subrule 71.20(1) are met, the inspector shall apply to the elevator a seal and a red tag marked with the words "Do Not Operate."

71.20(3) One year after the inspection, the owner must file with the labor commissioner written confirmation that the status of the elevator and building have not changed, and the owner must file again two years after the inspection. Failure to comply with this requirement shall result in termination of the temporary suspension of the requirements for safety tests, inspections, and operating permits.

71.20(4) Prior to returning the elevator to service, and upon request of the owner, the labor commissioner may allow the elevator to be operated for 30 days for the sole purpose of performing safety tests and maintenance.

71.20(5) The owner must notify the labor commissioner at least two weeks before placing an elevator back into service and must arrange for an inspector who is a state employee to witness a safety test.

71.20(6) If at the end of three years the building is still unoccupied, suspension of the requirements for safety tests, inspections, and operating permits shall end without possibility of renewal.

[Filed 8/16/12, effective 10/10/12]

[Published 9/5/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/5/12.

ARC 0319C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby amends Chapter 81, "Waivers or Variances from Administrative Rules by the Boiler and Pressure Vessel Board," Chapter 83, "Declaratory Orders by the Boiler and Pressure Vessel Board," Chapter 85, "Public Records and Fair Information Practices of the Boiler and Pressure Vessel Board," Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Chapter 91, "General Requirements for All Objects," Chapter 92, "Power Boilers," Chapter 95, "Water Heaters," and Chapter 96, "Unfired Steam Pressure Vessels," Iowa Administrative Code.

The 2012 General Assembly enacted Senate File 2280 creating an extended, four-year internal inspection schedule for certain objects. These amendments adopt a new rule to implement 2012 Iowa Acts, Senate File 2280; adopt by reference more recent editions of various national standards; rescind unnecessary rules; and make technical and editorial changes. Most of the items are a result of the rules review process set forth in Iowa Code subsection 89.14(7).

The purposes of these amendments are to make the rules more current; make the rules internally consistent; make the rules easier to read; protect the safety of the public; and implement legislative intent.

Notice of Intended Action was published in the July 11, 2012, Iowa Administrative Bulletin as **ARC 0207C**. No public comment was received on the proposed amendments. 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 chapter 89 and 2012 Iowa Acts, Senate File 2280.

These amendments shall become effective on October 10, 2012.

The following amendments are adopted.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 1. Amend subrule 81.4(3) as follows:

81.4(3) Filing petition. A petition is deemed filed when it is received in the board's office. A petition and related materials for consideration should be sent to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. ~~The petitioner shall submit the petition and all related materials for consideration at least three weeks prior to a scheduled board meeting for board review of the petition at the meeting.~~

ITEM 2. Amend rule 875—83.1(17A,89), introductory paragraph, as follows:

875—83.1(17A,89) Petition for declaratory order. Any person may file at the ~~board's offices~~ board office a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

ITEM 3. Amend subrule 85.3(2) as follows:

85.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays.

ITEM 4. Rescind the definition of "Authorized inspector" in rule **875—90.2(89,261,252J,272D)**.

ITEM 5. Amend rule **875—90.2(89,261,252J,272D)**, definition of "National Board," as follows:

"*National Board*" means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of jurisdictions who are charged with the enforcement of the provisions of ~~local~~ boiler codes.

ITEM 6. Amend subrule 90.6(1) as follows:

90.6(1) General. All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code (~~2007 with 2008 addenda~~ 2011), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

ITEM 7. Amend paragraph **90.6(4)"f"** as follows:

f. Evidence or knowledge of a vessel having been subjected to external heat from a ~~resulting~~ fire.

ITEM 8. Amend paragraph **90.6(4)"h"** as follows:

h. ~~Personal injury, property damage~~ Evidence of an accident, incident or malfunction affecting that could affect or may have resulted from a problem with the pressure vessel's object's integrity.

ITEM 9. Adopt the following new subrule 90.6(8):

90.6(8) Internal inspections on a four-year cycle. The owner shall demonstrate compliance with the requirements set forth in 2012 Iowa Acts, Senate File 2280, by annually submitting to the labor commissioner a notarized affidavit. The affidavit shall be in a format approved by the labor commissioner and shall be signed by the owner or an officer of the company.

ITEM 10. Amend subrule 90.7(1) as follows:

90.7(1) Special inspector ~~certification~~ commission fee. A \$40 fee shall be paid annually to the commissioner to obtain a special inspector ~~certification~~ commission pursuant to Iowa Code section ~~89.7, subsection 1.~~

ITEM 11. Amend subrule 91.1(1), introductory paragraph, as follows:

91.1(1) ASME boiler and pressure vessel codes adopted by reference. The ASME Boiler and Pressure Vessel Code (~~2007 with 2008a and 2009b addenda~~ 2010 with 2011a addenda) is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code (~~2007 with 2008a and 2009b addenda~~ 2010 with 2011a addenda) except for objects that meet one of the following criteria:

LABOR SERVICES DIVISION[875](cont'd)

ITEM 12. Amend subrule 91.1(3) as follows:

91.1(3) *Inspection code adopted by reference.* The National Board Inspection Code (~~2007 with 2008, 2009, and 2010 addenda~~ 2011) is adopted by reference, and installations, alterations, and repairs after ~~December 22, 2010~~ October 10, 2012, shall comply with it.

ITEM 13. Amend subrule 91.1(8) as follows:

91.1(8) *Oil burning equipment code adopted by reference.* National Fire Protection Association Standard for the Installation of Oil Burning Equipment, NFPA 31 (~~2006~~ 2011), is adopted by reference.

ITEM 14. Amend subrule 91.1(10) as follows:

91.1(10) *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (~~2008~~ 2011), is adopted by reference.

ITEM 15. Amend subrule 91.1(11) as follows:

91.1(11) *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (~~2007~~ 2011), is adopted by reference.

ITEM 16. Rescind and reserve rules ~~875—91.7(89)~~ to ~~875—91.9(89)~~.

ITEM 17. Rescind paragraph ~~92.4(2)~~“c.”

ITEM 18. Amend rule ~~875—95.2(89)~~ as follows:

~~875—95.2(89)~~ Recognized standard. All water heaters shall be in accordance with a recognized standard such as those promulgated by the Canadian Standards Association, American National Standards Institute Z21.10.1 and Z21.10.3, Underwriters Laboratories, American Gas Association, Gas Appliance Manufacturers Association, or the applicable ASME Code adopted by reference at rule ~~875—94.2(89)~~ ~~875—91.1(89)~~.

ITEM 19. Amend rule ~~875—95.4(89)~~, introductory paragraph, as follows:

~~875—95.4(89)~~ Temperature and pressure relief valves. Each water heater with storage capacity shall have at least one automatically resetting temperature and pressure relief valve bearing the ASME Code symbol “HV.” Water heaters with no storage capacity shall have at least one automatically resetting pressure relief device bearing the ~~AMSE~~ ASME Code symbol “HV,” and a temperature control device recommended by the manufacturer.

ITEM 20. Rescind and reserve rule ~~875—95.6(89)~~.

ITEM 21. Amend rule ~~875—95.7(89)~~ as follows:

~~875—95.7(89)~~ Stop valves. Stop valves shall be used in each supply and return pipe connection of multiple water heater installations to permit draining ~~the~~ any heater without emptying the system.

ITEM 22. Amend paragraph ~~96.2(1)~~“c” as follows:

c. The maximum allowable working pressure for ~~nonecode unfired steam~~ pressure vessels without an ASME stamp subjected to external or collapsing pressure shall be determined by the ASME Code, Section VIII.

ITEM 23. Rescind and reserve subrule ~~96.2(2)~~.

[Filed 8/16/12, effective 10/10/12]

[Published 9/5/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/5/12.

ARC 0308C**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority in Iowa Code sections 455A.5(6), 456A.24 and 456A.30 and 2012 Iowa Acts, Senate File 2283, section 6, the Natural Resource Commission hereby adopts Chapter 56, "Shooting Sports Program Grants," Iowa Administrative Code.

The chapter creates program grants for shooting range development and enhancement around the state. These ranges are excellent tools for hunter recruitment and retention, as well as a source of recreation in their own right. The Department of Natural Resources' shooting sports program receives federal dollars plus some state Fish and Game Protection Fund dollars to foster shooting sports and hunter safety in the state. Utilizing a portion of these funds to implement shooting range program grants furthers the Department's mission of encouraging and promoting outdoor recreation.

The program contains two funding avenues: (1) for the development of new ranges or the improvement of existing ranges; and (2) for the purchase of range equipment. This new chapter implements this program by defining eligibility, application procedures, project selection criteria, the make-up and role of a scoring committee, and record-keeping requirements. This chapter is the product of a weeklong stakeholder meeting between the Department, county conservation boards, nonprofit shooting ranges, and private citizens, all of whom have expertise and an interest in shooting sports. The program grants and this new chapter were specifically structured to ensure clarity of the rules, positive impact to the state, and maximum benefit to the general public.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 30, 2012, as **ARC 0146C**. Public comments were accepted through June 21, 2012, and a public hearing was held in the Wallace State Office Building that same day. No one attended the hearing. One written comment was received in support of the program during the public comment period.

Two technical changes have been made since the rules were published under Notice. Iowa Code section 456A.24 has been removed from the implementation sentence, and 2012 Iowa Acts, Senate File 2283, section 6, has been added. Additionally, subrules 56.3(2) and 56.19(2) were revised for clarity by dividing the content of paragraph "e" in both subrules into paragraphs "e" and "f."

These grants will have a positive economic impact on the state, and present the following job creation opportunities:

1. Attendance will increase at shooting ranges (both those that receive grant dollars as well as those that do not) because there will be a general increase in awareness and interest in shooting sports through promotional activities;
2. Increased general interest in shooting sports will provide retailers, outfitters, suppliers, and other related businesses increased revenue opportunities; and
3. Increased support for the Department's hunter recruitment and retention efforts will, in turn, benefit many businesses through equipment purchases, traveling needs, and license sales.

The complete Jobs Impact Statement prepared by the Department is available from the Department upon request.

These rules are intended to implement Iowa Code section 456A.30 and 2012 Iowa Acts, Senate File 2283, section 6.

These rules shall become effective October 10, 2012.

The following amendment is adopted.

Adopt the following **new** 571—Chapter 56:

CHAPTER 56
SHOOTING SPORTS PROGRAM GRANTS

NATURAL RESOURCE COMMISSION[571](cont'd)

DIVISION I
DEVELOPMENT GRANTS

571—56.1(456A,481A) Purpose. The purpose of the shooting sports development grant is to provide state cost sharing to eligible applicants for the creation of new shooting ranges and improvement of existing shooting ranges and facilities. The department of natural resources shall administer this program.

571—56.2(456A,481A) Definitions.

“Commission” means the natural resource commission.

“Committee” means the review and selection committee established in subrule 56.6(1).

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

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

571—56.3(456A,481A) Eligibility requirements. The applicant must submit an application and all supporting documents in a timely manner.

56.3(1) Applicant requirements. The entity submitting the application must meet the requirements of this subrule. The entity must:

- a. Allow public access;
- b. Be free of any unresolved close-out issues on prior grant projects;
- c. Ensure that the shooting range will be located on property owned by the applicant or that the property is enrolled in a long-term lease of at least 25 years;
- d. Have liability insurance unless not required by law; and
- e. Make the range available for department hunter education courses, department hunter recruitment efforts, department archery programs, and Scholastic Clay Target Program activities.

56.3(2) Eligible entities. The following entities are eligible to apply for development grants:

- a. Iowa-based shooting sports organizations.
- b. Iowa primary and secondary public and private schools.
- c. Iowa public and private colleges and universities.
- d. Iowa nonprofit corporations.
- e. Public ranges not owned by the state.
- f. City park and recreation agencies, or county governments.

56.3(3) Ineligible entities. Privately owned for-profit ranges and state-owned-and-operated public ranges are not eligible for development grants.

571—56.4(456A,481A) Maximum grant amounts. The maximum grant award is \$50,000 per project with at least a 25 percent match as described in subrule 56.5(3).

571—56.5(456A,481A) Grant application submissions.

56.5(1) Form of application. Grant applications shall be on forms provided by the department and shall follow guidelines provided by the department.

56.5(2) Application deadline. Grant applications (one original and five copies) must be received by the department by September 15 for the 2012 grant cycle. All subsequent years shall have a grant application deadline of February 1.

56.5(3) Match and local funding. Applicants are expected to finance 25 percent of development grant projects, either through cash, donated materials/labor, or other preapproved in-kind match. An applicant shall certify that it has committed its match before the 90 percent up-front grant payment will be made pursuant to rule 571—56.11(456A,481A). A letter of intent signed by the mayor, the chairperson of the board of supervisors, the chairperson of the county conservation board, or the CEO or chief financial officer of an agency, organization, or corporation and submitted with the application showing intent to include matching funds in finalized budgets will be accepted as proof of commitment. Applicants must forward proof of local funding to the department by November 1 of the 2012 grant cycle, and June 1 for

NATURAL RESOURCE COMMISSION[571](cont'd)

all subsequent years. If proof of local funding is not submitted, the application will be removed from the list of approved projects.

56.5(4) *Competitive bids.* Any development expense more than \$500 that is funded by grant dollars must be purchased through a competitive bid or quotation process. Records of such process must be submitted with close-out documentation. Items purchased by any other means are not reimbursable under the grant.

571—56.6(456A,481A) Project review and selection.

56.6(1) *Review and selection committee.* The review and selection committee shall be comprised of six members appointed by the director. The committee shall review and evaluate project applications and determine final project approval to be recommended to the commission. Three members shall be department staff, and three members shall be from the public/private sector and shall be appointed based upon their expertise and interest in one of the three shooting sports of rifle/handgun, shotgun, and archery.

56.6(2) *Conflict of interest.* If a project is submitted to the committee by an entity with a member or employee on the committee, that committee member shall not participate in discussion and shall not vote on that particular project.

56.6(3) *Consideration withheld.* The committee will not consider any application which, on the date of the selection session, is not complete or for which additional pertinent information has been requested and not received. The committee will not consider any application from an entity which, on the date of the selection session, has not demonstrated compliance with or does not have a reasonable plan for achieving compliance with the requirements of Iowa Code section 657.9.

56.6(4) *Application rating system.* The committee will apply a numerical rating system to each grant application that is considered for funding. The criteria and maximum number of points are as follows:

- a. Overall program strength and feasibility – 30 points.
- b. Education – 30 points.
- c. Proximity to other public ranges – 25 points.
- d. Range capacity – 15 points.
- e. Project type – 10 points.

56.6(5) *Rating of scores for tiebreakers.* If two or more projects receive the same score, the committee shall use the points awarded for overall program strength and feasibility, paragraph 56.6(4) “a,” to determine which project has a higher rank.

571—56.7(456A,481A) Commission review. The commission will review and act upon all committee recommendations at the next scheduled commission meeting. The commission may reject any application selected for funding. Applicants shall be notified of their grant status in writing within 30 days after the commission meeting.

571—56.8(456A,481A) Appeals. Unfunded applicants may appeal the commission’s decision to the director within five days of receipt of the commission’s decision. A letter of appeal shall be sent to the director of the department. Before making a final decision as to the grant award, the director shall review the application, committee score sheets and commission minutes.

571—56.9(456A,481A) Grant amendments. Grant amendments may be made upon request by the applicant, subject to the availability of funds and approval by the director or the director’s designee.

571—56.10(456A,481A) Timely commencement of projects. Grant recipients are expected to carry out their projects in an expeditious manner. Projects shall be initiated no later than two months following their approval by the committee and shall be completed no later than June 30 of the year following the grant award. Failure to initiate projects in a timely manner may be cause for termination of the agreement and cancellation of the grant.

571—56.11(456A,481A) Payments. Ninety percent of approved grant funding may be paid to project grantees when requested, but no earlier than the start-up date of the project. Ten percent of the grant

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total shall be withheld by the department, pending successful completion of the project and final site inspection, or until any irregularities discovered as a result of the final site inspection have been resolved.

56.11(1) Expense documentation, balance payment or reimbursement. Documentation of expenditures eligible for prepayment or reimbursement shall be submitted on forms provided by the department and shall be accompanied by applicable receipts showing evidence that the expense is necessary and reasonably related to the creation of a new shooting range or to the improvement of an existing shooting range or facility. The grantee shall sign a certification stating that all expenses for which reimbursement is requested are related to the project and have been paid by the grantee prior to requesting reimbursement. If necessary, the department may request copies of canceled checks to verify expenditures.

56.11(2) Reasonable costs. For purposes of this rule, expenses that are necessary and reasonably related to the creation of a new shooting range or to the improvement of an existing shooting range or facility include, without limitation: (1) costs associated with the lease or acquisition of real property used for the project; (2) personal property acquired for use in the project; and (3) management and maintenance costs associated with the project. However, in no event shall funds awarded under this program be used to cover costs associated with employment or personnel costs of the grant recipient, including salaries and benefits. Those costs, however, may be used to meet the match requirement described in subrule 56.5(3).

571—56.12(456A,481A) Record keeping and retention. Grant recipients shall keep adequate records relating to the administration of the project, particularly relating to all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office for a period of three years following the close of the grant. All records shall be retained in accordance with state laws.

56.12(1) Definition of records. Records include but are not necessarily limited to invoices, canceled checks, bank statements, and bid and quote documentation.

56.12(2) Annual reports. Grant recipients shall submit on forms provided by the department an annual report for seven years following the close of the grant.

571—56.13(456A,481A) Project life and recovery of grant funds. Applicants shall state an expected project life of at least ten years which will become part of the project agreement. Should the funded project cease to be used for public recreation before the end of the stated project life, the director may seek to recover the remaining value of the grant award.

571—56.14(456A,481A) Unlawful use of grant funds. Unlawful use of grant funds includes whenever any property, real or personal, acquired or developed with grant funds under this program passes from the control of the grantee or is used for purposes other than the approved project.

571—56.15(456A,481A) Remedy. Grant funds used without authorization for purposes other than the approved project, or unlawfully, must be returned to the department for deposit in the account supporting this program. In the case of diversion of personal property, the grantee shall remit to the department funds in the amount of the original purchase price of the property. The grantee shall have a period of three months after notification from the department in which to correct the unlawful use of funds. The remedy provided in this rule is in addition to others provided by law.

571—56.16(456A,481A) Ineligibility. Whenever the director determines that a grantee is in violation of these rules, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the director.

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DIVISION II
EQUIPMENT GRANTS

571—56.17(456A,481A) Purpose. The purpose of the shooting sports equipment grant is to provide state cost sharing to eligible applicants for the purchase or improvement of shooting range equipment. The department shall administer the program.

571—56.18(456A,481A) Definitions.

“*Commission*” means the natural resource commission.

“*Committee*” means the review and selection committee established in subrule 56.22(1).

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

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

571—56.19(456A,481A) Eligibility requirements. The applicant must submit an application and all supporting documents in a timely manner.

56.19(1) Applicant requirements. The entity submitting the application must meet the requirements of this subrule. The entity must:

- a. Allow public access;
- b. Be free of any unresolved close-out issues with prior grant projects;
- c. Ensure that the shooting range will be located on property owned by the applicant or that the property is enrolled in a long-term lease of at least 25 years;
- d. Have liability insurance unless not required by law; and
- e. Make the range available for department hunter education courses, department hunter recruitment efforts, department archery programs, and Scholastic Clay Target Program activities.

56.19(2) Eligible entities. The following entities are eligible to apply for equipment grants:

- a. Iowa-based shooting sports organizations.
- b. Iowa primary and secondary public and private schools.
- c. Iowa public and private colleges and universities.
- d. Iowa nonprofit corporations.
- e. Public ranges not owned by the state.
- f. City park and recreation agencies, or county governments.

56.19(3) Ineligible entities. Privately owned for-profit ranges and state-owned-and-operated public ranges are not eligible for equipment grants.

571—56.20(456A,481A) Maximum grant amounts. There is no maximum request amount for equipment grants, but a 50 percent match is required as described in subrule 56.21(3).

571—56.21(456A,481A) Grant application submissions.

56.21(1) Form of application. Grant applications shall be on forms provided by the department and shall follow guidelines provided by the department.

56.21(2) Application deadline. Grant applications (one original and five copies) must be received by the department by September 15 for the 2012 grant cycle. All subsequent years shall have a grant application deadline of February 1.

56.21(3) Match and local funding. Applicants are expected to finance 50 percent of equipment grant projects, either through cash, donated materials/labor, or other preapproved in-kind match. An applicant shall certify that it has committed its match before the 90 percent up-front grant payment will be made pursuant to rule 571—56.27(456A,481A). A letter of intent signed by the mayor, the chairperson of the board of supervisors, the chairperson of the county conservation board, or the CEO or chief financial officer of an agency, organization, or corporation and submitted with the application showing intent to include matching funds in finalized budgets will be accepted as proof of commitment. Applicants must forward proof of local funding to the department by November 1 of the 2012 grant cycle, and June 1 for all subsequent years. If proof of local funding is not submitted, the application will be removed from the list of approved projects.

NATURAL RESOURCE COMMISSION[571](cont'd)

56.21(4) *Competitive bids.* Any equipment costing more than \$500 that is funded by grant dollars must be purchased through a competitive bid or quotation process. Records of such process must be submitted with close-out documentation. Items purchased by any other means are not reimbursable under the grant.

571—56.22(456A,481A) Project review and selection.

56.22(1) *Review and selection committee.* The review and selection committee shall be comprised of six members appointed by the director. The committee shall review and evaluate grant applications and determine final project approval to be recommended to the commission. Three members shall be from department staff, and three members shall be from the public/private sector and shall be appointed based upon their expertise and interest in one of the three shooting sports of rifle/handgun, shotgun, and archery.

56.22(2) *Conflict of interest.* If an equipment request is submitted to the committee by an entity with a member or employee on the committee, that committee member shall not participate in discussion and shall not vote on that particular equipment purchase.

56.22(3) *Consideration withheld.* The committee will not consider any grant application which, on the date of the selection session, is not complete or for which additional pertinent information has been requested and not received. The committee will not consider any application from an entity which, on the date of the selection session, is proposing to use the equipment at a facility that has not demonstrated compliance with or does not have a reasonable plan for achieving compliance with the requirements of Iowa Code section 657.9.

56.22(4) *Application rating system.* The committee will apply a numerical rating system to each grant application that is considered for funding. The criteria and maximum number of points are as follows:

- a. Overall program strength and feasibility – 30 points.
- b. Education – 30 points.
- c. Proximity to other public ranges – 25 points.
- d. Range capacity – 15 points.
- e. Project type – 10 points.

56.22(5) *Rating of scores for tiebreakers.* If two or more projects receive the same score, the committee shall use the points awarded for overall program strength and feasibility, paragraph 56.22(4)“a,” to determine which project has a higher rank.

571—56.23(456A,481A) Commission review. The commission will review and act upon all committee recommendations at the next scheduled commission meeting. The commission may reject any grant application the committee has selected for funding. Applicants shall be notified of their grant status in writing within 30 days of the commission meeting.

571—56.24(456A,481A) Appeals. Unfunded applicants may appeal the commission’s decision to the director within five days of receipt of the commission’s decision. A letter of appeal shall be sent to the director of the department. Before making a final decision as to the grant award, the director shall review the application, committee score sheets and commission minutes.

571—56.25(456A,481A) Grant amendments. Grant amendments may be made upon request by the applicant, subject to the availability of funds and approval by the director or director’s designee.

571—56.26(456A,481A) Timely commencement of projects. Grant recipients are expected to carry out their projects in an expeditious manner. Projects shall be initiated no later than two months following their approval by the committee and shall be completed no later than June 30 of the year following the grant award. Failure to initiate projects in a timely manner may be cause for termination of the agreement and cancellation of the grant.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—56.27(456A,481A) Payments. Ninety percent of approved grant funding may be paid to grantees when requested, but not earlier than the start-up date of the project. Ten percent of the grant total shall be withheld by the department, pending successful completion of the project and final site inspection, or until any irregularities discovered as a result of the final site inspection have been resolved.

56.27(1) Expense documentation, balance payment or reimbursement. Documentation of expenditures eligible for prepayment or reimbursement shall be submitted on forms provided by the department and shall be accompanied by applicable receipts showing evidence that the expense is necessary and reasonably related to the purchase or improvement of shooting range equipment. The grantee shall sign a certification stating that all expenses for which reimbursement is requested are related to the purchase and have been paid by the grantee prior to requesting reimbursement. If necessary, the department may request copies of canceled checks to verify expenditures.

56.27(2) Reasonable costs. For purposes of this rule, expenses that are necessary and reasonably related to the purchase or improvement of shooting range equipment include, without limitation, costs of the actual equipment approved as the funded project and associated delivery costs, as well as the management and maintenance costs associated with such equipment. However, in no event shall funds awarded under this program be used to cover costs associated with employment or personnel costs of the grant recipient, including salaries and benefits. Those costs, however, may be used to meet the match requirement described in subrule 56.21(3).

571—56.28(456A,481A) Record keeping and retention. Grant recipients shall keep adequate records relating to the administration of the project, particularly relating to all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office for a period of three years following the close of the grant. All records shall be retained in accordance with state laws.

56.28(1) Definition of records. Records include but are not necessarily limited to invoices, canceled checks, bank statements, and bid and quote documentation.

56.28(2) Annual reports. Grant recipients shall submit on forms provided by the department an annual report for five years following the close of the grant.

571—56.29(456A,481A) Project life and recovery of grant funds. Applicants shall state an expected project life of at least ten years which will become part of the project agreement. Should the funded project cease to be used for public recreation before the end of the stated project life, the director may seek to recover the remaining value of the grant award.

571—56.30(456A,481A) Unlawful use of grant funds. Unlawful use of grant funds includes whenever any property, real or personal, acquired or developed with grant funds under this program passes from the control of the grantee or is used for purposes other than the approved project.

571—56.31(456A,481A) Remedy. Grant funds used without authorization, for purposes other than the approved project, or unlawfully, must be returned to the department for deposit in the account supporting this program. In the case of diversion of personal property, the grantee shall remit to the department funds in the amount of the original purchase price of the property. The grantee shall have a period of three months after notification from the department in which to correct the unlawful use of funds. The remedy provided in this rule is in addition to others provided by law.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—56.32(456A,481A) Ineligibility. Whenever the director determines that a grantee is in violation of these rules, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the director.

These rules are intended to implement Iowa Code section 456A.30 and 2012 Iowa Acts, Senate File 2283, section 6.

[Filed 8/13/12, effective 10/10/12]

[Published 9/5/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/5/12.

ARC 0310C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts new Chapter 223, "Sourcing of Taxable Services," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXV; No. 1, p. 37, on July 11, 2012, as **ARC 0199C**.

The subject matter of Chapter 223 is sourcing of taxable services. The adopted new chapter is intended to implement Iowa Code chapter 423, otherwise known as the Streamlined Sales and Use Tax Act. New Chapter 223 provides detailed rules for sourcing sales of services that are taxable in Iowa under Iowa Code section 423.2. The adopted new chapter defines relevant terms, clarifies, and provides examples of, where a sale of services performed on tangible personal property should be sourced, and also clarifies, and provides examples of, where a sale of personal care services should be sourced.

There have been no substantive changes to the rules published under Notice of Intended Action. However, one correction has been made to the last sentence of subrule 223.2(1). The words "sales or" were removed to reflect the proper type of tax due. Subrule 223.2(1) now reads as follows:

"223.2(1) If an Iowa purchaser is determined to owe sales tax in another state based on first use, Iowa use tax may still apply. If, subsequent to the first use in another state, the product or result of a service is used in Iowa, Iowa use tax applies. (See Iowa Code section 423.5.)"

These rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

These rules are intended to implement Iowa Code chapter 423.

These rules will become effective October 10, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The following amendment is adopted.

Adopt the following **new** 701—Chapter 223:

CHAPTER 223 SOURCING OF TAXABLE SERVICES

701—223.1(423) Definitions.

"Agreement" means the streamlined sales and use tax agreement authorized by subchapter IV of Iowa Code chapter 423 to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use tax.

"Department" means, for the purpose of this chapter, the Iowa department of revenue.

"First use of a service" occurs, for the purpose of this chapter, at the location at which the service is received.

REVENUE DEPARTMENT[701](cont'd)

“First use of a service performed on tangible personal property” means, for the purpose of this chapter, receiving, with the ability to use, whether or not actually used, the tangible personal property on which the taxable service was performed.

“Governing board” means the group comprised of representatives of the member states of the agreement and created by the agreement to be responsible for the agreement’s administration and operation.

“Receive” or *“receipt,”* with regard to sales of services, means making “first use of services” pursuant to this chapter. For purposes of receipt of services performed on tangible personal property under rule 701—223.3(423), the location (or locations) where the purchaser (or the purchaser’s donee) regains possession or can potentially make first use of the tangible personal property on which the seller performed the service is the location (or locations) of the receipt of the service. The location where the seller performs the service is not determinative of the location where the purchaser receives the service. The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser; this is treated as though the retailer delivered to the purchaser the tangible personal property on which the service was performed. When a shipping company delivers tangible personal property on which the service was performed, the service is deemed “received” where the shipping company delivers the tangible personal property to the purchaser. For the purposes of sales of personal care services described in rule 701—223.4(423), the location (or locations) where the service is performed on the purchaser (or the purchaser’s donee) is the location where the purchaser receives the service.

“Retailer” means and includes every person engaged in the business of selling taxable services at retail. “Retailer” includes a seller obliged to collect sales or use tax.

“Seller” means a person making sales, leases or rentals of services.

701—223.2(423) General sourcing rules for taxable services. Except as otherwise provided in the agreement, retailers providing taxable services in Iowa shall source the sales of those services under the general destination sourcing regime described in Iowa Code section 423.15. In determining whether to apply the provisions of Iowa Code section 423.15 to the sale of a taxable service, it is necessary to determine the location where the service is received, first used, or could potentially be first used, by the purchaser or the purchaser’s donee. With respect to taxable services performed on tangible personal property, the location where the retailer performs the taxable service does not determine the location where the purchaser receives the service. This rule and subsequent rules in Chapter 223 clarify the application of the definition of “receive” or “receipt” to various categories of services to assist in applying the sourcing provisions of Iowa Code section 423.15 to sales of services. The provisions of these rules do not affect the obligation of a purchaser or lessee to remit additional tax, if any, to another taxing jurisdiction based on the use of the service at another location.

223.2(1) If an Iowa purchaser is determined to owe sales tax in another state based on first use, Iowa use tax may still apply. If, subsequent to the first use in another state, the product or result of a service is used in Iowa, Iowa use tax applies. (See Iowa Code section 423.5.)

223.2(2) If tax has been imposed on the sales price of services performed on tangible personal property in another state at a rate that is less than the Iowa use tax rate, the purchaser will have to pay Iowa use tax at a rate measured by the difference between the Iowa use tax rate and the tax rate imposed in the state where the service was first used. (See Iowa Code section 423.22.) There is no local option use tax.

EXAMPLE: An Iowa resident first uses the results of services performed on tangible personal property in another state and pays that state’s 5 percent sales tax to that state. The Iowa resident returns to Iowa to use the tangible personal property on which the service was performed. Iowa’s use tax rate on the services performed on the tangible personal property is 6 percent. The resident must remit to the department 1 percent use tax; no local option use tax is due. If, on the other hand, the other state’s sales tax rate is equal to or greater than Iowa’s use tax rate, the Iowa resident does not have to remit use tax to the department on the services performed on tangible personal property.

REVENUE DEPARTMENT[701](cont'd)

701—223.3(423) First use of services performed on tangible personal property.

223.3(1) *First use of services performed on tangible personal property defined.* A service performed on tangible personal property is a service that changes some aspect of the property, such as its appearance or function. Services with respect to tangible personal property, but not necessarily performed on tangible personal property, such as inspection and appraisal, are not addressed in this rule. Except as otherwise provided in the agreement or the rules adopted by the governing board, a service performed on tangible personal property is first used at, and sourced to, the location where the customer receives, regains possession of, or can potentially make first use of, whether or not actually used, the tangible personal property on which the seller performed the service. In general, this is the location where the tangible personal property is returned to the purchaser or the purchaser's donee.

223.3(2) *Sourcing of taxable services performed on tangible personal property as applied to local option sales and service tax.* A local option sales and service tax shall be imposed on the same basis as the state sales and service tax. With respect to sourcing of taxable services performed on tangible personal property, the local option sales and service tax sourcing rules shall be the same as the general destination regime described in Iowa Code section 423.15 and as set forth in rules 701—223.1(423) and 701—223.2(423) and subrule 223.3(1). However, the location of the taxable service performed on tangible personal property shall be sourced to the taxing jurisdiction, rather than to the state, where the customer regains possession or can potentially make first use of the tangible personal property on which the seller performed the service. Iowa does not impose a local option use tax.

223.3(3) *Specific examples of taxable enumerated services.* Specific examples of services performed on tangible personal property taxable in Iowa under Iowa Code section 423.2 include, but are not limited to:

- a. Alteration and garment repair;
- b. Vehicle repair and vehicle wash and wax;
- c. Boat repair;
- d. Carpentry;
- e. Roof, shingle and glass repair;
- f. Dry cleaning, pressing, dyeing, and laundering;
- g. Electrical and electronic repair and installation;
- h. Farm implement repair of all kinds;
- i. Furniture, rug, carpet, and upholstery repair and cleaning;
- j. Gun and camera repair;
- k. Household appliance, television, and radio repair;
- l. Jewelry and watch repair;
- m. Machine repair of all kinds, including office and business machine repair;
- n. Motor repair;
- o. Motorcycle, scooter, and bicycle repair;
- p. Pet grooming;
- q. Wood preparation;
- r. Sewing and stitching;
- s. Shoe repair and shoeshine; and
- t. Taxidermy services.

223.3(4) *Examples of sourcing rules for motor and machine repair.* The following examples are intended to clarify when motor and machine repair services are deemed "received."

EXAMPLE A: Ms. Brown of Muscatine, Iowa, takes her lawnmower to a repair shop in Moline, Illinois, to have its engine repaired. When the lawnmower is repaired, she picks it up at the Illinois repair shop and returns to Muscatine. The repair service is received at the repair shop location in Illinois since Ms. Brown has the potential first use of the repaired item at that location. The repair transaction is sourced to Illinois. Ms. Brown's subsequent use of the repair services performed on the lawnmower obliges her to remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on lawnmower repair services. That is, Ms. Brown must remit Iowa use tax at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed in Illinois on lawnmower

REVENUE DEPARTMENT[701](cont'd)

repair services. If Illinois does not tax motor and machine repair, Ms. Brown must remit use tax to the Department at a rate equal to Iowa's entire use tax rate.

EXAMPLE B: Same facts as in subrule 223.3(4), Example A, except that the Illinois repair shop delivers the repaired lawnmower to the owner's residence in Iowa. In this case, the potential first use is at Ms. Brown's residence. Thus, Ms. Brown receives the repair service at, and the repair service is sourced to, her residence in Iowa; Iowa sales tax is due.

EXAMPLE C: Mr. Cho, a homeowner in Iowa, contacts an appliance repair service provider located in Missouri to have a clothes dryer repaired. The repair service provider dispatches a technician to Mr. Cho's home in Iowa to make the needed repairs. Mr. Cho received the repair service in Iowa because the potential first use of the repaired clothes dryer was in Iowa. This transaction is sourced to Iowa; Iowa sales tax is due.

EXAMPLE D: A manufacturer in Iowa uses gauges in its production process to ensure that its product meets specifications. Periodically, the manufacturer ships the gauges to a test laboratory in Minnesota to verify that they are producing proper measurements. The test laboratory tests the gauges and adjusts the calibration on the gauges. The test laboratory ships the gauges back to the manufacturer's location in Iowa. The manufacturer regained possession and had potential first use of the gauges in Iowa so the transaction is sourced to the location of the manufacturer in Iowa; Iowa sales tax is due.

EXAMPLE E: Same facts as in subrule 223.3(4), Example D, except that the manufacturer picks up the calibrated gauges from the test laboratory in Minnesota. The potential first use of the calibrated gauges (the result of the test laboratory services) is in Minnesota, and the transaction is sourced to the test laboratory's location in Minnesota. The manufacturer must remit use tax to the department to the extent Iowa's use tax rate exceeds Minnesota's tax rate on test laboratory services. That is, the manufacturer is obliged to pay Iowa use tax at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed in Minnesota on test laboratory services. If Minnesota does not tax test laboratory services, the manufacturer must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE F: Same facts as in subrule 223.3(4), Example D, except that the manufacturer hires a shipping company, such as a common or contract carrier, to pick up the tested and recalibrated gauges from the test laboratory and deliver them to the manufacturer's location in Iowa. Since the terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to the manufacturer's location in Iowa where the manufacturer regains possession and has potential first use of the gauges. Iowa sales tax is due.

223.3(5) *Examples of sourcing rules for the painting of tangible personal property.* The following examples are intended to clarify when the service of painting of tangible personal property is deemed "received."

EXAMPLE A: A law office in Iowa has antique bookcases it wishes to have painted. The bookcases are picked up by a painter and taken to and painted in the painter's shop in Illinois. The painter then delivers the painted bookcases to the law office. The transaction is sourced to the location of the law office in Iowa; Iowa sales tax is due. If, instead, the law office sends one of its employees to the painter's shop in Illinois to pick up the painted bookcases, the transaction is sourced to the painter's location in Illinois where possession or potential first use occurs. The law office must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on painting services. If Illinois does not tax painting services, the law office must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE B: A business in Davenport, Iowa, hires a painter from Rock Island, Illinois, to paint several file cabinets. The painter does the painting on site at the purchaser's office location. Because the file cabinets remain at the same location and the purchaser's potential first use of the cabinets is in Iowa, the transaction is sourced to the purchaser's office location in Davenport. Iowa sales tax is due.

223.3(6) *Example of sourcing rules for dry cleaning services.* The following example is intended to clarify when dry cleaning services are deemed "received."

EXAMPLE: Mr. Riley, a Council Bluffs, Iowa, resident, takes laundry to an Omaha, Nebraska, dry cleaner's store. After his clothing is dry-cleaned, Mr. Riley returns to the dry cleaner in Omaha to pick up the clothing. The dry cleaner returns the clothes to Mr. Riley at the dry cleaner's store. Mr. Riley regains possession of his dry-cleaned clothes at the store in Omaha, so the transaction is sourced to Nebraska.

REVENUE DEPARTMENT[701](cont'd)

Mr. Riley must remit use tax to the department to the extent Iowa's use tax rate exceeds Nebraska's tax rate on dry-cleaning services. If Nebraska does not tax dry-cleaning services, then Mr. Riley must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

223.3(7) *Example of sourcing rules for vehicle wash and wax services.* The following example is intended to clarify when vehicle wash and wax services are deemed "received."

EXAMPLE: Mr. Moyle lives in Sioux City, Iowa, but he drives his vehicle to a car wash in Dakota Dunes, South Dakota, for a vehicle wash and wax service. The car wash operator washes and waxes the vehicle in Dakota Dunes. When the car wash operator completes the vehicle wash and wax service, Mr. Moyle pays the car wash operator and drives back to Sioux City, Iowa. Since the owner regains possession of the car at the car wash, the transaction is sourced to South Dakota. Mr. Moyle must remit use tax to the department to the extent that Iowa's use tax rate exceeds South Dakota's tax rate on vehicle wash and wax services. If South Dakota does not tax vehicle wash and wax services, then Mr. Moyle must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

223.3(8) *Examples of sourcing rules for animal grooming services.* The following examples are intended to clarify when animal grooming services are deemed "received."

EXAMPLE A: Ms. Decker of Lake Mills, Iowa, hires a mobile pet washing and grooming service based in Albert Lea, Minnesota, to come to her home and bathe and groom her dog Sascha. The grooming service is performed on Sascha at Ms. Decker's home in Lake Mills. Therefore, the pet washing service transaction is sourced to Ms. Decker's home in Iowa. Iowa sales tax is due.

EXAMPLE B: Mr. Marx who resides in Bettendorf, Iowa, takes his cat Fluffy to a Milan, Illinois, grooming shop. The cat groomer cuts and washes Fluffy's fur. Once Fluffy is groomed, Mr. Marx returns to the grooming shop, pays for the service, and drives Fluffy home to Bettendorf. Since Mr. Marx picks up Fluffy at the shop in Illinois, the first use of the grooming services is in Illinois, and the transaction is sourced to Illinois. Mr. Marx must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on animal grooming services. If Illinois does not tax animal grooming services, then Mr. Marx must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

223.3(9) *Example of local option sales and service tax sourcing rules for camera repair services.* The following example is intended to clarify when camera repair services are deemed "received."

EXAMPLE: Mr. Pagano, a photographer in Promise City, Iowa, contacts Bob's Camera Shop, which is located in Appanoose County, Iowa, to arrange for one of his cameras to be repaired. Promise City has imposed local option sales and service tax. Bob's Camera Shop dispatches a repairperson to Mr. Pagano's studio in Promise City to repair the camera. Mr. Pagano receives the repair service in Promise City since he can potentially make first use of his repaired camera at that location. The repair service is sourced to Promise City even though the camera shop is located in Appanoose County. Local option sales and service tax imposed by Promise City and Iowa sales tax are due on the sales price of the camera repair service.

223.3(10) *Examples of local option sales and service tax sourcing rules for bicycle repair services.* The following examples are intended to clarify when bicycle repair services are deemed "received."

EXAMPLE A: Mr. Edwards, a resident of Slater, Iowa, contacts Bike-o-rama Repair Shop in Ankeny, Iowa, to arrange for his bicycle to be repaired. Slater has imposed local option sales and service tax; Ankeny has not. Mr. Edwards delivers his bicycle to Bike-o-rama and leaves it there to be repaired. Because he is a preferred customer, Bike-o-rama has one of its employees deliver Mr. Edwards' bicycle to his home in Slater when the bicycle repair service is completed. Mr. Edwards' potential first use of his bicycle is in Slater; therefore, the transaction is sourced to Slater. Local option sales and service tax is due even though Bike-o-rama is located in Ankeny where there is no local option sales and service tax. Iowa sales tax is also due.

EXAMPLE B: Same facts as in subrule 223.3(10), Example A, but Mr. Edwards picks up his repaired bicycle at Bike-o-rama in Ankeny. Because Mr. Edwards regains possession and can make potential first use of the repaired bicycle in Ankeny, the repair transaction is sourced to Ankeny, and no local option sales and service tax is due on the sales price of the repair. Iowa sales tax is due.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE C: Same facts as in subrule 223.3(10), Example A, but Bike-o-rama is located in Willow Glen, California, and Bike-o-rama ships Mr. Edwards' bike to his home in Slater, Iowa. Since the terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to Slater. Slater's local option sales and service tax is due even though Bike-o-rama is located in Willow Glen, California. Iowa sales tax is also due.

701—223.4(423) Sourcing rules for personal care services.

223.4(1) Definition. "Personal care services" means services that are performed on the physical human body. Examples of personal care services governed by this rule include, but are not limited to:

- a. Barber and beauty services;
- b. Massage, excluding services provided by massage therapists licensed under Iowa Code chapter 152C;
- c. Reflexology;
- d. Reducing salons; and
- e. Tanning beds and salons.

223.4(2) Sourcing of personal care services. Except as otherwise provided in the agreement or the rules adopted by the governing board, a purchaser receives a personal care service within the meaning of rule 701—211.1(423) at the location where the services are performed, which is the same location where the services are received by the purchaser (or the purchaser's donee). The services will be received by the purchaser (or the purchaser's donee) either at the seller's location, pursuant to Iowa Code section 423.15(1)"a," or at the purchaser's (or the purchaser's donee) location, pursuant to Iowa Code section 423.15(1)"b."

223.4(3) Examples of sourcing of personal care services. The following examples are intended to clarify sourcing rules for personal care services.

EXAMPLE A: Mr. Fernandez, a resident of Illinois, goes to a barber shop to have his hair cut. The barber is located within Iowa. The barber is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Mr. Fernandez makes first use of the services in Iowa where his hair is cut. The sale is sourced to Iowa; Iowa sales tax is due.

EXAMPLE B: Ms. Jackson, a resident of Council Bluffs, Iowa, goes to a tanning salon in Omaha, Nebraska, and pays for use of a tanning bed. The tanning salon is providing personal care services, and the sale of these services must be sourced to the location of the tanning salon since this is where the services are received (place of first use). Since the tanning salon is located in Nebraska, the sale is sourced to Nebraska. If Nebraska taxes tanning salon services and that rate is lower than Iowa's use tax rate, Ms. Jackson is obliged to pay Iowa use tax to the department at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed on tanning salon services in Nebraska. If Nebraska does not tax tanning salon services, then Ms. Jackson must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE C: Ms. Zastrow, a resident of Iowa, contacts a massage therapist (who is not licensed under Iowa Code chapter 152C) located in Nebraska for a therapeutic massage. Ms. Zastrow requests that the therapist perform the massage at Ms. Zastrow's residence in Iowa. The therapist travels to Ms. Zastrow's residence and performs the massage. The therapist is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Ms. Zastrow makes first use of the services in Iowa where the massage is performed. The sale is sourced to Iowa, and therefore Iowa sales tax is due.

These rules are intended to implement Iowa Code sections 423.2, 423.15, and 423B.5.

[Filed 8/15/12, effective 10/10/12]

[Published 9/5/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/5/12.

AGENCY	RULE	DELAY
Transportation Department[761]	25.2(8) [IAB 7/11/12, ARC 0187C]	Effective date of August 15, 2012, delayed 70 days by the Administrative Rules Review Committee at its meeting held August 14, 2012. [Pursuant to §17A.4(7)]



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

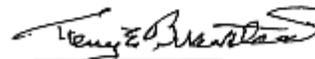
EXECUTIVE ORDER NUMBER SEVENTY-EIGHT

- WHEREAS, to control the rising costs of health care all Iowans need to take more ownership of our own health, protecting ourselves and our bodies by exercising, eating healthier and making healthier lifestyle choices; and
- WHEREAS, Iowans work hard every day to provide for their families, many Iowans pay the full costs of healthcare themselves while also paying taxes to fund state government; and
- WHEREAS, health care costs for state employees are paid for with taxpayer dollars earned by working families; and
- WHEREAS, the State of Iowa provides exceptional health care plans to state employees, and while hard-working state employees are able to take advantage of this system, the overwhelming majority of state employees pay nothing towards the cost of their own health care; and
- WHEREAS, most of Iowa's private sector workers pay part of their health care costs and self-employed Iowans and others responsible for their own health care costs pay all of their own health care costs out of their own pockets; and
- WHEREAS, in the interest of fairness to all working Iowans, many of whom pay both taxes and a significant amount toward their own health insurance, state employees should share in the health care costs currently funded by Iowa taxpayers; and
- WHEREAS, it is reasonable that Iowa taxpayers funding state employee benefits should expect state employees to pay the minimal amount of twenty percent of premium cost toward their own health care; and
- WHEREAS, state employees who willingly pay twenty percent of their health care costs will be good stewards of taxpayer dollars, saving the State of Iowa taxpayer dollars and setting an example demonstrating that state workers serve the taxpayers.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, declare that the interests of the taxpayers are well-served by allowing state employees to contribute to their own health care costs. I hereby order and direct that the Department of Administrative Services implement an arrangement whereby state employees may voluntarily contribute twenty percent of their health care costs.

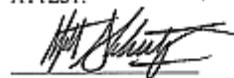


IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 2nd day of July in the year of our Lord two thousand twelve.

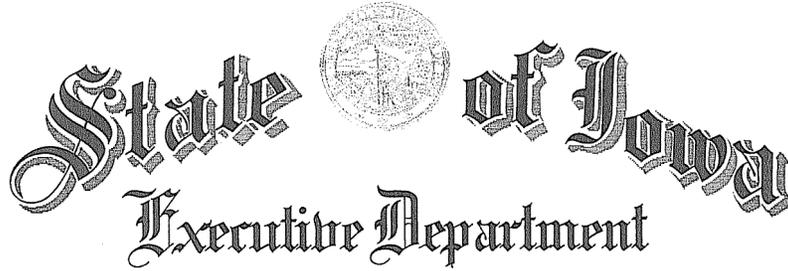


TERRY E. BRANSTAD
GOVERNOR

ATTEST:



MATT SCHULTZ
SECRETARY OF STATE



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER SEVENTY-NINE

WHEREAS, Article IV, section 9 of the Constitution of the State of Iowa provides that the Governor shall ensure the laws are faithfully executed; and

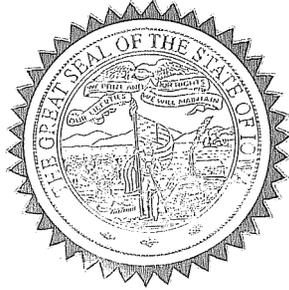
WHEREAS, all executive orders remain in effect unless they expire on their own terms, are rescinded or superseded; and

WHEREAS, to ensure an efficient and effective state government, executive orders should periodically be reviewed to determine which orders are still necessary.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the power and authority vested in me by the Constitution and statutes of the State of Iowa, do hereby order and direct that the following Executive Orders be rescinded:

1. Executive Order Number 63, dated February 10, 1998, issued by Governor Terry E. Branstad, shall be rescinded because the committee no longer meets.
2. Executive Order Number 3, dated February 5, 1999, issued by Governor Thomas J. Vilsack, shall be rescinded because the council is no longer needed.
3. Executive Order Number 25, dated June 4, 2002, issued by Governor Thomas J. Vilsack, shall be rescinded because the legislature has formally codified this order.
4. Executive Order Number 33, dated November 17, 2003, issued by Governor Thomas J. Vilsack, shall be rescinded because the legislature has formally codified this order.
5. Executive Order Number 34, dated December 5, 2003, issued by Governor Thomas J. Vilsack, shall be rescinded because the council is no longer needed.
6. Executive Order Number 43, dated July 4, 2005, issued by Governor Thomas J. Vilsack, shall be rescinded because it is outdated.
7. Executive Order Number 45, dated January 16, 2006, issued by Governor Thomas J. Vilsack, shall be rescinded because it is outdated.
8. Executive Order Number 46, dated January 16, 2006, issued by Governor Thomas J. Vilsack, shall be rescinded because it is outdated.
9. Executive Order Number 6, dated February 21, 2008, issued by Governor Chester J. Culver, shall be rescinded because the steering committee, advisory committee and task forces no longer meet.
10. Executive Order Number 7, dated June 27, 2008, issued by Governor Chester J. Culver, shall be rescinded because the office and committee are no longer needed.
11. Executive Order Number 17, dated September 25, 2009, issued by Governor Chester J. Culver, shall be rescinded because it does not support cost-efficient government.
12. Executive Order Number 20, dated December 16, 2009, issued by Governor Chester J. Culver, shall be rescinded because it is unnecessarily burdensome.

This executive order shall not be interpreted to reinstate any executive order rescinded by the above executive orders.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 20th day of August, in the year of our Lord two thousand twelve.


TERRY E. BRANSTAD
GOVERNOR

ATTEST:


MATT SCHULTZ
SECRETARY OF STATE



EXECUTIVE ORDER NUMBER EIGHTY

WHEREAS, when adopting regulations to protect the health, safety and welfare of the people of the State of Iowa, state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens; and

WHEREAS, the bureaucracy must be accountable to the citizens of Iowa, and is best served by increased stakeholder involvement and public input; and

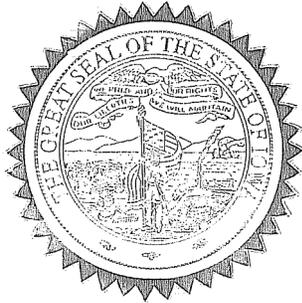
WHEREAS, public participation in the formulation of administrative rules will help our state to reform burdensome rules and prevent overregulation or red tape, encouraging efficiency, economic growth and job creation; and

WHEREAS, stakeholder groups are an effective way for government to interact with those who are affected by regulations and encourage public involvement.

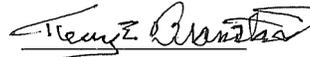
NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, declare that the best interests of our state would be well served by greater public participation and stakeholder input for administrative rules. I hereby order and direct that:

1. Each agency shall create a stakeholder rulemaking group for a specific rulemaking if requested to do so by the head of the agency or the Administrative Rules Coordinator in the office of the Governor ("Administrative Rules Coordinator").
2. Creation of Stakeholder Group: The stakeholder rulemaking group shall be appointed by the agency, in consultation with the Administrative Rules Coordinator. The subject matter of its deliberations shall be defined by the agency and the deliberations of that group shall be limited to that subject matter. Membership in the group is in the sole discretion of the agency. The group shall consist of stakeholders that can adequately represent the varying interests that will be significantly affected by any contemplated draft rule proposal that may result from the deliberation so of the stakeholder rulemaking group. The appointing agency shall ensure that all significant or known interests have an opportunity to be represented, to the extent practicable. One person shall be appointed to represent the agency or board. The agency, in consultation with the Administrative Rules Coordinator, shall also specify a time frame for group deliberations. The stakeholder rules group is an advisory group only and is not an agency for rulemaking purposes.
3. Public Notice: Notice of the creation of a stakeholder rulemaking group shall be published in the Iowa administrative bulletin and on the agency's website and shall include the subject matter of the rule proposal. After the members are appointed, the agency shall publish the list of members of the group on its website, along with contact information for the group, to the extent practicable.
4. Procedures: Each stakeholder rulemaking group shall select its own chairperson and adopt its own rules of procedure, with a majority of members constituting a quorum. Members shall not receive any per diem payment, nor shall they be reimbursed for expenses.

5. **Public Input:** A stakeholder rulemaking group shall receive public comment and input and deliberate on the desirability and content of any rule it may recommend to the agency for adoption .
6. **Results:** After the stakeholder rulemaking group has completed its work, its recommendation, if any, shall be forwarded to the agency with rulemaking authority. The agency shall consider any recommendation of the rulemaking group and if the agency decides to initiate a rulemaking on the basis of such a recommendation it must do so pursuant to the Iowa Administrative Procedure Act (Iowa Code Chapter 17A).
7. This Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the State of Iowa, its Departments, Agencies, or Political Subdivisions, or its officers, employees, or agents, or any other person.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 20th day of August in the year of our Lord two thousand twelve.


 TERRY E. BRANSTAD
 GOVERNOR

ATTEST:


 MATT SCHULTZ
 SECRETARY OF STATE