



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

| | | |
|--|------------|---------------|
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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2009

| 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. 24 '08* | Jan. 14 '09 | Feb. 3 '09 | Feb. 18 '09 | Feb. 20 '09 | Mar. 11 '09 | Apr. 15 '09 | July 13 '09 |
| Jan. 9 | Jan. 28 | Feb. 17 | Mar. 4 | Mar. 6 | Mar. 25 | Apr. 29 | July 27 |
| Jan. 23 | Feb. 11 | Mar. 3 | Mar. 18 | Mar. 20 | Apr. 8 | May 13 | Aug. 10 |
| Feb. 6 | Feb. 25 | Mar. 17 | Apr. 1 | Apr. 3 | Apr. 22 | May 27 | Aug. 24 |
| Feb. 20 | Mar. 11 | Mar. 31 | Apr. 15 | Apr. 17 | May 6 | June 10 | Sep. 7 |
| Mar. 6 | Mar. 25 | Apr. 14 | Apr. 29 | May 1 | May 20 | June 24 | Sep. 21 |
| Mar. 20 | Apr. 8 | Apr. 28 | May 13 | ***May 13*** | June 3 | July 8 | Oct. 5 |
| Apr. 3 | Apr. 22 | May 12 | May 27 | May 29 | June 17 | July 22 | Oct. 19 |
| Apr. 17 | May 6 | May 26 | June 10 | June 12 | July 1 | Aug. 5 | Nov. 2 |
| May 1 | May 20 | June 9 | June 24 | ***June 24*** | July 15 | Aug. 19 | Nov. 16 |
| ***May 13*** | June 3 | June 23 | July 8 | July 10 | July 29 | Sep. 2 | Nov. 30 |
| May 29 | June 17 | July 7 | July 22 | July 24 | Aug. 12 | Sep. 16 | Dec. 14 |
| June 12 | July 1 | July 21 | Aug. 5 | Aug. 7 | Aug. 26 | Sep. 30 | Dec. 28 |
| ***June 24*** | July 15 | Aug. 4 | Aug. 19 | ***Aug. 19*** | Sep. 9 | Oct. 14 | Jan. 11 '10 |
| July 10 | July 29 | Aug. 18 | Sep. 2 | Sep. 4 | Sep. 23 | Oct. 28 | Jan. 25 '10 |
| July 24 | Aug. 12 | Sep. 1 | Sep. 16 | Sep. 18 | Oct. 7 | Nov. 11 | Feb. 8 '10 |
| Aug. 7 | Aug. 26 | Sep. 15 | Sep. 30 | Oct. 2 | Oct. 21 | Nov. 25 | Feb. 22 '10 |
| ***Aug. 19*** | Sep. 9 | Sep. 29 | Oct. 14 | Oct. 16 | Nov. 4 | Dec. 9 | Mar. 8 '10 |
| Sep. 4 | Sep. 23 | Oct. 13 | Oct. 28 | ***Oct. 28*** | Nov. 18 | Dec. 23 | Mar. 22 '10 |
| Sep. 18 | Oct. 7 | Oct. 27 | Nov. 11 | ***Nov. 12*** | Dec. 2 | Jan. 6 '10 | Apr. 5 '10 |
| Oct. 2 | Oct. 21 | Nov. 10 | Nov. 25 | ***Nov. 25*** | Dec. 16 | Jan. 20 '10 | Apr. 19 '10 |
| Oct. 16 | Nov. 4 | Nov. 24 | Dec. 9 | ***Dec. 9*** | Dec. 30 | Feb. 3 '10 | May 3 '10 |
| ***Oct. 28*** | Nov. 18 | Dec. 8 | Dec. 23 | ***Dec. 23*** | Jan. 13 '10 | Feb. 17 '10 | May 17 '10 |
| ***Nov. 12*** | Dec. 2 | Dec. 22 | Jan. 6 '10 | Jan. 8 '10 | Jan. 27 '10 | Mar. 3 '10 | May 31 '10 |
| ***Nov. 25*** | Dec. 16 | Jan. 5 '10 | Jan. 20 '10 | Jan. 22 '10 | Feb. 10 '10 | Mar. 17 '10 | June 14 '10 |
| ***Dec. 9*** | Dec. 30 | Jan. 19 '10 | Feb. 3 '10 | Feb. 5 '10 | Feb. 24 '10 | Mar. 31 '10 | June 28 '10 |
| ***Dec. 23*** | Jan. 13 '10 | Feb. 2 '10 | Feb. 17 '10 | Feb. 19 '10 | Mar. 10 '10 | Apr. 14 '10 | July 12 '10 |

PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u> | <u>ISSUE DATE</u> |
|---------------------|------------------------------|-------------------|
| 11 | Wednesday, October 28, 2009 | November 18, 2009 |
| 12 | Thursday, November 12, 2009 | December 2, 2009 |
| 13 | Wednesday, November 25, 2009 | December 16, 2009 |

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 10, 2009, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Administration—updates to department structure, 1.1(4), 1.2, 1.5 Filed Emergency **ARC 8240B** 10/21/09

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]“umbrella”

Regulated loans—size of bond, 15.6 Filed **ARC 8236B** 10/21/09

Industrial loans—size of bond, 16.13 Filed **ARC 8237B** 10/21/09

Mortgage bankers and brokers, amendments to ch 18 Filed **ARC 8238B** 10/21/09

Mortgage loan originators, ch 19 Filed **ARC 8239B** 10/21/09

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Endow Iowa tax credits, amendments to ch 47 Notice **ARC 8228B** 10/7/09

Information technology training program, amendments to ch 103 Filed **ARC 8210B** 10/7/09

Lean manufacturing institute; supply chain development program, rescind ch 110; amend ch 111 Filed **ARC 8211B** 10/7/09

Management talent recruitment program, amendments to ch 112 Filed **ARC 8212B** 10/7/09

Community attraction and tourism development (CATD) programs, 211.2, 211.8, 211.9, 211.103 Filed **ARC 8213B** 10/7/09

Iowa broadband deployment governance board, chs 410 to 412 Notice **ARC 8219B**, also Filed Emergency **ARC 8218B** 10/7/09

EDUCATION DEPARTMENT[281]

Attendance centers, rescind ch 19 Notice **ARC 8186B** 10/7/09

Senior year plus program, ch 22 Filed **ARC 8187B** 10/7/09

Supplementary weighting plan for operational function sharing, 97.1, 97.2, 97.4, 97.5(6)“a,” 97.7 Filed **ARC 8188B** 10/7/09

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Air quality, amendments to chs 20, 22, 23, 25, 28, 33 Filed **ARC 8215B** 10/7/09

Removal of EPA clean air mercury rule (CAMR) provisions, 23.1, 25.3, 34.300 to 34.308 Filed **ARC 8216B** 10/7/09

Water quality and effluent pretreatment standards, amendments to chs 61, 62 Filed **ARC 8214B** 10/7/09

Water quality standards—revisions to surface water classifications, 61.3(5) Filed **ARC 8226B** 10/7/09

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

Historic site preservation grant program—award limit, 50.3(8) Filed **ARC 8234B** 10/21/09

HUMAN SERVICES DEPARTMENT[441]

FIP assistance payments, 45.21 Filed **ARC 8204B** 10/7/09

Long-term care partnership program—Medicaid eligibility, 75.5 Notice **ARC 8220B** 10/7/09

Medicaid eligibility, 75.16, 75.23 Notice **ARC 8221B** 10/7/09

Remedial services—formal assessment, authorization of continued services, 78.12 Notice **ARC 8247B** 10/21/09

Medicaid—coverage and fees for ambulatory surgical center services, 78.26, 79.1 Filed **ARC 8205B** 10/7/09

Reimbursement for translation and interpretation services, 79.1(19) Filed **ARC 8206B** 10/7/09

Nursing facilities—pay for performance, amendments to ch 81 Notice **ARC 8246B** 10/21/09

Intermediate care facilities—inflation factor for reimbursement, 82.5, 82.7 to 82.12 Notice **ARC 8208B**, also Filed Without Notice **ARC 8207B** 10/7/09

Child abuse assessment intake process, 175.24, 175.27(3) Notice **ARC 8209B** 10/7/09

INSPECTIONS AND APPEALS DEPARTMENT[481]

Administration, amendments to ch 1 Notice **ARC 8242B** 10/21/09

Health care facilities, 50.10 to 50.13, 56.3, 56.6, 56.13 to 56.16, 58.57 Notice **ARC 8190B** 10/7/09

Technical amendments affecting boilers and boiler regulation, 60.11, 61.11 Filed **ARC 8189B** 10/7/09

Boarding homes, ch 66 Filed **ARC 8243B** 10/21/09

IOWA FINANCE AUTHORITY[265]

Water pollution control works and drinking water facilities financing, amendments to ch 26 Notice **ARC 8193B** 10/7/09

Iowa jobs program, ch 32 Notice of Termination **ARC 8192B** 10/7/09

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

OSHA standards; amusement ride reinspection fee, 10.20; ch 35 title; 61.1(2)"c" Notice **ARC 8241B** 10/21/09
 Civil penalties, 34.3(2) Filed **ARC 8185B** 10/7/09

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Nonpayment of state debt, 12.1 to 12.3 Notice **ARC 8191B** 10/7/09
 Standards of practice—medical directors at medical spas, 13.8, 23.1(43), 23.1(44) Notice **ARC 8199B** 10/7/09
 Discipline—performing service at wrong site or on wrong patient or performing unauthorized
 or unnecessary service, 23.1(42) Notice **ARC 8198B** 10/7/09

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Licensure—administration fee, special licenses, revocation or suspension due to state debt,
 15.4, 15.23, 15.24, 15.51 to 15.55 Notice **ARC 8196B** 10/7/09
 Agricultural lease program, 21.4(7) Filed Without Notice **ARC 8197B** 10/7/09
 Paddlefish snagging, 81.1, 81.2(4) Filed **ARC 8195B** 10/7/09
 Fishing tournaments—electronic submission of applications, 88.3 Filed **ARC 8194B** 10/7/09

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Applicants for licensure—criminal conviction history, amendments to ch 3 Filed **ARC 8222B** 10/7/09

PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]

Propane education and research council, 1.1 to 1.3, 1.4(2) Notice **ARC 8200B** 10/7/09

PUBLIC HEALTH DEPARTMENT[641]

Reportable diseases, poisonings and conditions, and quarantine and isolation, ch 1 Filed **ARC 8231B** 10/7/09
 Early hearing detection and intervention, amendments to ch 3 Filed **ARC 8232B** 10/7/09
 State medical examiner—required meetings for interagency coordinating council and
 advisory council, 124.3(1), 125.3 Filed **ARC 8229B** 10/7/09
 Scope of practice for Iowa EMS providers, 131.3(3)"b," 132.2(4)"b" Filed **ARC 8230B** 10/7/09

REVENUE DEPARTMENT[701]

Penalty and enforcement; form of invoice; motor fuel and undyed special fuel tax rates and
 bills of lading, 10.71, 67.12, 68.2, 68.18 Filed **ARC 8225B** 10/7/09
 Married taxpayers filing joint federal but separate Iowa returns, 40.15 Notice **ARC 8223B** 10/7/09
 Real estate tax and declaration of value; property tax credits and exemptions, 79.1, 79.5,
 79.6, 80.12, 80.13, 80.26, 80.28 Notice **ARC 8224B** 10/7/09

SECRETARY OF STATE[721]

Voting systems, amendments to ch 22 Notice **ARC 8245B**, also Filed Emergency **ARC 8244B** 10/21/09

TRANSPORTATION DEPARTMENT[761]

Bridge safety fund, ch 162 Notice of Termination **ARC 8233B** 10/21/09
 Issuance of temporary restricted license to repeat offenders, 620.3(6) Filed **ARC 8203B** 10/7/09
 Close-clearance warning signs along railroad tracks, ch 813 Filed **ARC 8202B** 10/7/09

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Electric interconnection of distributed generation facilities, amend 15.8, 15.10, 15.11(4);
 adopt ch 45 Notice **ARC 8201B** 10/7/09
 High-volume access service, 22.1(3), 22.14(2), 22.20(5) Notice **ARC 8227B** 10/7/09

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Iowa veterans home, 10.36, 10.43, 10.47 Notice **ARC 8235B** 10/21/09

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

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

Senator Merlin Bartz
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

| | | |
|--|---|--|
| Endow Iowa tax credits, amendments to ch 47 IAB 10/7/09 ARC 8228B | Iowa Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa | November 10, 2009 3:30 to 4:30 p.m. |
| Iowa broadband deployment governance board, chs 410 to 412 IAB 10/7/09 ARC 8219B (See also ARC 8218B) | ICN Conference Room 200 E. Grand Ave. Des Moines, Iowa | October 27, 2009 2 to 4 p.m. |

ENVIRONMENTAL PROTECTION COMMISSION[567]

| | | |
|---|--|-----------------------------|
| Outstanding Iowa waters, ch 61 IAB 8/12/09 ARC 8038B (See Regulatory Analysis herein) | Auditorium, Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa | November 10, 2009 1 p.m. |
|---|--|-----------------------------|

INSPECTIONS AND APPEALS DEPARTMENT[481]

| | | |
|---|--|-----------------------------|
| Health care facilities, 50.10 to 50.13, 56.3, 56.6, 56.13 to 56.16, 58.57 IAB 10/7/09 ARC 8190B (ICN Network) | ICN Room, Sixth Floor Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa | November 19, 2009 3 p.m. |
| | Room 118, Iowa Lakes Community College 1900 N. Grand Ave. Spencer, Iowa | November 19, 2009 3 p.m. |
| | Room 024, Looft Hall Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa | November 19, 2009 3 p.m. |
| | Room D, Public Library 123 S. Linn St. Iowa City, Iowa | November 19, 2009 3 p.m. |
| | Room 110, Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa | November 19, 2009 3 p.m. |
| | Room 106, Activity Center North Iowa Community College 500 College Dr. Mason City, Iowa | November 19, 2009 3 p.m. |
| | Room 2, Keystone AEA 2310 Chaney Rd. Dubuque, Iowa | November 19, 2009 3 p.m. |
| | Public Library 529 Pierce St. Sioux City, Iowa | November 19, 2009 3 p.m. |

IOWA FINANCE AUTHORITY[265]

| | | |
|--|--|-----------------------------|
| Water pollution control works and drinking water facilities financing, amendments to ch 26 IAB 10/7/09 ARC 8193B | Presentation Room 2015 Grand Ave. Des Moines, Iowa | October 28, 2009 10 a.m. |
|--|--|-----------------------------|

LABOR SERVICES DIVISION[875]

| | | |
|---|--|-----------------------------|
| OSHA standards; amusement ride reinspection fee, 10.20; ch 35 title; 61.1(2) IAB 10/21/09 ARC 8241B | Stanley Room Iowa Workforce Development 1000 E. Grand Ave. Des Moines, Iowa | November 17, 2009 2 p.m. |
|---|--|-----------------------------|

MEDICINE BOARD[653]

| | | |
|---|---|--------------------------------|
| Standards of practice—medical directors at medical spas, 13.8, 23.1 IAB 10/7/09 ARC 8199B | Suite C, Board Office 400 S.W. 8th St. Des Moines, Iowa | October 27, 2009 11:30 a.m. |
|---|---|--------------------------------|

| | | |
|--|---|-----------------------------|
| Discipline—performing service at wrong site or on wrong patient or performing unauthorized or unnecessary service, 23.1(42) IAB 10/7/09 ARC 8198B | Suite C, Board Office 400 S.W. 8th St. Des Moines, Iowa | October 27, 2009 11 a.m. |
|--|---|-----------------------------|

NATURAL RESOURCE COMMISSION[571]

| | | |
|---|---|----------------------------|
| Licensure—administration fee, special licenses, revocation or suspension due to state debt, 15.4, 15.23, 15.24, 15.51 to 15.55 IAB 10/7/09 ARC 8196B | Fourth Floor East Conference Room Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa | October 27, 2009 1 p.m. |
|---|---|----------------------------|

PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]

| | | |
|---|---|-----------------------------|
| Propane education and research council, 1.1 to 1.3, 1.4(2) IAB 10/7/09 ARC 8200B | Council Conference Room, Suite 8 4830 Maple Dr. Pleasant Hill, Iowa | October 27, 2009 10 a.m. |
|---|---|-----------------------------|

PUBLIC HEALTH DEPARTMENT[641]

| | | |
|--|---|---------------------------------------|
| Supervision of fluoroscopy, 41.1(5) IAB 9/23/09 ARC 8161B | Fifth Floor Rooms 517 & 518 Lucas State Office Bldg. Des Moines, Iowa | October 28, 2009 1:30 to 3:30 p.m. |
|--|---|---------------------------------------|

UTILITIES DIVISION[199]

| | | |
|--|---|------------------------------|
| Electric interconnection of distributed generation facilities, amend 15.8, 15.10, 15.11(4); adopt ch 45 IAB 10/7/09 ARC 8201B | Board Hearing Room 350 Maple St. Des Moines, Iowa | December 10, 2009 10 a.m. |
|--|---|------------------------------|

| | | |
|--|---|----------------------------|
| High-volume access service, 22.1(3), 22.14(2), 22.20(5) IAB 10/7/09 ARC 8227B | Board Hearing Room 350 Maple St. Des Moines, Iowa | December 8, 2009 9 a.m. |
|--|---|----------------------------|

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

| | | |
|---|--|---|
| Iowa veterans home, 10.36, 10.43, 10.47 IAB 10/21/09 ARC 8235B | Ford Memorial Conference Room Iowa Veterans Home 1301 Summit St. Marshalltown, Iowa | November 11, 2009 1 p.m. (If requested) |
|---|--|---|

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

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

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

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

The following list will be updated as changes occur:

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ENVIRONMENTAL PROTECTION COMMISSION[567]**Regulatory Analysis****Proposed Iowa Administrative Code 567 Chapter 61, “Antidegradation Policy and Implementation Procedures: Outstanding Iowa Waters”**

Notice of Intended Action published in the Iowa Administrative Bulletin Vol. XXXII, No. 4, ARC 8038B, August 12, 2009

I. Introduction

Subsection 1 of Iowa Code section 17A.4A states that upon written request by the administrative rules review committee or the administrative rules coordinator, an agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph “a” of Iowa Code section 17A.4A. The elements to be included in the regulatory analysis are specifically identified as follows:

- (1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.
- (2) A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.
- (3) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
- (4) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.
- (5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.
- (6) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why those methods were rejected in favor of the proposed rule.

Each of these elements will be addressed in turn following a summary of the background of the proposed rule making. Quantifications of the data are provided to the extent practicable, including short-term and long-term consequences in accordance with subsection 3 of Iowa Code section 17A.4A.

Persons are invited to present oral or written comments at a public hearing which will be held:

November 10, 2009

1 p.m.

Wallace State Office Building
Wallace Building Auditorium
502 East 9th Street
Des Moines, Iowa

Detailed information regarding Iowa’s water quality standards and the Department’s rules, including the full version of the “Iowa Antidegradation Implementation Procedure,” can be found on the Department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

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Any person may submit written suggestions or comments on the regulatory analysis through November 10, 2009. Such written material should be submitted to Adam Schnieders, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or by E-mail to adam.schnieders@dnr.iowa.gov. Persons who have questions may contact Adam Schnieders at (515)281-7409.

II. Background

The Department has proposed to revise the state's antidegradation policy and create implementation procedures as required by 40 CFR §131.12. The proposed amendments were approved by the Environmental Protection Commission (EPC) at its October 14, 2008, meeting, and they were included in a Notice of Intended Action published on November 19, 2008, in the Iowa Administrative Bulletin as **ARC 7368B**. The Notice of Intended Action was later amended, specifically the list of "Outstanding Iowa Waters" in Appendix B of the Iowa Antidegradation Implementation Procedure, by the EPC at its July 21, 2009, meeting with the amended Notice of Intended Action published on August 12, 2009, in the Iowa Administrative Bulletin as **ARC 8038B**.

The Clean Water Act (CWA) is the cornerstone of surface water quality protection in the United States and it sets broad goals for restoring and maintaining the chemical, physical, and biological integrity of the nation's water. Water quality standards (WQS) are aimed at translating the broad goals of the CWA into water body-specific objectives. The antidegradation rule is one of three federally required regulatory elements of the WQS. The other two elements include beneficial uses and water quality criteria (narrative and numeric). All of these review elements must be administered as a whole. All surface waters of the state are subject to antidegradation provisions. The main purpose of the antidegradation policy and implementation procedures is to protect existing uses of surface waters and to specify how the Department will determine, on a case-by-case basis, whether and to what extent existing water quality may be lowered in a surface water.

The Iowa Department of Natural Resources is required by 40 CFR §131.12(a) to develop and adopt a statewide antidegradation policy and to identify procedures for implementing that policy. There has been an antidegradation policy in Iowa's WQS, but it was absent formal implementation procedures which limited the policy's usefulness. The proposed implementation procedures include identifying the antidegradation review levels (i.e., the "tiers") that apply to a surface water; determining existing water quality; assessing and determining water quality degradation; identifying and assessing less degrading or nondegrading alternatives; determining the importance of economic or social development to justify degradation of waters; and establishing intergovernmental coordination and public participation processes.

The antidegradation policy and implementation procedures are intended to provide guidance to persons who are responsible for the regulated activities that may degrade water quality in Iowa. Regulated activities include any activity that requires a CWA permit or a water quality certification pursuant to federal law.

This effort also establishes the Outstanding National Resource Waters (ONRW) and Outstanding Iowa Waters (OIW) antidegradation use categories. These categories will provide an increased level of protection where degradation is prohibited except in limited circumstances. The implementation procedures detail how the public can nominate a surface water to be afforded these levels of protection to the Department and how the Department will consider such nominations. It is important to note the Outstanding National Resource Waters category (i.e., Tier 3) must be included in any state's antidegradation policy and implementation procedures as required by 40 CFR §131.12.

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The Administrative Rules Review Committee requested a formal regulatory analysis on September 9, 2009, specific to **ARC 8038B**, to estimate the impact OIW protections would have on the growth and economies of neighboring rural communities. **ARC 8038B** proposes to revise the list of “Outstanding Iowa Waters” in Appendix B of the Iowa Antidegradation Implementation Procedure. The impact will be assessed in relationship with the revised list of OIWs identified in **ARC 8038B**.

The amendments to the list of Outstanding Iowa Waters served three main purposes:

1. Provide a scientific review of each water on the original OIW list and associated water quality data to determine if they were appropriately qualified to be considered OIWs based on the criteria listed in the draft Iowa Antidegradation Implementation Procedures document.
2. More closely evaluate the nature of NPDES regulated facilities to determine if OIW protections would cause adverse economic impact.
3. More closely evaluate the nature of the impairments applicable to several highly regarded cold water streams (e.g., French and Waterloo Creeks) to determine the impairment severity and whether or not these and other streams should be added to the list.

The amendments can be summarized as follows:

1. Only the cold water trout streams listed on the Department’s Iowa Coldwater Stream Priority Rating list that scored 3 or 4 for Water Quality Rating are currently eligible for OIW. These scores represent trout streams that exhibit consistent natural reproduction of wild trout or may serve as a brood stock source of wild trout. The Commission removed streams on the current OIW list that scored a water quality rating of 1 or 2 (this action removed 11 proposed OIWs off the original list) and added streams that received a water quality rating of 3 or 4 that were not included on the initial list (this action added 16 new streams to the OIW list).
2. Three warm water streams - Lime Creek (Buchanan/Benton Co.), Bear Creek (Buchanan/Benton Co.), and Deer Creek (Worth/Mitchell Co.) - were added based on exemplary scores for biological integrity, including diverse populations of mussels some of which are threatened and endangered species.
3. Dalton Lake is removed based on a review of the data and public comments. The Iowa Great Lakes are moving forward with intent of a more detailed review of individual great lakes through the public comment process.

Below is the amended list of Outstanding Iowa Waters:

Appendix B – Outstanding Iowa Waters

| STREAMS | DESCRIPTION | Length (Miles) |
|---------------------|---|-------------------|
| 1) Baron Springs | Mouth (S2, T91N, R6W, Clayton Co.) to spring source (S4, T91N, R6W, Clayton Co.) | 1.99 |
| 2) Bear Creek | From road crossing in SW ¼, NW ¼, S11, T86N, R10W, Benton Co. to E line, S25, T87N, R10W, Buchanan Co. | 5.2 |
| 3) Bloody Run | From (W. line of Section 22, T95N, R4W, Clayton Co.) to the confluence with Unnamed Creek (NAD83) UTM Coordinates X(Easting) 645284.89 Y(Northing) 4766657.44 | 8.59 |
| 4) Brownfield Creek | Mouth (Clayton Co.) to spring source (S31, T91N, R3W, Clayton Co.) | .94 |

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| <u>STREAMS</u> | <u>DESCRIPTION</u> | <u>Length (Miles)</u> |
|--|---|---------------------------|
| 5) Clear Creek | Mouth (Allamakee Co.) to W. line of Section 25, T99N, R4W, Allamakee Co. | 3.79 |
| 6) Deer Creek | E. line of S1, T100N, R19W, Worth Co. to road crossing in SE ¼, S35, T100N, R19W, Worth Co. | 1.6 |
| 7) Dousman Creek | Mouth (S33, T96N, R3W, Allamakee Co.) to Allamakee-Clayton Co. line | 3.44 |
| 8) Duck Creek | From the mouth (S14, T100N, R06W, Allamakee Co.) to the Iowa-Minnesota state line | 1.98 |
| 9) Ensign Creek (aka Ensign Hollow) | Mouth (S28, T92N, R6W, Clayton Co.) to spring source (S29, T92N, R6W, Clayton Co.) | 1.05 |
| 10) Unnamed Creek (aka Erickson Spring Branch) | Mouth (S23, T98N, R4W, Allamakee Co.) to W. line of S23, T98N, R4W, Allamakee Co. | .91 |
| 11) French Creek | Mouth (Allamakee Co.) to E. line of Section 23, T99N, R5W, Allamakee Co. | 5.58 |
| 12) Grannis Creek | Mouth (S30, T95N, R7W, Fayette Co.) to W. line of S36, T93N, R8W, Fayette Co. | 3.56 |
| 13) Jones Creek | From the mouth (S19, T98N, R04W, Allamakee Co.) to bridge crossing at Clonkitty Rd. (S14, T98N, R05W, Allamakee Co.) | 5.75 |
| 14) Kleinlein Creek | Mouth (Clayton Co.) to spring source (South Spring) (S10, T91N, R6W, Clayton Co.) | 3.96 |
| 15) Lime Creek | From confluence with unnamed tributary in NE ¼, NW ¼, S34, T87N, R10W, Buchanan Co. to N. line of S23, T87N, R10W, Buchanan Co. | 3.0 |
| 16) Little Paint Creek | Mouth to N. line of Section 30, T97N, R3W | 1.92 |
| 17) Ludlow Creek | Mouth (S2, T96N, R6W, Allamakee Co.) to confluence with an unnamed tributary (S33, T97N, R6W, Allamakee Co.) | 2.00 |
| 18) Mill Creek (aka Big Mill Creek) | Confluence with Little Mill Cr. to confluence with Unnamed Cr. (S1, T86N, R3E, Jackson Co.) | 8.04 |
| 19) Mossey Glen Creek | Mouth (S3, T91N, R5W, Clayton Co.) to S. line of S10, T91N, R5W, Clayton Co. | 1.96 |
| 20) North Bear Creek | Mouth (S25, T100N, R7W, Winneshiek Co.) to Iowa-Minnesota state line | 6.39 |
| 21) Pine Creek (aka South Pine Creek) | Mouth (S26, T99N, R7W, Winneshiek Co.) to N. line of S21, T99N, R7W, Winneshiek Co. | 2.80 |
| 22) Smith Creek (aka Trout River) | Mouth (S21, T98N, R7W, Winneshiek Co.) to S. line of S33, T98N, R7W, Winneshiek Co. | 3.42 |
| 23) South Canoe Creek | From the mouth (S22, T99N, R08W, Winneshiek Co.) to the bridge crossing at Winn Rd. (S21, T99N, R08W, Winneshiek Co.) | 1.90 |
| 24) Spring Branch Creek | Mouth (S10, T88N, R5W, Delaware Co.) to spring source (S35, T89N, R5W, Delaware Co.) | 2.83 |
| 25) Storybook Hollow | Mouth (S7, T86N, R4E, Jackson Co.) to S. line of S12, T86N, R3E, Jackson Co. | 1.37 |
| 26) Trout Run | Mouth (S16, T98N, R4W, Allamakee Co.) through one mile reach | 1.0 |
| 27) Twin Springs Creek | Mouth (S17, T98N, R8W, Winneshiek Co.) to springs in Twin Springs Park (S20, T98N, R8W, Winneshiek Co.) | 0.61 |

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| <u>STREAMS</u> | <u>DESCRIPTION</u> | <u>Length (Miles)</u> |
|---|---|---------------------------|
| 28) Unnamed Creek (aka Cold Water Cr.) | Mouth (S32, T100N, R9W, Winneshiek Co.) to N. line of Section 31, T100N, R9W, Winneshiek Co.) | 2.46 |
| 29) Unnamed Creek (aka S. Fk. Big Mill) | Mouth (S8, T86N, R4E, Jackson Co.) to W. line of S17, T86N, R4E, Jackson Co. | 0.97 |
| 30) Village Creek | Mouth (Allamakee Co.) to W. line of S19, T98N, R4W, Allamakee Co. | 13.32 |
| 31) Waterloo Creek | Mouth (S35, T100N, R6W, Allamakee Co.) to Iowa-Minnesota state line | 9.39 |
| 32) West Branch French Creek | From the mouth (S23, T99N, R05W, Allamakee Co.) to the confluence with Unnamed Creek (S26, T99N, R05W, Allamakee Co.) | .67 |
| Total | | 112.39 |

| <u>LAKES</u> | <u>Description (Section, Township, Range)</u> | <u>Size (Acres)</u> |
|---------------------------|---|---------------------|
| 1) Big Spirit Lake SGMA | S33, T100N, R36W | 5,684 |
| 2) East Okoboji Lake SGMA | S29, T99N, R36W | 1,835 |
| 3) Lower Gar Lake SGMA | S32, T99N, R36W | 251 |
| 4) Minnewashta Lake SGMA | S29, T99N, R36W | 122 |
| 5) Upper Gar Lake SGMA | S29, T99N, R36W | 36 |
| 6) West Okoboji Lake SGMA | S20, T99N, R36W | 3,847 |

III. Elements of the Analysis

A. *A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.*

Any person or facility engaging in new or expanding Clean Water Act regulated activities that would degrade water quality within the drainage area of these 32 streams and 6 lakes or any other waters later revised to OIW status through the nomination and review process described in Section 1.3 of the "Iowa Antidegradation Implementation Procedure" (AIP) will be impacted by the OIW categorization. This includes any activity that requires a permit or a water quality certification pursuant to the following federal laws: 1) CWA § 402 NPDES permits, 2) CWA § 404 dredge and fill permits, 3) any activity requiring a CWA §401 certification.

Classes of persons that will benefit from the proposed rule include all users of surface waters categorized as OIW. The proposed rules will better preserve Iowa's outstanding surface water resources for future generations.

B. *A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.*

The application of the Outstanding Iowa Waters (OIW) antidegradation category may have an economic impact in a given watershed. This category provides a very high level of water quality protection by prohibiting degradation of Outstanding Iowa Waters in all but three situations:

1) The degradation will be "temporary and limited" as defined in Section 2.4 of the Iowa Antidegradation Implementation Procedure (AIP) document;

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2) The applicant documents that less degrading alternatives are not available, that effects on existing water quality will be minimal, and that the project will, overall, serve to enhance the value, quality, or use of the OIW (for example, a new or expanded source of wastewater treatment effluent associated with a visitor center may be authorized where reasonable nondegrading or less degrading treatment alternatives are not available as outlined in Section 3 of the AIP); or

3) The degradation is caused by the expansion of an existing source and the applicant has conducted an alternatives analysis, selected the least degrading alternative that is “affordable” within the meaning of Section 3.2 of the AIP, and demonstrated the socioeconomic importance of the project as described in Section 3.3 of the AIP after full opportunity for public comment. In all cases, current treatment levels for existing sources should be enhanced, where possible.

Situation #3 above represents a change, based on public input, to how the rule was originally proposed in October of 2008. The original proposal prohibited any degradation due to expansions. This change will allow expansions to occur for existing discharges, but is still protective of Iowa’s outstanding resources by not allowing the cost-effective cap to be considered in the alternatives analysis. Therefore, any existing facility proposing an expansion that may degrade water quality in an OIW must select the least degrading option the facility can afford. The economic impact of this provision is limited because there is no municipal wastewater treatment plant known to discharge into the waters proposed as OIW. Facilities with an individual NPDES permit known to be potentially impacted are listed in Table 1.

Table 1 — Outstanding Iowa Waters with individual NPDES permittees

| OIW Water Body | Facility Name |
|---------------------|------------------------------|
| Spring Branch Creek | DNR Manchester Fish Hatchery |
| Village Creek | Makee Manor Care Facility |

The facilities listed in Table 1 are not expected to be impacted by the proposed rule. The DNR Fish Hatchery in Manchester and Makee Manor Care Facility are considered static in their operations and likely will not need to expand or grow their operations. Therefore these facilities will not need to expand their wastewater treatment plant infrastructure resulting in water quality degradation and as a result will not be negatively impacted by the categorization of these streams as Outstanding Iowa Waters. Furthermore, the manner in which trout hatcheries are regulated and the quality of the water discharged should not result in water quality degradation.

It is important to note that there are several additional waters being proposed as OIWs in this rule making that do not have any existing CWA regulated activities. Any new discharger, primarily industries, could have a difficult time locating in these watersheds unless it is demonstrated that less degrading alternatives are not available, that effects on existing water quality will be minimal, and that the project will, overall, serve to enhance the value, quality, or use of the OIW. The cost of this is impossible to estimate. There is no way to determine whether new industries would want to locate in the drainage areas of the proposed OIWs and would need to discharge pollutants. There are also no new municipalities or settlements expected to emerge within these drainage areas needing centralized wastewater treatment and the corresponding permits. Historical review of CWA regulated activities show that permanent new sources of degradation of the waters proposed as OIWs have been nearly nonexistent.

A complicating factor is whether a new discharge would be directly to the OIW segment, or indirectly via a tributary that eventually reaches the OIW segment. Any new or expanded discharge will be examined on a pollutant-by-pollutant basis. Some pollutants can decay naturally and may dissipate before reaching an OIW segment. One example of this situation may be a wastewater treatment plant that discharges indirectly to an OIW stream through 20 miles of unnamed stream tributaries.

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The unnamed tributaries are not OIWs and therefore degradation can be allowed after a Tier 2 antidegradation review, but degradation is generally prohibited downstream in the OIW or ONRW segment. Pollutants such as ammonia-nitrogen, chlorine, or bacteria naturally decay or dissipate over time as they travel downstream. Each pollutant and discharge scenario can be different and will need to be closely examined to determine if degradation in the OIW may actually occur.

New discharging on-site wastewater disposal systems would be prohibited from degrading OIW waters. Nondischarging on-site wastewater disposal systems, such as a mound system, would qualify as a non-degrading option. These systems are, in general, about 33% more expensive than their discharging counterparts. The typical discharging on-site systems cost around \$9,000 while nondischarging systems can cost in the range of \$10,000 to \$12,000 depending on local variables (e.g., cost of materials, topography). There are only two known discharging on-site systems in the proposed OIW drainage areas. It is impossible to estimate how many future on-site systems would be required to install nondischarging systems as a result of this proposal.

New quarry operations may be impacted as a result of a water body categorized as an OIW. These operations generally require dewatering of some of the pits created during the quarrying process. There are some quarry operations that do not require dewatering and therefore will not be impacted. Dewatering operations may be prohibited in OIWs if degradation were reasonably expected to occur. The AIP allows for an analysis to determine whether or not a regulated activity will result in degradation through an evaluation of the expected discharge quality versus ambient water quality conditions for the constituents that will be discharged.

In many cases, effluent from quarry dewatering is expected to be similar to groundwater and may be comparable to the quality of water found in spring fed trout streams. If the effluent quality is better than or equivalent to the ambient water quality consistent with the provisions in the AIP, then it may be possible to locate a new quarry in these watersheds. If it is shown that unacceptable degradation may result, then this activity would not be allowed to occur to protect Iowa's outstanding water resources. This may require the raw materials, like crushed limestone rock, to be quarried outside the OIW watershed and hauled in for projects. This may increase the cost of projects within these watersheds due to increased hauling costs of importing the raw material from quarries outside the watershed; however, this is not expected to be significant due to the relatively small size of the drainage areas of the proposed OIWs.

Antidegradation policies only apply to Clean Water Act (CWA) regulated concentrated animal feeding operations (CAFOs) as defined in 567 IAC Chapter 65, Division II, which does not include most confinement feeding operations because they are specifically prohibited from discharging by state law (567 IAC Chapter 65). Discharges from CWA regulated CAFOs that are considered to result in degradation are prohibited in the drainage areas of OIWs. A non-discharging CAFO would be allowed in OIW watersheds. There are no known Clean Water Act (CWA) regulated concentrated animal feeding operations (CAFOs) in the watersheds of the proposed OIWs. As a result, it is impossible to estimate how many future planned CWA regulated CAFOs would be prohibited as a result of this proposal and whether the alternatives selected would result in appreciable cost differences.

Additional waters may be added to the list of Outstanding Iowa Waters in future rule-making efforts as detailed in the AIP. The economic impact of these potential additions to the OIW list can only be determined as new waters are considered for inclusion as OIWs at that future time and place.

One of the protections afforded to Outstanding Iowa Waters is that any regulated activity that may temporarily degrade an OIW will require an individual NPDES permit or individual §401 certification to ensure that impacts will be temporary and limited and that the public can participate in the decision whether to allow degradation. As a result, this will increase the amount of time it takes to receive a permit.

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There is direct cost associated with this provision as a result of the difference between NPDES permit fees for individual and general permitted activities. Storm water discharges associated with industrial activities (i.e. General Permits No. 1, 2, & 3) pay an annual general permit coverage fee of \$175. If the activity occurs within the drainage area of an OIW, this activity will require an individual NPDES permit at an annual cost of \$1,250. The additional cost is associated with the level of review and detail required for individual NPDES permits which provide the additional review needed to ensure that impacts resulting from these activities will be temporary and limited.

The Department currently issues five different general permits for certain classes of activities.

- General Permit #1 – Storm Water Discharge Associated with Industrial Activity
- General Permit #2 – Storm Water Discharge Associated with Construction Activities
- General Permit #3 – Storm Water Discharge Associated with Industrial Activity for Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, and Construction Sand and Gravel Facilities
- General Permit #4 – Discharge from Private Sewage Disposal Systems
- General Permit #5 – Discharge from Mining and Processing Facilities

A review of all regulated activities receiving coverage under all general permits was conducted to assess the impact of these activities that would require an individual permit under the proposed rule. Of the general permits examined, the majority of the activities identified in drainage areas of OIWs received coverage under general permit #2 – storm water discharge associated with construction activities. These are typically one time permits that are not renewed, therefore not a recurring cost. The majority of these activities occurred in the Iowa Great Lakes watershed. There are nominal amounts of activities covered by general permits #1, 3, 4, & 5. Each watershed was examined individually to determine the permit fee cost difference under the proposed rule. The critical factor examined in this case was the rate at which these activities are estimated to occur in these drainage areas based on a historical review of how these watersheds have been regulated under the CWA. For water bodies that had limited history of CWA regulated activities and where the frequency was expected to be less than one activity per year, an annual rate of one per year was used representing a conservative approach. It is also important to note that these frequencies are subject to change depending on future development and activities that may occur in these OIW watersheds.

Table 2 — Permit Fee Cost Difference

| <u>STREAMS</u> | <u>Rate of CWA Regulated Activity Occurrence</u> | <u>Old cost based on annual expected rate</u> | <u>New cost based on annual expected rate</u> |
|-------------------------------------|--|---|---|
| 1) Baron Springs | No history of CWA regulated activities | \$0 | \$0 |
| 2) Bear Creek | 2/year | \$350 | \$2,500 |
| 3) Bloody Run | 1/year | \$175 | \$1,250 |
| 4) Brownfield Creek | No history of CWA regulated activities | \$0 | \$0 |
| 5) Clear Creek | <1/year | \$175 | \$1,250 |
| 6) Deer Creek | No history of CWA regulated activities | \$0 | \$0 |
| 7) Dousman Creek | No history of CWA regulated activities | \$0 | \$0 |
| 8) Duck Creek | <1/year | \$175 | \$1,250 |
| 9) Ensign Creek (aka Ensign Hollow) | No history of CWA regulated activities | \$0 | \$0 |

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| <u>STREAMS</u> | <u>Rate of CWA Regulated Activity Occurrence</u> | <u>Old cost based on annual expected rate</u> | <u>New cost based on annual expected rate</u> |
|--|--|---|---|
| 10) Unnamed Creek (aka Erickson Spring Branch) | No history of CWA regulated activities | \$0 | \$0 |
| 11) French Creek | <1/year | \$175 | \$1,250 |
| 12) Grannis Creek | <1/year | \$175 | \$1,250 |
| 13) Jones Creek | <1/year | \$175 | \$1,250 |
| 14) Kleinlein Creek | <1/year | \$175 | \$1,250 |
| 15) Lime Creek | <1/year | \$175 | \$1,250 |
| 16) Little Paint Creek | <1/year | \$175 | \$1,250 |
| 17) Ludlow Creek | No history of CWA regulated activities | \$0 | \$0 |
| 18) Mill Creek (aka Big Mill Creek) | <1/year | \$175 | \$1,250 |
| 19) Mossey Glen Creek | No history of CWA regulated activities | \$0 | \$0 |
| 20) North Bear Creek | <1/year | \$175 | \$1,250 |
| 21) Pine Creek (aka South Pine Creek) | No history of CWA regulated activities | \$0 | \$0 |
| 22) Smith Creek (aka Trout River) | <1/year | \$175 | \$1,250 |
| 23) South Canoe Creek | <1/year | \$175 | \$1,250 |
| 24) Spring Branch Creek | <1/year | \$175 | \$1,250 |
| 25) Storybook Hollow | <1/year | \$175 | \$1,250 |
| 26) Trout Run | <1/year | \$175 | \$1,250 |
| 27) Twin Springs Creek | <1/year | \$175 | \$1,250 |
| 28) Unnamed Creek (aka Cold Water Cr.) | <1/year | \$175 | \$1,250 |
| 29) Unnamed Creek (aka S. Fk. Big Mill) | <1/year | \$175 | \$1,250 |
| 30) Village Creek | <1/year | \$175 | \$1,250 |
| 31) Waterloo Creek | <1/year | \$175 | \$1,250 |
| 32) West Branch French Creek | <1/year | \$175 | \$1,250 |
| Total | | \$4,200 | \$30,000 |

| <u>LAKES</u> | <u>Rate of CWA Regulated Activity Occurrence</u> | <u>Old cost based on annual expected rate</u> | <u>New cost based on annual expected rate</u> |
|----------------------|--|---|---|
| 1) Big Spirit Lake | 3/year | \$525 | \$3,750 |
| 2) East Okoboji Lake | 5/year | \$875 | \$6,250 |
| 3) Lower Gar Lake | 2/year | \$350 | \$2,500 |
| 4) Minnewashta Lake | 2/year | \$350 | \$2,500 |
| 5) Upper Gar Lake | 2/year | \$350 | \$2,500 |
| 6) West Okoboji Lake | 4/year | \$700 | \$5,000 |
| Total | | \$3,150 | \$22,500 |

C. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

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The probable costs to the Department are associated with the review of nominations for Outstanding Iowa Waters and the additional work required by the issuance of individual permits and §401 certifications in these watersheds. It is anticipated that review of the nominations for Outstanding Iowa Waters can be incorporated into the existing work of the Water Quality Standards program.

Based on the historical review of NPDES general permitted activities, it is conservatively expected that 39 individual permits will be required annually for activities occurring in the proposed OIW watersheds. Each individual permit may take roughly 16 hours versus the 1 hour currently required for review for coverage under general permits. These are primarily expected to be storm water activities covered under general permit #2. The potential 624 hours (78 workdays) increase in workload may increase the current storm water permit staff workload by approximately 30%. It is not known at this time if this will require any additional staff. If the need for additional staff becomes clear, then it could potentially be funded by the increased fees as identified in Table 2.

Based on review of the §401 certifications process, it is conservatively expected that 100 additional certifications will be required annually for activities occurring in the proposed OIW watersheds. Each individual certification may take roughly 2 more hours to complete versus the 1 hour currently required for review of a §404 nationwide permit application. The potential 200 hours (25 workdays) increase in workload may increase the current staff workload by approximately 10%. It is not known at this time if this will require any additional staff.

D. *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.*

The total costs for implementing the proposed rules are impossible to calculate due to the factors described in Part B, but would include increased costs for individual permitting vs. general permitting, additional department staff time for review of nominations for OIWs, additional department staff time to issue individual permits, and potential loss of industrial growth within OIW watersheds.

The anticipated benefits from the revised antidegradation policy and new implementation procedures are associated with the potential improvements to instream protections for aquatic and semiaquatic life, wildlife and livestock watering needs, and aesthetic conditions due to increased attention to researching treatment alternatives and preventing water quality degradation consistent with provisions listed in the AIP. The proposed implementation procedures require a systematic review of various options for treating a proposed discharge. Tier 2½ protection works to require potential dischargers to select a plan that affords a higher degree of protection than given to Tier 2 waters.

There may also be indirect marketing benefits associated with waters categorized Outstanding Iowa Waters (OIW). These benefits may be realized by increased tourism and use of these waters and other nonuse benefits such as Iowans simply knowing these resources are better protected and preserved for future generations.

The monetary benefits are also impossible to determine as none of the benefits have a readily identifiable monetary value. Due to the fact neither costs nor benefits have readily identifiable monetary values it is impossible to compare the costs and benefits of implementing the rules with the results of inaction with any reliable degree of accuracy. This is truly a matter of perspective. For example, assume an ethanol plant is interested in locating in the drainage area of a cold water trout stream. There are economic benefits and social importance for this type of industrial growth. However, the discharge while protecting beneficial uses may degrade the existing water quality to the point that consistent natural reproduction of wild trout is no longer possible. This may result in decreased user trips from anglers to this area due to declining fish populations or perception that the water quality isn't what it used to be resulting in decreased tourism to that area. Conversely, if this water is protected via OIW, then the reverse is possible

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through maintained or increased amounts of fishing trips to the area around these streams, but possible loss in potential industrial growth (depending on the variations of how strong that potential might be in these areas).

E. A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

The overall purpose of the proposed rule is to preserve the quality of Iowa's exemplary surface waters for all Iowans. As discussed in Section B, the Department has actively pursued less intrusive methods for incorporation into the final rule. For example, the provision allowing an existing discharger to degrade the OIW only if the applicant has conducted an alternatives analysis, selected the least degrading alternative that is "affordable," and demonstrated the socioeconomic importance of the project after full opportunity for public comment represents a change, based on public input, to how the rule was originally proposed in October of 2008. The original proposal did not allow this flexibility for existing discharges and prohibited degradation resulting from expansions.

This change will allow expansions to occur for existing discharges, but is still protective of Iowa's outstanding surface water resources by not allowing the cost-effective cap to be considered in the alternatives analysis. Therefore, any existing facility proposing an expansion that may degrade water quality in an OIW must select the least degrading option the facility can afford regardless of whether it is cost-effective.

Also, it must be noted that regulated entities are presented the opportunity to demonstrate whether or not an activity may result in unacceptable pollution of these outstanding surface water resources by comparing the expected discharge quality versus ambient water quality conditions for the constituents that will be discharged.

F. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

The Code of Federal Regulations (40 CFR §131.12) requires that states adopt a minimum three-tier antidegradation policy. Tier 1 maintains existing and beneficial surface water uses, Tier 2 maintains existing water quality unless a review of reasonable alternatives and social and economic considerations justifies a lowering of water quality, and Tier 3 prohibits degradation. However, EPA guidance allows for a Tier between Tiers 2 and 3, commonly referred to as Tier 2½, that recognizes individual states may have waters that warrant special protection, but do not warrant a complete ban of any and all degradation.

Since Tier 2½ falls between Tier 2 and Tier 3, the level of protection is greater than Tier 2, but not as restrictive as what is required in Tier 3. Tier 2 protection is afforded to all surface waters where existing water quality is better than applicable water quality standards as determined on a pollutant-by-pollutant basis. Tier 2 protection allows degradation only if a review of reasonable alternatives and social and economic considerations justifies a permanent lowering of water quality or the lowering of water quality is temporary and limited.

Tier 3 protection prohibits any lowering of water quality unless it is temporary and limited, as determined by the Director of IDNR on a case-by-case basis. Any proposed activity that would result in a permanent new or expanded source of pollutants is prohibited. This is a very high level of protection with no flexibility available under 40 CFR §131.12.

The Department recognized that very few waters in Iowa, if any, could be considered outstanding on a national level in the context and framing flexibilities of the antidegradation policy. However, the Department also recognized that there are waters of exemplary quality when compared to other waters

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across Iowa. The allowance for this intermediate Tier 2½ in EPA guidance offered the unique opportunity to provide an additional level of protection to help preserve Iowa's outstanding surface water resources while providing more implementation flexibility. Another benefit of Tier 2½ is that it allows for waters to be added or removed from the list without requiring the approval of the Environmental Protection Agency (EPA).

Throughout the rule-making effort, there have been suggestions to eliminate the Tier 2½ category altogether in favor of the federally required three-tier system. Designating Outstanding Iowa Waters as Outstanding National Resource Waters would afford more protection for these waters by prohibiting degradation and removing the implementation flexibilities afforded by Tier 2½. Since Tier 3 is federally required, any modification to the list must be approved by the EPA.

As discussed in parts B and E above, additional flexibilities will be a part of the final rule based on public input compared to how the rule was originally proposed in October of 2008. The original proposal did not allow flexibility for existing discharges within OIW watersheds and prohibited degradation resulting from expansions. The revisions will allow expansions to occur for existing discharges, but is still protective of Iowa's outstanding resources by not allowing the cost-effective cap to be considered in the alternatives analysis. Therefore, any existing facility proposing an expansion that may degrade water quality in an OIW must select the least degrading option the facility can afford. This is one example of the implementation flexibilities that are possible under Tier 2½ that are not possible under Tier 3.

From the Department's perspective, the ability to afford a level of protection that recognizes and attempts to preserve Iowa's truly remarkable surface water resources is needed and long overdue. Examination of the chemical, biological, and physical characteristics of Iowa's surface waters reveals that there are very few waters that exhibit exceptional quality. Some of those that do have exceptional quality show declining trends. The Outstanding Iowa Waters category in this rule proposal presents a unique opportunity to afford a level of protection commensurate with the caliber of waters listed in this proposal.

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Notice of Intended Action

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

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

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

The proposed amendments require measurement of a child's mental health functioning level with a standardized instrument when Medicaid remedial services are initiated and every six months thereafter. The remedial services provider would be required to submit the results of the testing as part of the request for prior authorization for continued remedial services.

Federal regulations for rehabilitation services specify that the services must demonstrate the child is making progress for the services to continue. The proposed amendments require the use of standardized measurement tools to make the evaluation of progress more uniform and to make the evaluation more effective at identifying the need for changes in strategies or interventions.

These amendments do not provide for waivers in specified situations. The clinician may choose the most appropriate standardized measurement tool, in cooperation with staff of the Iowa Plan for

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Behavioral Health, but standardized assessment will be required to meet federal requirements for demonstrating progress.

Any interested person may make written comments on the proposed amendments on or before November 10, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule 78.12(3) as follows:

78.12(3) Coverage requirements. Medicaid covers remedial services only when the following conditions are met:

a. and *b.* No change.

c. For a member under the age of 21, the licensed practitioner of the healing arts:

(1) Has, in cooperation with the managed care contractor, selected a standardized assessment instrument appropriate for baseline measurement of the member's current skill level in managing mental health needs;

(2) Has completed an initial formal assessment of the member using the instrument selected; and

(3) Completes a formal assessment using the same instrument every six months thereafter if continued services are ordered.

e. d. The remedial services provider has prepared a written remedial services implementation plan that has been approved by:

(1) The member or the member's parent or guardian; and

(2) The medical services unit of the Iowa Medicaid enterprise.

ITEM 2. Amend subrule 78.12(4) as follows:

78.12(4) Approval of plan. The remedial services provider shall submit the treatment plan, the results of the formal assessment, and the remedial services implementation plan to the Iowa Medicaid enterprise (IME) medical services unit for approval before providing the services.

a. No change.

b. Subsequent plans. The IME medical services unit may approve a subsequent remedial services implementation plan according to the conditions in paragraph "*a*" if the services are recommended by a licensed practitioner of the healing arts who has:

(1) Reexamined the member;

(2) Reviewed the original diagnosis and treatment plan; ~~and~~

(3) Evaluated the member's progress-, including a formal assessment as required by 78.12(3) "c"(3); and

(4) Submitted the results of the formal assessment with the recommendation for continued services.

c. No change.

ITEM 3. Amend rule ~~441—78.12(249A)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 249A.4 ~~and 2006 Iowa Acts, House File 2734, section 10, subsection 11.~~

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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 249A.4 and 2009 Iowa Acts, House File 811, section 33, the Department of Human Services proposes to amend Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

The proposed amendments would:

- Implement a Medicaid nursing facility “pay for performance” program in place of the nursing facility accountability measures.
- Make technical changes to reflect the current organizational structure and processes of the Iowa Medicaid Enterprise, including the elimination of the reconsideration of a level-of-care determination before the determination can be appealed.

In accordance with legislative direction in 2008 Iowa Acts, chapter 1187, section 33, the Department convened a workgroup to develop recommendations to redesign the nursing facility accountability measures program. The legislation required the workgroup to submit its recommendations for the redesign. As a result of the workgroup recommendations, 2009 Iowa Acts, House File 811, section 33, directs the Department to implement changes to the accountability measures program and the nursing facility reimbursement methodology effective July 1, 2009. The following changes are proposed in accordance with the legislation.

New benchmarks have been developed in four domains: quality of life, quality of care, access, and efficiency. Possible scores in each domain are: quality of life, 25 points; quality of care, 59 points; access, 8 points; and efficiency, 8 points, for a potential total of 100 points. A facility must receive at least 51 points to qualify for any additional reimbursement. Add-on payments are graduated depending on the facility’s performance score as follows:

- A score of 51-60 points qualifies for an add-on of 1 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 61-70 points qualifies for an add-on of 2 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 71-80 points qualifies for an add-on of 3 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 81-90 points qualifies for an add-on of 4 percent of the direct care plus nondirect care cost component patient-day-weighted medians.
- A score of 91-100 points qualifies for an add-on of 5 percent of the direct care plus nondirect care cost component patient-day-weighted medians.

A facility will forfeit all eligibility for pay-for-performance payments if during the payment period the nursing facility is cited for a deficiency rated at a severity level of H or higher by the Department of Inspections and Appeals. A facility’s payment add-on shall be reduced by 25 percent for each citation received during the year for a deficiency rated at a severity level of G and shall be eliminated if the facility fails to cure the deficiency within the time allowed by the Department of Inspections and Appeals. No add-on shall be paid for any month when the Centers for Medicare and Medicaid Services has suspended the facility’s admissions.

Facilities shall be required to post their results on the performance measures and the amount of add-on payments they receive. Facilities are required to use these payments to support direct care staff through increased wages, enhanced benefits, and expanded training opportunities and to publish an accounting of how they used the funds.

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These amendments do not provide for waivers in specified situations because the Department holds that all nursing facilities should be subject to the same pay-for-performance measures and scoring to determine add-on payments as a matter of fairness.

Any interested person may make written comments on the proposed amendments on or before November 10, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 33.

The following amendments are proposed.

ITEM 1. Rescind the definition of “Iowa Foundation for Medical Care (IFMC)” in rule **441—81.1(249A)**.

ITEM 2. Amend subrule **81.3(1)**, introductory paragraph, as follows:

81.3(1) Need for nursing facility care. Residents of nursing facilities must be in need of either nursing facility care or skilled nursing care. Payment will be made for nursing facility care residents only upon certification of the need for the level of care by a licensed physician of medicine or osteopathy and approval of the level of care by the department.

a. ~~Initial decisions~~ Decisions on level of care shall be made for the department by the ~~Iowa Foundation for Medical Care (IFMC)~~ Iowa Medicaid enterprise (IME) medical services unit within two working days of receipt of medical information. ~~After notice of an adverse decision by IFMC, the Medicaid applicant or recipient, the applicant’s or recipient’s representative, the attending physician, or the nursing facility may request reconsideration by IFMC by sending a letter requesting a review to IFMC not more than 60 days after the date of the notice of adverse decision. On initial and reconsideration decisions, IFMC~~ The IME medical services unit determines whether the level of care provided or to be provided should be approved based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2).

b. ~~Adverse decisions by IFMC on reconsiderations~~ the IME medical services unit may be appealed to the department pursuant to 441—Chapter 7.

ITEM 3. Rescind paragraphs **81.3(1)“a”** to **“d.”**

ITEM 4. Amend subrule 81.3(3) as follows:

81.3(3) Screening. All persons, regardless of the source of payment, seeking admission to a nursing facility shall also be screened by the ~~Iowa Foundation for Medical Care~~ IME medical services unit to determine if mental illness, mental retardation, or a related condition is present. The Iowa Medicaid program will cover the cost of this screening through the managed mental health contractor.

a. Final approval for initial admissions and continued stay of persons with mental illness, mental retardation, or a related condition is determined by the department of human services, division of mental health, ~~mental retardation and developmental disabilities~~ disability services.

b. Nursing facility payment under the Iowa Medicaid program will be made for persons with mental illness, mental retardation, or a related condition only if it is determined by the division of mental health, ~~mental retardation and developmental disabilities~~ disability services that the person’s treatment needs will be or are being met.

ITEM 5. Rescind paragraph **81.6(16)“g”** and adopt the following **new** paragraph in lieu thereof:

g. *Pay-for-performance program.* Additional reimbursement based on the nursing facility pay-for-performance program is available for non-state-owned facilities effective July 1, 2009, as provided in this paragraph. The pay-for-performance program provides an additional reimbursement based upon a nursing facility’s achievement of multiple favorable outcomes as determined by established benchmarks. The reimbursement is issued as an add-on payment after the end of the state fiscal year, which is referred to in this paragraph as the “payment period.”

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(1) Scope. Additional reimbursement for the nursing facility pay-for-performance program is not available to Medicare-certified hospital-based nursing facilities, state-operated nursing facilities, or special population nursing facilities. Therefore, data from these facility types shall not be used when determining eligibility for or the amount of additional reimbursement based on the nursing facility pay-for-performance program.

(2) Benchmarks. The pay-for-performance benchmarks include characteristics in four domains: quality of life, quality of care, access, and efficiency. These characteristics are objective and measurable and when considered in combination with each other are deemed to have a correlation to a resident's quality of life and care. While any single measure does not ensure the delivery of quality care, a nursing facility's achievement of multiple measures suggests that quality is an essential element in the facility's delivery of resident care.

(3) Definition of direct care. For the purposes of the nursing facility pay-for-performance program, "direct care staff" is defined to include registered nurses (RNs), licensed practical nurses (LPNs), certified nurse assistants (CNAs), rehabilitation nursing, and other contracted nursing services. "Direct care staff" does not include the director of nursing (DON) or minimum data set (MDS) coordinator.

(4) Qualifying for additional reimbursement. The Iowa Medicaid enterprise shall annually award points based on the measures achieved in each of the four domains, as described in subparagraphs (5) through (8). The maximum available points are 100. To qualify for additional Medicaid reimbursement under the nursing facility pay-for-performance program, a facility must achieve a minimum score of 51 points. The relationship of the score achieved to additional payments is described in subparagraph (10). Payments are subject to reduction or forfeiture as described in subparagraphs (12) and (13).

(5) Domain 1: Quality of life.

| Standard | Measurement Period | Value | Source |
|--|--|----------|--------------------|
| Subcategory: Person-Directed Care | | | |
| Enhanced Dining A: The facility makes available menu options and alternative selections for all meals. | For SFY 2010, 10/1/09 to 6/30/10; thereafter, payment period | 1 point | Self-certification |
| Enhanced Dining B: The facility provides residents with access to food and beverages 24 hours per day and 7 days per week and empowers staff to honor resident choices. | For SFY 2010, 10/1/09 to 6/30/10; thereafter, payment period | 1 point | Self-certification |
| Enhanced Dining C: The facility offers at least one meal per day for an extended period to give residents the choice of what time to eat. | For SFY 2010, 10/1/09 to 6/30/10; thereafter, payment period | 2 points | Self-certification |
| Resident Activities A: The facility employs a certified activity coordinator for at least 38 minutes per week per licensed bed. | For SFY 2010, 10/1/09 to 6/30/10; thereafter, payment period | 1 point | Self-certification |
| Resident Activities B: The facility either has activity staff that exceed the required minimum set by law or has direct care staff who are trained to plan and conduct activities and carry out both planned and spontaneous activities on a daily basis. | For SFY 2010, 10/1/09 to 6/30/10; thereafter, payment period | 1 point | Self-certification |
| Resident Activities C: The facility's residents report that activities meet their social, emotional and spiritual needs. | For SFY 2010, 10/1/09 to 3/31/10; thereafter, July through March of payment period | 2 points | Self-certification |

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| Standard | Measurement Period | Value | Source |
|--|--|---|---|
| Resident Choice A: The facility allows residents to set their own schedules, including what time to get up and what time to go to bed. | For SFY 2010, 10/1/09 to 6/30/10; thereafter, payment period | 1 point | Self-certification |
| Resident Choice B: The facility allows residents to have a choice of whether to take a bath or shower and on which days and at what time the bath or shower will be taken. | For SFY 2010, 10/1/09 to 6/30/10; thereafter, payment period | 1 point | Self-certification |
| Consistent Staffing: The facility has the same staff members work with the same residents at least 70% of the time. | For SFY 2010, 10/1/09 to 6/30/10; thereafter, payment period | 3 points | Self-certification |
| National Accreditation: The facility has CARF or another nationally recognized accreditation for the provision of person-directed care. | For SFY 2010, 10/1/09 to 6/30/10; thereafter, payment period | 13 points NOTE: A facility that receives points for this measure does not receive points for any other measures in this subcategory. | Self-certification |
| Subcategory: Resident Satisfaction | | | |
| Resident/Family Satisfaction Survey: The facility administers an anonymous resident/family satisfaction survey annually. The survey tool must be developed, recognized, and standardized by an entity external to the facility. Results must be tabulated by an entity external to the facility. To qualify for the measure, the facility must have a response rate of at least 35%. A summary report of the aggregate results and point scale must be made publicly available and be posted prominently along with the facility's state survey results until the next satisfaction survey is completed. | For SFY 2010, survey completed between 9/1/08 and 3/31/10; thereafter, survey completed between October 1 and March 31 of the payment period | 5 points | Form 470-3891, Nursing Facility Opinion Survey Transmittal, submitted by independent entity that compiled results |
| Long-Term Care Ombudsman: The facility has resolved 70% or more of complaints received and investigated by the local or state ombudsman. | Calendar year ending December 31 of the payment period | 5 points | LTC ombudsman's list of facilities meeting the standard |
| Resident Advocate Committees: The facility has an active resident advocate committee and submits meeting minutes to the LTC ombudsman at least quarterly. The minutes contain comments from residents (positive and negative). Minutes address how the facility worked to resolve any negative comments. | Calendar year ending December 31 of the payment period | 2 points | LTC ombudsman's list of facilities meeting the standard |

(6) Domain 2: Quality of care.

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| Standard | Measurement Period | Value | Source |
|---|---|---|---|
| Subcategory: Survey | | | |
| <p>Deficiency-Free Survey: The facility is deficiency-free on the latest annual state and federal licensing and certification survey and any subsequent surveys, complaint investigations, or revisit investigations.</p> <p>If a facility's only scope and severity deficiencies are an A level pursuant to 42 CFR Part 483, Subparts B and C, as amended to July 30, 1999, the facility shall be deemed to have a deficiency-free survey for purposes of this measure. Surveys are considered complete when all appeal rights have been exhausted.</p> | Calendar year ending December 31 of the payment period, including any subsequent surveys, revisit, or complaint investigations | 10 points | DIA list of facilities meeting the standard |
| <p>Regulatory Compliance with Survey: No on-site revisit to the facility is required for recertification surveys or for any substantiated complaint investigations during the measurement period.</p> | Calendar year ending December 31 of the payment period, including any subsequent surveys, revisits, or complaint investigations | 5 points NOTE: A facility that receives points for a deficiency-free survey does not receive points for this measure. | DIA list of facilities meeting the standard |
| Subcategory: Staffing | | | |
| <p>Nursing Hours Provided: The facility's per-resident-day nursing hours are at or above one-half standard deviation above the mean of per-resident-day nursing hours for all facilities.</p> <p>Nursing hours include those of RNs, LPNs, CNAs, rehabilitation nurses, and other contracted nursing services. Nursing hours shall be normalized to remove variations in staff hours associated with different levels of resident case mix.</p> | Facility fiscal year ending on or before December 31 of the payment period | 5 points if case-mix adjusted nursing hours are above mean plus one-half standard deviation 10 points if case-mix adjusted nursing hours are greater than mean plus one standard deviation | Form 470-0030, Financial and Statistical Report, as analyzed by IME provider cost audit and rate setting unit. The facility cost report period case-mix index shall be used to normalize nursing hours. |
| <p>Employee Turnover: The facility has overall employee turnover of 50% or less and CNA turnover of 55% or less.</p> | Facility fiscal year ending on or before December 31 of the payment period | 5 points if overall turnover is between 40% and 50% and CNA turnover is between 45% and 55% 10 points if overall turnover is less than or equal to 40% and CNA turnover is less than or equal to 45% | Form 470-0030, Financial and Statistical Report, as analyzed by IME provider cost audit and rate setting unit |

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| Standard | Measurement Period | Value | Source |
|---|--|---|---|
| <p>Staff Education, Training and Development: The facility provides staff education, training, and development at 25% above the basic requirements for each position that requires continuing education. The number of hours for these programs must apply to at least 75% of all staff of the facility, based upon administrator or officer certification.</p> | Calendar year ending December 31 of the payment period | 5 points | Self-certification |
| <p>Staff Satisfaction Survey: The facility annually administers an anonymous staff satisfaction survey. The survey tool must be developed, recognized, and standardized by an entity external to the facility and must identify worker job classification. Results must be tabulated by an entity external to the facility.</p> <p>To qualify for this measure, the facility must have a response rate of at least 35%. A summary report of the aggregate results and point scale must be made publicly available and be posted prominently along with the facility's state survey results until the next satisfaction survey is completed.</p> | For SFY 2010, survey completed between 9/1/08 and 3/31/10; thereafter, survey completed between October 1 and March 31 of the payment period | 5 points | Form 470-3891, Nursing Facility Opinion Survey Transmittal, submitted by independent entity that compiled results |
| Subcategory: Nationally Reported Quality Measures | | | |
| <p>High-Risk Pressure Ulcer: The facility has occurrences of high-risk pressure ulcers at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on MDS data as applied to the nationally reported quality measures.</p> | 12-month period ending September 30 of the payment period | <p>3 points if one-half to one standard deviation below the mean percentage of occurrences</p> <p>5 points if one standard deviation or more below the mean percentage of occurrences</p> | IME medical services unit report based on MDS data as reported by CMS |
| <p>Physical Restraints: The facility has a physical restraint rate of 0% based on MDS data as applied to the nationally reported quality measures.</p> | 12-month period ending September 30 of the payment period | 5 points | IME medical services unit report based on MDS data as reported by CMS |

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| Standard | Measurement Period | Value | Source |
|--|---|--|---|
| Chronic Care Pain: The facility has occurrences of chronic care pain at rates one-half standard deviation or more below the mean rate of occurrences for all facilities based on MDS data as applied to the nationally reported quality measures. | 12-month period ending September 30 of the payment period | 3 points if one-half to one standard deviation below the mean rate of occurrences 5 points if one standard deviation or more below the mean rate of occurrences | IME medical services unit report based on MDS data as reported by CMS |
| High Achievement of Nationally Reported Quality Measures: The facility received at least 9 points from a combination of the measures listed in this subcategory. | 12-month period ending September 30 of the payment period | 2 points if the facility receives 9 to 12 points in the subcategory of nationally reported quality measures 4 points if the facility receives 13 to 15 points in this subcategory | IME medical services unit report based on MDS data as reported by CMS |

(7) Domain 3: Access.

| Standard | Measurement Period | Value | Source |
|--|--|--|---|
| Special Licensure Classification: The facility has a unit licensed for the care of residents with chronic confusion or a dementing illness (CCDI unit). | Status on December 31 of the payment period | 4 points | DIA list of facilities meeting the standard |
| High Medicaid Utilization: The facility has Medicaid utilization at or above the statewide median plus 10%. Medicaid utilization is determined by dividing total nursing facility Medicaid days by total nursing facility patient days. | Facility fiscal year ending on or before December 31 of the payment period | 3 points if Medicaid utilization is more than the median plus 10% 4 points if Medicaid utilization is more than the median plus 20% | Form 470-0030, Financial and Statistical Report, as analyzed by IME provider cost audit and rate setting unit |

(8) Domain 4: Efficiency.

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| Standard | Measurement Period | Value | Source |
|--|--|---|---|
| High Occupancy Rate: The facility has an occupancy rate at or above 95%. "Occupancy rate" is defined as the percentage derived when dividing total patient days based on census logs by total bed days available based on the number of authorized licensed beds within the facility. | Facility fiscal year ending on or before December 31 of the payment period | 4 points | Form 470-0030, Financial and Statistical Report, as analyzed by IME provider cost audit and rate setting unit |
| Low Administrative Costs: The facility's percentage of administrative costs to total allowable costs is one-half standard deviation or more below the mean percentage of administrative costs for all Iowa facilities. | Facility fiscal year ending on or before December 31 of the payment period | 3 points if administrative costs percentage is less than the mean less one-half standard deviation 4 points if administrative costs percentage is less than the mean less one standard deviation | Form 470-0030, Financial and Statistical Report, as analyzed by IME provider cost audit and rate setting unit |

(9) Source of measurements. Source reports are due to the department by May 1 of each year. For those measures whose source is self-certification, the data shall be drawn from Form 470-4828, Nursing Facility Medicaid Pay-for-Performance Self-Certification Report, submitted by the facility to IME. The independent party that collects and compiles the results of the resident/family survey shall communicate the results to IME on Form 470-3891, Nursing Facility Opinion Survey Transmittal. The department shall request required source reports from the long-term care ombudsman and the department of inspections and appeals (DIA).

(10) Calculation of potential add-on payment. The number of points awarded shall be determined annually. A determination is made on whether a facility qualifies for an add-on payment at the end of the payment period. Based upon the number of points awarded, a retroactive add-on payment is made effective beginning the first day of the payment period as follows, subject to subparagraph (11):

| Score | Amount of Add-on Payment |
|---------------|---|
| 0-50 points | No additional reimbursement |
| 51-60 points | 1 percent of the direct care plus nondirect care cost component patient-day-weighted medians, subject to reduction as provided in subparagraph (13) |
| 61-70 points | 2 percent of the direct care plus nondirect care cost component patient-day-weighted medians, subject to reduction as provided in subparagraph (13) |
| 71-80 points | 3 percent of the direct care plus nondirect care cost component patient-day-weighted medians, subject to reduction as provided in subparagraph (13) |
| 81-90 points | 4 percent of the direct care plus nondirect care cost component patient-day-weighted medians, subject to reduction as provided in subparagraph (13) |
| 91-100 points | 5 percent of the direct care plus nondirect care cost component patient-day-weighted medians, subject to reduction as provided in subparagraph (13) |

HUMAN SERVICES DEPARTMENT[441](cont'd)

(11) Monitoring for reduction or forfeiture of reimbursement. The department shall request the department of inspections and appeals to furnish by September 1, December 1, March 1, and August 1 of each year a list of nursing facilities subject to a reduction or forfeiture of the additional reimbursement pursuant to the criteria in subparagraph (12) or (13).

(12) Forfeiture of additional reimbursement. A nursing facility shall not be eligible for any additional reimbursement under this program if during the payment period the nursing facility is cited for a deficiency resulting in actual harm or immediate jeopardy pursuant to the federal certification guidelines at a scope and severity level of H or higher, regardless of the amount of fines assessed.

(13) Reduction of additional reimbursement. The additional reimbursement for the nursing facility pay-for-performance program calculated according to subparagraph (10) shall be subject to reduction based on survey compliance as follows:

1. The add-on payment shall be suspended for any month in which the nursing facility has received denial of payment for new admission status that was enforced by CMS.

2. A facility's add-on payment shall be reduced by 25 percent for each citation received during the year for a deficiency resulting in actual harm at a scope and severity level of G pursuant to the federal certification guidelines.

3. If the facility fails to cure a cited level G deficiency within the time allowed by the department of inspections and appeals, the add-on payment shall be forfeited, and the facility shall not receive any nursing facility pay-for-performance program payment for the payment period.

(14) Application of additional payments. The additional reimbursement for the nursing facility pay-for-performance program shall be paid to qualifying facilities at the end of the state fiscal year. At the end of each state fiscal year, the Iowa Medicaid enterprise shall:

1. Retroactively adjust each qualifying facility's quarterly rates from the first day of the state fiscal year to include the amount of additional reimbursement for the nursing facility pay-for-performance program calculated according to paragraph 81.6(16) "g"; and

2. Reprice all facility claims with dates of service during the period in which an additional reimbursement for the nursing facility pay-for-performance program is effective to reflect the adjusted reimbursement rate.

(15) Use of additional payments. As a condition of eligibility for such payments, any additional payments received by a nursing facility for the pay-for-performance program must be:

1. Used to support direct care staff through increased wages, enhanced benefits, and expanded training opportunities; and

2. Used in a manner that improves and enhances quality of care for residents.

(16) Monitoring facility compliance on the use of payments. Each nursing facility shall complete Form 470-4829, Nursing Facility Medicaid Enhanced Payment Report, to report the use of any additional payments received for the nursing facility pay-for-performance program. Form 470-4829 is due to the department each year by May 1, beginning May 1, 2011. Failure to submit the report by the due date shall result in disqualification for add-on payment for the next pay-for-performance payment period.

(17) Reporting results of the program. The department shall publish the results of the nursing facility pay-for-performance program annually.

ITEM 6. Amend rule 441—81.7(249A) as follows:

441—81.7(249A) Continued review. The ~~Iowa Foundation for Medical Care~~ IME medical services unit shall review Medicaid ~~recipients'~~ members' need of continued care in nursing facilities, pursuant to the standards and subject to the ~~reconsideration and appeals processes~~ process in subrule 81.3(1).

This rule is intended to implement Iowa Code sections 249A.2(6) and 249A.3(2) "a."

ITEM 7. Amend subparagraph **81.13(9)"f"(1)** as follows:

(1) A nursing facility shall not admit a new resident with mental illness or mental retardation unless the division of mental health, ~~mental retardation,~~ and ~~developmental disabilities~~ disability services has approved the admission, based on an independent physical and mental health evaluation. This evaluation shall be reviewed by the ~~Iowa Foundation for Medical Care~~ prior to IME medical

HUMAN SERVICES DEPARTMENT[441](cont'd)

services unit before admission to determine whether the individual requires the level of services provided by the facility because of the physical and mental condition of the individual. If the individual requires nursing facility level of services, the individual shall receive specialized services for mental illness or mental retardation.

ARC 8242B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code chapter 10A, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 1, “Administration,” Iowa Administrative Code.

Chapter 1 is being amended to incorporate statutory changes over the last several years.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 10, 2009. Such written materials should be sent to Steven Mandernach, Administrative Rules Coordinator, Department of Inspections and Appeals, 321 E. 12th Street, Third Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6863 or by E-mail to steven.mandernach@dia.iowa.gov.

These amendments are intended to implement Iowa Code chapters 10A, 13B, 99D, 99F, and 237.

The following amendments are proposed.

ITEM 1. Rescind the mission statement in **481—Chapter 1** and adopt the following **new** mission statement in lieu thereof:

The department’s mission is to assure state and federal program integrity by adjudicating, examining, and enforcing compliance to protect the health, safety and welfare of Iowans.

ITEM 2. Amend rule 481—1.1(10A) as follows:

481—1.1(10A) Organization.

1.1(1) *Overview of the department.* The Iowa department of inspections and appeals was established by Iowa Code sections 10A.101 to ~~10A.601~~ 10A.801. The chief executive officer of the department is the director of the department of inspections and appeals who shall be appointed by the governor to serve at the pleasure of the governor subject to confirmation by the senate no less frequently than every four years.

1.1(2) *Appointment of deputy.* The director is assisted by a deputy director who is appointed by the director of inspections and appeals.

1.1(3) *Organization of department.* The department is organized into divisions which are further divided into bureaus and ~~sections~~ units.

1.1(4) *Director’s duties.* The director has general supervision over the administration and operation of all divisions. The director also develops statewide programs in compliance with the goals of the department.

1.1(5) *Deputy director’s duties.* The deputy director serves as the principal deputy to the director, ~~to assist in the development, implementation, or revision of the policies affecting overall operations and relationships in the agency; confers with staff department heads regarding the progress and problems of specific programs and operations for which they are responsible; reviews activities, reports and records, and determines conformity with policies and procedures and the need for improvements or revisions; determines and ensures that policy required by changes in the law or director action are executed, reports~~

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

~~findings and submits recommendations to the director for approval or subsequent actions; supervises divisions requiring administrative coordination, and supervises general administrative matters. The deputy director represents the director in various capacities as directed.~~

1.1(6) and 1.1(7) No change.

1.1(8) *Motions to quash or modify subpoena.* A person who desires to challenge a subpoena directed to that person must, within ten days after service of the subpoena, or before the time specified for compliance, if such time is less than ten days, file with the director a motion to quash or modify the subpoena. Upon receipt of a timely motion to quash or modify a subpoena, the director or the director's designee may issue a decision or request an administrative law judge to issue a decision. Oral argument may be scheduled and conducted at the discretion of the director or the director's designee or the administrative law judge. The director or the director's designee or the administrative law judge may quash or modify the subpoena, deny the motion, or issue other appropriate orders. A person aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the director by serving the director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. The director's or the director's designee's decision is final for purposes of judicial review.

1.1(9) No change.

ITEM 3. Rescind the definition of "Department of human services" in rule **481—1.2(10A)**.

ITEM 4. Rescind rule 481—1.3(10A) and adopt the following **new** rule in lieu thereof:

481—1.3(10A) Administration division. This division provides administrative support to the department, including fiscal, policy and planning, information technology, and public information. This division negotiates and provides oversight for compacts entered into between the state of Iowa and Indian tribes located in the state. The division certifies targeted small businesses. The division also inspects and licenses the following entities:

1. Social and charitable gambling pursuant to Iowa Code chapter 99B;
2. Food establishments, including but not limited to restaurants, vending establishments, and mobile food units;
3. Hotels, home food establishments, and egg handlers;
4. Inspections for sanitation in any locality of the state upon written petition of five or more residents of the locality.

ITEM 5. Amend rule 481—1.4(10A) as follows:

481—1.4(10A) Investigations division. This division conducts audits and investigations, including but not limited to the following:

1. Investigations relative to the practice of regulated professions and occupations, except those within the jurisdiction of the board of ~~medical examiners~~ medicine, the board of pharmacy ~~examiners~~, the dental board of dental examiners, and the board of nursing.
2. ~~Investigations relative to proposed sales within the state of subdivided land situated outside of the state.~~ Audits relative to the administration of hospitals and health care facilities.
3. ~~Investigations relative to applications for beer and liquor licenses.~~ Audits relative to administration and disbursement of funding under the state supplementary assistance program.
4. Investigations and collections relative to the liquidation of overpayment debts owed to the department of human services.
5. Investigations relative to the operations of the department of ~~elder affairs~~ on aging.
6. Investigations relative to the administration of the state supplemental assistance program, the state medical assistance program, the food ~~stamp~~ assistance program, ~~and the family investment program, and any other state or federal benefit assistance program.~~
7. Investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.
8. Investigations relative to Medicaid fraud and dependent adult abuse.

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

ITEM 6. Rescind rule 481—1.5(10A) and adopt the following new rule in lieu thereof:

481—1.5(10A) Health facilities division. This division conducts inspections and investigations, including but not limited to the following:

1. Investigations relative to the standards and practices of hospitals, hospice programs, and health care facilities.
2. Inspections and other licensing procedures relative to hospice programs, hospitals, and health care facilities. The division shall be the sole designated licensing authority for these programs and facilities.
3. Inspections relative to hospital and health care facility construction projects.
4. Inspections of child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.
5. Inspections and certification of elder group homes, assisted living programs, and adult day services programs.
6. Registration of boarding homes.
7. Investigation of dependent adult abuse in facilities and programs.

ITEM 7. Rescind rule 481—1.6(10A) and adopt the following new rule in lieu thereof:

481—1.6(10A) Administrative hearings division. The division conducts contested case hearings for state agencies, departments, boards, and commissions. In addition, the division conducts contested case hearings for some counties and municipalities.

1.6(1) All hearings are governed by Iowa Code chapter 17A, other applicable statutes, including the transmitting agency's enabling statute and the statute authorizing the action taken, applicable agency rules, and the department's administrative rules found at 481—Chapter 10.

1.6(2) The administrator shall coordinate the division's conduct of all hearings.

ITEM 8. Amend rule 481—1.7(10A) as follows:

481—1.7(10A) Administering discretion. Nothing in the aforesaid allocation of duties shall be interpreted to prevent flexibility in interdepartmental operations or to forbid other divisional allocations of duties in the discretion of the director ~~of the department of inspections and appeals~~.

ITEM 9. Amend rule 481—1.8(10A) as follows:

481—1.8(10A) Employment appeal board. The employment appeal board consists of three members appointed by the governor, subject to confirmation by the senate, to staggered six-year terms. One member shall be qualified by experience and affiliation to represent employers, one member shall be qualified by experience and affiliation to represent employees, and one member shall represent the general public. This board hears and decides contested cases under Iowa Code chapters 8A, subchapter IV, 49A, 80, 88, 96, and 97B and 104 in accordance with administrative rules promulgated by the employment appeal board.

ITEM 10. Amend rule 481—1.9(10A) as follows:

481—1.9(10A,237) Foster care review board. Child advocacy board. The ~~foster care review~~ child advocacy board consists of ~~seven~~ nine members appointed by the governor, subject to confirmation by the senate. This board administers foster care review and the court appointed special advocate programs, as defined in Iowa Code section ~~237.19~~ 237.18, in accordance with administrative rules promulgated by the ~~foster care review~~ board.

ITEM 11. Rescind rule 481—1.10(10A) and adopt the following new rule in lieu thereof:

481—1.10(10A,13B) State public defender. The governor shall appoint the state public defender, who shall serve at the pleasure of the governor, subject to confirmation by the senate. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime,

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

seeking postconviction relief, against whom a contempt action is pending, in proceedings under Iowa Code section 811.1A or Iowa Code chapter 229A or 812, in juvenile proceedings, on appeal in criminal cases, and on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and may provide for the representation of indigents in proceedings instituted pursuant to Iowa Code chapter 908.

ITEM 12. Rescind rule 481—1.11(10A) and adopt the following new rule in lieu thereof:

481—1.11(10A,99D,99F) Racing and gaming commission. The Iowa racing and gaming commission regulates pari-mutuel dog and horse racing, gambling structures, and excursion gambling boats in Iowa. The commission, whose five members are appointed by the governor, seeks to preserve the integrity of these industries and to maintain confidence in the industries by protecting the public. In performing its duties, the commission investigates the eligibility of applicants for licensure and selects those that can best serve the citizens of Iowa. The commission adopts standards for the licensing of racing industry occupations, as well as standards for the operation of all race meetings and facilities. The commission also adopts standards for the operation and licensing of gambling structures and excursion gambling boats.

ITEM 13. Rescind and reserve rule **481—1.12(10A)**.

ITEM 14. Amend **481—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~10A.104 and 17A.3(1), paragraph “a,” and Iowa Code Supplement section 10A.106 as amended by 2000 Iowa Acts, Senate File 2390, section 2~~ chapters 10A, 13B, 99D, 99F, and 237.

ARC 8241B

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 sections 88.5, 88A.3, and 91A.9, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, “General Industry Safety and Health Rules,” Chapter 35, “Wage Collection Payment,” and Chapter 61, “Administration of Iowa Code Chapter 88A,” Iowa Administrative Code.

The first proposed amendment adopts by reference changes to federal occupational safety and health standards pertaining to personal protective equipment in general industry workplaces. The federal changes are part of a broader effort by the federal Occupational Safety and Health Administration to update or remove references to consensus and industry standards. The changes update and delete references to various national consensus standards.

The second proposed amendment changes the title of 875—Chapter 35.

The third proposed amendment clarifies that the fees for reinspections of amusement rides are equal to the fees for annual inspections of amusement rides.

The principal reasons for adoption of these amendments are to implement legislative intent and to make Iowa’s regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1)“a” and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

Written data, views, or arguments to be considered in adoption shall be submitted no later than November 17, 2009, 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.

LABOR SERVICES DIVISION[875](cont'd)

A public hearing will be held on November 17, 2009, at 2 p.m. in the Stanley Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

No variance provisions are included in these rules. Variances procedures are set forth in 875—Chapters 1 and 5.

These amendments are intended to implement Iowa Code sections 88.5, 88A.3, and 91A.9.

The following amendments are proposed.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:

74 Fed. Reg. 46355 (September 9, 2009)

ITEM 2. Amend **875—Chapter 35**, title, as follows:

WAGE COLLECTION PAYMENT COLLECTION

ITEM 3. Amend paragraph **61.1(2)“c”** as follows:

c. “*Reinspection fee*” is a equal to the fee established by the Act for a ~~reinspection~~ an annual inspection.

ARC 8245B

SECRETARY OF STATE[721]

Notice of Intended Action

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

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

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

These proposed amendments are necessary due to the submission of a large number of Engineering Change Orders (ECOs) by voting equipment vendors. Chapter 22 currently does not provide the Board of Examiners for Voting Systems with any discretion to determine whether ECOs should be considered de minimis changes to the voting systems or whether they should be considered substantive modifications to the voting systems, requiring the voting systems to be recertified by the Board of Examiners before any of the changes can be implemented. In most cases, these ECOs will affect the ability of county commissioners to have existing voting equipment repaired.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 10, 2009. Written suggestions or comments should be directed to Sarah Reisetter, Elections Director, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)242-5071 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by November 10, 2009.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8244B**. The purpose of this Notice is to solicit comment on that submission, which is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 52.

ARC 8233B

TRANSPORTATION DEPARTMENT[761]

Notice of Termination

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation terminates the rule making initiated by its Notice of Intended Action published in the August 12, 2009, Iowa Administrative Bulletin as **ARC 8027B** to adopt new Chapter 162, "Bridge Safety Fund," Iowa Administrative Code. This new chapter was also Adopted and Filed Emergency on the same date as **ARC 8026B**, and the rules became effective July 15, 2009.

2009 Iowa Acts, Senate File 376, section 34, created the Bridge Safety Fund under the authority of the Transportation Commission and required the Department of Transportation to adopt rules. These new rules administer the expenditure of funds appropriated by the General Assembly in 2009 Iowa Acts, Senate File 376, section 13, subsection 6, for infrastructure projects relating to functionally obsolete and structurally deficient bridges on the state's primary road system. The rules describe the purpose and source of funds, provide definitions, provide general information, and establish eligibility requirements.

The Notice was published to solicit comments and to provide an opportunity for an oral presentation. Since no comments were received, no one requested an oral presentation, and no changes are required to the emergency adopted rules, there is no further need to proceed with the rule making for **ARC 8027B**.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for October is 5.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

| | |
|---------------------------------|--------------|
| 74A.2 Unpaid Warrants | Maximum 6.0% |
| 74A.4 Special Assessments | Maximum 9.0% |

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective October 9, 2009, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TREASURER OF STATE(cont'd)

TIME DEPOSITS

| | |
|----------------------------|---------------|
| 7-31 days | Minimum .20% |
| 32-89 days | Minimum .25% |
| 90-179 days | Minimum .15% |
| 180-364 days | Minimum .40% |
| One year to 397 days | Minimum .75% |
| More than 397 days | Minimum 1.35% |

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 8235B

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

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 35A.3(2), the Commission of Veterans Affairs hereby gives Notice of Intended Action to amend Chapter 10, “Iowa Veterans Home,” Iowa Administrative Code.

These proposed amendments add language regarding the ability for domiciliary residents to leave the facility on a pass status, information about which is received from the Department of Veterans Affairs, and clarify the discharge process for emergency discharge proceedings and the responsibility for discharge appeals.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 10, 2009. Such written materials should be directed to John Mathes, Interim Commandant, Iowa Veterans Home, 1301 Summit Street, Marshalltown, Iowa 50158-5485, or faxed to (641)753-4278. E-mail may be sent to john.mathes@ivh.state.ia.us. Persons who wish to convey their views orally should contact the Commandant’s office at (641)753-4309 at the Iowa Veterans Home.

If requested in writing, a public hearing on the proposed amendments will be held on November 11, 2009, at 1 p.m. in the Ford Memorial Conference Room at the Iowa Veterans Home, 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. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Iowa Veterans Home to advise of specific needs. If no written or oral requests for a public hearing are received, the public hearing will be canceled without further notice.

These amendments are intended to implement Iowa Code chapter 35D as amended by 2009 Iowa Acts, Senate File 407.

The following amendments are proposed.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 1. Amend rule **801—10.36(35D)**, catchwords, as follows:

801—10.36(35D) Leave, and bed holds and 96-hour passes.

ITEM 2. Amend paragraphs **10.36(1)“f”** and **“g”** as follows:

f. When a the nursing care member is on leave, the member shall remain on in-house status for the first 12 leave days per calendar year for DVA per diem purposes and IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

g. When a member has used 12 non-hospital leave days, IVH is not financially responsible for any medical charges for the member while on leave.

ITEM 3. Adopt the following **new** subrule 10.36(3):

10.36(3) *Ninety-six-hour passes for domiciliary members.*

a. A pass shall not exceed 96 hours. If a member expects to be gone for more than 96 hours, a leave is required.

b. Upon return from a pass, the member must spend 24 hours in residence before another pass is issued.

c. When a member is on pass, the member shall remain on in-house status for DVA per diem purposes; IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

ITEM 4. Renumber subrules **10.43(4) to 10.43(6)** as **10.43(5) to 10.43(7)**.

ITEM 5. Adopt the following **new** subrule 10.43(4):

10.43(4) Emergency discharge. In the case of an emergency transfer or discharge relating to a threat of imminent harm, the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file, and it must contain all the information required by 10.43(3). In addition, the notice must contain a statement in not less than 12-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as 'Commission') within 5 calendar days after receiving this notice. If you request a hearing, it will be held and a decision rendered within 10 calendar days of the filing of the appeal no later than 14 days after receipt of your request by the Commission. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, you may call the Commission or write to the Commission to the attention of: Chairperson, Commission of Veterans Affairs."

ITEM 6. Renumber subrules **10.47(2) to 10.47(6)** as **10.47(3) to 10.47(7)**.

ITEM 7. Adopt the following **new** subrule 10.47(2):

10.47(2) The commission shall conduct a contested case proceeding in accordance with the uniform rules on contested case proceedings found in 801—Chapter 8. The rules in 801—Chapter 8 are adopted by reference with the following amendment: The presiding officer must be a member of the commission and cannot be an administrative law judge with the department of inspections and appeals.

ARC 8240B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 159.5, the Department of Agriculture and Land Stewardship hereby amends Chapter 1, "Administration," Iowa Administrative Code.

Chapter 1 provides the administrative structure of the Department. These amendments reflect the current structure of the Department and align Bureaus with their appropriate Division.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments update administrative rules to reflect the Department's existing structure.

Pursuant to Iowa Code section 17A.5(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective September 30, 2009. These amendments provide a benefit to the public by providing accurate information about the Department.

These amendments are intended to implement Iowa Code sections 17A.3 and 17A.4 and Iowa Code chapter 159.

These amendments became effective September 30, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 1.1(4) as follows:

1.1(4) The department is organized into ~~three~~ four branches known as the consumer protection and industry services division, the administration division, ~~and~~ the soil conservation division, and the food safety and animal health division. The deputy secretary of agriculture heads the administration division, and division directors head the consumer protection and industry services division, ~~and~~ the soil conservation division, and the food safety and animal health division. The directors assist the secretary in the implementation of the secretary's policies within the various bureaus, laboratories, and units assigned to that division. The directors shall also assist the secretary in supervising the work of the various bureaus and units assigned to that division, provide the expertise of their division to other divisions where appropriate, and perform other duties as assigned by the secretary.

ITEM 2. Rescind rule 21—1.2(159) and adopt the following new rule in lieu thereof:

21—1.2(159) Consumer protection and industry services division. In addition to the duties outlined in subrule 1.1(4), the director of the consumer protection and industry services division advises the secretary of activities and any impending or potential problems that have come to the attention of the division's personnel. The bureaus and laboratories under the supervision of the consumer protection and industry services division are as follows:

1.2(1) Grain warehouse bureau. This bureau licenses, inspects and examines grain dealers and grain warehouse facilities and reviews financial statements of licensees to ensure compliance with requirements, including payment of fees into the grain indemnity fund. The bureau also reviews claims made against the fund and makes recommendations on those claims to the grain indemnity fund board, upon which the board takes action.

1.2(2) Weights and measures bureau. This bureau inspects and licenses for commercial use all weights and measures or weighing and measuring devices; conducts petroleum products sampling and testing, tests and certifies antifreeze, and conducts random package and labeling inspections of products offered for sale; registers and licenses all service agencies and persons who service or repair commercial weighing and measuring devices; approves or rejects all blueprints on new scale installations; and approves or rejects bonds for scale installation. The bureau maintains the state metrology laboratory and, following the rules and regulations of the National Institute of Standards and Technology and using the weights and measures standards that are traceable to the National Institute of Standards and Technology, adjusts, certifies, and seals weights and measures used by state inspectors, commercial repairers and private industry. The bureau deals with renewable fuels and coproducts by facilitating

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

increased production and consumption of products made from Iowa's agricultural commodities and by encouraging production and use of renewable fuels and coproducts.

1.2(3) *Entomology and seed laboratory.* This laboratory licenses establishments selling or distributing seeds that are sold for agricultural purposes; controls the movement of serious insect pests and plant diseases, including those under federal quarantine; and inspects nursery stock growers and dealers.

1.2(4) *Agricultural diversification and market development bureau.* This bureau processes applications for organic certification and works closely with the Iowa organic standards board to ensure approval of those applications that meet state and federal regulations. This bureau provides marketing opportunities for diversified agricultural products throughout the state.

1.2(5) *Agricultural marketing bureau.* This bureau works with the various boards of Iowa agricultural organizations to assist and support their respective marketing efforts. The bureau also seeks new opportunities to assist Iowa's private firms to find markets for their products. Additionally, the bureau provides Iowa livestock and grain producers with essential market information on a timely basis through the market news reporting service, a joint effort with the United States Department of Agriculture.

1.2(6) *Audit bureau.* This bureau analyzes reports filed by feed and fertilizer companies for fees paid into the general fund of the state. The bureau also makes audits to check for compliance with check-off law for the commodity promotion boards.

1.2(7) *Horse and dog bureau.* This bureau promotes the Iowa horse and dog breeding industry by registering qualified Iowa-foaled horses and Iowa-whelped dogs and working in cooperation with the racing industry. The bureau administers the payment of breeder awards to the breeders of qualified winning horses and dogs.

1.2(8) *Horticulture and farmers' market bureau.* This bureau includes the following units:

a. Horticulture. This unit lends direction, continuity, leadership, and administrative services and guidance to the Iowa horticulture industry. The horticulture unit works with the Iowa State Horticultural Society to promote and encourage horticulture with the individual affiliate groups and the Iowa State Horticultural Society as a whole. The unit identifies and helps determine the market potential for horticultural crops such as ornamental plants, fruits and vegetables, Christmas trees, herbs, mushrooms, grapes, nuts, and turf products. The horticulture unit monitors the conditions of the industry and identifies, collects, and distributes pertinent information concerning horticulture and related interests. The unit acts as a resource for horticultural producers and provides referrals for assistance in marketing, production, financial aid, disaster programs, and regulatory issues. The horticulture unit acts as a liaison between industry organizations, other state and federal agencies, universities, noncommercial horticultural groups, and the agricultural community.

b. Farmers' markets. This unit assists in the organization and improvement of farmers' markets throughout the state. The unit collects and distributes information pertinent to the markets and provides market managers assistance in vendor recruitment, market promotion, and regulatory issues.

c. Farmers' market nutrition programs. This unit administers programs designed to provide a supplemental source of fresh, locally grown fruits and vegetables for women, infants, and children, seniors, and other clients; and to increase the production, distribution, and consumption of locally grown fruits and vegetables.

ITEM 3. Adopt the following **new** rule 21—1.5(159):

21—1.5(159) Food safety and animal health. In addition to the duties outlined in subrule 1.1(4), the director of the food safety and animal health division advises the secretary of activities and any impending or potential problems that have come to the attention of the division's personnel. The bureaus and laboratories under the supervision of the food safety and animal health division are as follows:

1.5(1) *Animal industry bureau.* This bureau is under the direction of the state veterinarian and consists of the following units:

a. Animal health. This unit conducts brucellosis, pseudorabies, and tuberculosis control and eradication programs; issues quarantines and approves premises for receiving animals of unknown

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

health status for feeding or isolation while under quarantine; monitors and investigates reports of foreign animal diseases; inspects and licenses cattle dealers, pig dealers, auction markets, hatcheries, and rendering plants; registers cattle brands; provides administrative support, supplies and facilities for the board of veterinary medicine; maintains the capability to react to emergency situations; and maintains liaisons with livestock producer groups.

b. Animal welfare. This unit licenses and regulates facilities that engage in commercial activities relating to animals in the pet industry including, but not limited to, pet stores, dog and cat breeders and dealers, animal shelters and pounds, and kennels.

1.5(2) Commercial feed and fertilizer bureau. This bureau licenses feed mills and commercial feed manufacturing facilities; registers feed and stock tonic products; collects commercial feed tonnage fees; inspects medicated feed in accordance with Food and Drug Administration (FDA) rules and regulations; licenses and registers fertilizer plants and products; collects, compiles, and distributes data on plant food consumption; collects commercial fertilizer tonnage fees and groundwater protection fees; approves, inspects and regulates all anhydrous ammonia installations; and licenses, samples, evaluates and certifies all limestone quarries.

1.5(3) Dairy products control bureau. This bureau conducts a statewide program of dairy products control and regulates all phases of production, processing, and manufacturing of Grade A and Grade B dairy foods (manufacturing milk), dairy food, milk and dairy products, and other by-products. The dairy program is a part of a national regulatory scheme which provides for the interstate shipment of raw milk, pasteurized milk, and dairy products.

1.5(4) Meat and poultry inspection bureau. This bureau enforces and administers Iowa Code chapter 189A, the meat and poultry inspection Act. It is a cooperative program with the United States Department of Agriculture. The program must maintain an "equal to" status with the federal Wholesome Meat and Poultry Products Inspection Acts. This bureau conducts inspections of facilities, animals, products, and labeling and exercises processing controls and reinspection of meat and poultry products for intrastate commerce.

1.5(5) Pesticide bureau. This bureau registers pesticide products, licenses and certifies pesticide applicators, establishes programs for best management practices of agricultural chemicals, monitors consumer products for pesticide residues, implements pesticide enforcement and certification programs of the Environmental Protection Agency, and cooperates with the department of natural resources and other agencies.

1.5(6) Feed, fertilizer, vitamin and drug laboratory. This laboratory analyzes feed and fertilizer samples to ensure that they comply with the guaranteed analysis. The laboratory analyzes medicated feed samples to ensure that they are manufactured and used in accordance with Food and Drug Administration (FDA) regulations. The laboratory also analyzes milk products for added vitamins A and D₃.

1.5(7) Food, meat, poultry and dairy laboratory. This laboratory analyzes samples to detect bacterial contamination and determine the composition of the product and substances added to determine wholesomeness and safety; certifies private dairy laboratories in the state; and tests public and private water supplies for bacteria and nitrate content.

1.5(8) Pesticide residue and formulation laboratory. This laboratory analyzes samples collected from pesticide retail establishments, from pesticide manufacturers to determine if pesticides have been used and produced properly, and during use/misuse investigations.

[Filed Emergency 9/30/09, effective 9/30/09]

[Published 10/21/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/21/09.

ARC 8244B**SECRETARY OF STATE[721]****Adopted and Filed Emergency**

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

These amendments are necessary due to the submission of a large number of Engineering Change Orders (ECOs) by voting equipment vendors. Chapter 22 currently does not provide the Board of Examiners for Voting Systems with any discretion to determine whether ECOs should be considered de minimis changes to the voting systems or whether they should be considered substantive modifications to the voting systems, requiring the voting systems to be recertified by the Board of Examiners before any of the changes can be implemented. In most cases, these ECOs will affect the ability of county commissioners to have existing voting equipment repaired.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are unnecessary because the Board of Examiners must have in place a procedure to follow immediately to resolve the ECO issues that have already been submitted so county commissioners are not unduly prevented from moving forward with needed repairs to their voting equipment. In addition, these amendments rescind a rule which is no longer necessary due to changes in the law effective July 1, 2009.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Secretary of State further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective upon filing. These amendments confer a benefit upon the voting public by ensuring that there is a procedure for the Board of Examiners to follow in evaluating whether submitted ECOs represent a de minimis change to a voting system and can therefore be approved by the Board of Examiners without further testing or whether submitted ECOs represent a modification to a voting system requiring further testing by the Board of Examiners before the changes are approved to be used in the state.

These amendments are also published herein under Notice of Intended Action as **ARC 8245B** to allow for public comment.

These amendments are intended to implement Iowa Code chapter 52 and 2009 Iowa Acts, House File 475.

These amendments became effective October 2, 2009.

The following amendments are adopted.

ITEM 1. Amend rule **721—22.1(52)**, definitions of "Audio ballot," "Automatic tabulating equipment," "Ballot," "Certification," "Examiners," "Voting equipment" and "Voting machine," as follows:

"Audio ballot" means the presentation of the contents of a ballot on a ~~direct recording electronic voting machine~~ an electronic ballot marking device in a recorded format, played to the voter over headphones. ~~An audio ballot is used to make voting accessible to persons with visual disabilities.~~

"Automatic tabulating equipment" means apparatus, ~~including but not limited to electronic data processing machines,~~ that are utilized to ascertain the manner in which optical scan ballots have been marked by voters or by electronic ballot marking devices; and to count the votes marked on the ballots.

"Ballot" means the official document that includes all of the offices or public measures to be voted upon at a single election, whether they appear on one or more paper ballots. The term includes optical scan paper ballots designed to be read by automatic tabulating equipment. In appropriate contexts, "ballot" also includes conventional paper ballots.

"Certification" means formal approval of ~~voting machines or an~~ optical scan voting systems system for use in Iowa pursuant to Iowa Code sections 52.5 and 52.26 ~~and 2007 Iowa Acts, Senate File 369, section 7.~~

"Examiners" means the board of examiners for voting systems described in Iowa Code section 52.4 ~~as amended by 2007 Iowa Acts, Senate File 369, section 28.~~

SECRETARY OF STATE[721](cont'd)

“*Voting equipment*” means ~~voting machines and~~ an optical scan voting systems system which ~~are~~ is required by Iowa Code sections 52.5 and 52.26 ~~and 2007 Iowa Acts, Senate File 369, section 7,~~ to be approved for use by the examiners.

“*Voting machine*” means a direct recording electronic device ~~meeting the requirements of 2007 Iowa Acts, Senate File 369, section 7, subsections 1 and 2, and designated for use in casting, registering, recording, and counting votes at an election.~~

ITEM 2. Adopt the following new definitions of “De minimis change” and “Modification” in rule ~~721—22.1(52)~~:

“*De minimis change*” means a change to a certified voting system’s hardware, the nature of which will not materially alter the system’s reliability, functionality, capability, security and operation. In order for a change to qualify as a de minimis change, it must not alter the reliability, functionality, capability, security and operability of the system. A de minimis change shall also ensure that when the hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances. A change shall not be considered de minimis if it has reasonable and identifiable potential to affect the system’s operation and compliance with applicable voting system standards.

“*Modification*” means a change to a certified voting system’s software or firmware. Modification also means a change to a certified voting system’s hardware that has the potential to affect the reliability, functionality, capability, security or operability of a system.

ITEM 3. Amend paragraphs ~~22.4(2)“a” and “b”~~ as follows:

a. For each meeting or series of meetings held for the purpose of certifying ~~a voting machine, electronic voting system or voting booth~~ an optical scan voting system or component thereof.

b. For each meeting or series of meetings for reconsideration of ~~a voting machine, electronic voting system or voting booth~~ an optical scan voting system or component thereof after denial of certification.

ITEM 4. Rescind paragraphs ~~22.4(2)“c” and “d.”~~

ITEM 5. Amend subrule 22.5(8), introductory paragraph, as follows:

~~22.5(8) Descriptions of the equipment, including the methods used to comply with the requirements of 2007 Iowa Acts, Senate File 369, section 7, if the equipment to be examined is a voting machine, or Iowa Code section 52.26 if it is an optical scan voting system. This description shall include an acknowledgment of the following requirements:~~

ITEM 6. Amend rule ~~721—22.7(52)~~ as follows:

~~721—22.7(52) Consultant.~~ If the examiners determine that a consultant is necessary to determine whether a system meets the requirements of Iowa law, ~~they or whether a change to a voting system is de minimis or a modification,~~ the examiners shall notify the vendor of the decision. The vendor may suggest the names of reliable independent test authorities to the examiners and may decline to submit the equipment to the examination of an individual for good reason.

A consultant ~~shall~~ may be employed if no other state has certified the equipment for use. The examiners may require a consultant if the equipment has been modified following certification by other states, or if the examiners believe it to be necessary.

If a test authority has been determined to be necessary by the examiners and a suitable consultant cannot be agreed upon by the examiners and the vendor, the equipment shall not be approved for use.

ITEM 7. Rescind rule ~~721—22.17(52)~~ and adopt the following new rule in lieu thereof:

721—22.17(52) Changes to certified voting systems. The procedures in this rule shall be followed anytime a change is made to a certified voting system, including a change in tabulation software, firmware, or hardware.

SECRETARY OF STATE[721](cont'd)

22.17(1) Notification of change. The vendor shall notify the examiners of any changes in a certified voting system. The vendor shall provide the examiners with the following information at the time the vendor provides notice of the change(s):

- a. A description of the changes made.
- b. Reports of test results conducted by an accredited independent test authority, and any reports of test results conducted by or for other states following the changes to the voting system.
- c. Copies of manuals, instructions, advertisements and other documents submitted with the voting system's original application for certification that have been updated since the original application was submitted.
- d. An assessment from an accredited independent test authority of the change as either a de minimis change or a modification to the voting system.

22.17(2) Commencing review proceedings. Within seven days of receiving a voting system change notice from a vendor, the examiners shall commence review proceedings to independently determine whether the change submitted by the vendor is a de minimis change or a modification to the voting system. In making this independent determination, the examiners may use any means available, including hiring a consultant pursuant to rule 721—22.7(52).

22.17(3) De minimis changes. If the examiners determine a change to a voting system is de minimis, the examiners may approve the changes by motion and certify the changed voting system for use in the state.

22.17(4) Modifications to voting systems. If the examiners determine a change to a voting system is a modification to the voting system, the examiners shall require the vendor to submit a new application for certification and testing of the voting system pursuant to rules 721—22.5(52) to 721—22.11(52).

ITEM 8. Amend paragraph **22.18(1)“b”** as follows:

b. ~~Material changes~~ Modifications have been made in the equipment a certified voting system that ~~do~~ have not comply with requirements for certification been approved by the examiners.

ITEM 9. Rescind and reserve rules **721—22.19(52)** to **721—22.29(52)**.

[Filed Emergency 10/2/09, effective 10/2/09]

[Published 10/21/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/21/09.

ARC 8236B**BANKING DIVISION[187]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3, 536.3, and 536.21, the Banking Division of the Department of Commerce hereby amends Chapter 15, "Regulated Loans," Iowa Administrative Code.

The amendment requires regulated loan companies that engage in residential mortgage lending to maintain a bond that meets the requirements of the new federal S.A.F.E. Mortgage Licensing Act of 2008. This amendment implements 2009 Iowa Acts, Senate File 355, which was passed in response to the Act.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8067B** on August 26, 2009.

No public comment was received on this amendment. This rule is identical to the rule published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 536 as amended by 2009 Iowa Acts, Senate File 355, section 40.

This amendment will become effective November 25, 2009.

The following amendment is adopted.

Adopt the following new rule 187—15.6(17A,536):

187—15.6(17A,536) Size of bond. An applicant for a regulated loan company license must file with the superintendent a bond complying with the provisions of Iowa Code section 536.3 as amended by 2009 Iowa Acts, Senate File 355, section 40. For applicants or licensees who do not make, arrange, broker, process, or underwrite any residential mortgage loans, as defined by 2009 Iowa Acts, Senate File 355, section 3, subsection 13, the bond shall be in the amount of \$25,000. For applicants or licensees who make, process, or underwrite residential mortgage loans, as defined by 2009 Iowa Acts, Senate File 355, section 3, subsection 13, the bond amount required to be filed and maintained shall be set and adjusted annually by March 31 using the following scale, based on the volume of residential mortgage loans made, originated, arranged, brokered, processed, and underwritten, as the case may be, by the applicant or licensee during the preceding calendar year:

| Loans | Bond Amount |
|------------------------------|-------------|
| \$0 – \$5,000,000 | \$25,000 |
| \$5,000,001 – \$20,000,000 | \$50,000 |
| \$20,000,001 – \$50,000,000 | \$75,000 |
| \$50,000,001 – \$100,000,000 | \$100,000 |
| Over \$100,000,000 | \$150,000 |

This rule is intended to implement Iowa Code section 536.3 as amended by 2009 Iowa Acts, Senate File 355, section 40.

[Filed 9/30/09, effective 11/25/09]

[Published 10/21/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/21/09.

ARC 8237B**BANKING DIVISION[187]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3, 536A.7A and 536A.28, the Banking Division of the Department of Commerce hereby amends Chapter 16, "Industrial Loans," Iowa Administrative Code.

The amendment requires industrial loan companies that engage in residential mortgage lending to maintain a bond that meets the requirements of the new federal S.A.F.E. Mortgage Licensing Act of 2008. This amendment implements 2009 Iowa Acts, Senate File 355, which was passed in response to the Act.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8068B** on August 26, 2009.

No public comment was received on this amendment. This rule is identical to the rule published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 536A as amended by 2009 Iowa Acts, Senate File 355, section 44.

This amendment will become effective November 25, 2009.

The following amendment is adopted.

Adopt the following new rule 187—16.13(17A,536A):

187—16.13(17A,536A) Size of bond. An applicant for an industrial loan company license must file with the superintendent a bond complying with the provisions of Iowa Code section 536A.7A as amended by 2009 Iowa Acts, Senate File 355, section 44. For applicants or licensees who do not make, process, or underwrite any residential mortgage loans, as defined by 2009 Iowa Acts, Senate File 355, section 3, subsection 13, the bond shall be in the amount of \$25,000. For applicants or licensees who make, arrange, broker, process, or underwrite residential mortgage loans, as defined by 2009 Iowa Acts, Senate File 355, section 3, subsection 13, the bond amount required to be filed and maintained shall be set and adjusted annually by March 31 using the following scale, based on the volume of residential mortgage loans made, originated, arranged, brokered, processed, and underwritten, as the case may be, by the applicant or licensee during the preceding calendar year:

| Loans | Bond Amount |
|------------------------------|-------------|
| \$0 – \$5,000,000 | \$25,000 |
| \$5,000,001 – \$20,000,000 | \$50,000 |
| \$20,000,001 – \$50,000,000 | \$75,000 |
| \$50,000,001 – \$100,000,000 | \$100,000 |
| Over \$100,000,000 | \$150,000 |

This rule is intended to implement Iowa Code section 536A.7A as amended by 2009 Iowa Acts, Senate File 355, section 44.

[Filed 9/30/09, effective 11/25/09]

[Published 10/21/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/21/09.

ARC 8238B**BANKING DIVISION[187]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 535B.14, the Banking Division of the Department of Commerce hereby amends Chapter 18, "Mortgage Bankers and Mortgage Brokers," Iowa Administrative Code.

The amendments update the rules in Chapter 18 and strike all administrative rule requirements relating to individual registration of mortgage loan originators. Individual registrants will be licensed under a new statute and chapter of administrative rules. These amendments implement 2009 Iowa Acts, Senate File 355, which was mandated by the federal S.A.F.E. Mortgage Licensing Act of 2008.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8066B** on August 26, 2009. No public comment was received on these amendments.

One technical change has been made to the amendments published under Notice of Intended Action. A cross reference has been corrected in new subrule 18.2(5).

These amendments are intended to implement Iowa Code chapter 535B as amended by 2009 Iowa Acts, Senate File 355.

These amendments will become effective January 1, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 18] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8066B**, IAB 8/26/09.

[Filed 9/30/09, effective 1/1/10]

[Published 10/21/09]

[For replacement pages for IAC, see IAC Supplement 10/21/09.]

ARC 8239B**BANKING DIVISION[187]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3 and 2009 Iowa Acts, Senate File 355, sections 12 and 22, the Banking Division of the Department of Commerce hereby adopts new Chapter 19, "Mortgage Loan Originators," Iowa Administrative Code.

The rules are designed to implement 2009 Iowa Acts, Senate File 355 (the Iowa Secure and Fair Enforcement (SAFE) for Mortgage Licensing Act), adopted in 2009 and effective July 1, 2009, which requires natural persons acting as mortgage loan originators to be licensed by the Banking Division beginning January 1, 2010. Senate File 355 requires applicants for licensure to meet stringent licensing requirements, including meeting test and prelicense education requirements, and completion of continuing education requirements each year. The rules address the processes and requirements for applying for and renewing a mortgage loan originator license. The rules also address continuing education requirements and establish administrative fees associated with licenses administered pursuant to 2009 Iowa Acts, Senate File 355. Finally, the rules describe the complaint and disciplinary process that applies to mortgage loan originator licensees.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8065B** on August 26, 2009.

No public comment was received on the rules.

One change has been made to the rules published under Notice of Intended Action. Subrule 19.9(1) has been rewritten to conform to the practices used by the nationwide mortgage licensing system; however, the substance remains the same as the version published under Notice of Intended Action. Subrule 19.9(1) now reads as follows:

BANKING DIVISION[187](cont'd)

“**19.9(1)** A licensee applying to renew a mortgage loan originator license shall, during the license term preceding renewal, complete at least eight hours of continuing education or prelicensing education.”

These rules are intended to implement 2009 Iowa Acts, Senate File 355.

These rules will become effective November 25, 2009.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 19] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 8065B**, IAB 8/26/09.

[Filed 9/30/09, effective 11/25/09]

[Published 10/21/09]

[For replacement pages for IAC, see IAC Supplement 10/21/09.]

ARC 8234B

HISTORICAL DIVISION[223]

Adopted and Filed

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs amends Chapter 50, “Historic Site Preservation Grant Program,” Iowa Administrative Code.

The amendment to Chapter 50 removes the limit of two projects per county per grant cycle and substitutes a limit of \$200,000 per county in any grant cycle. This action is required due to a change made by the Legislature during the 2009 legislative session.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 3, 2009, as **ARC 7817B**. The Department of Cultural Affairs sought input on the amendment by holding a public hearing on June 23, 2009. No members of the public provided comments. This amendment is identical to that published under Notice.

The Department Director approved and adopted this amendment on September 23, 2009.

This amendment is intended to implement Iowa Code chapter 303.

This amendment will become effective on November 25, 2009.

The following amendment is adopted.

Amend subrule 50.3(8) as follows:

50.3(8) *Geographic distribution of funds.* No more than ~~two projects~~ \$200,000 may be awarded in any grant cycle within a single county.

[Filed 9/23/09, effective 11/25/09]

[Published 10/21/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/21/09.

ARC 8243B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of 2009 Iowa Acts, Senate File 484, the Department of Inspections and Appeals hereby rescinds Chapter 66, “Quality-Based Inspection,” and adopts new Chapter 66, “Boarding Homes,” Iowa Administrative Code.

The current Chapter 66 is being rescinded, as this chapter has never been implemented and no facilities participate in the program. New Chapter 66 is proposed pursuant to 2009 Iowa Acts, Senate File 484, which created new responsibilities related to boarding homes.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 2009, as **ARC 8047B**. The Notice was presented to other agencies in the multidisciplinary team and the

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

Governor's Dependent Adult Protective Advisory Council. Several suggestions were incorporated into the Notice.

A public hearing was held at nine locations via the Iowa Communications Network, and no comments were presented. The Department received written comments from one industry group. The comments related to having information on registered boarding homes available online. The Department has added subrule 66.7(4), which clearly designates a searchable database that will be available online to search registered boarding homes.

Additional comments received after the comment deadline related to the breadth of the definition of "boarding home," which is taken directly from statute, and to concerns about the collection of information by owners and lessees. No changes have been made as a result of these comments.

The Department also received comments from its Food and Consumer Safety Bureau recommending that a question be included on the registration which asks whether a production kitchen is being used to prepare meals. Such a question has been incorporated into the requirements of the registration.

Additionally, a sentence has been added to rule 481—66.3(83GA,SF484) referring readers to the definition of "known" in rule 481—66.1(83GA,SF484). This term is referenced repeatedly in rule 481—66.3(83GA,SF484).

These rules are intended to implement 2009 Iowa Acts, Senate File 484.

These rules will become effective January 1, 2010.

The following amendment is adopted.

Rescind 481—Chapter 66 and adopt the following **new** chapter in lieu thereof:

CHAPTER 66
BOARDING HOMES

481—66.1(83GA,SF484) Definitions.

"Activities of daily living" means the following self-care tasks: bathing, dressing, grooming, eating, transferring, toileting, and ambulation.

"Affiliated person or entity" means an individual operating as a sole proprietorship who is related within the third degree of consanguinity to the boarding home owner or lessee; or a business entity with common ownership or with 25 percent or more ownership by the boarding home owner or lessee.

"Assistance" means aid or help.

"Boarding home" means a premises used by its owner or lessee for the purpose of letting rooms for rental to three or more persons not related within the third degree of consanguinity to the owner or lessee where supervision or assistance with activities of daily living is provided to such persons. A boarding home does not include a facility, home, or program otherwise subject to licensure or regulation by the department of human services, the department of inspections and appeals, or the department of public health.

"Commencing operations" means the date on which a premises becomes a boarding home by renting to a third individual who meets the requirements pursuant to the definition of "boarding home."

"Department" means the department of inspections and appeals.

"Director" means the director of the department of inspections and appeals.

"Known" means information that an owner, a lessee, or a manager possesses without seeking additional information from tenants.

"Lessee" means a person who leases the boarding home from its owner.

"Multidisciplinary team" means a team consisting of members of various departments as is appropriate for an investigation. The team may include employees of the department of inspections and appeals, the department of human services, the state fire marshal and the division of criminal investigation of the department of public safety, the department of justice, or other local, state, and federal agencies.

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

“*Premises*” means a room and the structure of which it is a part and facilities and appurtenances to it and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

“*Preponderance of the evidence*” means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. A “preponderance of the evidence” standard does not require that the investigator personally witnessed the alleged violation.

“*Probable cause*” means a reasonable suspicion to believe that a boarding home is in violation of 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 135O], licensing or other regulatory requirements of the department of human services, department of inspections and appeals, or department of public health; or that dependent adult abuse of any individual living in the boarding home has occurred or is occurring.

“*Responsible party*” means the individual designated on the registration of a boarding home as the department’s primary contact.

“*Room*” means an apartment, group of rooms, or single room that is occupied as a separate living quarter or, if vacant, that is intended for occupancy as a separate living quarter, in which a tenant can live and sleep separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.

“*Supervision*” means oversight necessary to prevent accidents or ensure the health, safety, and welfare of the tenant.

“*Third degree of consanguinity*” means the following relatives of the owner or lessee: spouse, children, parents, siblings or half-siblings, grandchildren, grandparents, uncles, aunts, nephews, nieces, great-grandparents, and great-grandchildren.

481—66.2(83GA,SF484) Registration of boarding homes.

66.2(1) A boarding home shall file a statement of registration with the department.

a. Boarding homes in operation on January 1, 2010, or after shall register with the department within 60 days of commencing operations.

b. Boarding homes in operation prior to January 1, 2010, shall register with the department no later than March 1, 2010.

66.2(2) The statement of registration may be submitted electronically via an Internet-based system; by mail to the Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by fax to (515)242-5022.

66.2(3) The registrant shall include, at a minimum, the following information on the statement of registration:

- a.* Name(s) of the owner, lessee, and manager, as applicable;
- b.* Number of rooms available for rent and maximum number of tenants for the entire boarding home;
- c.* Location of the boarding home, including street address, city, and ZIP code;
- d.* Contact information for the owner, lessee, and manager, including telephone number, mailing address, and E-mail address;
- e.* Occupant loads as calculated in accordance with the building and fire codes as adopted by the applicable jurisdictions;
- f.* Whether the building is equipped with a fire sprinkler system;
- g.* Whether the building is equipped with a centralized kitchen in which meals are prepared; and
- h.* Name of the responsible party. The department will send all notices regarding the boarding home to the responsible party.

66.2(4) Failure to file a statement of registration in a timely manner may result in a penalty of no more than \$500.

66.2(5) The boarding home shall notify the department of any changes to the information on the initial statement of registration within 30 days of when the change occurs, including cessation of operation. Changes shall be submitted in the manner described in subrule 66.2(2).

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481—66.3(83GA,SF484) Occupancy reports. See rule 481—66.1(83GA,SF484) for the definition of “known.”

66.3(1) Each boarding home shall file an occupancy report annually with the department.

a. For new boarding home registrations, an occupancy report shall be filed along with the initial statement of registration. The occupancy report that accompanies the initial statement of registration shall provide information as of the last day of the preceding month.

b. After the initial registration, registrants shall submit a completed occupancy report by January 31 of each year with information current as of December 31 of the preceding year.

66.3(2) The occupancy report may be submitted electronically via an Internet-based system; by mail to the Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by fax to (515)242-5022.

66.3(3) The owner or lessee shall include, at a minimum, the following information on the occupancy report. If the owner or lessee is unable to answer the question because the owner or lessee does not have such information, the owner or lessee shall indicate such on the report.

- a.* Current number of rooms occupied;
- b.* Current number of tenants residing in the boarding home;
- c.* If applicable, date of last fire inspection and any deficiencies noted and how such deficiencies have been corrected;
- d.* If known, the number of tenants receiving Medicaid;
- e.* If known, the number of tenants receiving food assistance benefits (EBT cards);
- f.* If known, the number of tenants receiving other types of state assistance and the types of state assistance received;
- g.* Types of services provided or arranged by the owner, lessee, manager or an affiliated person or entity; frequency of services by type; and the name and contact information of the person or entity providing or arranging such services;
- h.* Any assistance or supervision provided to tenants by the owner, lessee or manager;
- i.* Method of rent payments, such as cash, check, or state assistance; and
- j.* If known, the number of tenants with a power of attorney, guardian or conservator.

481—66.4(83GA,SF484) Complaints.

66.4(1) Complaints.

a. The process for filing a complaint is as follows:

(1) Any person with a concern regarding the operation of a boarding home may file a complaint with the Department of Inspections and Appeals, Complaint/Incident Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083, or by use of the complaint hotline, telephone 1-877-686-0027. The Web site address is https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

(2) When the nature of the complaint is outside the department’s authority, the department shall forward the complaint to the appropriate investigatory entity.

(3) If other state agencies receive a complaint that relates to boarding homes, the agencies shall forward the complaint to the department.

b. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the boarding home or is without a reasonable basis. If the department, upon preliminary review, determines that the complaint is intended to harass or is without a reasonable basis, the department may dismiss the complaint.

66.4(2) Content of complaint reports. The complaint shall include as much of the following information as possible: the complainant’s name, address and telephone number; the complainant’s relationship to the boarding home and tenant; and the reason for the complaint. The complainant’s name shall be confidential information and shall not be released by the department.

66.4(3) Time frames for investigation of complaints. Upon receipt of a complaint made in accordance with this rule, the department shall make a preliminary review of the complaint to determine if probable cause exists to investigate the complaint. If probable cause exists, an investigation of the boarding home shall be initiated, as provided in rule 481—66.5(83GA,SF484), within 45 working days. If there is

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the likelihood of immediate danger, the department shall initiate an investigation of the boarding home within 2 working days of receipt of the complaint. If there is an allegation of harm, the department shall initiate an investigation of the boarding home within 20 working days of receipt of the complaint.

66.4(4) *Submission of all complaints to core multidisciplinary team.* A copy of all complaints and the department's initial determination whether to investigate the complaint shall be sent to the core multidisciplinary agencies: the department of human services, the state fire marshal of the department of public safety, and the department of justice. If the department has determined not to initiate an investigation, the members of the core multidisciplinary team may recommend the initiation of, and the department shall initiate, an investigation.

66.4(5) *Standard for determining whether a complaint is substantiated.* The department shall apply a preponderance of the evidence standard in determining whether a complaint is substantiated.

66.4(6) *Notification of the boarding home or alleged boarding home of results of investigation.* The department shall notify the boarding home or alleged boarding home, in writing, of the final report of the complaint investigation.

66.4(7) *Notification of the complainant of results of investigation.* The complainant, if known, shall be notified of the final findings of a complaint investigation. The complainant, if known, shall also be notified if the department determines not to investigate a complaint and shall receive an explanation of the department's decision.

481—66.5(83GA,SF484) Investigations.

66.5(1) *Initiation of investigations.* Investigations may be initiated because of a complaint or other information received by the department or upon referral from other agencies. If the department determines there is probable cause to believe that a boarding home is an unregistered boarding home or that a registered boarding home is not in compliance with state, federal or local statutes or rules, an investigation shall be initiated.

66.5(2) *Evaluation of allegations and formation of initial multidisciplinary team.* If an investigation is initiated, the department shall evaluate the allegations to determine which local, state, and federal agencies to include in the initial multidisciplinary team. The department shall notify the agencies of the investigation and the allegations associated with the investigation. The department shall be the lead agency for the investigation unless the multidisciplinary team determines otherwise.

66.5(3) *Addition of other agencies.* The lead agency for the investigation may add other local, state, and federal agencies to the multidisciplinary team as is determined necessary. As a component of the coordinated interagency approach, all members of the multidisciplinary team shall share investigative findings.

66.5(4) *Final findings.* Each agency shall prepare final findings regarding the agency's investigation and submit these findings to the lead agency. The lead agency shall then prepare a consolidated final findings report, which shall be maintained by the department pursuant to the state's document retention policy.

66.5(5) *Post-investigation actions.* The agencies on the multidisciplinary team shall meet to determine the action to be taken as a result of the investigation. Each agency on the multidisciplinary team shall maintain the agency's individual report pursuant to the state's document retention policy. Investigative findings that are confidential under other state, federal, or local requirements shall not be included in the final report.

66.5(6) *Notification of law enforcement.* If the multidisciplinary team believes a criminal violation has occurred or is occurring, the lead agency shall notify the appropriate law enforcement entities.

481—66.6(83GA,SF484) Penalties. The director shall consider the following when determining whether to assess a penalty for violation of 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 1350], or rules adopted pursuant to 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 1350], and when determining the amount of the penalty:

1. The duration of the noncompliance;
2. The nature of the noncompliance;

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3. The response of the owner or lessee upon notification of noncompliance;
4. The number of tenants affected; and
5. The impact to the tenants.

481—66.7(83GA,SF484) Public and confidential information.

66.7(1) *Public disclosure.* The following records are open and available for inspection:

- a. Registration forms and accompanying materials;
- b. Final findings of investigations, unless otherwise confidential by law, such as investigative findings of the division of criminal investigation of the department of public safety or dependent adult abuse investigations; and
- c. Official notices of penalties.

66.7(2) *Confidential information.* Confidential information includes the following:

- a. Information that does not comprise a final finding resulting from a complaint investigation or other investigation of the multidisciplinary team and its individual members;
- b. Names of all complainants;
- c. Names of tenants of a boarding home, identifying personal or medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or lessee; and
- d. Social security or employer identification numbers (EIN).

66.7(3) *Redaction of confidential information.* If a record normally open for inspection contains confidential information, the confidential information shall be redacted prior to an agency's providing the record for inspection.

66.7(4) *Searchable database of all registered boarding homes.* The department shall maintain a searchable database of all registered boarding homes on the health facilities division's Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

These rules are intended to implement 2009 Iowa Acts, Senate File 484.

[Filed 10/2/09, effective 1/1/10]

[Published 10/21/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/21/09.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 17

WHEREAS, the State of Iowa's executive agencies and Regent Institutions own, purchase, build and lease property, including office space, worth billions of dollars for educational, correctional, recreational, conservation, transportation, communication, public health, workforce, and related public functions; and

WHEREAS, the placement of state offices in historic central business districts or "downtowns" can strengthen and revitalize Iowa's cities and towns; and

WHEREAS, central cities and downtowns in Iowa have served as centers of both growth and commerce and hold historic, architectural, and cultural significance; and

WHEREAS, development of existing infrastructure, structures, sites, and areas protects Iowa's historical and architectural story while limiting use of environmental resources and preventing degradation of environmental quality; and

WHEREAS, the ability to enjoy, protect and preserve environmental quality and resources depends to an important degree on the economic well-being of the State, and Iowa's ability to sustain long term economic well-being depends to an important degree on the protection and preservation of the environmental quality and resources; and

WHEREAS, the conflict of environmental quality and economic activity put Iowa's rich soil and other environmental resources at risk, and create the need for appropriately sited and designed development; and

WHEREAS, I signed Executive Order Number Six on February 21, 2008, creating a Green Government Initiative to encourage resource protection throughout state agencies and Regent institutions; and

WHEREAS, resource protection and sustainable development should be pursued as dual objectives to support the growth patterns in Iowa cities and towns, reduce operating expenses, ensure accessibility to state services, reduce traffic congestion, and improve air quality; and

WHEREAS, the state's commercial real estate investments and leases represent a significant impact on the State's expenditures and the policies herein shall guide the location decisions of both leased and newly acquired state offices.

NOW, THEREFORE, I, Chester J. Culver, Governor of the State of Iowa, by the power vested in me by the laws and the constitution of the State of Iowa do hereby order as follows:

- I. State entities managing or leasing real estate on behalf of the State shall give priority to the needs of public entities and the populations they serve consistent with the cost-effective use of state revenues.
- II. Existing resources and facilities shall be used where adequate, cost competitive and appropriate for efficient and effective current state operations.
- III. Sound and smart growth patterns shall receive maximum support consistent with the foregoing state priorities including the following considerations:
 - a. All agencies shall promote, assist, and exert reasonable effort to pursue the rehabilitation and revitalization of infrastructure, structures, sites and areas that have been previously developed and that are still suitable for economic use or reuse and that can be configured into efficient, safe, healthy ADA compliant spaces suitable for modern day State operations. Such rehabilitation and revitalization, where practicable, shall be deemed preferable over the construction of new facilities or the development of areas with significant value

in terms of environmental quality and resources, unless otherwise provided and supported by local or regional growth management plans.

- b. When locating State facilities, state agencies shall give first consideration to historic properties offered within cultural and entertainment districts. If no such property is suitable, then State agencies shall consider other developed or undeveloped sites within historic districts. State agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. Rehabilitation and construction that is undertaken pursuant to this Order must be architecturally compatible with the character of the surrounding historic district, or properties and cost competitive with comparable construction outside the historic area.
- c. State agencies with responsibilities for leasing, acquiring, locating, maintaining or managing State facilities, or with responsibilities for the planning or managing of historic resources, shall take steps to reform, streamline and otherwise minimize regulations, policies and procedures that impede the State's ability to establish or maintain a presence in historic districts or to acquire suitable historic properties to satisfy State space needs, unless such regulations, policies and procedures are designed to protect human health and safety or the environment.
- d. In carrying out the authorities of the National Historic Preservation Act, the Secretary of the Interior, and the Advisory Council on Historic Preservation, each State agency shall seek appropriate partnerships with local governments, Indian tribes and appropriate private organizations with the goal of enhancing participation of these parties in the National Historic Preservation Program. Such partnerships shall embody the principles of administrative flexibility, reduced paperwork and increased service to the public, all the while remaining sensitive to building design and scale as well as environmental and economic concerns. State agencies shall seek the input of the State Department of Cultural Affairs and the Iowa Department of Economic Development Main Street Program when implementing this Order.
- e. While keeping the above-specifications in mind, other critical facility siting and development factors shall include, but shall not be necessarily limited to the proximity of public transit and other needed infrastructure; closeness to affordable and available housing; pedestrian access to retail and commercial facilities; and exploiting opportunities for mixed-use.
- f. To the extent reasonably possible, State agencies shall embrace sustainable design standards shall and follow the U.S. Green Building Council's LEED Program, which provide building owners and operations a concise framework for identifying and implementing practical and measurable green building design, construction, operations and maintenance solutions.

IV. The Department of Administrative Services, within six months following the date of this Order, shall issue a guidance document for facility siting and development for use by all State agencies and departments for projects beginning thereafter.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 25th day of September, in the year of our Lord two thousand nine.

Chester J. Culver
CHESTER J. CULVER
GOVERNOR

ATTEST:

Michael A. Mauro
MICHAEL A. MAURO
SECRETARY OF STATE



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 18

WHEREAS, the State Revenue Estimating Conference (REC) reduced its Fiscal Year 2009 net General Fund revenue estimate at the December 12, 2008, meeting by 1.6 percent from \$6.151 billion to \$6.052 billion; and

WHEREAS, as a result of the December 12, 2008, REC meeting, I issued a uniform reduction, as required in Iowa Code section 8.31, of 1.5 percent, or \$89.1 million, while also imposing additional spending expenditure reductions and recommendation on program eliminations to bring the State General Fund back into balance; and

WHEREAS, the REC, again, reduced its Fiscal Year 2009 net General Fund revenue estimate at its March 20, 2009, meeting, by 1.3 percent from \$6.052 billion to \$5.970 billion; and

WHEREAS, as a result of the March 20, 2009, REC meeting, I negotiated with the Iowa General Assembly and signed into law, a Fiscal Year 2009 General Fund budget that was balanced and had a positive ending balance; and

WHEREAS, since the March 20, 2009, REC meeting, as a direct result of the national recession, gross state revenues unexpectedly and precipitously declined in May and June – the last two months of Fiscal Year 2009 – by \$77.6 million; and

WHEREAS, the Department of Management has informed me, as expected, that a transfer from the State's Economic Emergency Fund established in Iowa Code section 8.55, would be necessary to balance the Fiscal Year 2009 State General Fund; and

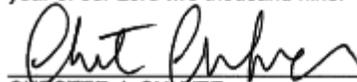
NOW, THEREFORE, I, Chester J. Culver, Governor of the State of Iowa, by the power vested in me by the Constitution and laws of the State of Iowa, do hereby order the transfer of \$45.3 million from the State Economic Emergency Fund to the State General Fund, as provided under Iowa Code section 8.55. The Department of Management shall take all necessary steps under Iowa law to effectuate these transactions. Actions taken by the Department of Management to implement this order shall commence on September 25, 2009.



ATTEST:


 MICHAEL A. MAURO
 SECRETARY OF STATE

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 25th day of September, in the year of our Lord two thousand nine.


 CHESTER J. CULVER
 GOVERNOR



EXECUTIVE ORDER NUMBER 19

WHEREAS, reckless conduct by Wall Street financial interests, combined with years of misguided economic and fiscal policies of the federal government, have joined to create a Great Recession, the worst economic downturn since the Great Depression; and

WHEREAS, as a result, across the nation, states are facing record high budget shortfalls in Fiscal Year 2010; and

WHEREAS, in addition to budgetary challenges caused by this economic down turn, the State of Iowa has, in recent years, experienced a series of unprecedented natural disasters requiring increased expenditures to relieve hardships endured by individuals and businesses harmed by those weather-related events; and

WHEREAS, the State of Iowa, using sound fiscal management practices, is in better shape than most other states, had the highest reserve funds in the state's history in Fiscal Year 2009, and thereby positioned itself to manage successfully notwithstanding the economic downturn and the adverse impacts of weather-related events; and

WHEREAS, in March, 2009, the State's Revenue Estimating Conference projected state revenues for Fiscal Year 2010, and the Iowa General Assembly passed, in April 2009, a balanced budget for Fiscal Year 2010, based on those projections; and

WHEREAS, on October 7, 2009, the State's Revenue Estimating Conference (REC), upon its review of more recent economic data, substantially revised and reduced its official projection of state General Fund revenues for Fiscal Year 2010 by approximately \$415 million; and

WHEREAS, based on these most recent projections, unless budgetary adjustments are made, I find that the estimated budget resources during Fiscal Year 2010 will be insufficient to pay all appropriations in full by the end of that period; and

WHEREAS, I have therefore requested the Department of Management to recast the Fiscal Year 2010 General Fund budget with the REC's new revenue projections in order to abide with generally accepted accounting practices and to avoid an overdraft or deficit in the several funds of the State's General Fund for Fiscal Year 2010; and

WHEREAS, modifying budget allotments to state departments and agencies this early in the fiscal year will help state agencies adjust to lower revenues, despite already managing within the tight budget; and

WHEREAS, an across-the-board reduction of General Fund expenditures avoids the unfair and unrealistic "picking and choosing" of important programs; and

WHEREAS, a 10 percent reduction in appropriations, pursuant to Iowa Code 8.31, would reduce state expenditures in Fiscal Year 2010 by approximately \$565 million and help the State avoid an overdraft or deficit in the Fiscal Year 2010 General Fund; and

NOW, THEREFORE, I, Chester J. Culver, Governor of the State of Iowa, by the power vested in me by the Constitution and laws of the State of Iowa, do hereby order and direct a uniform modification of allotment requests, pursuant to Iowa Code 8.31, to achieve an annual ten percent budget reduction for Fiscal Year 2010. The Department of Management shall take all necessary steps under Iowa law to effectuate the annual ten percent reduction for Fiscal Year 2010, directed to all state departments and establishments, as provided in Iowa Code 8.2(5). Actions taken by the Department of Management and all state departments and establishments described above to implement this order shall commence on October 8, 2009.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 8th day of October, in the year of our Lord two thousand nine.

CHESTER J. CULVER
GOVERNOR

ATTEST:

MICHAEL A. MAURO
SECRETARY OF STATE